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Current and future governance arrangements for the Indian Ocean Territories

Joint Standing Committee on the National Capital and External Territories

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Foreword

In recent years, the Committee has taken a close interest in issues of governance in Australia's external territories. The Committee has produced two reports on the governance of Norfolk Island in 2005 which led the Australian Government to the view that current governance and financial arrangements on Norfolk Island are unsustainable and that an alternative is urgently needed.

An inquiry reviewing departmental operations in the Indian Ocean Territories (IOTs) undertaken by the Committee in 2003–04 revealed that closer investigation of governance issues affecting the IOTs was necessary. The Committee has also, therefore, pursued an inquiry into current and future governance arrangements for the IOTs, resulting in this report.

The evidence presented to the Committee during this inquiry revealed that the system of governance in the IOTs requires attention. There needs to be greater transparency and accountability in decision-making by the Federal government. There also needs to be greater consultation between the Federal government, including its departmental representatives, and the community. The Committee believes that this needs to operate not only at the level of personal interaction between departmental officers and IOTs residents – systematic processes for consultation and accountability need to be put in place. This is especially true of the processes surrounding the application of Western Australian laws in the IOTs and the implementation of Service Delivery Arrangements.

The Committee has also observed the close linkage between governance and economic sustainability in the IOTs. The Committee believes that more effective, accountable and transparent governance arrangements are vital to any further economic development of the IOTs. The Committee makes a number of positive recommendations with regard to the future economic development of the IOTs.

The inquiry has also addressed broader issues of governance – the role of the Shires of Christmas Island and Cocos (Keeling) Islands, the aspirations of IOTs residents for more representative governance arrangements, and options for the future governance of the IOTs. The options canvassed by the report include

maintaining current governance arrangements with some refinement; incorporation of the Indian Ocean Territories into Western Australia; and some form of limited self government. On this point, the Committee wishes to strike a note of caution. The experience of Norfolk Island reveals that there are limits to the level of self government small isolated communities can enjoy. Whatever alterations to the system of governance ultimately result from this inquiry, they should be the result of careful consideration, close consultation with the Islands' communities, and a realistic appreciation of what can be achieved.

My colleagues and I would like to thank all those who participated in this inquiry. We are especially grateful for the generous reception we received when we visited Christmas Island and the Cocos (Keeling) Islands. The residents of the IOTs may rest assured that the Committee will take a keen and positive interest in their future.

Senator Ross Lightfoot
Chairman



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Membership of the Committee

Chair Senator Ross Lightfoot

Deputy Chair Senator Kate Lundy (from 29/03/06)

 Senator Trish Crossin (to 28/03/06)

Members The Hon. Ian Causley MP

 Ms Annette Ellis MP

 Mr Paul Neville MP

 Ms Sophie Panopoulos MP

 Mr Patrick Secker MP

 The Hon. Warren Snowdon MP

 Senator Kim Carr (from 08/12/05)

 Senator John Hogg

 Senator Barnaby Joyce (from 16/08/05)

 Senator Kate Lundy (from 10/08/05)

 Senator Kerry O'Brien (to 10/08/05)

 Senator Nigel Scullion (to 16/08/05)

 Senator Natasha Stott Despoja

Committee Secretariat

Secretary Mr Stephen Boyd

Inquiry Secretary Dr William Pender

Senior Research Officer Mr Justin Baker

Administrative Officers Mr Cameron Carlile

 Ms Natasha Petrovic



Terms of reference

On 11 May 2005, the Senate asked the Joint Standing Committee on National Capital and External Territories to inquire into current and future governance arrangements for the Indian Ocean Territories, with particular reference to:

- a. accountability and transparency of decision-making in relation to the Indian Ocean Territories;
- b. the role of the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands;
- c. aspirations of the residents of Christmas Island and Cocos (Keeling) Islands for more representative governance arrangements;
- d. the link between more effective governance and improved economic sustainability for the Indian Ocean Territories;
- e. the operation of Western Australian applied laws;
- f. community service delivery including the effectiveness of service delivery agreements with the Western Australian Government; and
- g. proposals for reform of governance arrangements.



List of abbreviations

APSC	Asia Pacific Space Centre
CCC	Community Consultative Committee
CEO	Chief Executive Officer
CI	Christmas Island
CKI	Cocos (Keeling) Islands
CKIEDA	Cocos (Keeling) Islands Economic Development Association
DOTARS	Department of Transport and Regional Services
EDA	Economic Development Association
IOTs	Indian Ocean Territories
IRPC	Immigration Reception and Processing Centre
JSCNCET	Joint Standing Committee on the National Capital and External Territories
SDA	service delivery arrangement
WA	Western Australia



List of recommendations

3 Accountability and transparency in decision making, and the link between effective governance and economic sustainability

Recommendation 1 (para 3.78)

The Committee recommends that the Australian Government review the decision to block the licensing of a casino on Christmas Island, in consultation with the Christmas Island community, with a view to reissuing a casino licence, at the earliest opportunity.

Recommendation 2 (para 3.83)

The Committee recommends that the Australian Government adopt the policy that, in future, all Commonwealth land released for development on Christmas Island, is sold at full market value.

Recommendation 3 (para 3.84)

The Committee recommends that the Australian Government compensate Northern Bay Pty Ltd through the purchase of Location 448 Phosphate Hill Road at full market value, or by some other means.

Recommendation 4 (para 3.93)

The Committee recommends that the Australian Government conduct an investigation into the cost of sea freight to the Indian Ocean Territories with a view to reducing costs and streamlining operations.

Recommendation 5 (para 3.94)

The Committee recommends that the Australian Government rescind customs and quarantine charges, where they exist, on freight travelling between the Indian Ocean Territories and the Australian mainland.

Recommendation 6 (para 3.100)

The Committee recommends that the Australian Government increase the number of flights between Australia and the Indian Ocean Territories under the existing contract, and invite international carriers to open services to the IOTs.

Recommendation 7 (para 3.105)

The Committee recommends that the Australian Government take action to ensure that:

- corporations law be amended to include the IOTs;
- the *Education Services for Overseas Student Act 2000* be amended to include the IOTs as a possible destination for overseas students;
- a review of all Commonwealth legislation is conducted to identify and rectify similar instances where the Indian Ocean Territories are excluded from legislation; and
- in future, the IOTs be included under the provisions of new legislation except in instances where exclusion can be demonstrated as justified.

4 Applied WA law and community service delivery**Recommendation 8 (para 4.25)**

The Committee recommends that, as a matter of priority, the Australian Government allocate sufficient resources to implement a program for reviewing all Western Australian legislation currently applied as Commonwealth law in the Indian Ocean Territories, with a view to repealing, or amending, all legislation which cannot be practically applied in the Territories.

Recommendation 9 (para 4.28)

The Committee recommends that, following a review of existing applied Western Australian legislation, the Australian Government allocate sufficient resources for the ongoing monitoring of new, amended, or proposed Western Australian laws which apply, or will apply, in the Indian Ocean Territories as Commonwealth law.

Recommendation 10 (para 4.52)

The Committee recommends that the Australian Government cease its policy of market-testing and outsourcing to third parties services which it currently provides to the Indian Ocean Territories, with a view to promoting the development of community capacity within a framework of enhanced local/regional government.

Recommendation 11 (para 4.67)

The Committee recommends that Section 8 of both the *Cocos (Keeling) Islands Act 1955* and the *Christmas Island Act 1958* be amended to include a framework for consultation with the Indian Ocean Territories communities in relation to service delivery arrangements with the State of Western Australia, and in the review of Western Australian legislation which is applied in the territories as Commonwealth law.

5 Governance of the Indian Ocean Territories

Recommendation 12 (para 5.78)

The Committee recommends that the Australian Government alter the governance arrangements of the Indian Ocean Territories to provide the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands with an expanded role. The shires should have:

- direct representation of the communities with the Minister for Territories; and
- a formal advisory capacity with regard to applied laws and service delivery arrangements.

Moreover, the shires should be:

- fully funded on the basis of an agreed service delivery framework;
- given adequate title to all assets required to carry out their functions; and
- able to jointly enter into a regional local government type cooperation agreement.

Recommendation 13 (para 5.79)

The Committee recommends that the Australian Government undertake to develop options for future governance for the Indian Ocean Territories in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands, with a view to, where practical, submitting options to a referendum of those communities by the end of June 2009. Possible options could include but should not be limited to:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and
- a form of limited self government.

Introduction

Governance has been and will always remain a contentious issue in the Indian Ocean Territories until the people who live here can effectively participate in the political processes that affect their livelihood.¹

Substantive change is possible, including more effective governance arrangements, but only if the Islands' history is understood, the situation of residents acknowledged and a commitment to comprehensive action in the community's interest given.²

- 1.1 In recent years, the Joint Standing Committee on the National Capital and External Territories has taken a close interest in governance arrangements in Australia's external territories. In December 2003³ and November 2005,⁴ the Committee presented reports making far reaching recommendations concerning governance arrangements on Norfolk Island. The Committee is pleased to note that the Australian Government is currently acting upon those recommendations. During the course of its inquiries into various matters, the Committee's attention was drawn to the need for a broad

1 Christmas Island Chamber of Commerce, Submission no. 4, p. 8.

2 Shire of Christmas Island, Submission no. 10, p. i.

3 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Parliament of the Commonwealth of Australia, December 2003.

4 Joint Standing Committee on the National Capital and External Territories, *Norfolk Island Financial Sustainability: The Challenge – Sink or Swim*, Parliament of the Commonwealth of Australia, November 2005.

inquiry into governance arrangements in the Indian Ocean Territories (IOTs).

Background to the inquiry

- 1.2 The Committee has pursued an inquiry into current and future governance arrangements for the IOTs since May 2004 when it wrote to the then Minister for Territories proposing terms of reference for such an inquiry.
- 1.3 The Committee supplemented this request with a recommendation in its 2004 report, *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*. This recommendation was not supported by the Australian Government on the grounds that a clear policy was already in place for the future direction of the Territories. The policy, as determined by Cabinet in August 2000, is that:
- the Commonwealth's preferred long-term solution for the Territories is the incorporation of the IOTs into an existing State or Territory, with 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.⁵
- 1.4 The Government holds the view that incorporation into Western Australia would:
- ...enable the Territories' communities to fully participate in state level democracy and enjoy the same rights and responsibilities as other Australians.⁶
- 1.5 However, it was the fact that this policy was announced with no apparent consultation with the residents of the IOTs which was of particular
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5 Department of Transport and Regional Services, 2003, Submission (no. 57) to Joint Standing Committee on the National Capital and External Territories Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage, p. 11.

6 Government response to the Joint Standing Committee on the National Capital and External Territories Report: *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage, August 2004*, presented 18 August 2005, p. 4.

concern to the Committee. Doubts have also been raised as to the prospect of the Government's policy of incorporation ever being achieved, given the sequence of events required under the Constitution to facilitate such a move. The Committee therefore endeavoured to address these and other issues relating to current and future governance arrangements for the IOTs.

- 1.6 The current inquiry was initiated on 11 May 2005, when the Senate passed a resolution asking the Committee to inquire into and report on current and future governance for the Indian Ocean Territories.
- 1.7 The inquiry was advertised in *The Australian* and *The West Australian* and on both Christmas and Cocos (Keeling) Islands in June 2005. The closing date for submissions was Friday 15 July 2005.
- 1.8 The Committee received a total of 18 submissions.
- 1.9 The Committee held a public hearing on Christmas Island on 30 January 2006 and on Cocos (Keeling) Islands on 1 February 2006. During its visit to the Territories, the Committee also took time to inspect various infrastructure on the Islands. The Committee is grateful to all those who assisted in facilitating these inspections.
- 1.10 A further public hearing was held in Perth on 22 February 2006 and a final hearing, with representatives from the Commonwealth Department of Transport and Regional Services (DOTARS), was conducted in Canberra on 27 March 2006.

Scope of the inquiry

- 1.11 This inquiry represents a broad ranging investigation into issues of current and future governance in the Indian Ocean Territories of Christmas Island and the Cocos (Keeling) Islands. It has focused upon the following issues:
 - accountability and transparency of decision-making in relation to the Indian Ocean Territories;
 - the role of the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands;
 - aspirations of the residents of Christmas Island and Cocos (Keeling) Islands for more representative governance arrangements;

- the link between more effective governance and improved economic sustainability for the Indian Ocean Territories;
- the operation of Western Australian applied laws;
- community service delivery including the effectiveness of service delivery agreements with the Western Australian Government; and
- proposals for reform of governance arrangements.

- 1.12 In this report, the Committee addresses issues as they relate to Christmas and the Cocos (Keeling) Islands collectively rather than addressing each Territory separately. This is not to ignore the fact that both Territories have significant differences, both historically and culturally. Rather, it is a reflection of the fact that both territories have undergone a similar process of legal, political and administrative reform over the last two decades, and current Government policy suggests that the future of the two Territories will be considered together.
- 1.13 It is therefore important to note that the Committee encountered two somewhat different views between the two Territories on some of the issues falling under the inquiry's terms of reference. On Christmas Island, the desire for urgent reform was clearly evident, as was the considerable dissatisfaction with the Government's handling of affairs impacting on the island community. On Cocos (Keeling) Islands, the Shire Council appeared to be more content with many of the current arrangements, and it was suggested to the Committee that relations between the Cocos (Keeling) Islands Shire Council and the Australian Government had improved markedly in recent times.
- 1.14 The majority of evidence received by the inquiry was from Christmas Island, attributable to the voluminous submissions lodged by the Shire of Christmas Island and the Christmas Island Chamber of Commerce, both of which put forward strong views in favour of greater self-determination, as indicated by the title of the Shire's submission, 'Our future in our hands'.
- 1.15 A common theme from the shires of both Christmas and Cocos (Keeling) Islands was that neither was prepared to suggest a model of future governance for either territory. Instead, both shires emphasised the importance that any future model be determined by the island communities themselves.

Role of the Committee

- 1.16 The Parliament of Australia has a significant role to play in the affairs of the IOTs. It is the function of the Australian Parliament to participate in developing law and policy, to scrutinise government activity and public administration, and to inquire into matters of public interest on behalf of all Australians. A system of parliamentary committees facilitates the work of the Commonwealth Parliament.
- 1.17 As one of these committees, the Joint Standing Committee on the National Capital and External Territories is established by a Resolution of Appointment passed in both the House of Representatives and the Senate on 18 November 2004. The Committee is appointed to inquire into, and report to both Houses of Parliament, in an advisory role, on a range of matters.
- 1.18 Since 1993, the Committee has had a specific responsibility to examine Australia's external territories, including the IOTs. The Committee has produced ten reports in relation to the external territories:
- *Delivering the Goods*, February 1995 (Government Response, 1 December 1995);
 - *Island to Islands: Communications with Australia's External Territories*, March 1999 (Government Response, 1 March 2001);
 - *In the Pink or In the Red: Health Services on Norfolk Island*, July 2001;
 - *Risky Business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort*, September 2001 (Government Response, 6 February 2003);
 - *Norfolk Island Electoral Matters*, June 2002;
 - *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, December 2003 (Government Response, 27 October 2005);
 - *Norfolk Island: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*, July 2004 (Government Response, 23 June 2005);
 - *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*, August 2004 (Government Response, 18 August 2005);
 - *Antarctica: Australia's Pristine Frontier, Inquiry into the Adequacy of Funding for Australia's Antarctic Program*, June 2005; and

- *Norfolk Island Financial Sustainability: The Challenge – Sink or Swim*, November 2005.

1.19 It is the role of the Committee to gather and consider evidence, then produce recommendations based on that evidence for the consideration of the Australian Government. It is the role of the Australian Government to respond to and take action upon those recommendations.

Structure of the report

1.20 The report is divided into five chapters including this introduction.

1.21 Chapter two is a background chapter which provides a brief history of the IOTs and then looks at the developments which have shaped the way the Territories function today. Chapter three addresses two of the inquiry's terms of reference: the accountability and transparency of decision-making in relation to the IOTs; and the link between more effective governance and improved economic sustainability for the Territories.

1.22 Chapter four looks at the impact of the comprehensive law reform which extended a body of Commonwealth and Western Australian law to the IOTs. This chapter also examines the issue of community service delivery, including the effectiveness of service delivery arrangements between the Commonwealth and the State of Western Australia.

1.23 Finally, chapter five looks at the role of the shires of both Christmas Island and Cocos (Keeling) Islands and addresses the broader issue of future governance arrangements for the IOTs. In this chapter, the Committee considers the viability of the Australian Government's policy of eventual incorporation of the Territories into Western Australia and examines the aspirations of the Island residents for more representative governance arrangements.

Background

- 2.1 This chapter briefly outlines the history of Christmas Island and the Cocos (Keeling) Islands with a view to explaining the origins and operation of the current system of governance. Its purpose is to provide the context for subsequent chapters.

Cocos (Keeling) Islands: a brief history

- 2.2 The Territory of Cocos (Keeling) Islands is located in the Indian Ocean, approximately 2,700km north-west of Perth. The Territory consists of two separate atolls comprising 27 coral islands having a land area of approximately 14 square kilometres. Only two of the islands – Home Island and West Island – are permanently inhabited.
- 2.3 Although discovered in 1609, the islands were uninhabited until the 1820s when a party led by Englishman Alexander Hare, consisting predominantly of people of Malay origin, settled on the islands. The Territory was subsequently settled by a party led by Scottish seaman Captain John Clunies-Ross in 1827, which began harvesting the coconuts for which the Territory is named.¹
- 2.4 In 1857 the islands were annexed to the Crown and in 1886 Queen Victoria granted all land on the islands to the Clunies-Ross family.²

1 The island group is named after the coconut *Cocos nucifera*.

2 Certain rights were reserved to the Crown.

- 2.5 The Cocos (Keeling) Islands became a Territory of Australia on 23 November 1955 with the proclamation of the *Cocos (Keeling) Islands Act 1955*, having previously been administered as a dependency of Britain's Singapore colony.
- 2.6 In 1978 the Australian Government paid \$6.25m for the remainder of the Clunies-Ross family's property on the islands with the exception of the Clunies-Ross residence (Oceania House) and surrounds on Home Island.³
- 2.7 In 1984 the Cocos population voted overwhelmingly in favour of full integration with Australia through an Act of Self Determination overseen by the United Nations.⁴ The Commonwealth gave a commitment to respect the culture and religious beliefs of the Cocos Malays.
- 2.8 Today, the Territory of Cocos (Keeling) Islands has a population of around 600. Approximately 80 per cent of the population comprises the Cocos Malays who inhabit Home Island and maintain a traditional lifestyle in accordance with their religion and customs. The remaining 20 per cent of the population reside on West Island which is also the administrative centre for the Islands. Most of the West Island population are Europeans from mainland Australia – either employees of government departments on the mainland and their families, or people with business interests on the island.

Christmas Island: a brief history

- 2.9 The Territory of Christmas Island lies approximately 853km to the east of the Cocos (Keeling) Islands. The island, comprising a land area of about 135 square kilometres, is situated approximately 320km to the south of Java, and 2630km north-west of Perth.
- 2.10 First sighted in 1615, Christmas Island is named for the day of its discovery by Captain William Mynors in 1643.
- 2.11 The island was annexed and settlement begun by the United Kingdom in 1888 after phosphate was discovered in what is now called Flying Fish Cove.

3 In 1993 the Australian Government purchased the remaining property of Mr John Cecil Clunies-Ross. Oceania House was privately sold by the Government in 2001.

4 Question of the Cocos (Keeling) Islands, A/RES/39/30, United Nations General Assembly, 5 December 1984. Available online: <http://www.un.org/documents/ga/res/39/a39r030.htm>, accessed 13 February 2006.

- 2.12 Phosphate mining on the island commenced in the 1890s and workers were recruited from Asia.
- 2.13 In 1900 Christmas Island was incorporated in the British crown colony of the Straits Settlements with its capital at Singapore. From March 1942 until the end of World War II in 1945, Japanese forces occupied the island.
- 2.14 At Australia's request, the United Kingdom transferred sovereignty to Australia in 1958.
- 2.15 The phosphate mine closed in 1987 and was reopened in 1990 through a private venture, Phosphate Resources Ltd (trading as Christmas Island Phosphates). While the existing mining leases are nearing exhaustion, the Minister for Environment and Heritage is currently considering an application for nine new leases which would extend the life of the mine.
- 2.16 Today, Christmas Island has a population of around 1,500, the majority of whom are Chinese, with the remaining population predominantly comprised of people of European or Malay origin.

Australia's Indian Ocean Territories

- 2.17 Together, the non-self governing territories of Christmas Island and the Cocos (Keeling) Islands make up Australia's Indian Ocean Territories (IOTs). The IOTs are administered by the Australian Government through the Department of Transport and Regional Services (DOTARS).
- 2.18 The Federal Minister for Local Government, Territories and Roads is responsible for the provision of State level services in the Territories, while other Australian Government agencies have responsibility for matters which fall within their portfolios. An Administrator appointed by the Governor-General is the most senior Australian Government representative in the Territories.⁵
- 2.19 Local government services are provided on Christmas Island by the Shire of Christmas Island, which is responsible to a council of nine elected representatives. On Cocos (Keeling) Islands, the Cocos (Keeling) Islands Shire Council comprises seven elected members. These two bodies perform functions under the *Local Government Act 1995 (WA) (CI)* and the *Local Government Act 1995 (WA) (CKI)* similar to local government authorities on the mainland.

5 The current Administrator of the Indian Ocean Territories is Mr Neil Lucas PSM (since 30 January 2006).

- 2.20 For the purposes of enrolment and voting in Federal elections, Christmas Island and the Cocos (Keeling) Islands are part of the electoral division of Lingiari in the Northern Territory. Two Senators for the Northern Territory provide representation for the IOTs communities in the Senate.

Law reform in the Territories

- 2.21 In March 1991, the House of Representatives Standing Committee on Legal and Constitutional Affairs tabled its findings of an inquiry into the legal systems of Australia's external territories.
- 2.22 The recommendations of the Committee's report, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, included the replacement of the existing legal regime applying to the Indian Ocean Territories of Christmas and the Cocos (Keeling) Islands with the legal regime of Western Australia (WA).
- 2.23 These recommendations formed the basis for a package of changes introduced by the *Territories Law Reform Act 1992* which amended both the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955* and saw a contemporary body of Commonwealth and State law applied to the Territories from 1 July 1992. This legislation replaced the outdated Singapore-based legal regime with a view to extending to residents the same rights, responsibilities and obligations enjoyed by Australians on the mainland.
- 2.24 Section 8A of the *Territories Law Reform Act 1992* provides the legislative base for the application of WA laws to the Territories.
- 2.25 Under this model, WA laws are applied in the Territories as Commonwealth laws. Therefore the Federal Minister for Territories – and not the WA Government – has ultimate responsibility for state and local government matters.⁶
- 2.26 New and amended laws in WA automatically apply as Commonwealth laws in the Territories unless the Commonwealth Parliament determines otherwise.
- 2.27 All non-judicial powers in applied WA legislation are vested in the Federal Minister for Territories, who has delegated most of these powers between the IOTs Administrator, officers from DOTARS, and officials from the WA Government under service delivery arrangements (SDAs).
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6 Government of Western Australia, Submission no. 11, p. 3.

2.28 The *Territories Law Reform Act 1992* also included a provision that applied WA laws may be amended, repealed or suspended by Ordinance made by the Governor-General. The WA Government advised that:

A number of Western Australian Acts have been repealed in their application in the Territories to avoid confusion where Commonwealth legislation is operative (for example, industrial relations, electoral matters, heritage and conservation) and where necessary, the Commonwealth has amended applied Western Australian laws by Ordinance to make them more relevant to the Territories.⁷

2.29 Where an applied WA law is in conflict with Commonwealth law, the Commonwealth law always prevails. This hierarchy of laws was described by Ms Virginia Miller from the WA Department of the Premier and Cabinet:

...you have got Commonwealth laws of their own force, like the Social Security Act and other laws, right at the top. Then you have the Christmas Island laws and the Cocos Islands laws. Then right at the very bottom you have Western Australian applied laws in the territories. Therefore, you have this pecking order of legislation.⁸

2.30 WA laws which have been amended in whole or in part, or suspended or repealed from operation in the IOTs since the introduction of the applied laws system are listed in table 2.1.

Australian Government policy

2.31 In 2000, the Australian Government announced that it favoured the long term incorporation of the IOTs into an existing State or Territory, with Western Australia as the preferred option. This, the Government stated:

...would enable the Territories' communities to fully participate in state level democracy and enjoy the same rights and responsibilities as other Australians.⁹

7 Government of Western Australia, Submission no. 11, p. 3.

8 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 3.

9 Government response to the Joint Standing Committee on the National Capital and External Territories Report: *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage, August 2004*, presented 18 August 2005, p. 4.

Table 2.1 WA laws which have been amended, suspended or repealed from operation in Christmas Island and the Cocos (Keeling) Islands*

<i>Administration Act 1903 (W.A.)</i>	<i>Local Government Grants Act 1978 (W.A.)</i>
<i>Associations Incorporation Act 1987 (W.A.)</i>	<i>Local Government Superannuation Act 1980 (W.A.)</i>
<i>Bread Act 1982 (W.A.)</i>	<i>Lotteries Commission Act 1990 (W.A.)</i>
<i>Building and Construction Industry Training Fund and Levy Collection</i>	<i>Marketable Securities Transfer Act 1970 (W.A.)</i>
<i>Building and Construction Industry Training Levy Act 1990 (W.A.)</i>	<i>Medical Act 1894 (W.A.)</i>
<i>Business Franchise (Tobacco) Act 1975 (W.A.)</i>	<i>Minimum Conditions of Employment Act 1993 (W.A.)</i>
<i>Business Names Act 1962 (W.A.)</i>	<i>Motor Vehicle Dealers Act 1973 (W.A.)</i>
<i>Children's Court of Western Australia Act 1988 (W.A.)</i>	<i>Motor Vehicle (Third Party Insurance) Act 1943 (W.A.)</i>
<i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i>	<i>National Companies and Securities Commission (State Provisions)</i>
<i>Companies (Acquisition of Shares) (Western Australia) Code (W.A.)</i>	<i>Navigable Waters Regulations (W.A.)</i>
<i>Companies (Administration) Act 1982 (W.A.)</i>	<i>Nurses Act 1992 (W.A.)</i>
<i>Companies (Application of Laws) Act 1981 (W.A.)</i>	<i>Pay-roll Tax Act 1971 (W.A.)</i>
<i>Companies (Co-operative) Act 1943-1959 (W.A.)</i>	<i>Pay-roll Tax Assessment Act 1971 (W.A.)</i>
<i>Companies (Western Australia) Code (W.A.)</i>	<i>Pharmacy Act 1964 (W.A.)</i>
<i>Companies Act 1961 (W.A.)</i>	<i>Physiotherapists Act 1950 (W.A.)</i>
<i>Companies and Securities (Interpretation and Miscellaneous</i>	<i>Podiatrists Registration Act 1984 (W.A.)</i>
<i>Companies and Securities (Interpretation and Miscellaneous</i>	<i>Police Act 1892 (W.A.)</i>
<i>Company Takeovers Act 1979 (W.A.)</i>	<i>Prisons Act 1981 (W.A.)</i>
<i>Coroners Act 1996 (W.A.)</i>	<i>Psychologists Registration Act 1976 (W.A.)</i>
<i>Crime (Serious and Repeat Offenders) Sentencing Act 1992 (W.A.)</i>	<i>Public and Bank Holidays Act 1972 (W.A.)</i>
<i>Criminal Code Act Compilation Act 1913 (W.A.)</i>	<i>Public Trustee Act 1941 (W.A.)</i>
<i>Criminal Law Amendment Act 1992 (W.A.)</i>	<i>Referendums Act 1983 (W.A.)</i>
<i>Daylight Saving Act 1991 (W.A.)</i>	<i>Registration of Births, Deaths and Marriages Act 1961 (W.A.)</i>
<i>Death Duty Act 1973 (W.A.)</i>	<i>Residential Tenancies Act 1987 (W.A.)</i>
<i>Death Duty Assessment Act 1973 (W.A.)</i>	<i>Registration of Deeds Act 1856 (W.A.)</i>
<i>Debits Tax Act 1990 (W.A.)</i>	<i>Road Traffic Act 1974 (W.A.)</i>
<i>Debits Tax Assessment Act 1990 (W.A.)</i>	<i>Road Traffic Code 1975 (W.A.)</i>
<i>District Court of Western Australia Act 1989 (W.A.)</i>	<i>Securities Industry (Application of Laws) Act 1981 (W.A.)</i>
<i>Domicile Act 1981 (W.A.)</i>	<i>Securities Industry (Release of Sureties) Act 1977 (W.A.)</i>
<i>Election of Senators Act 1903 (W.A.)</i>	<i>Securities Industry (Western Australia) Code (W.A.)</i>
<i>Electoral Act 1907 (W.A.)</i>	<i>Securities Industry Act 1975 (W.A.)</i>
<i>Electoral Distribution Act 1947 (W.A.)</i>	<i>Sentencing Act 1995 (W.A.)</i>
<i>Employers' Indemnity Supplementation Fund Act 1980 (W.A.)</i>	<i>Standard Survey Marks Act 1924 (W.A.)</i>
<i>Explosives and Dangerous Goods Act 1961 (W.A.)</i>	<i>State Government Insurance Commission Act 1986 (W.A.)</i>
<i>Family Court Act 1975 (W.A.)</i>	<i>State Supply Commission Act 1991 (W.A.)</i>
<i>Financial Institutions Duty Act 1983 (W.A.)</i>	<i>Supreme Court Act 1935 (W.A.)</i>
<i>Financial Institutions Duty Regulations 1984 (W.A.)</i>	<i>Tobacco Control Act 1990 (W.A.)</i>
<i>Fisheries Act 1905 (W.A.)</i>	<i>Trade Unions Act 1902 (W.A.)</i>
<i>Futures Industry (Application of Laws) Act 1986 (W.A.)</i>	<i>Transfer of Land Act 1893 (W.A.)</i>
<i>Gaming Commission Act 1987 (W.A.)</i>	<i>Transport Co-ordination Act 1966 (W.A.)</i>
<i>Heritage of Western Australia Act 1990 (W.A.)</i>	<i>Travel Agents Act 1985 (W.A.)</i>
<i>Industrial Relations Act 1979 (W.A.)</i>	<i>Valuation of Land Act 1978 (W.A.)</i>
<i>Interpretation Act 1984 (W.A.)</i>	<i>Waterfront Workers' (Compensation for Asbestos Related Diseases)</i>
<i>Juries Act 1957 (W.A.)</i>	<i>Weights and Measures Act 1915 (W.A.)</i>
<i>Land (Titles and Traditional Usage) Act 1993 (W.A.)</i>	<i>Wildlife Conservation Act 1950 (W.A.)</i>
<i>Land Administration Act 1997 (W.A.)</i>	<i>Workers' Compensation and Rehabilitation Act 1981 (W.A.)</i>
<i>Limitation Act 1935 (W.A.)</i>	<i>Workplace Agreements Act 1993 (W.A.)</i>
<i>Liquor Licensing Act 1988 (W.A.)</i>	<i>Young Offenders Act 1994 (W.A.)</i>
<i>Local Government Act 1995 (W.A.)</i>	

* No laws have been disallowed under either the Christmas Island Act 1958 or the Cocos (Keeling) Islands Act 1955.

Source: Department of Transport and Regional Services, Submission no. 18, pp. 11-13.

- 2.32 Despite this policy, the Committee received evidence from the WA Government that, apart from correspondence from the Prime Minister in 1999, in which he sought the views of the then Premier on incorporation of the IOTs into WA, there has been ‘no other approach made at a political level from the Commonwealth Government to the State Government on this matter’.¹⁰
- 2.33 Many submissions to the inquiry also acknowledged that there are certain constitutional requirements which need to be met before the boundaries of a State may be altered.¹¹
- 2.34 While DOTARS has previously acknowledged that formal incorporation may be ‘many years away’, the Government has determined that, in the interim, Commonwealth policies should aim to align the legislative, administrative and institutional frameworks in the Territories with those of remote communities on the mainland to prepare the IOTs for incorporation.¹²

Community service delivery

- 2.35 As discussed, the Commonwealth Minister for Local Government, Territories and Roads is responsible for the provision of State level services in the Territories.
- 2.36 Services delivered by DOTARS include electricity, freight and passenger ports, ferry services, land and asset management, environmental and industry regulation and health. These services are delivered either through contracts with the private sector, SDAs with the WA Government, or directly by DOTARS.
- 2.37 Officers from DOTARS located on Christmas Island, and in Perth and Canberra, are responsible for oversight of the IOTs. Two DOTARS officers are permanently based on Christmas Island and the office includes 16 full time equivalent locally employed staff.¹³

10 Ms V. Miller (WA Department of Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 4.

11 Section 123 of the Constitution states that the limits of a State may only be increased, diminished, or otherwise altered by the Parliament of the Commonwealth with the consent of the Parliament of the State, and with the approval of the majority of electors of the State voting upon the question.

12 Department of Transport and Regional Services, Submission no. 12, p. 1.

13 Department of Transport and Regional Services, Submission no. 12, p. 1.

2.38 In 2004, funding for the IOTs was moved out of departmental funding and is now an Administered Programme. DOTARS submitted that this change adds transparency to decisions in relation to government expenditure in the IOTs and provides the community and Parliament with additional lines of accountability for decision making and reporting.¹⁴

2.39 In the 2004-05 financial year, the cost of services to and funding for the IOTs (not including the cost of capital works or of depreciation of administered assets) was \$75.2 million. An amount of \$58.8 million has been allocated in 2005-06.¹⁵

Service delivery arrangements

2.40 The Australian Government recognised that duplicating services commensurate with the mainland for the Territories of Christmas and Cocos (Keeling) Islands would not be cost effective. Therefore, in order that residents of the IOTs not be disadvantaged by their geographical isolation, in 1992 the Australian Government entered into SDAs with the Western Australian Government for the provision of equivalent State services.

2.41 These arrangements are established by section 8H of the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955*, which provide that:

- (1) The Commonwealth may enter into arrangements with Western Australia for the effective application and administration of laws in force in the Territory.
- (2) Without limiting the generality of subsection (1), such an arrangement may provide for the exercise of powers or the performance of functions or duties by an officer or authority of Western Australia in or in relation to the Territory.

2.42 To facilitate the system of SDAs, the WA Government enacted the *Indian Ocean Territories (Administration of Laws) Act 1992 (WA)* to enable State agencies to exercise powers, perform functions and provide services to the IOTs. The Premier of Western Australia, as the Minister for Public Sector Management, has responsibility for administering this Act. The Premier receives advice from the Project Manager, Indian Ocean Territories, within the WA Department of the Premier and Cabinet, who also develops policy in relation to service provision in the IOTs.

14 Department of Transport and Regional Services, Submission no. 12, p. 1.

15 Department of Transport and Regional Services, *Annual Report 2004-05*, p. 129.

2.43 The costs associated with the provision of services by WA agencies in the IOTs are fully met by the Australian Government. DOTARS reports annually against the performance of SDAs.¹⁶ The reports are largely comprised of annual performance and financial reports supplied by the relevant WA agencies, and also include information from DOTARS based on visit reports, reviews of SDAs and discussions with WA agency representatives.¹⁷ The agencies through which WA, as an agent of the Commonwealth, currently provides services in the IOTs are listed at Table 2.2. Table 2.3 outlines federal expenditure on SDAs for the financial year 2003/04.

Table 2.2 WA Agencies providing services to the IOTs through SDAs with the Commonwealth

Department for Community Development	Department of Consumer and Employment Protection (Consumer Protection, WorkSafe, Resources Safety and Energy Safety divisions)
Department of Culture and the Arts	Disability Services Commission
Department of Education and Training	Office of Energy
Department of Environment	Equal Opportunity Commission
Fire and Emergency Services Authority	Department of Fisheries
Department of Health	Office of Health Review
Department of Housing and Works	Department of Industry and Resources
Department of Justice (NB Department of Justice was abolished on 1 February 2006 and new Department of Attorney General and Department of Corrective Services created)	Department of Land Information (including Valuer-General)
Legal Aid Commission	Department of Local Government and Regional Development
LotteryWest	Main Roads
Medical Board	Nurses Board
Parliamentary Commissioner for Administrative Investigations (State Ombudsman)	Department for Planning and Infrastructure (Planning, Land Management and Transport services)
Public Trustee	Department of Racing, Gaming and Liquor (Liquor Licensing)
Small Business Development Corporation	Department of Sport and Recreation
State Library	Department of Treasury and Finance (Office of State Revenue and Government Purchasing)
WorkCover	

Source: WA Department of the Premier and Cabinet, Exhibit no. 4.

16 Department of Transport and Regional Services, Submission no. 12, p. 7.

17 Department of Transport and Regional Services, *Service Delivery Arrangements Performance Reports 2003/04*, p. i.

Table 2.3 SDA Expenditure Extract from 2003/04 Performance Report

<i>WA Department / Agency</i>	<i>\$</i>
Community Development	137,929.00
Consumer Protection	149,660.00
Worksafe	24,983.00
Culture and the Arts	54,927.00
Training & Adult Education	85,277.00
Environment	17,310.00
Equal Opportunity Commission	43,577.00
FESA	139,162.00
Fisheries	73,000.00
Health ¹⁸	365,758.00
Housing & Works	47,844.00
Industry and Resources	99,190.00
Justice ¹⁹	198,251.00
Land Information	136,804.00
Valuer General's Office	26,621.00
Legal Aid Commission	206,846.00
Local Government	133,946.00
LotteryWest	-
Main Roads	63,137.00
Medical Board	1,000.00
Nurses Board	27,555.00
State Ombudsman	-
Planning & Infrastructure	
- LAMS	19,689.00
- Planning	63,228.00
- Transport	58,230.00
Public Trustee	1,000.00
Racing Gaming & Liquor	73,197.00
Small Business Dev Corp	44,270.00
State Library	195,841.00
DTF - Government Procurement	10,000.00
- Office State Revenue	36,548.00
WorkCover	20,500.00
Expenditure 2003/2004	2,555,280.00

NB. Total expenditure for IOTs schools for 2003/04 was \$8.54m.

Source: Department of the Premier and Cabinet, Government of Western Australia, Exhibit no. 4.

18 * Department of Health retainer for services is \$30,000.

* Provision of WA public hospital inpatient services to IOT residents is \$335,758.

19 \$198,521 includes costs for holding one IOT prisoner in a WA jail. IOT prisoners are charged at the calculated cost per prisoner per day.

Accountability and transparency in decision making, and the link between effective governance and economic sustainability

Introduction

- 3.1 This chapter deals with accountability and transparency in decision making, and the link between effective governance and economic sustainability. The Committee notes that accountability and transparency are at the heart of effective governance, while effective governance is required to underpin economic sustainability.
- 3.2 The overall view of the Committee is that there are serious questions for government to address relating to accountability and transparency in decision making in the Indian Ocean Territories. Lack of accountability, lack of transparency, and failures in community consultation are undermining decision making processes and the community's confidence in those processes. This in turn is retarding economic development.

Accountability and transparency in decision making

- 3.3 Issues of accountability and transparency lie at the centre of much of what will be discussed in this and subsequent chapters. The processes by which decisions are made and implemented in the IOTs are of critical concern,

given the prevailing level of disenchantment emanating from residents of the Territories.

The view from Christmas Island

- 3.4 On Christmas Island, there is profound dissatisfaction with levels of consultation, accountability and transparency in decision making processes relating to the IOTs. In his evidence to the Committee, Mr Gordon Thomson, Shire President on Christmas Island, stated:

We welcome the inquiry because overall we are extremely dissatisfied with the current governance arrangements. We do not have enough say in our own affairs. The government makes decisions without considering the impacts on us.¹

- 3.5 He continued:

We want change in order to put our community on a surer and fairer footing so that we can realise that our future is in our hands.²

- 3.6 The Shire of Christmas Island highlights numerous examples of perceived failures of accountability and transparency in decision making in its submission. These shortcomings relate to attitude, process and outcomes across a range of issues. The Shire argues that:

...the [Australian] Government isn't accountable to this community and doesn't believe that it is required to be. Further, the Government pays lip service to consultation and has no sense of or concern about the impact of its decisions on the community.

This lack of accountability is closely allied to the fact that the community is non-self governing and has little decision making rights of its own.

It is also the Shire's submission that there are insufficient mechanisms to make the government accountable for its decisions. The limited accountability mechanisms available are relatively inaccessible to this community. They are also ineffective in that they are largely ignored by those being called to account. The Shire has attempted to utilise the available mechanisms to raise the level of accountability, and to create its own, but is overall

1 Mr. G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3.

2 Mr. G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3.

dissatisfied with the Government's unwillingness to account to the community for its decisions.³

3.7 The Shire's submission further argues that:

Transparency is also absent when decisions are made at a distance, not locally, and aren't announced or explained. Decisions are made solely from a bureaucratic or political perspective, not a community perspective. Allied to this is the attitude that commitments previously made can be conveniently put aside, ignored or forgotten. There is no continuity. Further, the connection with the community is so tenuous, communications so disjointed, and lines of decision making so unclear that the community can't 'keep the bastards honest'.⁴

3.8 In essence, the Shire concludes, 'there is no accountability, no transparency and no responsibility'.⁵

3.9 The two decisions, amongst others, highlighted by the Shire to demonstrate the shortcomings in accountability and transparency are the 2004 decision to refuse a casino licence for Christmas Island (this issue will be addressed in more detail later in this chapter), and the 2003 policy announcement resulting in a downsizing of the Administration and a move towards outsourcing services. Both decisions were made without consulting the Christmas Island community. Neither decision, from the point of view of the Shire, has ever been satisfactorily explained or justified. Both decisions have had a significant impact on the local community.

3.10 According to the Shire, the decision to downsize DOTARS' presence in the IOTs has had the additional effect of making the Government less accessible and thus less responsive to the concerns of the community.⁶ In its submission, the Christmas Island Chamber of Commerce described the 2003 policy decision as 'a backward step':

The 2003 decision by the Department to reduce its Island office and functions and administer our affairs 2500km away in Perth has both dismayed and offended the majority of the residents in both Territories. The commonly held perception of this decision is that while the Department wants to continue to control our lives

3 Shire of Christmas Island, Submission no. 10, p. 26.

4 Shire of Christmas Island, Submission no. 10, pp. 26-7.

5 Shire of Christmas Island, Submission no. 10, p. 27.

6 Shire of Christmas Island, Submission no. 10, pp. 27-32.

they are not prepared to live here and share the challenges we face in our daily endeavours.⁷

3.11 Other examples of the failure to consult and consider impacts upon the community raised by the Shire of Christmas Island are the construction of the temporary Immigration Reception and Processing Centre (IRPC) and its impact on the planned waste management facility, the planning and construction of the community recreation centre, and the future of the Indian Ocean Territories Health Service.⁸

3.12 The Shire also highlighted what it perceived as DOTARS' lack of responsiveness to outside scrutiny. The Shire views parliamentary oversight of the Department's activities as intermittent and only sporadically successful. Inquiries by the Commonwealth Ombudsman had, to date, resulted in no apparent action.⁹ The Shire was particularly frustrated by the tendency of DOTARS to ignore or evade the findings of reports,¹⁰ concluding:

The examples in this section are evidence of a Government Department who has no compunction in getting reports to suit it, or in wasting considerable public money on reports, or in ignoring commitments made, even those made to Parliament. It also appears to reward, or do nothing to restrain, poor behaviour despite public scrutiny of its actions. Essentially DOTARS Territories Branch don't understand the term accountability and appear to believe that it is above any mechanism to ensure Government actions are in accord with the principles of efficiency, effectiveness or fairness.¹¹

3.13 In his evidence to the Committee, Mr Thomson argued that to overcome the suspicion and conflict which characterised the IOTs' relationship with the Australian Government would require a change of attitude on the part of the Government and the development of a shared strategic vision for the IOTs:

To change the relationship requires commitment and respect from both parties. Unfortunately community relations with the Commonwealth are less than good. They are characterised by suspicion and distrust, a lack of effective communication and a

7 Christmas Island Chamber of Commerce, Submission no. 4, p. 15.

8 Shire of Christmas Island, Submission no. 10, pp. 33–38.

9 Shire of Christmas Island, Submission no. 10, pp. 53–56. See also Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, pp. 24–5.

10 Shire of Christmas Island, Submission no. 10, pp. 38–45.

11 Shire of Christmas Island, Submission no. 10, p. 45.

lack of shared vision or plans. The shire have worked hard to improve the relationship but in many ways it remains difficult and unsatisfactory. We have a long-established strategic plan for Christmas Island, developed by this community under the auspices of the Shire of Christmas Island. The Commonwealth does not have a shared vision for this island or, indeed, we believe, a strategic plan. If there is one, it is secret. The shire have worked hard to improve the relationship but in many ways it remains difficult and unsatisfactory. Recognition of the local community's interest is vital. The community perception is that the Commonwealth is interested in the rock but not in the needs and interests of the people who live here.

A change in Commonwealth attitudes to the island and its inhabitants, as well as actions to cement such a change, is vital. A key component of a change in the relationship is creating an environment where accountability and shared decision making is the norm. In many cases there is no government accountability to this community, as the casino decision of July 2004 exemplifies. The shire are willing to work with the Commonwealth in this partnership, believing that we have a clear legal and community mandate to pursue such a partnership, but we need the Commonwealth to join with us.¹²

3.14 In its submission, the Shire of Christmas Island identified a range of measures to improve accountability and transparency in decision making by government:

Immediate

1. Prepare and publish a customer service charter for the Territories Branch of DOTARS.
2. Establish complaint mechanisms that are transparent and readily accessible to the community.
3. Produce and publish an annual report about the Territories Branch of DOTARS activities in the Indian Ocean Territories, disaggregated by Territory.
4. Document lines of decision making within the Department's offices in Canberra, Perth and Christmas Island and by the Minister and publish this information in the community.

12 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 4.

5. Agree and establish clear lines of communication and information dissemination about Commonwealth activities in the Indian Ocean Territories.
6. Commit to reviewing services already contracted out when the contract expires, with a view to local management of these services wherever possible.
7. Agree to review decision making arrangements within the Department in consultation with the community on the basis of locating decision making as close as possible to the community and identifying all areas and activities the subject of decision making.
8. Agree to a timeframe and resources to establish an effective consultation arrangement about the health service, using the Alberton Consultants report as a starting point.

Longer Term

9. Submit the 2003 policy and all details of current plans for existing services being delivered by the Department to the community via the Shire for comment and change.
10. Establish the Ministerial Advisory Committee in the terms proposed by the Shire of Christmas Island.
11. Establish an agreed effective mechanism for direct community participation in decisions about expenditure on service delivery programs for the Indian Ocean Territories.
12. Agree a framework and timeframe for progressively transferring decision making to the community.
13. Negotiate, agree and establish an effective health advisory arrangement.¹³

Committee conclusions

- 3.15 The Committee views the evidence from Christmas Island as strongly indicative of problems in the processes of accountability and transparency, and the processes of community consultation, in DOTARS' administration of the IOTs. At base, there is a fundamental lack of any requirement for DOTARS to answer to the community for its actions, or even to consult with the community. The answer, at least as far as Christmas Island is concerned, is a fundamental alteration in the system of governance. The

13 Shire of Christmas Island, Submission no. 10, pp. 59–60.

Committee agrees that as part of a more thorough review of governance arrangements in the IOTs, many of the measures identified by the Shire of Christmas Island in its submission would be useful.

The view from the Cocos (Keeling) Islands

3.16 The evidence from the Cocos (Keeling) Islands is less clear cut. Mr John G. Clunies-Ross was frustrated both by the withdrawal of DOTARS staff from the islands, and the lack of a review process for WA applied laws.¹⁴ In his submission, referring to the question of governmental and departmental accountability generally, he stated:

Currently there is no process for accountability. Even when accountability is ascertained for misfeasance or malfeasance, I can only remember of a single case of it ever being taken beyond a mild slap on the wrist. Decision making is done remotely, with little reference to the community. "Policy" is not debated, presented by media release, and generally only adhered to if "revenue neutral".¹⁵

3.17 In his submission, Mr Robert Jarvis, former CEO of the Cocos (Keeling) Islands Shire Council, also questioned accountability and transparency of decision making in the IOTs:

The cause of greatest concern for the Shire's and many residents is the role of the head of the Territories section of the Department of Transport and Regional Services who has become by default the equivalent of the state government for the two territories. This is not just a perception on his or residents' part, but is often manifested in decision making over issues that are of real consequence to residents without consultation. The development of heritage buildings on Cocos by the Commonwealth without referral to the Shire or the Heritage Commission is one recent example, when the Shires have been told stridently of their responsibilities with regard to approvals for changes to Heritage buildings, and have complied with those directives. There appears to be no accountability for these actions, or repercussions despite concerns being lodged with the Department.

The absence of any involvement by State Ministers of Health, Planning, etc. in the administration of applied legislation places the State Departments, who provide assistance to the

14 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, pp. 33, 39.

15 Mr J. G. Clunies-Ross, Submission no. 15, p. 6.

Commonwealth (on a fee recovery basis) in the position of being contractors to the Commonwealth, and their priorities and actions are prescribed by Commonwealth Bureaucrats. This does not provide for a transparent and accountable process, nor does the Minister for Territories fulfilling the function of any body mentioned in the State legislation that is applied for which there is no Commonwealth equivalent. In developing Commonwealth land or assets, the Commonwealth has been the proponent, the State and Federal Government, the employer of the State agencies which provide the advice, and the appeal body in the event of any dispute, as well as being able to direct the local governments.¹⁶

- 3.18 Mr Jarvis noted in his evidence before the Committee in Perth on 22 February 2006, however, that since lodging his submission in June 2005 the relationship between the shire and the Commonwealth had ‘significantly improved’:

I believe that some of the [DOTARS] officers have moved on. I do not mean any disrespect to them, but I believe the relationship now with the Department of Transport and Regional Services is a very positive one. Some of the conflicts that had arisen during the time that I was there have since been resolved. I am very pleased about that, as I have a personal interest in the success of the Indian Ocean Territories.¹⁷

- 3.19 This improved relationship was confirmed by representatives from the Cocos (Keeling) Islands Shire Council. Mr Bill Price, current CEO of the Shire Council, noted that communications had improved, notwithstanding the withdrawal of DOTARS from Cocos, and rather, because of it:

We feel we have excellent communication lines with DOTARS. To be quite honest, as a community we are not unhappy that DOTARS’ presence is off island. We feel that has given the council the opportunity to represent the community. Instead of the little brother on the island, it is now more the figurehead of the island. Our communication lines particularly with the Perth office are very open. If we have any concerns we have contact with Christmas, Perth or Canberra.¹⁸

16 Mr R. Jarvis, Submission no. 3, p. 1.

17 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 46.

18 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 9.

- 3.20 In his evidence before the Committee, Mr Ron Grant, President of both the Cocos (Keeling) Islands Shire Council and the Cocos (Keeling) Islands Economic Development Association, also told the Committee that communication with DOTARS was 'very effective' and 'on a very regular basis':

I would describe the relationship with DOTARS as the best that we have had in the 20 years I have been in the territory. To give an example, we have a monthly teleconference with the general manager of DOTARS in Canberra. We have a monthly teleconference with the director of DOTARS in Perth and also one with the director of DOTARS for Christmas Island. After the visit by the new administrator, Neil Lucas, last week, we have agreed to put in place a teleconference once a month with him. We also have regular visits with DOTARS in Perth and Christmas Island, and we make a point, when we travel to Perth or Canberra, to have a regular briefing session with DOTARS. We also have two face-to-face meetings per year with DOTARS, one on Cocos and one in Canberra, where we go through issues that we are concerned about in relation to the application of WA laws or DOTARS-delivered services in the territory. Currently both DOTARS and ourselves believe we have a very good working relationship.¹⁹

- 3.21 Despite the improvement in the relationship between the Cocos Islanders and DOTARS, the Committee nonetheless remains concerned about the structure of consultation between the department and the community, and the level of accountability and transparency in decision making. The evidence of Mr Jarvis indicates that it was not so long ago that there were serious problems with accountability regarding 'a whole range of things where it just happened and locals felt like they were powerless to do anything about',²⁰ not least being the attitude of senior DOTARS officers:

The department head saw himself as the equivalent of our state government, and it was a statement that that particular person made on a number of occasions to me and to the shire. I guess that rankled a little, because we did not elect him; he was a Commonwealth bureaucrat. That person has moved on and I have not heard any similar comments.²¹

19 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 29.

20 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, pp. 53, 47–8.

21 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 47.

3.22 Similarly, when pressed upon the outcome of a particular issue, Mr Price admitted that even now accountability and transparency in decision making was not always what it could be:

Mr SNOWDON – What is happening with the issue of the hovercraft?

Mr Price – Currently there is a ferry service which is contracted to the cooperative. They called for an expression of interest from alternative suppliers of a ferry contract and a submission was received for a hovercraft arrangement between the islands. That proponent had to go through the EPA process and apparently that is about where it is at now. DOTARS still have not granted a contract to that person, but if you go through all the process and everything else they will need to decide whether they are going to award the contract to them. Obviously that is going to have implications to local employment, the current local business, the cooperative. That is probably one where not a lot of negotiation was done prior to accepting the hovercraft proposal.

Mr SNOWDON – The point I am trying to make is the one you have just made. There are significant areas of policy judgement and decision making which are made elsewhere without negotiating with the community.

Mr Price – Yes.²²

Committee conclusions

3.23 It is the view of the Committee that while the need for reform of governance arrangements appears less urgent in the Cocos (Keeling) Islands than on Christmas Island, similar problems exist. Some reform of the consultation and accountability mechanisms would be desirable, and, if the two Territories are to remain under joint administration, inevitable.

The view from DOTARS

3.24 In its submission, DOTARS acknowledged that ‘the importance of effective consultation with the communities of the IOTs is accentuated by their geographic isolation and is conscious of the need to continually review its performance in this area’. Departmental officers responsible for oversight of the IOTs are distributed between Christmas Island, Perth and Canberra. DOTARS’ submission also noted that the Minister for

22 *Transcript of Evidence*, 1 February 2006, pp. 12–13.

Territories had 'delegated many of his powers to those in the most appropriate position – in many instances this will be an officer located on Christmas Island but may also be officers in Canberra or Perth or to officials in WA departments with whom the Commonwealth has SDAs'.²³

3.25 Elaborating upon the issue of delegation of powers, a representative of DOTARS stated:

It is a difficult question to give a precise answer to. Decisions in Canberra relate principally to resource allocation. Major policy decisions in terms of future policy of the IOTs, decisions which relate to the investigation of SDAs and other day-to-day provisioning for the islands are, by and large, made in our Perth Office. That is the general split.²⁴

3.26 The General Manager of the Territories Branch within DOTARS, commenting on the same issue, indicated her own delegations, but also that the structure of delegation was undergoing change:

As general manager for territories, I have various delegations in relation to issuing licenses and signing off on some of the more significant financial matters, but those delegations are going to be altered so that they go back to the Perth office.²⁵

3.27 DOTARS observed that it had a range of measures in place to ensure it consults with the IOTs' communities before decisions are made, including:

- a fixed monthly phone hook up between the Shire of Cocos (Keeling) Islands and the Department in which new initiatives and other issues are discussed;
- Departmental officers undertake regular travel to the Islands on a range of issues, particularly those related to service provision; and
- funding for the Shire Councils to support community consultation and liaison in respect of state government-type services provided through WA State Agencies.²⁶

3.28 Other initiatives to ensure information is shared with the communities include a regular newsletter by the Territories Minister and regular departmental bulletins.

23 Department of Transport and Regional Services, Submission no. 12, pp. 1-2.

24 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 2.

25 Ms A. Clendinning (Department of Transport and Regional Services) *Transcript of Evidence*, 27 March 2006, p. 2.

26 Department of Transport and Regional Services, Submission no. 12, p. 2.

3.29 DOTARS also noted that the Territories Minister had ‘endorsed protocols for a new committee of the Shire of Christmas Island whose objective will be to facilitate communication between the community and the Minister’.²⁷ On this committee, the Minister would be represented by the Administrator.

3.30 The role of the Administrator had been modified ‘to provide a better division between the Department and the Government’:

The Administrator’s role is independent from the Department and is now more focussed on facilitation and economic development rather than daily administration. The Administrator provides IOT residents with a direct and independent avenue of communication with the Government.²⁸

3.31 Despite the evidence submitted by DOTARS, the Committee retains concerns about the level of consultation between the Australian Government and the IOTs communities, and the accountability and transparency of decision making processes. When asked to outline the precise consultation process in place for SDAs, DOTARS assured the Committee that consultation did take place, but was unable to outline the process in place:

Money has been provided by the Commonwealth to the two shire councils on the IOTs – an amount of, I think, \$75,000 a year – to enable those shire councils to facilitate a formal consultation process on legislation and the SDAs that affect them. My understanding is that in the overwhelming majority of cases there is formal consultation. I am aware that the Christmas Island Shire Council has concerns about a lack of consultation in relation to a recent SDA on sport and recreation. Other than that, my understanding is that regular consultation does take place. Three or five SDAs are due to expire this year and consultations are currently under way with both communities to get their views on the effectiveness of those agreements.²⁹

3.32 Similar concerns arise over consultation on applied laws. DOTARS stated that it was the department’s understanding that similar processes applied to consultation on Western Australian applied laws as applied to SDAs. When pressed as to the exact form of the consultation process, however, a

27 Department of Transport and Regional Services, Submission no. 12, p. 2.

28 Department of Transport and Regional Services, Submission no. 12, p. 2.

29 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, pp. 3-4.

representative of DOTARS advised: 'I am not aware of a process.'³⁰ When questioned on the current status of the Community Consultative Committees on Christmas and Cocos, DOTARS responded that its understanding was that both committees were still in existence, but noted that the department was no longer formally part of those committees. When asked why this was so, DOTARS replied:

I suppose it represents a change in the relationship. As there are more providers of services on the island, DOTARS role is changing. The administrator now has an explicit role to examine economic development and to consult formally with those communities. I think it was felt that it would be better to place the relationship on a more formal basis rather than having DOTARS, if you like, as a representative on those committees; that those committees ought to be able to speak for themselves.³¹

3.33 When it was indicated that the Shire of Christmas Island saw this as a negative move, DOTARS suggested that this was the view of the Christmas Island Shire President rather than the collective view of the Shire or community. The department conceded that Mr Thomson's view may have had some impact on the decision to establish the alternative consultation arrangements through the new committee cited in the DOTARS submission.³² When the Committee enquired as to the current status of the new committee, DOTARS replied:

That committee is yet to meet. The minister has offered the prospect of a consultative committee, which would be a committee for whom the shire council has responsibility. It will meet in accordance with the needs and requirements of the shire council. At this stage, the shire has yet to finalise arrangements. It is my understanding, with regard to that committee – and it has not met – that the shire and the administrator are continuing to negotiate on mutually acceptable arrangements for the operation of the committee.³³

3.34 Questioned on the relationship between DOTARS and the IOTs more generally, particularly the discrepancy in attitudes towards the

30 Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 4.

31 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 36.

32 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 37.

33 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 5.

Department between Christmas Island and the Cocos (Keeling) Islands, DOTARS stated:

I do not think we have an uncooperative relationship with either island community. As I said at the outset, there are always going to be tensions in relation to the delivery of services by another body or another level of government with an island community, particularly a remote community. I can understand, as I indicated to you, that from time to time there will be dissatisfaction about elements of that. I accept that and I accept that we can improve them, but I would not characterise either as uncooperative relationships.³⁴

- 3.35 DOTARS acknowledged the frustration of the IOTs communities, but argued that within the limits of what was possible, the department was consulting with people and attempting to provide the services they desired:

Successive governments have devised a separate model for the Indian Ocean territories. I can certainly see that if you were a resident of the territories you might find at times the fact that you have services delivered centrally from Canberra and do not have access to a state government frustrating and annoying. We do recognise that. We try to do our best to ameliorate or recognise those concerns. On some occasions we may not get it right, but within the limits of what we can do we do try to consult with people. It is certainly not our intention to provide services to either of those communities in a fashion that they would find undesirable.³⁵

Committee conclusions

- 3.36 The Committee recognises the difficulties DOTARS faces under the current arrangement. The Committee is not critical of DOTARS on account of a lack of willingness to undertake consultation; rather, the Committee is concerned that the framework for consultation is fundamentally flawed. The Committee does not believe DOTARS seeks to intentionally avoid accountability and transparency in decision making – but nonetheless views the current system as unacceptable. The critical issue is the lack of formal consultation mechanisms which make accountable and transparent
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34 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 30.

35 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 8.

decision making more difficult. In the rest of this chapter the Committee examines the impact of these problems on the economic viability of the IOTs, and proposes solutions to those problems. In chapter four, the Committee looks at the issue of Western Australian applied law and service delivery arrangements more closely.

Effective governance and economic sustainability

3.37 In its submission, the Shire of Christmas Island observes that ‘economic sustainability is a key component of effective governance’.³⁶ The Committee observes that the opposite is equally true, that effective governance is an important component of economic sustainability, for, as this chapter reveals, poor government decision making within the context of an inadequate governance framework can undermine economic development. As Captain Don O’Donnell, executive member of the Christmas Island Chamber of Commerce, told the Committee:

Good governance and economic development go hand in hand, and there is abundant historical and empirical evidence to support that statement. Equally, bad governance, bad policy decisions and lack of economic development are the other side of the coin in the social equation. I raise this concept of governance and economic development because this island is economically going backwards. In fact it is in decline, and in 2006 it will be seen, in historical terms, as a watershed for either a positive or a negative future of development.³⁷

The view from DOTARS

3.38 The Committee notes that in its submission DOTARS paid some attention to the issue of the economic sustainability of the IOTs, but not necessarily in the context of the relationship between economic sustainability and effective governance. DOTARS does note, however, the inherent vulnerability of such small economies to the vagaries of government decision making:

The economies and population base of the IOTs are small and are susceptible to impacts from factors that would not normally affect

36 Shire of Christmas Island, Submission no. 10, p. 61.

37 Captain N. P. O’Donnell (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 34.

larger, more robust economies. Relatively minor decisions on government capital investments and programme funding often have a significant impact on their small economies.³⁸

3.39 Looking at the economic prospects of the Territories, DOTARS' submission notes that phosphate mining continues to be the main economic activity and core source of employment on Christmas Island, while delivery of services to government is the main private sector activity on the Cocos (Keeling) Islands. On Christmas, existing mining leases have an expected life of between five and ten years, with some prospect of new leases being opened. On Cocos, there has been some growth of small scale tourism and other 'cottage' industries, but much of this is still very much in the early stages of development.³⁹

3.40 Departmental activity 'has continued to focus on creating a climate conducive to private sector development by "normalising" structures and governance arrangements to reduce impediments to economic development'.⁴⁰ Specific 'normalisation' initiatives include:

- Town Planning Schemes and Local Planning Strategies, and a Land Release Strategy;
- the Australian Government divesting itself of assets which are no longer needed in providing core services; and
- reform of the housing market, increasing private home ownership and opportunities for private development.

3.41 In evidence before the Committee, DOTARS emphasised that normalisation 'is predicated on an assumption that the shires would eventually be incorporated into the state of Western Australia'.⁴¹

3.42 DOTARS' submission notes the important role public sector activity plays in the economy of the IOTs:

The annual capital works programme of the Government forms an important part of the economies of the IOTs and the Government has committed to a \$19 million capital funding programme for 2005-06. Around \$8.4 million of this funding has been committed to improving freight facilities on the Cocos (Keeling) Islands. Christmas Island has been allocated \$5.2 million primarily for the

38 Department of Transport and Regional Services, Submission no. 12, p. 4.

39 Department of Transport and Regional Services, Submission no. 12, p. 4.

40 Department of Transport and Regional Services, Submission no. 12, p. 4.

41 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 19.

replacement of hospital and power station equipment. The Department is attempting to schedule capital projects in a way that does not strengthen any boom bust cycle in the local economies.⁴²

- 3.43 DOTARS' submission also emphasises the potential for economic development inherent in the Immigration Reception and Processing Centre (IRPC) and the proposed Asia Pacific Space Centre (APSC):

The economic base of Christmas Island will be expanded and diversified through the Government's decision to establish a permanent Immigration Reception and Processing Centre on the Island. This project is providing significant economic benefits for the Island during the current construction phase. The ongoing impact from the operation of the Centre will be dependent on Government immigration policy. Similarly, the Government has made decisions to encourage the diversifying of the economy by supporting a private proposal for a satellite launching facility.⁴³

- 3.44 The main option for economic development on the Cocos (Keeling) Islands being explored by the Australian Government is tourism:

The private sector has a proposal in the planning stages for a resort on Cocos (Keeling) Islands and the Department is also in the process of developing a Request for Proposals for the development of a resort on Cocos. These resorts would target different markets and therefore would enhance economic sustainability, rather than compete in a limited market. The Department has undertaken on-island consultation on its proposal and has put forward an offer to the Shire to incorporate Trust land in any proposal.⁴⁴

- 3.45 DOTARS noted that the Administrator has commissioned the development of a strategic plan for the economic development of the IOTs, 'to be undertaken in conjunction with the Island Economic Development Associations (EDAs), the Christmas Island Chamber of Commerce and other interested parties'. DOTARS further noted that the Australian Government provides 'funding and support for economic development, particularly to encourage the private sector', and that DOTARS provides funding for the EDAs on both Christmas and Cocos (Keeling) Islands to support local initiatives:

These associations promote economic development through the identification and promotion of small projects which will provide

42 Department of Transport and Regional Services, Submission no. 12, p. 5.

43 Department of Transport and Regional Services, Submission no. 12, p. 5.

44 Department of Transport and Regional Services, Submission no. 12, pp. 5-6.

business opportunities and employment. On Cocos (Keeling) Islands the EDAs have supported export initiatives of live clams and fish for the aquarium trade and provided funding to develop local fresh produce. On Christmas Island support has been given to promote the Island as a tourist destination.⁴⁵

- 3.46 The section of DOTARS' submission dealing with the issue of economic sustainability concludes by stating:

Given that the model of governance on the IOTs previously involved the Australian Government implementing a colonial-type whole of government approach (responsible for the three levels of government), the communities still see, to some extent, the Government to be responsible for ensuring appropriate levels of economic activity. As the Department has scaled down its direct service provision and on island presence, the local communities have accepted more responsibility for the economic development of the Islands.⁴⁶

Committee conclusions

- 3.47 The Committee is of the view that this summary of economic potential and departmental activity provides a limited and flawed perspective. There is no sense of dynamism or direction. Even the strategic plan for the economic development of the Territories prepared by the Administrator has the feel of 'top-down' planning. Addressing development on Christmas Island, there is no response to the impending demise of the phosphate mine and undue emphasis is placed on the economic potential of the IRPC, an institution whose use is wholly dependent on the shifting requirements of government policy, and the APSC, a project which now appears defunct.⁴⁷ Much emphasis is also placed on the policy of 'normalisation'. Carried out for its own sake normalisation must inevitably produce a mixture of outcomes, good and bad, and has no intrinsic merit. As part of the process of incorporating the IOTs into Western Australia, normalisation has some value, but the process of incorporation has stalled and there is no proximate danger of a successful outcome. Normalisation, as a stand alone strategy, is not viable, as it fails to take account of the particular circumstances of the IOTs.

45 Department of Transport and Regional Services, Submission no. 12, p. 6.

46 Department of Transport and Regional Services, Submission no. 12, p. 6.

47 *The Australian*, 26 April 2006, p. 7.

The view from the Cocos (Keeling) Islands

3.48 The submissions of the Cocos (Keeling) Islands Shire Council and the Cocos (Keeling) Islands Economic Development Association (CKIEDA) outline a perspective similar to that projected by DOTARS—namely that of a small local community taking greater responsibility for the economic development of their people and resources. The Shire Council’s submission emphasises the link between effective local government and economic development, stating:

By establishing a more effective and efficient local government authority not only will sustainable economic development be encouraged but it will contribute to more effective governance not only at a local government level, but also at Territorial level.⁴⁸

3.49 In tandem with the Shire Council’s submission (they deliberately dovetail into each other) CKIEDA’s submission outlines a series of strategies and projects by which the local community, with the assistance of the Australian Government, is attempting to achieve economic development on a local scale.⁴⁹ In evidence before the Committee, Mr Ron Grant, President of both the Cocos (Keeling) Islands Shire Council and CKIEDA, explained:

From the shire’s point of view, *Vision 2010* very clearly identifies the direction the shire is moving in relation to economic development. From the Cocos (Keeling) Islands Economic Development Association’s point of view, their document which is referred to as *Resources 2010* provides a very clear indication of the strategic direction and the projects that are currently being undertaken. So in relation to tourism both the shire and the EDA have a very specific strategy for that development.⁵⁰

3.50 The strategic direction is northward, exploiting the markets of Southeast Asia. The principal resources for exploitation are marine resources and tourism. Both have their limits. The key to the strategy is finding small niche markets. Social, environmental and economic sustainability within an inherently limited social, financial and natural environment is the goal. Discussing the potential for economic growth on Cocos, Mr Grant stated:

At the moment, from economic development, small-scale tourism would be one thing. What you have to understand is that when

48 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 52.

49 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, pp. 14–18.

50 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 32.

tourists come to Cocos they want to see something. That is why the Cocos (Keeling) Islands Economic Development Association has a broad range of projects which go from the coconut oil project down to the mengkudu, the beche de mer project, the black-lip oyster pearl project and also the tuna project. When people come to Cocos, especially from South-East Asia, they normally only come for holidays of four to seven days. They are not long stayers but they really like to pack a lot into that, so you have to have a number of niche economic developments they can go and look at whose products they can buy and provide them with interest while they are here. Again, it has to be put in perspective. It has to be sustainable and by the sheer land area and population, it will not be huge. It will be reasonably small.⁵¹

3.51 Addressing the broader issue of governance and economic sustainability, CKIEDA's submission states:

It is essential that a modern body of state law, supported by state government departments, exists for the CKI, and Christmas Island ("CI"), to encourage economic development and this requires:

- A modern body of law, which is currently provided by Western Australian law being applied as Commonwealth law for the CKI.
- Service Delivery Agreements ("SDAs") in place with Western Australian agencies, to ensure that the same level of support that is provided in Western Australia by these agencies is provided to the residents of the CKI and CI.
- Accountability and transparency levels for the CKI and CI are at the same levels available to residents of Western Australia.⁵²

3.52 The Committee notes that broadly speaking this structure is already in place. Moreover, it appears to satisfy the needs of the Cocos Islanders. Mr Grant told the Committee:

I firmly believe, even with the current system of government that we have, which is a non-self-governing territory, there is the right combination of the private sector, governments of all levels, and community.⁵³

51 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, pp. 36-7.

52 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, pp. 19-20.

53 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 33.

- 3.53 His evidence emphasises both the need for the private sector to take a greater role in the economic development of the Cocos (Keeling) Islands, and the inherent limits owing to the Islands' circumstances:

My firm belief is that the private sector in the islands needs a real good kick in the bum. Really, the driving force in the island has always been the government. Whether the government is seen at the federal level or the local level, it has been the driver. The private sector tends to ride along on the coat-tails of the government sector. In the future for Cocos – and I am only speaking specifically for Cocos – the private sector has to be far more active. One of the areas is tourism and the other area is marine resources. If you can make those work at a sustainable level, you can create employment, you can create revenue, you can create taxes that flow back to the government. Taking into account the small population base and the small land mass, the ability of the territories to produce really significant incomes, taxes and employment is quite restricted.⁵⁴

- 3.54 Given the inherent limitations in the circumstances of the Cocos (Keeling) Islands, the evidence suggests that the mix of public and private sector activity on the Islands is about right, and that if current trends are maintained the outcomes will be beneficial to the community. It would also appear that the current system of governance is operating effectively in regard to the economic development of the Cocos (Keeling) Islands.

- 3.55 Having said this, however, there were some issues of concern raised with the Committee on Cocos that cut to the issue of the relationship between governance and economic sustainability. Mr Bill Price, CEO of the Cocos (Keeling) Islands Shire Council, expressed a desire to see more locals employed by Commonwealth funded services, although he did acknowledge gaps in local expertise.⁵⁵ This echoes more ardent concerns expressed in evidence from Christmas Island over the impact of 'normalisation' and 'market testing' (see chapter four). Mr Balmut Pirus, Deputy President of the Shire Council, expressed a desire for more apprenticeships and traineeships for the children on the Islands, 'so that in five or 10 years we will have people like them who will run the services'.⁵⁶

54 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, pp. 35.

55 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 9.

56 Mr B. Pirus (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 18.

- 3.56 While the Committee was on Cocos, concerns were also raised about the future of the telecentre on West Island. It was indicated to the Committee that this community facility staffed by volunteers faced closure due to rent increases. Rents on Commonwealth properties on West Island are set by consultants based in Perth. The community is not consulted about the setting of rents.⁵⁷
- 3.57 When this issue was raised with DOTARS at a public hearing in Canberra, the Department explained that the Commonwealth 'has to have an appropriate, fair and transparent formula or approach for determining rents on the island, and it has adopted the approach of using a Western Australian agency'. The rationale for this from the Commonwealth's point of view is that 'the Western Australian government have a lot of experience in dealing with remote communities as well, and they are probably better placed – certainly better than we would be – to provide advice on suitable rents'. Addressing the issue of consultation, DOTARS stated:
- But equally, in mainland Australia, if a judgment were made to increase rents, we would normally say, I think, that organisations had to pay the increase in the rent and we would not necessarily say that that was a failure in consultation.⁵⁸
- 3.58 The Committee notes that in a supplementary submission to the inquiry, lodged following the public hearing in Canberra, DOTARS explained that market rents for all Commonwealth non-residential properties in the IOTs are assessed by the Valuation Services branch of the WA Department of Land Information under an SDA, in accordance with WA applied laws. Consultants are contracted to collect rent and manage properties, but are not responsible for setting rents. DOTARS noted that the telecentre on Cocos pays a 'peppercorn rent' of \$1 per week, but may have been subject to a recent decision to pass all outgoing expenses for repair and maintenance onto tenants. This policy has been suspended subject to further consideration and consultation, and non-residential tenants have been advised 'that they are only required to pay rent (if applicable), electricity and water consumption charges until further notice'.⁵⁹

57 See *Transcript of Evidence*, 1 February 2006, pp. 23–4.

58 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, pp. 27–9.

59 Department of Transport and Regional Services, Submission no. 18, pp. 33–4.

Committee conclusions

3.59 From the Committee's perspective, DOTARS' initial response was inadequate. The Cocos (Keeling) Islands are not mainland Australia, the impact of seemingly trivial decisions can be quite significant, and DOTARS is ultimately responsible for the welfare of the IOTs communities. DOTARS should retain ultimate responsibility for setting rents on Commonwealth property, or it should divest itself of that property to the community. The Committee is gratified to learn that this matter is being subjected to further consideration.

The view from Christmas Island

3.60 The view from Christmas Island is very different to that from Cocos, and that from Canberra. On a range of issues, evidence from Christmas Island is in direct contention with that of DOTARS. In its submission, the Shire of Christmas Island argued that 'the Commonwealth has done effectively very little to involve, engage or facilitate the community in its own economic development'.⁶⁰ Rather, it is the Shire's belief that the Australian Government's policies have undermined the economic viability of the IOTs.

3.61 From the perspective of economic development, the Shire of Christmas Island identified two principle failings in government policy. The first major area of concern is the policy of 'normalisation', which is seen as undermining the social cohesion and economic self-sufficiency of the community. The Committee has already addressed this in principle in the current chapter, and deals with specific issues such as 'market testing' in chapter four. The second major issue is a tendency to rely on major capital projects rather than sustained investment to underpin the economy. In its submission the Shire states:

Like all other areas of Island life, the Commonwealth have considerable control of economic development. However, little has been done to foster economic development and overall the Commonwealth has looked to capital expenditure as a quick fix or fillip in the place of sustained investment.⁶¹

3.62 Examples of this trend are the IRPC, the APSC and the community recreation centre. The Committee notes that far from being seen as a

60 Shire of Christmas Island, Submission no. 10, p. 62.

61 Shire of Christmas Island, Submission no. 10, p. 66.

benefit to the Christmas Island community, the IRPC is considered a burden. Mr Gordon Thomson told the Committee:

We currently have the economic fillip of the construction of the detention centre, albeit that most of the money generated is going off the island. What future is there beyond the construction phase? The idea of the IRPC is a bad one. The island does not want its future economy based on a detention industry. It has the potential to detract from other economic developments such as tourism.⁶²

- 3.63 Moreover, the Committee observes that in the absence of a major influx of illegal immigrants, the IRPC is likely to remain underutilised, duplicating facilities on the mainland and elsewhere. Another potential white elephant is the APSC. Mr Thomson suggested that the APSC 'has failed, and a line needs to be drawn under it'.⁶³ In its submission the Shire of Christmas Island recommends setting a timeframe for a decision on the APSC development:

If the proponent does not meet its commitments as per the APSC ordinance, the industry assistance funding earmarked for the project is either spent on the planned upgrades (such as the extension and improvements to the airport) or applied to other industry assistance for the benefit of the community, utilising an assessment process agreed by the community.⁶⁴

- 3.64 In evidence before the Committee, DOTARS indicated that the APSC project was under review by the Minister for Industry, Tourism and Resources.⁶⁵ The consequence of this was that government funds for projects supporting the APSC would in all likelihood be withdrawn.⁶⁶ The Committee notes media reports to the effect that the Australian Government has now withdrawn financial support for the APSC.⁶⁷

- 3.65 The community recreation centre represents a political decision taken with little apparent regard of the consequences for the community – a facility which the Shire claimed is designed for a population of 70,000 yet has been given to a population of around 1,500. Mr Thomson outlined the process by which the community acquired the recreation centre:

62 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 6.

63 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 6.

64 Shire of Christmas Island, Submission no. 10, p. 73.

65 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 13.

66 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 16.

67 *The Australian*, 26 April 2006, p. 7.

We have a recreation centre that you saw yesterday that came about from a political deal. Mr Snowden spoke with Mr Ruddock and they came up with \$8 million because we had been complaining that the sports hall down here was not a place to put human beings – and it was not.

So, after some years of pressure, it was agreed that the government would put up \$8 million and we would have a dual purpose community facility and a place to house refugees in decent accommodation, who are arriving periodically over a period of 10 years. The government decided that an \$8 million facility was not good enough – they wanted a \$200 million one. They decided to build this other thing. I said, ‘You can keep the \$8 million and it will not be a dual purpose facility; it will be a recreation centre for the community completely and you can have this and you can have that.’ It is by accident, Senator Joyce, that we have a beautiful and magnificent facility which is designed for a population of 70,000 people. It is not something we said we had to have but it was a commitment that the government honoured. It was just an accident. We do have a magnificent facility, that is true.⁶⁸

3.66 The problem now is that the community are stuck with a facility they cannot afford. In its submission, the Shire of Christmas Island stated:

The centre was designed and located without effective involvement of the community, despite the fact that it is a community facility. As a previous Minister for Territories put it, ‘you’re going to get this recreation centre whether you like it or not’.

The Centre is essentially unaffordable. The community will have to rely on Government support to the tune of around \$750,000 per annum to operate the facility. A mainland centre of a comparable size would have a catchment population of around 50,000 people. And a local government operating such a centre would be working on a subsidy of around 8 cents per visit. By contrast the Christmas Island community is around 1,400 people and the subsidy per visit has been estimated at \$23.⁶⁹

3.67 At its hearing in Canberra, the Committee received assurances from DOTARS that the Shire of Christmas Island was receiving funding for the

68 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 25.

69 Shire of Christmas Island, Submission no. 10, p. 63.

upkeep of the recreation centre.⁷⁰ In its supplementary submission to the inquiry, following its appearance at the public hearing on 27 March 2006, DOTARS noted that the current agreement for the operation and maintenance of the recreation centre expires on 30 June 2006, but that the 'Australian Government will continue to provide funding for the operational and maintenance costs of the facility...subject to normal budgetary processes and approvals'.⁷¹ DOTARS' supplementary submission also outlined the community consultation process undertaken prior to the construction of the facility.⁷²

Committee conclusions

- 3.68 It would appear to the Committee that the current system of governance on Christmas Island is producing distorted outcomes. There is a high level of dissatisfaction with the performance of DOTARS, and considerable investment going into major projects of dubious value while the long term prosperity of the community is, at best, being ignored. There needs to be greater weight given to local opinion in decisions about future investment, particularly in infrastructure and major projects.

The Christmas Island Casino and Resort

- 3.69 If one issue highlights the link between governance and economic sustainability in the IOTs, that issue is the decision by the Australian Government in July 2004 to block the reopening of the Christmas Island Casino. That decision raises matters of consultation, transparency and accountability, and calls into question the appropriateness of the current framework of governance.
- 3.70 On 16 July 2004, the then Territories Minister, Senator the Hon. Ian Campbell, announced the Australian Government's decision to prevent the reopening of the casino. His statement highlighted the potential social impact of gambling upon the Christmas Island community:

In the interests of the Christmas Island community, the Australian Government has decided to make legislative changes to prohibit casino operations on Christmas Island.

"Gambling has become a major social concern in today's society and the challenge for the Australian Government is to find a

70 See *Transcript of Evidence*, 27 March 2006, p. 11.

71 Department of Transport and Regional Services, Submission no. 18, p. 19.

72 Department of Transport and Regional Services, Submission no. 18, pp. 17-18.

response which considers not only the financial aspects of a casino in the Territory, but takes into consideration the social impacts as a consequence of gambling.” Senator Campbell said.

“To that extent, the Government is concerned about the impact a casino would pose to the social fabric of the Christmas Island community and the dislocation to families that problem gambling can cause.”

“I would like to take this opportunity to reiterate my strong belief that tourism has the potential to represent significant economic activity on Christmas Island and I foresee the reopening of the Christmas Island Resort as a substantial contribution to the Christmas Island economy” he said.⁷³

- 3.71 Mr Thomson, in his evidence before the Committee, described this decision as ‘a killer’, leaving investment and employment in limbo, and highlighting the lack of coherent planning behind the decision making affecting the Island community.⁷⁴ Captain O’Donnell described the decision as ‘a very bad decision from the very highest level of government’.⁷⁵ Mr Russell Payne, President of the Christmas Island Chamber of Commerce, emphasised the damage done to Christmas Island’s reputation internationally as a place to invest.⁷⁶ In its submission, the Shire of Christmas Island questioned the rationale of the decision:

The reasoning given in the ‘no casino licence’ decision was, if it is to be believed, that the Government was “concerned about the impact a casino would pose to the social fabric of the Christmas Island community”. This is paternalistic justification, not sensible reasoning based on fact or careful consideration. It also ignored repeated emphasis on the casino as an important facilitator of economic development, and resultant community expectation.

The justification is also nonsensical. A casino operated on the Island within the CI Resort from 1993 to 1998. Over 300 jobs were created, many of them going to long term Island residents, and other social and economic benefits flowed into the community.

One study was undertaken during this period about the casino’s social and economic impact. There were some social problems

73 Senator Hon Ian Campbell, Media Release, 16 July 2004, C76/2004.

74 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, pp. 12–13.

75 Captain N. P. O’Donnell (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 42.

76 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 32.

associated with the casino, as there are social problems anywhere, but as the report identified, any negative impacts could have been/be addressed through programs for residents and workers at risk, measures to promote inclusiveness, cooperation and community cohesion, improved infrastructure, extended educational opportunities and a greater Government commitment to the island.⁷⁷

- 3.72 Moreover, according to the Shire of Christmas Island, the decision raises questions about the accountability and transparency of government, both for the decision itself and the way in which it was announced:

The decision against a casino license was unaccountable in all senses of the word. The community didn't believe the reason given, still don't, and are still waiting a reasoned explanation. As the community expressed it in their open letter to Minister Lloyd in August last year –

“We look forward to more information about why this decision was made because we don't believe your government when it says that it was concerned about the impact of a casino on our 'social fabric'. Nothing else your Government does shows any real interest in our social fabric.”

Whatever the real reason for the decision (and there has been plenty of conjecture about what motivated the Government to 'do a back flip'), it was not in consideration of, or support for, this community, and the government have never satisfied the community as to why it was made.

The way in which the 'no casino licence' decision was announced was also unaccountable. Since 2003 the Minister for Territories at the time, Senator Ian Campbell, had indicated his support for a casino licence. This support was still being given up until two days before he announced that a casino licence wouldn't be granted. His last act as out-going Minister for Territories was to make this announcement. He escaped his critics – this community – and left the incoming Minister for Territories with the convenient answer 'I don't know why the decision was made.'⁷⁸

77 Shire of Christmas Island, Submission no. 10, pp. 27–8.

78 Shire of Christmas Island, Submission no. 10, pp. 28–9.

- 3.73 Much of the evidence received from Christmas Island highlighted the benefits to the community of having this major avenue of employment and investment available. The evidence also emphasised the importance of the casino as the foundation for further economic activity. In evidence before the Committee, Mr Michael Asims of the Christmas Island Chamber of Commerce, spoke of the impact of the casino's closure:

During the operation of the original resort casino from 1993 until 1998, in excess of 400 staff were employed at the resort. With a known population at that time of approximately 2,200, this represented around 20 per cent of the total population. Many islanders were employed in various departments at the resort, ranging from gaming to food and beverage and hotel operations. With the closure of the resort in 1998, many of the local employees became unemployed or had to take on lower paying jobs in local small businesses. The cumulative loss of income has had a profound effect on the workforce and local businesses support the community. There are no official statistics kept on unemployment levels on this island. However, it is a well known fact that in excess of 10 per cent of the workforce is currently unemployed. In addition to this, the island phosphate mine is in the process of winding down operations. Once this occurs, the level of unemployment on Christmas Island will increase alarmingly. Many of these long-term island residents are contemplating the closure of their businesses and relocating to the mainland where employment and education for their children is assured.⁷⁹

- 3.74 Moreover, without the casino, Mr Asims told the Committee, the resort and all the things that went with it were not viable:

We spoke to a number of potential investors. They did visit the island and they did conduct feasibility studies to open the casino as a resort facility, rather than a gaming facility. On all occasions, those people decided that this property could not survive simply with tourism. It is also very interesting to note that the highest occupancy this resort ever enjoyed, even at its peak, was 28 per cent overall, but it did not matter. It could have stayed at five per cent, because it made all its money from a very, very small percentage of its visitors, and that was the gaming visitors. It did support airlines. It did support a number of things on the island, but without the revenue stream of the gaming operation, it could

79 Mr M. Asims (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 33.

not do so, and it can never do so in the future. Yes it was looked at for a resort, but it was never, ever going to be a resort.⁸⁰

- 3.75 When questioned about its view of the future prospects for the casino, DOTARS stated:

The closure of the casino and the resumption of the licence is a matter of government policy and I do not believe that I can comment on government policy decisions.⁸¹

Committee conclusions

- 3.76 The Committee has had first hand experience of the rumours and innuendo surrounding the casino license decision,⁸² to which it gives no credence. It notes, however, that the lack of transparency and accountability in the decision making process raises serious concerns about the structure of governance in the IOTs. It is the Committee's view that such a far reaching decision should not have been made without consultation with the affected communities.
- 3.77 It is the Committee's view that the decision to block the licensing of a casino on Christmas Island should be immediately reviewed in consultation with the Christmas Island community, with a view to reopening the casino at the earliest opportunity.

Recommendation 1

- 3.78 **The Committee recommends that the Australian Government review the decision to block the licensing of a casino on Christmas Island, in consultation with the Christmas Island community, with a view to reissuing a casino licence, at the earliest opportunity.**

The Sorensen Case

- 3.79 Another example of governance impacting on economic activity is highlighted by the case of Mr John Sorensen and his company, Northern
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80 Mr M. Asims (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 40.

81 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 18.

82 See, for example, *Transcript of Evidence*, 30 January 2006, p. 12; 22 February 2006, p. 26.

Bay Pty Ltd. Northern Bay has a history of land purchase and development on Christmas Island. In September 2000, Northern Bay purchased Location 448 Phosphate Hill Road with the intention of subdividing it and redeveloping it as a serviced estate to provide for the expected expansion in population following the announcement of the IRPC and the APSC.⁸³ However, as Mr Sorensen related in his evidence before the Committee in Perth, when the tender for housing was announced, he and other developers found themselves facing competitors with access to free Commonwealth land:

When the announcement came for the tender of government housing in connection with the immigration centre, the government offered in the tender document for construction firms to build either on privately owned, fully developed land, for which they naturally would have to pay market price, or on free Commonwealth land which was provided by the Commonwealth. Of course, as could be expected, free land was chosen. We believe the Commonwealth government acted unethically and illegally – possibly strong words – with reference to their own policy statement of competitive neutrality, as quoted in the submission, where competition cannot be unfairly pushed on private enterprise.⁸⁴

3.80 The consequence for Northern Bay is that ‘we have developed land which we have been unable to sell due to the Commonwealth’s action’. The consequence for Christmas Island was a severe depreciation of property values in the market:

I here refer to the Valuer General’s report and decision to lower the value for which tax is calculated. He lowered the values and in his reason for the decision he stated, as per my submission, that it was due to the Commonwealth government entering into the construction of Commonwealth housing on free Commonwealth land. Values have fallen and land is close to impossible to sell on Christmas Island today.⁸⁵

Committee conclusions

3.81 The Committee believes that Mr Sorensen has a strong case. He entered the property market in good faith, believing that he was operating on a

83 Northern Bay Pty Ltd, Submission no. 13, p. 2.

84 Mr J. Sorensen (Northern Bay Pty Ltd), *Transcript of Evidence*, 22 February 2006, p. 17.

85 Mr J. Sorensen (Northern Bay Pty Ltd), *Transcript of Evidence*, 22 February 2006, p. 17.

level playing field. He has been injured by the apparent decision of the Government to suspend the principle of 'competitive neutrality' in the case of the Christmas Island property market. He is not 'asking for a handout, but recognition that the Commonwealth has done wrong'.⁸⁶ The Committee believes that the Australian Government should purchase Location 448 Phosphate Hill Road at full market value.

- 3.82 Moreover, the Committee believes that the damage done to the fledgling Christmas Island property market must be recognised and addressed. The Committee is of the view that in future all land released on Christmas Island should be released at full market value. This will ensure the stability of the market and a fair return on investment for legitimate developers.

Recommendation 2

- 3.83 **The Committee recommends that the Australian Government adopt the policy that, in future, all Commonwealth land released for development on Christmas Island, is sold at full market value.**

Recommendation 3

- 3.84 **The Committee recommends that the Australian Government compensate Northern Bay Pty Ltd through the purchase of Location 448 Phosphate Hill Road at full market value, or by some other means.**

Other issues

- 3.85 A number of issues relating to economic sustainability but only indirectly to governance arose during the course of the inquiry. The Committee addresses the more significant of those in this section.

Freight costs

- 3.86 In evidence before the Committee, Mr Bill Price, CEO of the Cocos (Keeling) Islands Shire Council, raised the impact of freight costs upon the

86 Mr J. Sorensen (Northern Bay Pty Ltd), *Transcript of Evidence*, 22 February 2006, p. 18.

economy of the Cocos (Keeling) Islands, and argued that this 'cost is stifling a lot of development':

The sea freight is a real issue for the community. It is becoming enormously expensive. We also have the added cost of \$25 customs fee per consignment. Even if you buy one article from Bunnings it is \$25 and then 50 articles from somewhere else it is \$25. Every supplier has an additional \$25.⁸⁷

3.87 Mr Price noted that charges for sea freight to Cocos were '\$425 a cubic metre...which is double Christmas Island'.⁸⁸ He suggested a solution similar to the airlines 'where the Commonwealth have decided who the airline provider is'. He argued for an investigation into sea freight, 'whether there could be some healthy competition or a tender let over several years'.⁸⁹

3.88 The Committee also received evidence on the impact of air freight charges in the IOTs. Mr Kel Watkins, the proprietor of Freightshop, the air freight consolidator for the IOTs, highlighted the impact of quarantine charges on goods coming into Australia from the IOTs, especially goods travelling there and back. As he noted, 'the territories are treated as an international destination...that flummoxes a lot of people who think they are staying in Australia'.⁹⁰ The cost of importation of goods is as follows:

- Goods under \$1000 not requiring quarantine inspection, \$57.50.
- Goods under \$1000 requiring computer checks, \$107.
- Goods under \$1000 requiring quarantine inspection, \$199.
- Goods over \$1000 not requiring quarantine inspection, \$188.
- Goods over \$1000 requiring quarantine inspection, \$330.⁹¹

3.89 In addition, goods over \$1000 face customs charges and brokerage fees.⁹² Mr Watkins stated:

My submission is on behalf of the islanders. There is nothing in it for Freightshop either way. My submission is about goods that

87 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 25.

88 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 24.

89 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 25.

90 Mr K. Watkins (Freightshop), *Transcript of Evidence*, 22 February 2006, p. 39.

91 Mr K. Watkins (Freightshop), *Transcript of Evidence*, 22 February 2006, p. 39.

92 Mr K. Watkins (Freightshop), *Transcript of Evidence*, 22 February 2006, p. 40.

either go up to the islands and we know they are going to come back or goods that come down from the islands and we know that they are going to go back to the islands. It is the cost of getting those goods in. For example, if a tradesman tenders for a small job and takes up his toolbox with 100 kilos of tools, when he comes back he might find that, because they are tools, Quarantine wants to see them and he has got a \$330 charge to get his tools back into the country. However, if they were under \$1,000 and Quarantine did not want to see them, it would be \$57.50.

A lot of people get caught. They think, 'This is Australia but I've got to pay to get my stuff back.' Surgical equipment quite often goes up to the hospitals for a one-off surgical procedure. It might be a \$50,000 machine but it goes up. Obviously it is surgically cleaned up there but still, because it is surgical equipment, Quarantine say they want to see it so it is \$330 to get it back into the country. If somebody's car breaks down and they crack the cylinder head, normally it is cheapest to repair them so they send it down to get repaired, but it costs \$330 to get it into the country, and so on. So it is this area of goods that are going up there for a job and we know they are going to come back or goods that are sent down for calibration or repair that we know are going to go back to the islands. On the islanders' behalf, I feel that there should be another way to do this without it costing \$330. Basically that is my submission.⁹³

- 3.90 A solution offered by Mr Watkins is to create a separate customs and quarantine category for goods travelling both to and from the Territories, segregating them from genuine imports and exports, and removing quarantine and customs charges on those goods. This process would be managed by the freight consolidator.⁹⁴

Committee conclusions

- 3.91 The Committee sees some merit in Mr Watkins proposal, if it were able to be applied practicably. The Committee notes, however, that the aggregate cost of these fees represents a considerable impost upon the IOTs, regardless of the goods upon which they are imposed. Moreover, the benefit of excluding the IOTs from the mainland for the purposes of customs and quarantine accrues wholly to the mainland. This raises the

93 Mr K. Watkins (Freightshop), *Transcript of Evidence*, 22 February 2006, p. 39.

94 See Freightshop, Submission no. 1, pp. 1-2. See also Mr K. Watkins (Freightshop), *Transcript of Evidence*, 22 February 2006, pp. 42-3.

question of whether any goods travelling to or from the IOTs from the mainland should be subject to customs and quarantine charges at all. It is the view of the Committee that customs and quarantine charges should not be imposed upon goods travelling to or from the IOTs, and that the cost of inspection should rest wholly with the Commonwealth.

- 3.92 The Committee is also of the view that the Australian Government should carry out an investigation into the cost of sea freight to the IOTs, with a view to reducing costs and streamlining operations. Such a review could investigate the possibility of bringing goods to the islands from sources outside Australia, and using international operators for the transshipment of goods.

Recommendation 4

- 3.93 **The Committee recommends that the Australian Government conduct an investigation into the cost of sea freight to the Indian Ocean Territories with a view to reducing costs and streamlining operations.**

Recommendation 5

- 3.94 **The Committee recommends that the Australian Government rescind customs and quarantine charges, where they exist, on freight travelling between the Indian Ocean Territories and the Australian mainland.**

Air travel

- 3.95 Problems with air travel between the mainland and the IOTs were also brought to the attention of the Committee. In his submission, Mr K. Dallimore indicated that given the number of flights travelling to and from the IOTs, particularly at peak tourist times, the aircraft being used were too small, making it difficult to secure seats without booking months in advance. Moreover, he noted that air fares were expensive, excess baggage charges were very expensive, and flights from the IOTs connected poorly with flights to eastern states, necessitating stopover in Perth.⁹⁵

95 Mr K. Dallimore, Submission no. 9, pp. 1-2.

3.96 Mr Sorensen also raised the cost of airfares. He suggested a direct subsidy to reduce fares, the return from which would be increased tourism to the IOTs, and therefore increased employment. Alternatively, he suggested that the Government could legislate to make major carriers adopt the IOTs air route as part of their scheduled services.⁹⁶

3.97 In evidence to the Committee, Mr Price also identified flight bottlenecks as a serious problem, with consequences for the economic development of the IOTs:

The problem we have for Cocos is that at the moment the NJS plane has 60 or 65 seats. There is a large component of a contract that is going to Christmas Island at the moment for this DIMIA facility and they are taking up a lot of the seats. It is probably not affecting Christmas Island. They may be losing tourist numbers but that has been offset by their contract numbers for their local economy. We are missing out on tourist seats because they cannot get on the plane and there is a particular bottleneck between the islands. The other thing we cannot get here is group bookings unless you book six months in advance. With the Bali problems there are a lot of windsurfers, a lot of tourists who want 10 or 15 seats as a package deal, or even a few families, but you cannot book 15 seats on a NJS flight without booking six months in advance.⁹⁷

3.98 Mr Price suggested that the Commonwealth agree to underwrite additional flights to the Islands, as a way of increasing their tourism potential:

As I have said, the Commonwealth underwrite 120 flights and I think last year the Commonwealth had to pay very minimal money for the flights that did not pay for themselves. If there is a possibility of getting a few extra Saturday flights, or as Christmas Island are putting, or contractors going on a specific Saturday flight just for contractors, that would leave our tourism seats free. We are working quite extensively trying to market the islands, tourism is one of our biggest economic industries, but we are restricted by the number of bums in seats on the plane. That is one of our issues.⁹⁸

96 Northern Bay Pty Ltd, Submission no. 13, p. 6.

97 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 26.

98 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 26.

Committee conclusions

- 3.99 The Committee sees considerable merit in improving air access to the IOTs, especially given that it is the only means of access generally available. While the Committee is reluctant to recommend direct subsidies for air fares, it believes increasing the number of flights underwritten by government would be a simple and cost effective means of improving accessibility. The Committee also notes that the reopening of the Christmas Island Casino could significantly increase demand for flights in and out of the Territories. This should see an increase in commercial flights and provide greater competition in the provision of air services, reducing the need for future subsidies.

Recommendation 6

- 3.100 **The Committee recommends that the Australian Government increase the number of flights between Australia and the Indian Ocean Territories under the existing contract, and invite international carriers to open services to the IOTs.**

Commonwealth law

- 3.101 Another issue raised with the Committee was the exclusion of the IOTs from Commonwealth laws. Ms Margaret Robinson, CEO of the Shire of Christmas Island, highlighted the exclusion of the IOTs from the Commonwealth corporations law, observing: ‘You cannot register a company on Christmas Island.’⁹⁹ The Committee notes that when this issue was raised with DOTARS at the Canberra public hearing, there was initially some confusion as to whether or not Commonwealth corporations law applied in the IOTs.¹⁰⁰
- 3.102 Another anomaly brought to the attention of the Committee was the exclusion of the IOTs from the operation of the *Education Services for Overseas Student Act 2000*. As Mr Payne indicated, this prevents the IOTs from offering education services to overseas students:

The ESOS Act – which is a Commonwealth act – governs the way you manage overseas students. The school is designed to have

99 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 16.

100 Ms S. Page & Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 33.

overseas paying students in it, and we actually started cranking it up in the chamber to get this started. We looked up the act and we were specifically excluded. It said 'a state', but when you looked up the definition of 'a state' it said just about everywhere in the world except Christmas and Cocos Islands, and there are a lot of those acts. This is the thing. We do not have that representation. The act itself only set up the regulations. Why exclude anybody? Why not say, 'If you want to do it, here are the rules.'¹⁰¹

- 3.103 The issue of the IOTs exclusion from the *Education Services for Overseas Student Act 2000* was previously addressed by the Committee in its review of the administration of the IOTs – *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of Environment and Heritage* (August 2004). The Committee recommended in that report that the Act be amended to include the IOTs.¹⁰² In its response to that report the Government indicated that the matter was under review,¹⁰³ but to date the Committee is not aware of any change to the law. It therefore reiterates the recommendation made previously.

Committee conclusions

- 3.104 The Committee sympathises with the frustration of the islanders about their apparently arbitrary exclusion from Commonwealth laws, and recommends that:
- corporations law and the *Education Services for Overseas Student Act* be amended to include the IOTs;
 - the Australian Government review all legislation to identify and rectify similar anomalies; and
 - in future, the IOTs are excluded from the provisions of new legislation only where such exclusion can be demonstrated as necessary.

101 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, pp. 45–6.

102 Joint Standing Committee on the National Capital and External Territories, *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*, Parliament of the Commonwealth of Australia, August 2004, pp. 21–2.

103 Government response to the Joint Standing Committee on the National Capital and External Territories Report: *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*, August 2004, presented 18 August 2005, p. 5.

Recommendation 7

3.105 The Committee recommends that the Australian Government take action to ensure that:

- corporations law be amended to include the IOTs;
- the *Education Services for Overseas Student Act 2000* be amended to include the IOTs as a possible destination for overseas students;
- a review of all Commonwealth legislation is conducted to identify and rectify similar instances where the Indian Ocean Territories are excluded from legislation; and
- in future, the IOTs be included under the provisions of new legislation except in instances where exclusion can be demonstrated as justified.

Applied WA law and community service delivery

Introduction

- 4.1 This chapter addresses two of the inquiry's terms of reference:
- the operation of Western Australian applied laws; and
 - community service delivery including the effectiveness of service delivery arrangements (SDAs) with the Western Australian Government.
- 4.2 In this chapter, the Committee examines the effectiveness of having a body of WA law applied (as Commonwealth law) in the Indian Ocean Territories. In particular, the Committee addresses the various complexities arising from this arrangement, owing to the inapplicability of many laws which are automatically extended to the Territories and confusion over delegated authorities under applied legislation.
- 4.3 This chapter also analyses the effectiveness of the delivery of services in the IOTs, which, under the Australian Government's policy of 'normalisation', are increasingly being provided through SDAs with the WA State Government or are being delivered through contracts with the private sector following a market-testing and tender process.
- 4.4 In addressing these two terms of reference, the adequacy of consultation with the IOTs communities emerges as a key issue. Evidence from both

Christmas and the Cocos (Keeling) Islands identified significant flaws in the Government's consultation processes in both the consideration of applied laws and the negotiation of SDAs. Before concluding with its views on these matters, the Committee examines the way in which the role of Christmas Island's Community Consultative Committee has changed since its inception, and how this has affected community input into matters that impact directly on Territory residents.

The operation of Western Australian applied laws

- 4.5 As discussed in chapter two, the enactment of the *Territories Law Reform Act 1992* saw the laws of Western Australia extended to the IOTs in 'so far as they are capable of applying'.¹ WA laws are applied in the Territories as Commonwealth laws and all non-judicial powers in applied WA legislation are vested in the Commonwealth Minister for Territories.² Therefore WA State ministers have no jurisdiction, delegations or powers under the Act.
- 4.6 As new legislation is passed by the WA Parliament or existing WA legislation is amended, the new laws automatically apply to the IOTs as Commonwealth laws unless the Australian Parliament determines that this should not be the case. By Ordinance made by the Governor-General on the recommendation of the Federal Minister for Territories, WA laws can be amended, deferred or disallowed.³ Ordinances are used to adjust WA laws either to accommodate the special circumstances of the IOTs, including cultural differences, or to address potential inconsistencies between WA and Commonwealth law.⁴
- 4.7 While there is no question that the previous Singapore-based regime no longer held relevance for the IOTs communities and that comprehensive legal reform was necessary, it has been acknowledged that the current arrangements can generate confusion. During a Senate Estimates hearing in 2005, a representative from DOTARS stated:

The applied Western Australian legal regime is a very complex arrangement. Many people become confused and believe that they are living under Western Australian law. It is not necessarily an

1 *Territories Law Reform Act 1992* (Cth), Section 6, 8A(1).

2 Department of Transport and Regional Services, Submission no. 12, p. 7.

3 Department of Transport and Regional Services, Submission no. 12, p. 7.

4 Commonwealth Grants Commission, 1999, *Report on the Indian Ocean Territories 1999*, CanPrint Communications Pty Ltd, Canberra, p. 22.

easy concept. In addition to that, any amendments to the applied legislation et cetera makes it even more complex.⁵

- 4.8 This complexity can also be attributed to the fact that many of the WA laws which are automatically applied to the IOTs have little or no relevance for the Territories themselves. DOTARS further stated:

The body of legislation, as it stands, does not necessarily have a targeted effect on the Indian Ocean territories. There are a large number of laws that I am aware of that would not really relate at all.⁶

- 4.9 The Committee received evidence which suggested that of those WA laws currently applied as Commonwealth law in the IOTs, over 50 per cent are irrelevant.⁷ In addition, the Shire of Christmas Island stated:

The argument that not all laws apply equally to every region or area within Western Australia is not valid in the Christmas Island context. While a person in Western Australia can understand that a law has no relevance to where they live, they can understand that it applies somewhere within the State. In the territory context there is no relevance.⁸

- 4.10 It was suggested that in many cases, the inapplicability of certain laws is due to WA Government bodies being included in legislation applied to the Territories despite having no formal role. This situation was explained by former CEO of the Cocos (Keeling) Islands Shire Council, Mr Robert Jarvis, who stated:

At times, I believe Commonwealth legislation has been applied when it needed to be modified before it was applied. I will give an example. The Western Australian Local Government Act requires that a copy of a local law is sent to the joint house committee, which is a Western Australian parliamentary committee. No such body exists in the Commonwealth, and we ran into a dilemma when someone contacted a lawyer and challenged one of our local laws. The reason they challenged it was that it had not been to the joint house committee. When I spoke to the department of local

5 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 26 May 2005, p. 137.

6 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 27 May 2005, p. 7.

7 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 16.

8 Shire of Christmas Island, Submission no. 10, p. 98.

government in Western Australia, they asked, 'Why would you send it to us?' It is a Western Australian committee and has no jurisdiction over the Commonwealth. It is there to look at compatibility with other Western Australian laws, rather than with Commonwealth laws. That is a simple example. When laws from the state are applied in the territories, there should be some consideration given to certain elements of those pieces of legislation which do not quite fit. In that case, it was the basis for someone prepared to make a legal challenge against a shire's local law-making ability.⁹

- 4.11 The WA Department of the Premier and Cabinet explained that the application of irrelevant laws was a resource-saving measure on the part of the Commonwealth:

...you have got a lot of those acts in the territories that have no mechanism to trigger them, and that is fine because it would cost a lot of money to go to repeal processes and have all the parliamentary requirements of repealing acts and putting the acts on the table. What the Commonwealth has done is just applied those acts and commonsense dictates whether or not those acts apply in the territories.¹⁰

- 4.12 Evidence received by the inquiry suggests that for those people residing in the Territories, things are a little more complicated. Apart from confusion over knowing exactly which laws apply in the Territories, the Committee was told that the extraneous nature of certain laws can also result in police exercising discretion in their enforcement – as was suggested by Mr John G. Clunies-Ross in the case of bicycle helmet laws, which are only enforced for minors in the Cocos (Keeling) Islands, due to the lack of risk factors affecting cyclists on-Island.¹¹ Mr Clunies-Ross described the failure to review legislation to ensure its suitability to the Territories as 'insulting'.¹² He further stated:

All in all WA legislation has addressed the limited view of Australia, but has significant legal problems outlined previously. There are also procedural issues, in that the Territory's budget written by the Commonwealth does not reflect the initiatives, social and or economic put forward by WA state government. The

9 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 48.

10 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 4.

11 Mr J. G. Clunies-Ross, Submission no. 15, p. 5.

12 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 33.

budget is fixed prior to and separate to the WA budget, and has no flexibility to address initiatives put up by WA even though the Commonwealth levies WA taxes.¹³

4.13 In 1991, the *'Islands in the Sun'* report of the House of Representatives Standing Committee on Legal and Constitutional Affairs recognised the need for the IOTs communities to be involved in the reviewing process in respect of WA laws to be applied to the Territories. This was primarily to ensure that the particular circumstances of the Territories were not adversely affected by the extension of a law.¹⁴

4.14 However, in its 1999 report on the IOTs, the Commonwealth Grants Commission identified concerns about the process by which WA law was being applied in the Territories. While the Commission was unable to pinpoint the underlying cause of ongoing community concern, it advocated improvements to consultative processes generally. The Commission stated:

...[community concerns] could be addressed by ensuring that the IOT communities have better access to the laws that apply and to adequate information on how the legal system operates. The re-energisation of the Community Consultative Committee on both Territories would be a useful first step.

[DOTARS] should also consider whether a more streamlined process for applying new legislation to the IOTs and for culling irrelevant legislation could be developed.¹⁵

4.15 While acknowledging that there could be greater consultation between DOTARS and the local community, the Cocos (Keeling) Islands Shire Council appeared generally satisfied with the current arrangements in place with regard to the applied WA laws. Shire Council CEO, Mr Bill Price, stated:

We feel that the operation of Western Australian applied laws are quite relevant to us. At the moment we are quite happy with the majority of the legislation that is applied here, although we feel that there may need to be more consultation with the local community to tailor the legislation to accommodate the local

13 Mr J. G. Clunies-Ross, Submission no. 15, p. 6.

14 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra.

15 Commonwealth Grants Commission, 1999, *Report on the Indian Ocean Territories 1999*, CanPrint Communications Pty Ltd, Canberra, p. 31.

community a little bit more, taking into consideration their culture and things like that.¹⁶

- 4.16 The Shire of Christmas Island was more vocal in its criticism of the applied laws system, largely due to the lack of input or influence the Shire believes the island community has in the process. While acknowledging that the applied laws system was an improvement on the Singapore-based regime, the Shire submitted that 'the level of bureaucracy and complexity arising makes it only marginally better'. The Shire stated:

The applied laws system denies the Territory any real say in the laws that apply, exacerbated by the fact that the laws apply immediately they are proclaimed in Western Australia, and that requests for changes to laws are ignored.¹⁷

The Commonwealth hasn't provided sufficient resources, information or advice to either manage the system of laws or facilitate community understanding of these laws.¹⁸

Despite some initial efforts, the Shire has not been the conduit for effective monitoring of the effects of the applied laws system and has not had direct access to the Minister in respect of laws to apply. In essence, the question of effective community involvement in the application of Western Australian laws has now been abandoned. The absence of effective consultation and access arrangements has rendered a marginally fair system unfair.¹⁹

- 4.17 One of the confusing aspects of the applied law system is determining who has delegated authority where a WA law is applied in the Territories. The Shire of Christmas Island raised the issue of the effectiveness of such delegations where a particular level of expertise or qualifications is required. For example, for the purposes of the *Health Act 1911 (WA) (CI)*, the Administrator is delegated the same authority as the Executive Director of Health in WA. Similarly, the Administrator is delegated the equivalent role of child welfare officers within the WA Department of Community Development for certain child welfare/protection issues.²⁰

16 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

17 Shire of Christmas Island, Submission no. 10, p. 75.

18 Shire of Christmas Island, Submission no. 10, pp. 125-6.

19 Shire of Christmas Island, Submission no. 10, pp. 81-2.

20 Shire of Christmas Island, Submission no. 10, pp. 103-4.

- 4.18 The Shire stated that where recent delegations had been published in the Territory of Christmas Island Government Gazette, the general trend had been:
- where the Minister has the authority in the WA law, to delegate authority to the Administrator; and
 - where an officer has the authority in WA law, to delegate authority to that person in WA.²¹
- 4.19 During discussions, DOTARS acknowledged that it 'could not say that (the department's) examination of local government legislation is systematic or (its) highest priority'.²²
- 4.20 However, DOTARS did inform the Committee that it was developing a program for reviewing WA legislation applied as Commonwealth law in the IOTs. The Department advised that it had been working through the legislation to identify where laws needed to be amended and, in particular, where the delegations needed to be updated.²³
- 4.21 As yet, however, the Committee noted that there has been no consultation with the WA Government and DOTARS was not in a position to advise whether there was a plan to consult with the IOTs shire councils throughout the process.²⁴

Committee conclusions

- 4.22 While the Committee acknowledges the practicality of having a system of applied WA law in the IOTs, it is troubling that many of the concerns about the implementation of this system, which were identified in the early stages of the transition, have yet to be addressed.
- 4.23 In the Committee's view, the model which sees WA laws applied to the IOTs is, at present, the most appropriate one, regardless of the Commonwealth's stated policy for the long-term incorporation of the Territories into WA.
- 4.24 However, the effectiveness of this model is dependent on the preparedness of the Australian Government to contribute sufficient

21 Shire of Christmas Island, Submission no. 10, p. 103.

22 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

23 Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

24 Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

resources to ensure that the laws which are applied to the IOTs communities are not only tailored to the efficient functioning of the territories, but also recognise their unique culture.

Recommendation 8

- 4.25 **The Committee recommends that, as a matter of priority, the Australian Government allocate sufficient resources to implement a program for reviewing all Western Australian legislation currently applied as Commonwealth law in the Indian Ocean Territories, with a view to repealing, or amending, all legislation which cannot be practically applied in the Territories.**
- 4.26 While an all-encompassing review of the existing applied laws is required in the first instance, it is equally important that the Commonwealth commit resources for the ongoing monitoring of the suitability of WA legislation as it is applied in the Territories. The current situation, whereby anomalies in legislation appear to be addressed in an ad hoc manner only in the event that an incompatibility arises in practice, is unsatisfactory.
- 4.27 In the Committee's view there needs to be a working party tasked with considering in detail each piece of legislation as it is applied in the IOTs, with the view to identifying any perceived problems right at the beginning. This working party should have a collaborative relationship with the Shires of both island communities, in line with legislative changes proposed by the Committee in Recommendation 11.

Recommendation 9

- 4.28 **The Committee recommends that, following a review of existing applied Western Australian legislation, the Australian Government allocate sufficient resources for the ongoing monitoring of new, amended, or proposed Western Australian laws which apply, or will apply, in the Indian Ocean Territories as Commonwealth law.**

Community service delivery

4.29 As the Australian Government pursues its policy of 'normalisation' for the IOTs, one of its objectives has been to reduce the number of DOTARS staff in the Territories by devolving functions where possible. Under this policy, community services are increasingly being delivered through SDAs with WA agencies or through the private sector following market-testing and tender processes. The effectiveness of these arrangements is discussed below, as are the impacts being felt throughout the IOTs communities as a result of this transition.

Service delivery arrangements (SDAs)

4.30 Since 1992, the WA Government has acted as an agent of the Commonwealth to provide equivalent State services to the IOTs, as requested by the Commonwealth.

4.31 As discussed in chapter two, the position of Project Manager for the Indian Ocean Territories within the WA Department of the Premier and Cabinet provides advice to the Premier and develops policy in relation to service provision in the IOTs. In evidence to the Committee, current Project Manager, Ms Virginia Miller, outlined mechanisms available for residents of the IOTs to have a say in the process by which SDAs are formalised:

The service delivery arrangement process is as transparent as it possibly can be in as much as the residents of Christmas and Cocos islands have access to the actual documents that are prepared, which show the services to be provided, the aims and objectives of the service delivery arrangement and the costs. Each year the state agencies are required to prepare performance reports. These are documented by DOTARS and are available to the Christmas Islanders and Cocos Islanders. In addition, an audit is undertaken by the Western Australian Auditor-General, so that it is a very stringent process. At the end of the life of the service delivery arrangement, it is reviewed by a joint team from the Commonwealth and the state – me being the state – and the residents of Christmas and Cocos islands are invited to input at that point or earlier, if they so choose. At any stage of the way if there is a dissatisfaction with the way services are provided, there is opportunity for those concerns and comments to be heard. In addition, every service delivery arrangement has a contact officer and that contact officer is generally well known to the

stakeholders who have need of the service delivery arrangement. So there is that mechanism in place where the residents can actually contact the state contact officers if they have a problem in the first instance or they can contact or let their concerns be known to DOTARS. At the end of the service delivery arrangement, if nobody likes the services that are being provided, then we would recommend that that service delivery arrangement be terminated.²⁵

- 4.32 While consultation on SDAs is a Commonwealth responsibility, evidence received by the inquiry suggested that the process described above is not followed consistently by DOTARS. The Shire of Christmas Island used the example of a recent SDA with the WA Department of Sport and Recreation as 'one of many' examples of where the community was denied any opportunity to participate in negotiations over a service delivery that directly impacts on it.²⁶ The SDA was signed between the State and the Commonwealth on 18 December 2005. The Shire stated:

One of the key points about it is that we did not even get advice that this SDA was being considered or was being negotiated at all...Normally we are at least given the courtesy of being told what the agenda is for Commonwealth-state negotiations about SDAs.²⁷

- 4.33 While the Shire acknowledged that the WA Department of Sport and Recreation may well be able to provide a valuable service, as the largest on-Island recreation provider the Shire was very concerned that it had been denied an opportunity to comment on the proposal.²⁸
- 4.34 DOTARS acknowledged the Shire's concerns over this particular SDA, but suggested that this was an anomaly, adding that 'in the overwhelming majority of cases there is formal consultation'.²⁹
- 4.35 There was a significant contrast in the views submitted by the Shire of Christmas Island and the Cocos (Keeling) Islands Shire Council on the overall effectiveness of SDAs with Western Australian agencies. While on Cocos, the Shire Council stated that it was 'very happy' with the current

25 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 7.

26 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 8.

27 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 7.

28 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 8.

29 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, pp. 3-4.

SDA process,³⁰ the Shire of Christmas Island described the SDA system as ‘problematic for a range of reasons’ and again highlighted the lack of community involvement in the decision-making process as a major concern.³¹

4.36 It was suggested to the Committee that the Cocos (Keeling) Islands Shire Council was in the advantageous position of being a trustee of six-sevenths of the land, which may in part explain the inconsistency in views between the two Shires on the issue of consultation.³² It was also suggested that the withdrawal of DOTARS staff from Cocos (Keeling) Islands had opened communication lines and given council the opportunity to represent the community.³³

4.37 In regard to SDAs applying to the Cocos (Keeling) Islands, the Shire Council, stated:

We are quite satisfied that the majority are very relevant to us. We have an opportunity as a council through negotiation with DOTARS to review those SDAs that are relevant to us. If we feel they are not relevant we can throw that SDA away.³⁴

4.38 Some of the concerns the Shire of Christmas Island raised about the SDA system included:

- the exclusive arrangement between the Commonwealth and the State for the provision of services;
- the lack of accountability and transparency arising from this arrangement; and
- the lack of community involvement in decisions about effective service provision.³⁵

4.39 The Shire stated:

The Commonwealth has failed to acknowledge its greatest asset: the community. If the Commonwealth was committed to effective

30 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

31 Shire of Christmas Island, Submission no. 10, p. xii.

32 See Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 10.

33 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, pp. 9–10.

34 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

35 Shire of Christmas Island, Submission no. 10, p. xii.

community service provision, and to developing community capacity to take initiative and be involved in decision making, tangible benefits would flow.³⁶

- 4.40 DOTARS was asked how it assessed whether the Commonwealth was getting value for its dollar in entering SDAs with WA agencies. DOTARS responded that the funding provided to the WA Government for the delivery of services to the IOTs is finite, and therefore the interest of the WA Government is in providing the most efficient service.³⁷

Third party contracts

- 4.41 Where the Australian Government provides services to the IOTs directly there is a substantial impost on resources, as well as a reliance on specialised expertise which poses a significant risk to the Government should that expertise be lost through the departure of individuals employed in key positions. Therefore, the Australian Government introduced a policy whereby a number of these services are increasingly being:

...either re-engineered to meet WA legislation and procedural standards to eventually be covered by a SDA with WA, or market tested with a view to being offered for competitive tender. Where either the SDA or market testing process fails to find a suitable service delivery agency or contractor, then that service will, of necessity, be continued by the Department.³⁸

- 4.42 Services that have been contracted out include water and wastewater, power, port management, airport management, airline services and TV and radio broadcasting. DOTARS reported that significant progress had been made in reviewing and market testing non-core Island administration functions and services. In circumstances where the outsourcing of services renders pre-existing staff redundant, DOTARS offers financial planning, career advice and individual counselling.³⁹ DOTARS stated:

Market testing of services is not a measure to avoid the Commonwealth's responsibilities towards the Islands and the Commonwealth recognises that there will be a continued need to

36 Shire of Christmas Island, Submission no. 10, p. 154.

37 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 8.

38 Department of Transport and Regional Services, Submission no. 12, p. 8.

39 Department of Transport and Regional Services, Submission no. 12, p. 8.

subsidise many of these services in order to make provision viable. Rather, it is about having services provided by those best placed to recruit the required expertise taking account of the value for money for the Commonwealth. Any savings made from market testing are not lost to the programme but are instead available for reallocation towards service provision areas not currently well serviced. Indeed, it is vital that efficiencies are gained to enable this reallocation to occur.⁴⁰

- 4.43 The Shire of Christmas Island made it clear that it is strongly opposed to the Government's policy of market-testing. The Shire stated:

DOTARS current policy for the Indian Ocean Territories continues to create policy and administrative uncertainty and to undermine economic self-sufficiency. This policy promotes market testing, contracting out, divestment of non-core assets and the removal/reduction of DOTARS direct on-Island presence.

All that this policy has done is undermine the local community's employment and service base and created suspicion in the minds of many that the policy is against local residents, both in terms of accessing jobs and opportunities to provide outsourced services. The Government's decision not to advertise market testing "opportunities" on Island is further evidence that the Government is not committed to service delivery by residents or Island based organisations.⁴¹

- 4.44 In relation to services being market-tested by the Government, DOTARS commented that 'we certainly leave open the possibility that IOT shire councils could deliver them'.⁴² In 2005, DOTARS acknowledged that where the Shire councils had the resources to deliver services, this option would be favoured. A representative from the Department stated:

Our intent would be that if local government can deliver it on-island – they have the capacity to do so – that is always preferable in the sense that they are there, they are on the spot and, if they have the support and the capacity, that is much better for the community there.⁴³

40 Department of Transport and Regional Services, Submission no. 12, p. 8.

41 Shire of Christmas Island, Submission no. 10, pp. 66-7.

42 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 8.

43 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 27 May 2005, p. 6.

- 4.45 However, the Shire of Christmas Island disputed the Government's willingness to engage the local councils for service delivery. The Shire pointed to the fact that for the airport, the health service, and school and hospital cleaning services, expressions of interest were not advertised on-Island and instead were advertised through the State Department of Treasury – who the Shire stated 'don't "normally" advertise on island.'⁴⁴
- 4.46 The Shire used the privatisation of the management of the Christmas Island airport to illustrate the social impact on Island residents. The Committee was advised that eight local people who were employed at the airport are no longer employed there, and the majority of labour required at the airport is fulfilled on a casual basis, largely due to an increase in security requirements.⁴⁵ In light of this, the Shire expressed concern over the decision by the Australian Government to undertake a market testing process for the management and delivery of health services for the IOTs. Shire President Mr Gordon Thomson stated:

Why is the government contracting out the management of that health service instead of talking to this community about how health services could be delivered locally? Why hasn't the government encouraged the training and employment of locals in nursing roles, for example, and instead destabilised the service with fly-in, fly-out agency staff – at great expense, I might add? Why hasn't it looked at the contracting out of airport management and water and sewerage? Permanent jobs were lost in each case, to be replaced by short-term employment contracts – no certainty for those taken on by the incoming contractors and no future for those who lost their jobs.⁴⁶

- 4.47 The Shire submitted that there may be local solutions for the effective delivery of certain services without the Government contracting services out to third parties.⁴⁷ Mr Thomson stated:

We believe that involving the community in decisions about state type services will lead to more effective and efficient service provision that supports our economy. Local jobs and local delivery can be very effective given our small size and remoteness and our particular stage of development.

44 Shire of Christmas Island, Submission no. 10, p. 67.

45 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 19.

46 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 5.

47 Shire of Christmas Island, Submission no. 10, p. 154.

In this context, the current government policy of market testing and contracting out of state type services is wrong and undermines both service quality and economic sustainability. It detracts from permanent job creation, from which certainty and confidence will flow.⁴⁸

- 4.48 When DOTARS was asked whether there was an analysis of the overall economic impact of changes resulting from outsourcing, including on employment, the Department commented:

I do not think it was done in a comprehensive way. There would be decisions made in relation to the letting of individual contracts, and indeed some of them do provide for the employment of local staff. Whether I could put together a picture over the life of market testing arrangements, I am not sure.⁴⁹

Committee conclusions

- 4.49 While the Committee advocates employment opportunities for the local community, it also recognises the benefits the community derives from SDAs, where suitably qualified professionals from WA agencies are engaged to deliver often essential services.
- 4.50 However, with regards to the Government's policy of increased 'market testing' of government services with a view to outsourcing/privatising, the Committee is strongly opposed to the recruitment of outside labour where an appropriate skill-base exists on-Island. The precarious nature of the Territories is such that even the smallest number of job losses can have a significant social and economic impact on the communities.
- 4.51 The Committee was therefore surprised to learn that there had been no comprehensive analysis of the overall economic impact of changes resulting from outsourcing, including on employment. If the Australian Government was intent on pursuing a policy of market testing and outsourcing of services, the Committee believes it was incumbent upon the Government to monitor the social and economic effects of this policy on the IOTs communities. The Committee therefore recommends that this policy be abandoned.

48 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 5.

49 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 12.

Recommendation 10

- 4.52 **The Committee recommends that the Australian Government cease its policy of market-testing and outsourcing to third parties services which it currently provides to the Indian Ocean Territories, with a view to promoting the development of community capacity within a framework of enhanced local/regional government.**

The Community Consultative Committee

- 4.53 Much of the criticism levelled at the Australian Government for its lack of consultation with the IOTs communities on applied WA laws and SDAs can be attributed to what the Shire of Christmas Island and the Christmas Island Chamber of Commerce described as the diluting of the role of the Community Consultative Committee (CCC).
- 4.54 The CCC was established by the Christmas Island Assembly shortly after the new legal regime was introduced to the Island. The CCC is made up of various representatives of community groups and government agencies and its role is to facilitate community consultation on the implementation of law reforms.⁵⁰
- 4.55 The Committee was advised that initially, consultation occurred between the community, the Australian Government (through the Australian Government Solicitor and DOTARS' Legal Section) and WA government officials about the application of laws and related service delivery via the CCC. The Shire of Christmas Island explained that DOTARS would produce a brief which set out an impact statement for each new law being applied to the communities, and these were circulated to members of the CCC, who would take this information back to their various organisations to develop awareness of the new laws.⁵¹
- 4.56 However, the Shire has submitted that this process was disbanded in 1996, and impact statements are no longer provided, nor are lists of bills or Acts,

50 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3. The CCC is a standing committee of the Shire Council whose current members include all Shire councillors, the Christmas Island Women's Association, the Chinese Literary Association, the Poon Saan Club, the Malay Association, the Islamic Council of Christmas Island, the Union of Christmas Island Workers, Christmas Island Phosphates, the Christmas Island Chamber of Commerce and the Austasia Business Council.

51 Shire of Christmas Island, Submission no. 10, p. 85.

and an annual review of laws does not occur.⁵² The Christmas Island Chamber of Commerce outlined the reduction in the CCC's role and the effect this has had on community consultation. The Chamber stated:

The Territories Office moved quickly and quite deliberately to marginalise, then after 1995 exclude, the influence of the CCC in its decision making process to the point where the CCC can no longer provide any informed consultative function or opinion.

'Selective' laws became 'all' legislation because the Territories Office did not have the will to procure the resources necessary to closely monitor the suitability of all of the West Australian legislation.

The CCC budget was withdrawn in 1995 because the Territories Office deemed any further consultation after that time was unnecessary. This decision, which at best, defies logic when the West Australian Parliament continues to pass new legislation and amend existing legislation which are then automatically applied to the Christmas and Cocos Island legislation.

Legislative changes and SDAs are now presented to the CCC by the Territories Office as a *fait accompli*. Dozens of pieces of new legislation are condensed to single A4 page explanatory notes usually after the new legislation has become law.⁵³

4.57 Furthermore, the Shire of Christmas Island advised that during discussions with DOTARS in 2003, the Shire was told that 'the law reform process was over'.⁵⁴

4.58 The Shire argued that the role of the CCC has been reduced to disseminating information about new applied laws throughout the community and commenting on SDAs on the basis of advice only. In the view of the Shire, this does not accord with the recommendation in the *'Islands in the Sun'* report that the Shire should have:

...direct access to the Commonwealth Minister in respect of laws to apply to the Island, for reviewing Western Australian laws for their appropriateness to the Territory.⁵⁵

52 Shire of Christmas Island, Submission no. 10, p. 89.

53 Christmas Island Chamber of Commerce, Submission no. 4, p. 12.

54 Shire of Christmas Island, Submission no. 10, p. 90.

55 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra, p. 58.

4.59 Shire President, Mr Gordon Thomson added:

...as I understand it, the department does not have those resources any more to provide that sort of advice...the service delivery arrangements are between the Commonwealth and the state government, and neither the Premier's office representatives from the WA state government nor the Commonwealth will agree that we should have a formal role. We never have had, and we do not have, a formal role.⁵⁶

Recent progress on consultation

4.60 The Committee was encouraged to learn that during March 2006 representatives from the Shire of Christmas Island held productive meetings in Perth with officers from DOTARS' Perth office, the Liaison Officer from the WA Department of the Premier and Cabinet and representatives from six WA agencies. The Shire's visit was just prior to a review of five SDAs and its purpose was both to discuss SDAs and build and strengthen relationships. Importantly, one of the items discussed included:

...the potential to review and expand the Shire's Consultation Deed with the Commonwealth as a means to resource improved consultation and information.⁵⁷

4.61 A report on the Shire's visit in *The Islander* stated:

...the visit was a success both in terms of relationship building and information exchange. State and Commonwealth officials responded positively to the Shire's interest in service delivery issues and there was support for increasing local and Shire capacity to deliver services over time.⁵⁸

4.62 The ensuing SDA review meeting was held with the Community Consultative Committee and representatives from DOTARS and the WA Department of the Premier and Cabinet. *The Islander* reported that members of the committee were able to provide feedback on the operation of SDAs and also to discuss the review process. The next review is scheduled for September 2006.⁵⁹

56 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 11.

57 *The Islander*, 24 March 2006, p. 3

58 *The Islander*, 24 March 2006, p. 3

59 *The Islander*, 24 March 2006, p. 3

Committee conclusions

- 4.63 The Committee recognises that addressing the appropriateness or otherwise of those laws applied in the Territories represents a significant task. In the Committee's view, it is one which can only be achieved effectively with the involvement of the IOTs communities themselves. Not only are the local communities well placed to advise of situations where anomalies exist in applied legislation, they can also provide insights into the unique cultures of the Territories.
- 4.64 Based on the evidence before it, it would appear to the Committee that in the vast majority of cases the IOTs communities are provided adequate opportunity to comment on draft SDAs before they are finalised. However, in the absence of any formal arrangement, there still exists an opportunity for community consultation to be circumvented and for SDAs to be conferred on the territories with little or no notification – as appeared to be the case with the recent SDA between the Commonwealth and the WA Department of Sport and Recreation, where Christmas Islanders were not even advised that the SDA was being considered.
- 4.65 While it is inevitable that decisions taken by DOTARS will not always be to the satisfaction of all in the Territories, the Committee believes that tensions would be minimised if members of the community were kept informed as new arrangements were being developed and at the very least, invited to contribute their views during the process.
- 4.66 In the view of the Committee, the most effective way to ensure that community consultation is not bypassed is to establish a legal requirement for community consultation, in both the development of SDAs and in reviewing the application of WA laws in the IOTs.

Recommendation 11

- 4.67 **The Committee recommends that Section 8 of both the *Cocos (Keeling) Islands Act 1955* and the *Christmas Island Act 1958* be amended to include a framework for consultation with the Indian Ocean Territories communities in relation to service delivery arrangements with the State of Western Australia, and in the review of Western Australian legislation which is applied in the territories as Commonwealth law.**

Governance of the Indian Ocean Territories

Introduction

- 5.1 This chapter deals with three interrelated aspects of governance arrangements in the Indian Ocean Territories – the role of the shires, the aspirations of residents for more representative governance arrangements, and options for the reform of governance.
- 5.2 The Committee notes that any future role for the shires, whether along current lines or expanded to take on roles not traditionally part of local government, is intimately dependent upon broader governance outcomes. How the Australian Government and the local communities see the future governance of the IOTs unfolding will determine the role of the shires.
- 5.3 The options for future governance arrangements include:
- maintaining current governance arrangements with some refinement;
 - incorporation of the IOTs into the State of Western Australia; and
 - limited self government.
- 5.4 The Committee notes that which of these options will best meet the needs of the IOTs is a matter of contention. Broadly speaking, the Australian Government supports incorporation; the Christmas Islanders support self government; and the Cocos (Keeling) Islanders are seeking whichever solution best meets their needs, including the status quo.

- 5.5 However, one thing is clear from the evidence. The people of the IOTs want to be consulted on all the options being considered for the future governance of the Territories, before ultimately being left to determine which is the most desirable option for themselves.

The role of the shires

- 5.6 The evidence put before the Committee as to the role of the shires is complex and contradictory. The Committee observes that the current role of the shires – limited to the traditional role of local government – is predicated upon the eventual incorporation of the IOTs into Western Australia.
- 5.7 The current local government structure came in to effect in 1992. Prior to this, local government arrangements differed between Christmas and the Cocos (Keeling) Islands.
- 5.8 On Christmas Island, the *Christmas Island Assembly Ordinance 1985* allowed for an elected assembly to direct a Christmas Island Services Corporation established under the *Services Corporation Ordinance 1984*. This Corporation had responsibility for a broad range of functions, including utilities not normally the responsibility of local government, such as power generation and distribution.
- 5.9 On Cocos, a Home Island Council was created under the *Local Governance Ordinance 1979*, with local government responsibilities for Home Island only. West Island was administered directly by the federal department responsible for territories.¹
- 5.10 The current model of local government operating in the IOTs – the shires of Christmas Island and Cocos (Keeling) Islands – was created in 1992 as part of the law reform package whereby Western Australian legislation is applied to the IOTs as Commonwealth law. According to DOTARS:

This followed the House of Representatives Standing Committee on Legal and Constitutional Affairs report, *Islands in the Sun* [1991], which explored options for the future governance of the territories, including self government and incorporation. In exploring these options the Committee consulted with the community and included hearings in the territories. The Committee recommended that the Commonwealth initiate

1 Department of Transport and Regional Services, Submission no. 12, pp. 2–3.

discussions with the WA Government on the future of the IOTs, including the option of incorporation.²

- 5.11 Based on this approach, the Australian Government has adopted an interpretation of the role of the IOTs shires in close accord with the role of local government on the mainland:

Accordingly, the Australian Government decided to implement legislative, administrative and institutional frameworks for the territories that are comparable to those applying through the rest of the country, i.e. three tiers of government with:

- ⇒ Shires mirroring the roles of mainland Shire councils;
- ⇒ Commonwealth Ministers and their Departments providing Commonwealth services; and
- ⇒ the Federal Minister and Department with responsibility for territories, providing state level services.³

- 5.12 This view of the role of the shires is not satisfactory according to the Shire of Christmas Island, which argues in its submission that the Commonwealth has misinterpreted the role of the Shire from both a legal and historical perspective:

In essence the Commonwealth views the Shire as only having the role of a remote mainland local government whereas the Shire believes this was never the intention, as the Islands in the Sun recommendations and the subsequent legislative instruments which gave rise to the Shire, attest. There is an unbroken link between the Christmas Island Assembly and the Shire Council that must be understood. A broader role, including decision making power, beyond that of a local government was envisaged. As time has gone on, the Commonwealth have conveniently forgotten this link.⁴

- 5.13 The result of this, according to the Shire, is an unsatisfactory relationship between the local community and the Commonwealth, characterised by conflict and frustration:

The nub of the issue is this: the community want a similar level of involvement in decisions that are normally the province of State Government, and look to the Shire as the means of having this say, whereas the Commonwealth wants to keep State Government type decisions as its exclusive province. While the Government keeps

2 Department of Transport and Regional Services, Submission no. 12, p. 3.

3 Department of Transport and Regional Services, Submission no. 12, p. 3.

4 Shire of Christmas Island, Submission no. 10, p. 156.

articulating its policy of incorporation of the Territory into the State of Western Australia as the solution to the community's desire for involvement in decision making – but never does anything about it – the community are held captive to an empty promise. The Commonwealth has its cake and eats it too, and the community is left with bread and circuses.⁵

5.14 Specific issues of contention between the Shire of Christmas Island and DOTARS include:

- Shire assets remaining under Commonwealth ownership⁶ (although DOTARS claims to be addressing this issue⁷); and
- Factoring back of local government grants, meaning the Shire gets approximately 92% of recommended funding (which is in line with experience on the mainland and, therefore, part of the 'normalisation' process⁸).

5.15 Much of the frustration felt by the Shire of Christmas Island also relates to the issues raised in chapters three and four. The long term solution sought by the Shire is the transformation of governance along more representative lines, with the IOTs communities having a greater say in the delivery of state-type services and greater control over those services. In the meantime, the Shire has identified five measures to provide short term relief to the residents of Christmas Island:

1. The Commonwealth and the Shire agree and implement a service delivery framework for local government and community service provision. This framework to be based on community need and effective service provisions as distinct from "core" local government concepts, take into account all state and local government services currently provided, and new or unmet needs.
2. The Commonwealth and the Shire agree and implement an asset transfer plan based on freehold transfer of all community facilities necessary to support the service delivery framework.
3. The Commonwealth and the Shire negotiate funding arrangements for the Shire based on the agreed service delivery framework. The funding to be calculated based on actual identified need rather [than] a factor back methodology.

5 Shire of Christmas Island, Submission no. 10, p. 157.

6 Shire of Christmas Island, Submission no. 10, p. 171.

7 Department of Transport and Regional Services, Submission 12, p. 3.

8 Shire of Christmas Island, Submission no. 10, pp. 174–7.

4. The Commonwealth and the Shire settle disputed property matters concerning the Christmas Island Laundry and the Christmas Island Supermarket.
 5. Legislative arrangements are established to enable the Shires of Christmas Island and Cocos (Keeling) Islands effective means to enter into regional local government type cooperation agreements.⁹
- 5.16 In contrast to the position adopted by the Shire of Christmas Island, the Cocos (Keeling) Islands Shire Council has adopted the view that ‘irrespective of the ultimate form of future governance’, the shires should ‘continue in their current roles’.¹⁰
- 5.17 In evidence before the Committee, Mr Bill Price, Chief Executive Officer of the Cocos (Keeling) Islands Shire Council, stated that the Shire was not yet ready to take on an expansion in its areas of responsibility and was happy, for the time being, to focus on its traditional local government roles:
- We need to concentrate on our local government areas first. We have only been a true local government for the last 14 years so there are some areas we probably need to tidy up first before we take on those state type areas. At the moment we would not have the capacity. I am not saying that in future that is not an area we could look at once our capacity has been improved.¹¹
- 5.18 This is not to say that there has not been tension between the Cocos (Keeling) Islands Shire Council and DOTARS on occasion. In his submission, Mr Robert Jarvis, former Chief Executive Officer of the Shire Council, noted the Shire’s frustration at the factoring back of local government grants; and cited the case of goat importation as an example of the Shire and DOTARS working at cross purposes:
- The Commonwealth has at times ignored the Shire’s ownership in dealings with private enterprise, and a recent example is that of DOTARS staff giving permission for goats to be sent to Cocos without the Shire’s knowledge or approval, and although DOTARS required the importers to seek all necessary approvals, no mechanisms, at a local level, exist to ensure that the conditions of the export permit or DOTARS own conditions were complied with. As a result the goats are currently on Commonwealth land

9 Shire of Christmas Island, Submission no. 10, p. 192.

10 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 8.

11 Mr B. Price [Cocos (Keeling) Islands Shire Council], *Transcript of Evidence*, 1 February 2006, p. 4.

without formal approval and the Shire has resolved not to allow them on Shire land believing them to be potentially an environmental disaster – a claim supported by several Commonwealth staff within Environment Australia. The goats came on a special flight chartered by DOTARS, and yet the Shire was not consulted on the fact that goats were being imported with Shire land quoted as the destination. The Shire's role in such circumstances becomes difficult, and some in depth discussions should take place to clearly demarcate those roles that will be the Shire's and those that are Federal and State type roles. This has become more urgent as DOTARS continues to reduce its physical presence in the territories and relies on other agencies.¹²

- 5.19 In assessing the evidence presented to it, the Committee notes that a broader role for the shires of the IOTs was contemplated in the *Islands in the Sun* report. Recommendation 7 of that report provides:

The Committee recommends that the Commonwealth accelerate the development of administrative and political reform on Christmas Island to ensure the progressive development towards the establishment of a local government body on Christmas Island with an expanded role, including direct access to the Commonwealth Minister in respect of laws to apply on the Island, for reviewing Western Australian laws for their appropriateness to the Territory.¹³

- 5.20 Recommendation 19 makes almost identical provision for the Cocos (Keeling) Islands:

The Committee recommends that the Commonwealth, in consultation with Territory residents, develop a mechanism, such as a local government body with an expanded role, including direct access to the Commonwealth Minister in respect of laws to apply on Cocos (Keeling) Islands, for reviewing Western Australian laws for the appropriateness to the Territory.¹⁴

12 Mr Robert Jarvis, Submission no. 3, p. 2.

13 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra, rec. 7.

14 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra, rec. 19.

Aspirations of residents for more representative governance arrangements

- 5.21 The Committee believes that whatever the ultimate policy outcome with regard to the future governance of the IOTs, the aspirations of residents must be taken into account. This means that future governance arrangements should be the result of deliberate consultation and a definitive test of Islander opinion, such as a referendum. The Committee notes that there is a substantial difference in the aspirations for more representative governance arrangements between Christmas Island and the Cocos (Keeling) Islands. These differences must be addressed by any process intended to result in a change of governance arrangements.
- 5.22 Mr Gordon Thomson, President of the Shire of Christmas Island, told the Committee: 'We want change in order to put our community on a surer and fairer footing so that we can realise that our future is in our hands.'¹⁵ He continued:
- We do not want to be characterised as mendicants fighting over titbits and craving reassurances from a colonial master. We do not want to be treated like children by a paternalistic service provider, which makes decisions and controls our lives for our own good... We want past discrimination redressed and we want the opportunity to contribute to our own future – to have a real say in what happens here.¹⁶
- 5.23 In its submission, the Shire of Christmas Island makes clear its desire for more representative governance arrangements. The submission argues that 'it is clear that the community is dissatisfied with current governance arrangements', and that 'the community has demonstrated its aspirations for a greater say in its own affairs'.¹⁷ This does not mean independence or free association, but integration 'based on comparable levels of political rights, a modern governance system without any vestige of colonial institutions/administrative systems, fair and effective decision making, and adequate resources to provide relevant and comparable standards and services.'¹⁸
- 5.24 In its submission, the Christmas Island Chamber of Commerce stated that 'effective governance based on self-determination is the only way the

15 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3.

16 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 4.

17 Shire of Christmas Island, Submission no. 10, p. 193.

18 Shire of Christmas Island, Submission no. 10, p. 195.

Indian Ocean Territories will attain sustainable economic development and social cohesion'. It further argued:

The current colonial style administration has demonstratively failed this community. It has demoralised our economy, destroyed investment confidence and has critically undermined the Island's sense of community.¹⁹

5.25 According to the Chamber of Commerce, it is 'in the best interests of the Commonwealth to have both of the Indian Ocean Territories, populated by small but vibrant communities, fully integrated politically and economically with mainland Australia'.²⁰

5.26 Similarly, the Cocos (Keeling) Islands Economic Development Association (CKIEDA) argued that continuing the current governance arrangements into the long term was not an option:

The continuance of the CKI and CI as non-self governing territories is no longer a valid option as a form of future governance. It provides no democratic representation, at the equivalent of state level, for the territories' residents. It is essential that an elected form of representation at the equivalent of state level be achieved to provide dynamic leadership and direction for the IOTs.²¹

5.27 In his evidence and submission, Mr John G. Clunies-Ross, a resident of the Cocos (Keeling) Islands, argued that Australia should either complete the process of integration of the Islands following the Act of Self Determination in 1984 or abandon the process 'and create a real program to achieve the required dynamic state of evolution towards self-government in any of its forms'.²² He noted that 'the Commonwealth brought to the table the possibility of integrating into Australia and they have been unable to discharge that part of the bargain, and it is the base part of the bargain'.²³ Integration had failed, Mr Clunies-Ross argued, and it was time to move on.²⁴ Moreover, he argued, self government should not be impeded by budget considerations – the issue of economic self-sufficiency was separate from the issue of self government:

19 Christmas Island Chamber of Commerce, Submission no. 4, p. 1.

20 Christmas Island Chamber of Commerce, Submission no. 4, p. 4.

21 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 22.

22 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 33.

23 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 35.

24 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 36.

The financial responsibility of the Commonwealth and the territory has little or no bearing on the governance of the territory. Most of the money spent on Christmas Island is on the federal issue of immigration. Christmas Island does not have an immigration problem. The vast lump of the budget spent in the territories in the last three years has been on nothing to do with Cocos or Christmas Island; it has everything to do with a federal budget issue. If you said to us, 'You can put up an immigrant and we will give you \$80,000 a year,' I would have them as a house guest; it would not worry me at all. The fact of the matter is that you have built a low security place on Christmas Island. You have spent a lot of money on that and I cannot see that it has any relevance to me, to Christmas Island or to the governance of the island.²⁵

- 5.28 However, the view from the Cocos (Keeling) Islands is generally more tentative than that adopted by Mr Clunies-Ross or CKIEDA. Mr Clunies-Ross stated: 'The majority of residents on Cocos are content with the status quo, seeing rising living standards and housing as a reasonable reward for subjugation.'²⁶ In evidence received by the Committee, representatives of the Cocos (Keeling) Island Shire Council demonstrated an overall acceptance of the existing arrangements, and a willingness to accommodate themselves to the current system of governance. In evidence before the Committee, Shire President, Mr Ron Grant, stated:

At the moment we are a non-self-governing territory of Australia. The way the shire here looks at it, our parliament is the federal parliament, we have approximately 70 senators and 150 members of the House. We have elected members that represent us in the House of Reps and the Senate, but we do not restrict ourselves to just the members representing us; we believe we have access to any senator and any member of the House who has expertise and experience in areas we would like to promote. Whoever has the numbers will have the government of the day. The government of the day will appoint a minister to oversee policy and the application of legislation. The quality of the legislation can be applicable to Australia as a whole or very specific to the Cocos (Keeling) Islands. The Commonwealth has its representative the administrator, and to assist the minister in the performance of his portfolio responsibilities we have DOTARS.

25 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, pp. 37-8.

26 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 34.

We work within the current framework...We believe that while we are looking at future governance options, which will take some time, we have to use the current system as effectively as we can and that is what we are doing at the present time. The key area we have access to is policy that has been developed that is specific to the Cocos (Keeling) Islands.²⁷

5.29 This is not to say that the people of Cocos are not interested in reform of governance; rather, at this early stage, they are more interested in the process by which decisions are made than the outcome. In its submission, the Cocos (Keeling) Islands Shire Council does not advocate reform of governance, but insists that prior to any change, residents of the IOTs must be consulted – it is for the IOTs communities to determine their own future.

5.30 According to the Shire, the process of change must begin with the education of the community. There must be an education program delivered by a neutral party to provide residents with sufficient information to make an informed decision on this complex issue. This must be followed by a referendum of residents of both IOTs communities. Whatever decision is reached must be applied to both Territories, and a realistic time frame has to be established for each step in the process.²⁸

5.31 In evidence before the Committee, Mr Price summed up the position of the Shire Council as follows:

We are trying to stay very neutral. Council's position is that the community need to make that decision. We feel it is community's decision to make. Council is in the same position as the community in that we really do not know what the implications would be if we came under the Western Australian state. We understand that the islands are heavily subsidised in a lot of areas. Is that still going to be the case under a Western Australian arrangement? With electoral reform, we do not know what representation we could have up here. As a community and as a council we are sitting fairly neutral at the moment. We need to be educated on the options and the implications.²⁹

27 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, pp. 31–2.

28 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 59.

29 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 5.

Proposals for reform

- 5.32 The Committee notes that options for the reform of governance in the Indian Ocean Territories fall into three categories:
- maintaining current governance arrangements with some refinement;
 - incorporation into the State of Western Australia; and
 - limited self government.
- 5.33 The first of these options has already been addressed; the other two are further investigated below. Other issues raised in evidence include direct federal representation for the IOTs as a separate electorate;³⁰ and United Nations intervention in the reform of governance process.³¹ The Committee notes that while separate representation for territories is not unprecedented – both the Northern Territory (1922) and the Australian Capital Territory (1948) gained federal representation before self government and while their populations were still relatively small – it regards the current arrangement, whereby the people of the IOTs vote for, and are represented by, Northern Territory Members of the House of Representatives and Senators, as satisfactory. The Committee also acknowledges the role of the United Nations in the initial governance of the Cocos (Keeling) Islands, but believes questions of future governance for the IOTs are matters best left to the IOTs communities and the Australian Government to resolve.

Incorporation into Western Australia

- 5.34 Incorporation into Western Australia is the stated policy of the Australian Government for the long term future governance of the IOTs. In its submission, DOTARS stated:

In 2000, the Government decided that the long term governance of the IOTs should be provided through their incorporation into an existing state or territory, with WA as the preferred option. Incorporation would provide residents direct state/territory representation, and services under normal state and local Government arrangements. The Australian Government would

30 Shire of Christmas Island, Submission no. 10, p. 205.

31 Shire of Christmas Island, Submission no. 10, p. 198–201; Mr J. G. Clunies-Ross, Submission no. 15.

provide national programmes and discharge Commonwealth responsibilities, as in any other Australian community.³²

5.35 DOTARS also notes in its submission that incorporation 'is some years away'. Incorporation will require a referendum in Western Australia, with DOTARS submitting that the Australian Government 'would also be seeking the support of the IOTs' communities before such a referendum was undertaken'.³³ In the interim, the Government has decided that, 'to the maximum extent possible, Commonwealth policies towards the IOTs should prepare them for incorporation, including by "normalising" legislative, administrative and institutional frameworks'.³⁴

5.36 The Australian Government's immediate focus 'has been on improving service delivery, which is a prerequisite of incorporation' and is 'essential to the well-being and economic development of the IOTs'. Tying service delivery in the IOTs into the Western Australian framework is laying the foundation for eventual incorporation:

By having the majority of state government-type services provided through SDAs with the WA Government, progress is being made toward a seamless transfer of responsibilities to WA, should incorporation occur, and is enhancing the connection between the territories and WA.³⁵

5.37 The Committee notes that plans for incorporation are not well advanced. In evidence before the Committee, DOTARS explained:

The decision on how to move and at what point would ultimately be a government decision. There was obviously some exploration at a fairly preliminary level with the relevant Western Australian government at the time ['some years ago'] and it was decided that there would be no point in proceeding further.³⁶

5.38 The Committee also observes that without the cooperation of Western Australia and the IOTs communities, incorporation may not be viable. Ms Virginia Miller, representing the Western Australian Government, advised the Committee that there had been 'no structured discussion with that on

32 Department of Transport and Regional Services, Submission no. 12, p. 1.

33 Department of Transport and Regional Services, Submission no. 12, p. 4.

34 Department of Transport and Regional Services, Submission no. 12, p. 1.

35 Department of Transport and Regional Services, Submission no. 12, p. 4.

36 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 20.

the agenda in all the time I have been in this position'.³⁷ She further noted that:

There has never been a formal analysis of the pros and cons or benefits and pitfalls of the incorporation of the territories into Western Australia. That would need to be done before the state would even countenance incorporation.³⁸

5.39 Ms Miller also questioned the cost to Western Australia of running the Territories after incorporation. Then there is the vexed question of what the IOTs want for themselves.³⁹ The view from Western Australia, set out in a letter to Mr Gordon Thomson, President of the Shire of Christmas Island, by then Premier of Western Australia, Dr Geoff Gallop MLA, indicated that Western Australia would only consider incorporation if it were agreed to by the IOTs communities in the first instance. In this letter, dated 25 August 2004, Dr Gallop wrote:

Notwithstanding any impression which may have been created by Senator Campbell [then federal Minister for Territories], I can assure you that incorporation has not been raised with me at a political level by him or any other Commonwealth Minister. I note the objections in your letter to the position put forward by Senator Campbell and support your desire for Referenda in the Territories on this issue. It seems only fair and reasonable for Australian citizens in the Territories to have the same rights as those on the mainland.⁴⁰

5.40 In evidence presented to the Committee, there is little indication of support for incorporation, and much opposition. The Shire of Christmas Island regards incorporation as 'a remote and unsatisfactory outcome'.⁴¹ In its submission, the Shire argued that incorporation would simply shift the locus of current problems from the federal to the state level. It also questioned the rationale for Western Australia to accept responsibility for the Territories – exchanging cost neutral service delivery arrangements for the full cost of running the Territories – and the likelihood of such a proposal passing a referendum.⁴² It urged an alternative solution:

37 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 5.

38 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 13.

39 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, pp. 13–14.

40 Government of Western Australia, Submission no. 11, Attachment 2.

41 Shire of Christmas Island, Submission no. 10, p. 193.

42 Shire of Christmas Island, Submission no. 10, p. 205.

If the Commonwealth's treatment of the community 'just like a remote mainland community' is indicative of how the Island would be treated if it was incorporated into Western Australia, then the community can't see this as a desirable step. The community also can't see this as having the potential to be realised. If the Commonwealth have been advocating this move for some time and done nothing to advance the proposition, if the Constitutional steps required present a barrier to such incorporation in that it relies on the Government and the people of Western Australia agreeing, and if the lack of a Constitutional right for the people of Christmas Island to have a say cannot be unequivocally guaranteed by some other means, an alternative approach could and should be developed.⁴³

- 5.41 In evidence before the Committee, Mr Russell Payne, President of the Christmas Island Chamber of Commerce, described the Commonwealth's incorporation policy as a clear violation of the right to self determination provided for under international law. He argued that the United Nations Charter and Resolution 1541 set out clear obligations and processes by which the Commonwealth was bound, providing for the democratic resolution of a non-self governing territory's status, obligations the Commonwealth had ignored:

However, despite these very clear processes, in 2000 the Commonwealth, in an unambiguous violation of its obligations under international law, unilaterally decided to impose a policy of full integration with the state of Western Australia onto the peoples of the Indian Ocean territories. This policy was written in Canberra, by Canberra, for Canberra. The policy was compiled in secret without any consideration to the aspirations or democratic rights of the peoples of the Indian Ocean territories. It took 3½ years for this policy to be officially promulgated. Residents of the territories were not informed of the existence of this policy until January 2004.⁴⁴

- 5.42 The view from Cocos, expressed by Shire President, Mr Ron Grant, was that incorporation would be disastrous – mainly because it would add another layer of complexity to the governance of the islands. He preferred the existing arrangement:

43 Shire of Christmas Island, Submission no. 10, p. 194.

44 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 29.

I think it would be an absolute disaster – not so much that it is not a good thing, but let me give you an example. If the Cocos (Keeling) Shire was a local shire of Western Australia and we wanted to discuss an issue on local government, regional development, education, health or community development, we would have to deal with four government departments and four separate ministers. Here we have one-stop shopping: one minister; one department. If you have a very good political strategy and you have the respect of that minister and the department so that they can see that you know where you are going, it works far more effectively than if you incorporate into WA. But you must know the game, how it is played politically and within the department to make it as effective as possible. So the current system would work far better than being incorporated into WA, which would add another layer of governance.⁴⁵

5.43 Similar sentiments were expressed by Shire Council CEO, Mr Bill Price:

My personal opinion, not council opinion, is that we probably have a pretty good arrangement with the Commonwealth now and there is a possibility of opening those channels and remaining on that. My experience in Western Australia is that there is a lot of concentration on the high population areas and not a lot of concentration on small population rural areas. It is my personal opinion that it could be the same case for out there. Again, whether Western Australia have the capacity to fund – it is always probably going to be a Commonwealth responsibility anyway.⁴⁶

5.44 Mr Robert Jarvis, a former CEO of the Shire of Cocos (Keeling) Islands, believed incorporation was unlikely to garner sufficient support to succeed, and that a more popular outcome in both Territories would be some form of self-government:

A view that I still hold is that it is very unlikely that the two communities would want to become part of Western Australia, and I understand that is still the proposition of the department – that the two territories should become part of Western Australia. I am not sure, because it has never been tested, whether or not the people of Western Australia would want to inherit the two Indian Ocean territories. If I am correct in those assumptions, I believe the

45 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 36.

46 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 10.

people in the territories would like to see some form of self-government so that they have some say in some of the decisions that are made about their day-to-day lives.⁴⁷

Self Government

5.45 The Committee notes that there are, broadly speaking, three positions on self government for the IOTs articulated in the evidence – the Australian Government opposes self government; the Christmas Islanders support it; and the Cocos Islanders are unwilling to commit themselves without first being able to examine the implications of any proposal. What the two communities in the IOTs do have in common is the belief that any decision on future governance arrangements should be an informed decision made by the communities themselves.

5.46 The Australian Government's position on self government for the IOTs is outlined in DOTARS' submission to the inquiry:

In terms of alternative governance models, the most argued option is self-government. Some of the IOTs community, including the Shire of Christmas Island, have been campaigning for some time for self-government, along the lines of the Norfolk Island model. While this option may address representational issues, it may have an adverse impact on service provision.

The governance arrangements for Norfolk Island's approximately 2,000 residents, under the *Norfolk Island Act 1979*, provide a nine member Legislative Assembly with a range of state, local government and some federal type powers. As evidenced in the CGC's [Commonwealth Grants Commission] 1997 report on Norfolk Island and various reports of the Joint Standing Committee, the Norfolk Island Legislative Assembly struggles to provide the range and quality of services and infrastructure associated with the responsibilities devolved.

Given the complexity of the modern economy, the broad range of state type services required and the level of resources and skills necessary to establish and sustain such services, the Government does not believe that self-government would be a viable option for either of the IOTs. It considers the small population base, the lack of a significant economic platform and the remoteness of the territories mean that they could never be self-sustaining.⁴⁸

47 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 50.

48 Department of Transport and Regional Services, Submission no. 12, p. 9.

The view from Christmas Island

5.47 The Committee notes that the Shire of Christmas Island is not advocating any particular models of self government; 'rather it is proposing that given the resources, information and time, an appropriate model could be developed'.⁴⁹ Moreover, the Shire itself acknowledges the shortcomings of the Norfolk Island model in relation to the IOTs:

Despite earlier consideration of the Norfolk model of self government, the Shire is not advocating this system. While in 1999 the Shire perceived similarities with Norfolk, considered self government as superior to non self government and identified that the Norfolk self government model was at least an example of an alternative in the Australian context, the financial/funding arrangements pertaining to Norfolk did not translate easily into the Indian Ocean Territories context, particularly the differences in the level of economic self sufficiency enjoyed.⁵⁰

5.48 From the perspective of the Shire of Christmas Island, developing an effective process by which questions of future governance can be worked out is the essential first step towards some form of self government. However, as the Shire acknowledges, 'a better system of governance can be developed only if there is a will on the part of the Commonwealth to work with the community to decide appropriate arrangements'.⁵¹ The key ingredient is the willingness of the Commonwealth to consider alternatives to the current arrangements and examine the possibilities of self government.

5.49 The first step in the process identified by the Shire of Christmas Island is agreement to work towards a better system of governance:

Importantly, as the Shire has emphasised, the process can only begin if there is agreement that there is – and should be – a better way to govern the Island: that it is agreed that non-self government is neither desirable nor effective; that the community are the permanent residents of the Island and should be accorded due recognition and respect; that greater autonomy is about community development and fair democracy, not a threat to Australian sovereignty; and that community rather than

49 Shire of Christmas Island, Submission no. 10, p. 194.

50 Shire of Christmas Island, Submission no. 10, p. 193.

51 Shire of Christmas Island, Submission no. 10, p. 194.

bureaucratic control is desirable as framed by Commonwealth policy and fair and effective accountability mechanisms.⁵²

- 5.50 The next step is establishing a set of broad principles and commitments to guide the process:

As the Shire has highlighted, community distrust and suspicion of the Commonwealth is deeply ingrained. By establishing principles, by making commitments, such distrust and suspicion can give way to trust and confidence. It will also give the process a much better chance of success. The Shire has identified a number of ways in which the Commonwealth could give a clear commitment to the community by word and by deed. The fundamental commitment is of course to work with the community to develop better governance arrangements.⁵³

- 5.51 An essential ingredient to the process from the Shire's perspective is engaging an 'honest broker' – a 'person or organisation acceptable to both parties', to keep the process 'on a firm footing'.⁵⁴ The Shire regards United Nations supervision of the process as the ideal, but concedes that 'it is possible to replicate this process through other means'.⁵⁵

- 5.52 The Shire also argues that the process must involve immediate steps towards change to address issues of accountability, economic development, applied law, service delivery and local government service provision, already identified as requiring attention. The Shire notes that 'not only are immediate improvements necessary, their implementation would give considerable confidence to the longer term process and resultant arrangements'.⁵⁶

- 5.53 The Shire of Christmas Island calls for an agreed framework and timeframe for change:

A framework to commence the process of developing a better form of governance would need to be established at the outset. This framework should also identify the representative group to work closely with the independent broker and Commonwealth on behalf of the community. Realistic timeframes and the identification of resources required would ensure the parties had a clear forward agenda that could be communicated to all. Again,

52 Shire of Christmas Island, Submission no. 10, p. 210.

53 Shire of Christmas Island, Submission no. 10, p. 210.

54 Shire of Christmas Island, Submission no. 10, p. 210.

55 Shire of Christmas Island, Submission no. 10, pp. 200-1.

56 Shire of Christmas Island, Submission no. 10, pp. 210-11.

the establishment of the framework would build confidence in the process.⁵⁷

- 5.54 The Shire's submission notes that gathering and disseminating information, such as economic data, information about constitutional issues and potential means of advice need be part of the process. Investigating possible governance models and identifying how well they apply to the IOTs is also important. 'Once the investigation has concluded, and information collated, these should be brought together as the basis for developing options that could be realised.'⁵⁸
- 5.55 The submission also notes that, as part of the process, the manner of enabling the community to democratically decide on the preferred option needs to be considered. This must include consideration of who is entitled to vote, the timeframe for community education and discussion, the manner of voting and the timetable for implementation. Once an option is agreed, the focus will switch to implementation. The Shire notes that this 'in itself could take considerable time and would need careful management through its early stages'. Finally, once implementation has occurred, 'mechanisms need to be introduced and maintained to support the new governance arrangements, troubleshoot any problems and settle new issues not envisaged in the development of the options'.⁵⁹
- 5.56 In its evidence to the inquiry, the Christmas Island Chamber of Commerce took a similar stance to that adopted by the Shire of Christmas Island. The 'mission statement' in the Chamber of Commerce's submission reads:
- It is the wish of the peoples of Cocos (Keeling) Island and Christmas Island that Cocos (Keeling) Island and Christmas Island achieve, over a period of time, internal self government as a single Territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and other separate political and administrative institutions.⁶⁰
- 5.57 Amongst proposals for 'the way forward', the Christmas Island Chamber of Commerce suggests creating a single political entity, combining the Cocos (Keeling) Islands and Christmas Island, to be known as the Indian Ocean Territories; and establishing a Legislative Assembly, 'with powers to create and repeal legislation applicable to the provision of all non-

57 Shire of Christmas Island, Submission no. 10, p. 211.

58 Shire of Christmas Island, Submission no. 10, p. 211.

59 Shire of Christmas Island, Submission no. 10, p. 212.

60 Christmas Island Chamber of Commerce, Submission no. 4, p. 7.

commonwealth services'. The Assembly will have 'all those powers, obligations and responsibilities normally the function of the parliament in a state of the Commonwealth of Australia'. The Assembly will continue the practice of endorsing Western Australian legislation as law applying to the Territories. This will have cost benefits for the Territories and maintain the quality and integrity of the law applying to the islands. The Assembly will also be better able to scrutinise the legislation than the present system and filter out inapplicable legislation. All interests in current SDAs held by the Commonwealth with Western Australia are to be assigned to the Assembly. Maintenance of the SDA system will become the responsibility of the Assembly. The submission also notes that 'the Assembly will need to maintain a technically competent bureaucracy to administer the business of the Assembly'.⁶¹

- 5.58 In evidence before the Committee, Russell Payne, representing the Chamber of Commerce, expressed confidence that the IOTs could run state-type services on their own behalf using applied laws and SDAs:

I believe that we can run an entire state government level of services on the island, with SDAs where they are needed. I agree with the shire's submission that a lot of those SDAs could be amortised and run by a bureaucracy that is based here...

I have absolutely no problem at all with understanding that we could give an internal local assembly running our entire state level services, based on the model that actually exists on the island now, where we receive Western Australian law and we receive the bureaucratic support from SDAs through Western Australia. It takes that onus away that, as you are all very well aware – and it goes on at Norfolk Island – where generally legislation is done after the horse has bolted. There is a very small population base to get the intellect and the life experience to develop good laws that really protect their people, and that is where they are failing badly at the moment. They really should look at a model very similar to the way that we receive our state government legislative base. We can do it here if we use that system.⁶²

- 5.59 He emphasised that under this system, SDAs 'would be with the legislative assembly based on Christmas Island, not with the

61 Christmas Island Chamber of Commerce, Submission no. 4, pp. 17-19.

62 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, pp. 35-6.

Commonwealth government'.⁶³ He also emphasised that the beginning of the process 'is to educate people, to start this process where self-determination can happen really well'.⁶⁴

The view from the Cocos (Keeling) Islands

5.60 In its submission, the Cocos (Keeling) Islands Shire Council considered three options for future governance – no change to non-self governing territory status; incorporation into Western Australia; and self government. The Shire did not commit itself to any of these options, rather it argued that whatever option was taken it must first be preceded by an education program then a referendum.⁶⁵ The submission proposed the following timetable for deciding upon and implementing any agreed proposal:

Within twelve months of the JSCNCET presenting its report to Parliament the Commonwealth should have completed the proposed education programme as to the alternate forms of future governance for the IOTs' communities, and referendums to have been held as to the forms of future governance of the IOTs.

Based upon the results of the referendum, if the alternative of remaining non-self governing territories is rejected, within a period of five years of the lodgement of the JSCNCET's report to the Parliament, that the IOTs' communities wishes, either to be incorporated into Western Australia, subject to this being possible from a Western Australian government's point of view, or to become self-governing territory, be complied with and actually achieved.⁶⁶

5.61 The Cocos (Keeling) Islands Economic Development Association (CKIEDA), took a similar view, presenting two options – incorporation and self government – but stating that the 'choice of the future form of government is a matter to be decided by the residents' of the IOTs, after an 'appropriate education program'.⁶⁷ The Cocos Congress, representing the Cocos Malay community also urged that:

63 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 37.

64 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 36.

65 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 59.

66 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 11.

67 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 23.

...if there is to be any change in future Governance Arrangements for the islands that there needs to be an extensive education process (in both Malay and English versions) for the whole community explaining the options and their implications prior to the community having a referendum on the preferred option.⁶⁸

- 5.62 In its submission, CKIEDA took the view that self government could provide 'a unique opportunity for the development of a small dynamic self governing territory in close proximity to Southeast Asia'. The new territory would retain Western Australian applied laws and the system of SDAs. The only concern raised by CKIEDA was over whether such a small population 'has the capacity and capability for self governance as a territory'. The question of the appropriateness or otherwise of self government remained open.⁶⁹
- 5.63 Examining the option of self government in its submission, the Shire of Cocos (Keeling) Islands made the following points:
- that it would be unlikely that two self-governing territories would be established, the most likely outcome being the creation of a new Indian Ocean Territory;
 - the communities would have to demonstrate to the Commonwealth that self government was a realistic option for such a small community;
 - the communities in the IOTs must advance self government through exemplary leadership at the local government level, and by promoting regional cooperation through an IOTs Regional Council and IOTs Economic Development Corporation;
 - the new Indian Ocean Territory would require its own elected assembly, supported by its own professional bureaucracy;
 - the existing local governments would continue in their current roles;
 - that Norfolk Island not be used as the model;
 - that population size should not be used to deny self government; and
 - a self governing Indian Ocean Territory would be well placed to take advantage of its close proximity to Southeast Asia in relation to economic development.⁷⁰

68 Cocos Congress Inc., Submission no. 14, p. 3.

69 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 23.

70 Cocos (Keeling) Islands Shire Council, Submission no. 5, pp. 61-4.

- 5.64 Commenting on the Cocos (Keeling) Islands Shire Council's submission, CEO, Mr Bill Price, emphasised that 'as far as advocating self-governance, we have not got that in our submission'.⁷¹ He also indicated that the Cocos Islanders were seeking a more limited form of self government than the Christmas Islanders – a regional council rather than an assembly:

The initial submission we put in years ago was for an assembly arrangement but I think council is possibly looking more at just a regional type council arrangement with Christmas Island, where there is representation of council, community, economic development, certain areas. We have not really addressed the make-up of that committee, but a good cross-representation of the community. We feel there is a need for a regional council so that we have a bit more clout with Canberra.⁷²

- 5.65 Mr Price expanded further on this point, indicating that while there was ground for common action between Cocos and Christmas Islands, there were also substantial differences:

Senator JOYCE – The Cocos Islands and the Christmas Island are 900 kilometres away from each other. Do you think that you can effectively coordinate aspirations? They are two completely different island cultures with two completely different geographies. Do you feel a nexus; do [you] feel you would be able to effectively engage in a common arrangement with Christmas Island?

Mr Price – Not on all occasions because we are quite different from each other. We are trying to open channels in areas like tourism, for example. We are trying to market our tourism as a joint thing but as two different experiences. Christmas Island can offer ecotourism with their rainforests and wildlife whereas we have a different experience, more the tropical island, beach, relaxed type of environment. We have some eco with our lagoon and turtles and things like that. We are quite unique. They are largely economically driven with their mine, they have a different economic base from the community here, so there are differences there. There are some areas where we could work together and some areas that we would never be able to agree upon.⁷³

71 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 8.

72 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, pp. 9–10.

73 *Transcript of Evidence*, 1 February 2006, p. 15.

- 5.66 In evidence before the Committee, Shire President Mr Ron Grant also framed the issue of self government in terms of greater cooperation between Christmas and Cocos rather than action by a single autonomous territory:

CHAIRMAN—Would you believe that your penchant for more self-government—I am loath to mention a system—would be enhanced by having the one assembly for the two Indian Ocean territories?

Mr Grant—I believe any cooperation between the two territories can only be mutually beneficial. The facts are that both territories have a small population and both territories have a degree of infrastructure and resources. If the two territories could work far closer together, you could most probably streamline the resources that you are using and prevent some duplication. I think also by making the two fairly unique territories work closely together from an economic development point of view, it becomes very attractive for, for example, tourism or other resources to attract investments and people from South-East Asia.⁷⁴

- 5.67 Like others on Cocos, Mr Grant was cognisant of the limited financial and human resources in the IOTs. He regarded self government as ‘a real two-edged sword’:

If you had, for example, an elected assembly, would it be in a position to make decisions that related to economic development, and subsequent social development, faster than the current system? Or does the current system that we have provide us with greater areas of support and access to larger resources than you might have as an elected territory government? As I said previously, it will always come back to this: what does the community want, and, when the government accepts the preferred option of the community, does the community have the capacity and the capability to really go to another level of government? That is going to be the crux of it. Are the human resources in the territory basically up to making a territory with a local assembly more effective in economic and social development than the current system? That is in a nutshell. It really does come back to human resources.⁷⁵

⁷⁴ *Transcript of Evidence*, 22 February 2006, p. 36.

⁷⁵ Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 35.

5.68 Mr Robert Jarvis urged a small start, with close cooperation between the Commonwealth and the IOTs' shires and a gradual devolution of functions to the IOTs:

I still believe that a small start, with considerable Commonwealth involvement – because, as you mentioned, they are the major funder of the two territories – and the involvement of the two shires, being the only two elected local governments because there is no state government, would be an ideal model to test the waters. I believe that, if they were given the opportunity to jointly receive funds for various issues, to carry out some services which the Commonwealth wishes to devolve – and at various times the department has been very keen to devolve certain responsibilities to the territories – then it would be a way of seeing if that worked, if it had the support of the community, and the federal government could then consider further advances. The two shires, I believe, are still willing to join together for that purpose and I think it would be a very useful way of giving the residents a feeling that they have some say in their own position.⁷⁶

5.69 According to Mr Jarvis, such a body, including the Commonwealth, the shires and other community representatives, would be 'a useful first step in perhaps considering a broader involvement of the community in self-determination'.⁷⁷ It could trial a range of responsibilities, including application of Western Australian laws, and oversight of local government activities and other Commonwealth activities, giving locals a greater say in government and service delivery.⁷⁸

Committee conclusions

Options for reform

5.70 The Committee observes that there is some need and desire for reform of governance arrangements in the IOTs. The options raised in evidence before the Committee include:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and

⁷⁶ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 50.

⁷⁷ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 51.

⁷⁸ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 53.

- limited self government.
- 5.71 The Committee believes that the process by which any options for future governance are determined requires:
- a commitment from all parties;
 - an agreed framework and timeframe for examining options;
 - collation and dissemination of information on the political and economic ramifications of any proposals;
 - public education of the IOTs communities; and
 - a referendum on the options for future governance.
- 5.72 The Committee is of the opinion that formal proposals should be drawn up by the Australian Government in consultation with the IOTs' communities, sufficient time and resources set aside to explain the ramifications of any proposals, and options put to the communities via referendum. The Committee suggests that proposals for reform of governance be put to the people of the Indian Ocean Territories by the end of June 2009.
- 5.73 The Committee notes that the Australian Government has committed itself to the option of incorporating the IOTs into Western Australia. The Committee acknowledges the significant opposition to incorporation evident in the IOTs and the lack of interest, or incentive to cooperate, on the part of Western Australia. These factors need to be addressed through consultation and education. If the majority of the IOTs population votes in favour of incorporation at the proposed referendum on governance options, the Committee suggests that the proposal for the incorporation of the IOTs into Western Australia be put to the people of Western Australia by the end of June 2009.
- 5.74 The Committee appreciates that, as part of this process of consultation and referendum, the people of the IOTs may wish to have before them the option of some form of limited self government. The Committee believes, based on the experience of Norfolk Island, that any model of self government proposed for the IOTs must be strictly limited. A model of limited self government based on the creation of a single Indian Ocean Territory, governed by a Legislative Assembly responsible for state type matters, with ongoing use of Western Australian applied law and SDAs, would require adequate financial and administrative support from the Australian Government. The Committee stresses, however, that self government should be limited strictly to state and local government responsibilities; would operate within the framework of Western

Australian applied law; and would require use of SDAs for delivery of most major services, such as health and education. Any modification of WA laws would require the assent of the Administrator based on advice from DOTARS. Much of the administrative support would also still have to be supplied by Commonwealth officers, perhaps operating on secondment from DOTARS Territories Branch.

- 5.75 Such a model could go a long way towards satisfying the aspirations of the people of the IOTs for a greater say in how they are governed. However, the process by which governance options are examined must account for the different needs and concerns of the Christmas and Cocos Islanders.
- 5.76 In the interim, preceding the proposed referendum, the Committee is of the opinion that if the current arrangements are to remain in place, then some alteration of those arrangements, broadly along the lines advocated in *Islands in the Sun*, is both necessary and desirable. If the shires are to remain the only effective representative bodies in the IOTs, then their roles should be refined to reflect this, to include:
- direct representation of the communities with the Minister for Territories; and
 - a formal advisory capacity with regard to applied laws and service delivery arrangements.
- 5.77 Moreover, if the current governance arrangements are to remain in place, then the shires should be:
- fully funded on the basis of an agreed service delivery framework;
 - given freehold title to all assets required to carry out their functions; and
 - able to jointly enter into a regional local government type cooperation agreement.

Recommendation 12

5.78 The Committee recommends that the Australian Government alter the governance arrangements of the Indian Ocean Territories to provide the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands with an expanded role. The shires should have:

- direct representation of the communities with the Minister for Territories; and
- a formal advisory capacity with regard to applied laws and service delivery arrangements.

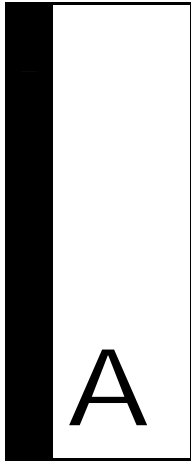
Moreover, the shires should be:

- fully funded on the basis of an agreed service delivery framework;
- given adequate title to all assets required to carry out their functions; and
- able to jointly enter into a regional local government type cooperation agreement.

Recommendation 13

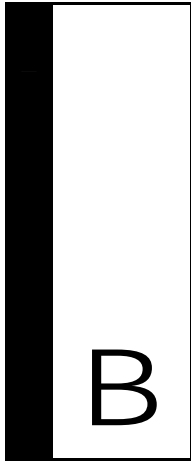
5.79 The Committee recommends that the Australian Government undertake to develop options for future governance for the Indian Ocean Territories in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands, with a view to, where practical, submitting options to a referendum of those communities by the end of June 2009. Possible options could include but should not be limited to:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and
- a form of limited self government.



Appendix A – Submissions to the inquiry

- 1 Freightshop
- 2 Confidential
- 3 Mr Robert Charles Jarvis
- 4 Christmas Island Chamber of Commerce
- 5 Cocos (Keeling) Islands Shire Council
- 6 Cocos (Keeling) Islands Economic Development Association Inc.
- 7 Confidential
- 8 Confidential
- 9 K Dallimore
- 10 Shire of Christmas Island
- 11 State Government of Western Australia
- 12 Department of Transport and Regional Services
- 13 Northern Bay Pty Ltd
- 14 Cocos Congress Inc
- 15 Mr John G Clunies-Ross
- 16 Mr Kelvin Kok Bin Lee
- 17 Northern Bay Pty Ltd (supplementary)
- 18 Department of Transport and Regional Services (supplementary)



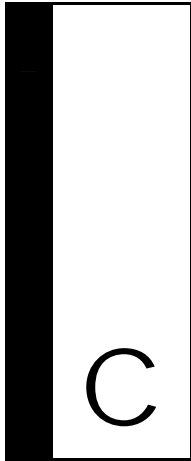
Appendix B – List of exhibits

- 1 Shire of Christmas Island, *Commonwealth of Australia and the State of Western Australia, Arrangement, Christmas Island & Cocos (Keeling) Islands, Dept. of Sport and Recreation*, (Related to Submission No. 10)

- 2 Christmas Island Chamber of Commerce, *Series of correspondence relating to the Christmas Island Casino and Resort*, (Related to Submission No. 4)

- 3 Northern Bay Pty Ltd, *Series of correspondence relating to Location 448 "Christmas Highland Estate"*, (Related to Submission No. 13)

- 4 Western Australian Department of the Premier and Cabinet, *Additional information relating to Service Delivery Arrangements between the Commonwealth of Australia and the State of Western Australia*, (Related to Submission No. 11)



Appendix C – List of public hearings and witnesses

Monday, 30 January 2006 - Christmas Island

Christmas Island Chamber of Commerce

Mr Michael Asims, Executive Member

Capt. Noel Patrick (Don) O'Donnell, Executive Member

Mr Russell Payne, President

Shire of Christmas Island

Ms Margaret Robinson, Chief Executive Officer

Mr Gordon Thomson, President

Wednesday, 1 February 2006 - Cocos Islands

Individuals

Mr John G Clunies-Ross

Cocos (Keeling) Islands Shire Council

Mr Balmut Pirus, Deputy President

Mr Bill Price, Chief Executive Officer

Cocos Club

Mr Ashley James, Manager

Ms Kylie James, Facility Manager

Wednesday, 22 February 2006 - Perth

Individuals

Mr Robert Charles Jarvis

Cocos (Keeling) Islands Shire Council

Mr Ron Grant, President

Department of the Premier and Cabinet

Ms Virginia Miller, Project Manager, Indian Ocean Territories, Office of Federal Affairs

Freightshop

Mr Kel Watkins, Proprietor

Northern Bay Pty Ltd

Mr John Sorensen

Monday, 27 March 2006 - Canberra

Department of Transport and Regional Services

Mr Adrian Beresford-Wylie, Acting Executive Director, Territories, Local Government and Natural Disaster

Ms Anna Clendinning, General Manager, Territories

Ms Susan Page, Deputy Secretary