

## Governance

2.1 In 2006, the Committee conducted an extensive review of the governance arrangements of the Indian Ocean Territories. The review revealed a number of anomalies in the governance arrangements. The evidence received by the Committee during and after its recent visit to the islands indicates that the governance issue remains unresolved and that islanders still find themselves caught between jurisdictions when trying to address issues. The *Indian Ocean Territories Regional Plan* said of the current governance arrangements:

This is a complex legislative and administrative arrangement that many people involved with the Administration of the Islands and the community have difficulty comprehending. It increases both the time and cost of making decisions for the Shires and DRA [Department of Regional Development, Local Government, Arts and Sport]. This is primarily because the prevailing laws and the appropriately empowered decision maker need first to be identified.<sup>1</sup>

2.2 Evidence taken on island highlighted a number of difficulties that arise in the IOTs resulting from their ambiguous status as external territories and the cross-jurisdictional issues that arise from the application and administration of Western Australian law as Commonwealth law.

2.3 Mr Tony Bagnell, director of On Island Enterprises Proprietary Limited, highlighted the confusion of jurisdictions relating to the propagation and harvesting of sea cucumbers:

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<sup>1</sup> Regional Development Australia Midwest Gascoyne, *Indian Ocean Territories Regional Plan 2012–2017*, October 2012, p. 36.

It has become apparent from ongoing communication with various state and Commonwealth agencies that there is significant confusion over the jurisdiction for the administration of applications for development of fisheries within Commonwealth waters for the Indian Ocean Territories. Our company identifies that our communication with the Commonwealth and state agencies with whom this type of application process has historically been administered has now been exhausted. It is now apparent that the relevant agency that has the authority to facilitate the process of administering the application for a development of a fishery within Commonwealth waters cannot be identified.<sup>2</sup>

- 2.4 Long-time Cocos resident and businessman John Clunies-Ross highlighted issues relating to the customs and quarantine status of the IOTs, and the pressures that placed on residents and businesses:

The actual basis of the environment to do business in Cocos Island is very, very shaky. You cannot export any goods without quarantine, with double stamping it. There is no quarantine officer on island. You cannot send any biologicals. If we wanted to get back to a rural program – and that is probably the only thing that would employ a large number of people; carob beans or some other agricultural product – you would have to start now with the paperwork so that my grandkids could bloody harvest the stuff, because no-one is bothering to have the environment the same as Australia.

If I have a fishing licence in Cocos Island, I cannot sell the fish to Australia as a live product. It is way too dangerous for the biosecurity guys. Economically it would not be viable to send dead crabs to Australia, because it is not premium product and you could not airfreight it. It stumps you right at the beginning. You look at the economics.<sup>3</sup>

- 2.5 Mr Clunies-Ross argued that, as a matter of equity, because he was an Australian citizen and a taxpayer, he should have the same rights of access to the Australian market as other people, and that a full biosecurity assessment of the IOTs should be done to enable this to happen.<sup>4</sup>

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2 Mr Tony Bagnell, On Island Enterprises Pty Ltd, *Committee Hansard*, Cocos (Keeling) Islands, 22 October 2012, p. 31.

3 Mr John Clunies-Ross, President, Cocos Club, *Committee Hansard*, Cocos (Keeling) Islands, 22 October 2012, p. 27.

4 Mr John Clunies-Ross, President, Cocos Club, *Committee Hansard*, Cocos (Keeling) Islands, 22 October 2012, p. 27.

- 2.6 Councillor Gordon Thomson of the Shire of Christmas Island told the Committee residents were frustrated by their lack of input in the legislative process, the fact that they were governed by Western Australian laws when they had no political representation in Western Australia.

Clearly, the most important services provided in our community, or in any community in Australia, are those provided by state governments – education, health and community services – and we do not have any say in those decisions. The state-type services are delivered on Christmas Island by the government of Western Australia, and we do not have a vote on who sits in the Parliament of Western Australia. Our community life and the most important aspects of it are governed by the laws of Western Australia, and we do not get to vote for a representative in that government. So that is clearly an issue for us.<sup>5</sup>

- 2.7 Councillor Thomson argued that the best place to make decisions affecting the island communities was in the communities themselves, and suggested moving public servants from Canberra and Perth to the IOTs as a way of building community capacity and making administrators more directly accountable to the community for their actions.<sup>6</sup>

- 2.8 Despite this confusion, the application of Western Australian law to the IOTs is generally seen as a positive outcome. Mr Ron Grant, General Manager of the Cocos Islands Co-operative Society, stated:

In general, having the laws of WA applied as Commonwealth law here has been extremely good. Some of the laws obviously have not been extended because they are just not relevant but at least now we have a very good legal basis, which we never had before.<sup>7</sup>

- 2.9 Mr Grant cited the example of the *Co-operatives Act 2009 (WA)* which replaced a Singapore ordinance dating from 1905.<sup>8</sup>

- 2.10 The *Indian Ocean Territories Regional Plan* also suggested that ‘increasing the responsibilities and decision making powers of the Administrator and DRA staff in the IOT and the Shires may improve transparency and efficiency’. It also suggested that ‘better and more frequent

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5 Cr Gordon Thomson, Shire of Christmas Island, *Committee Hansard*, Christmas Island, 24 October 2012, p. 5.

6 Cr Gordon Thomson, Shire of Christmas Island, *Committee Hansard*, Christmas Island, 24 October 2012, p. 6.

7 Mr Ron Grant, General Manager, Cocos Islands Co-operative Society, *Committee Hansard*, Cocos (Keeling) Islands, 22 October 2012, p. 13.

8 Mr Ron Grant, General Manager, Cocos Islands Co-operative Society, *Committee Hansard*, Cocos (Keeling) Islands, 22 October 2012, p. 13.

communications between the DRA and stakeholders in the IOT regarding progress on plans and the allocation of resources' is needed. Finally, with regard to the Service Delivery Arrangements (SDAs) with Western Australia, the Plan argued that 'the consultation and feedback processes in place for the review of SDAs require ongoing support to ensure that the contribution of local people and users of services is meaningful and valued'.<sup>9</sup>

- 2.11 According to the *Indian Ocean Territories Regional Plan* the absence of a strategic vision for the IOTs is also seen as an issue that needs to be addressed:

The Australian Government makes significant financial commitments to the maintenance and development of a range of services and infrastructure in the IOT. But there is no plan available to the public detailing what the community should routinely expect from the DRA in the IOT, and if the DRA achieve what they set out to do each year. A simple description of the services to be delivered by the DRA each year to the communities of the IOT and how the assets of the Government in the IOT are to be developed and managed over time would improve the accountability of the Department and the transparency of its operations.<sup>10</sup>

- 2.12 The *Indian Ocean Territories Regional Plan* stated that 'a specific Vision for the IOT will give a clear understanding of the intentions of the Australian Government, irrespective of other political decisions regarding Australian Government programs and policies'. It continued:

The necessity for the Australian Government to set out a clear vision for the IOT is further emphasised due to it taking on responsibilities and duties normally carried by states elsewhere in Australia. What the communities in the region seek in this regard is a common tangible future.<sup>11</sup>

- 2.13 Phosphate Resources Limited (PRL) also took the view that 'Executive Government needs to develop a vision for the future development of the [Christmas] Island if any real progress is to be made on broadening and strengthening its economic base', and argued that this needed to be done

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9 Regional Development Australia Midwest Gascoyne, *Indian Ocean Territories Regional Plan 2012-2017*, October 2012, p. 37.

10 Regional Development Australia Midwest Gascoyne, *Indian Ocean Territories Regional Plan 2012-2017*, October 2012, p. 37.

11 Regional Development Australia Midwest Gascoyne, *Indian Ocean Territories Regional Plan 2012-2017*, October 2012, p. 44.

by the 'Executive Government – Cabinet – rather than an individual minister or government department'. PRL took this view because:

- There is no coherent overarching 'Government' view on the future direction of the Island, with conflicting initiatives being taken within government and by different government departments;
- The local community has the right to know what the Government intends to do to strengthen and broaden the Island's economic base;
- The business community and potential investors need to understand if an investment proposal accords with the type of development the Government supports.<sup>12</sup>

2.14 Mr Clive Brown, Chairman of PRL, stated bluntly that the future of the IOTs could not be left to government departments – it must be decided by the Government and must be followed by all of government:

So, essentially, our view is that, if there is any genuine desire with an executive government as opposed to departments of government to see the economic base of Christmas Island strengthened and diversified, then executive government needs to define the economic policy directions for the island. It cannot be left on automatic pilot for government agencies to do. They have not done it; they will not do it. They do not agree with each other. So this has to be done. If we are to remove the policy confusion that currently exists, if we are to see investment opportunities not realised, then we would recommend that executive government develop, endorse and promote a vision for Christmas Island that provides guidance to potential investors and government agencies on the nature of the economic base government wishes to see developed for the island. That is the role of the executive and we urge the executive to take on that role.<sup>13</sup>

## Consultation fatigue

2.15 Another aspect of island governance that the Committee was alerted to was the high reliance on external consultants in addressing issues affecting the community. While the use of external experts was useful in addressing capability gaps, it also risked consultation fatigue, a lack of community input into and ownership of reports and plans, and outcomes which reflected external considerations rather than the needs and culture

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12 Phosphate Resources Limited, *Submission 3*, p. 2.

13 Mr Clive Brown, Chairman, Phosphate Resources Ltd, *Committee Hansard*, Christmas Island, 24 October 2012, p. 15.

of the local community. Ms Patricia Power, Chairperson of Arts and Culture Christmas Island, told the Committee:

On occasions when there has been a high level of community input and hope, the final report is seemingly ignored and money is spent on schemes that have no community ownership. For example, there was a Destination CI report in 2008, a good report, and that was the last time I can honestly say there was a wide representation of community and hope. So we have that versus the Themed Tourism and Diversitas report of 2011 which had no community ownership whatsoever. That came out of the blue.<sup>14</sup>

- 2.16 Ms Power and Ms Lisa Preston, Chairperson of the Christmas Island Tourism Association, identified a pattern of plans and reports which had cost money, led nowhere, and failed to reflect the community or place they were designed for.<sup>15</sup> Referring to the urban design plan, Ms Power stated:

On Christmas Island we participate in processes that in theory are meant to empower us but in reality leave us feeling powerless. This is the 1996 plan, which was completely ignored until we showed the consultants when they came up. For example, in the Tea Gardens area in this 1996 plan, they came out with some wonderful ideas. There were concepts there. In the back of this plan there are ideas for street lighting, seating. They wanted to identify the CLA as a cultural area. That is just an example. We will probably tweak these designs. But that is what we expected this plan would have.<sup>16</sup>

## **The Department's response**

- 2.17 In evidence to the Committee, the Department of Regional Australia offered the Australian Government's view of governance in the IOTs.
- 2.18 Responding to the question of whether full integration of the IOTs with Australia was still the policy of the Australian Government, and if there was a timetable or process in place to achieve integration, the Department of Regional Australia replied:

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14 Ms Patricia Power, Chairperson, Arts and Culture Christmas Island, *Committee Hansard*, Christmas Island, 24 October 2012, p. 33.

15 Ms Patricia Power & Ms Lisa Preston, *Committee Hansard*, Christmas Island, 24 October 2012, p. 33.

16 Ms Patricia Power, Chairperson, Arts and Culture Christmas Island, *Committee Hansard*, Christmas Island, 24 October 2012, p. 34.

This issue was raised in relation to the 1984 United Nations resolution 'Question of the Cocos (Keeling) Islands', in which the Cocos community voted in favour of integration with Australia (the Christmas Island community has not participated in any such referendum).

The Australian Government's objectives for the Cocos (Keeling) Islands are inscribed in the 1991 Memorandum of Understanding between the Commonwealth, the Cocos (Keeling) Islands Council and the Cocos Islands Cooperative Society, and outlines the steps to be taken jointly and separately towards the extension to the Cocos (Keeling) Islands of mainland equivalent living standards and levels of services. This policy objective is also applied to Christmas Island.

Generally, the policy objectives are to align conditions and standards in both Territories with those of comparable communities in the rest of Australia. All work and activities undertaken by the Department are consistent with these objectives.<sup>17</sup>

2.19 The Department noted that the 'Australian Government has no plans to incorporate the IOT into Western Australia'.<sup>18</sup>

2.20 The Department advised the Committee that coordination of policy on the IOTs between government departments was achieved through the Inter-Department Committee on the Indian Ocean Territories, comprising representatives of:

- Attorney-General's Department
- Australian Customs and Border Protection
- Australian Federal Police
- Australian Maritime Safety Authority
- Australian Quarantine Inspection Service
- Department of Defence
- Department of Broadband, Communications and the Digital Economy
- Department of Finance and Deregulation
- Department of Immigration & Citizenship
- Department of Innovation, Industry, Science and Research
- Department of the Prime Minister and Cabinet
- Department of Resources, Energy and Tourism

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17 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, pp. 6-7.

18 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 7.

- Department of Sustainability, Environment, Water, Population and Communities
- Department of the Treasury<sup>19</sup>

2.21 The role of the Inter-Departmental Committee is to:

- recommend initiatives that support the long term sustainable development of the IOT
- ensure the timely implementation of these recommendations including the budgetary impact of any proposals and the possibility of developing new policy proposals for some initiatives
- ensure implementation work is coordinated across agencies and consistent with Australian Government policies, including where existing initiatives may be underway
- identify alternative actions that achieve necessary improvements where extant recommendations are found not to be feasible.<sup>20</sup>

2.22 The Department stated that the hardships faced by residents of the IOTs with regard to access to services and markets for goods was 'a factor of the Territories' geographical, rather than their governance, status', and noted that:

The Australian Government granted an exemption from the Goods and Services Tax for the IOT and commits over \$100 million each year in the provision of services to the communities.

The Australian Government is also making significant capital investment in essential infrastructure in both Territories.<sup>21</sup>

2.23 The Department noted that the biosecurity and quarantine status of the IOTs is a matter for the Department of Agriculture, Fisheries and Forestry (DAFF). The Department informed the Committee that DAFF had 'introduced new Biosecurity Bills into Parliament' and that this legislation would apply to the IOTs.<sup>22</sup>

2.24 Responding to the issue of building capacity in the IOTs by moving public servants to the islands, the Department stated:

The Minister employs approximately 120 qualified people in the IOT to provide services to the public. Over recent years, the number of senior or specialist managers employed by the Minister in the IOT has increased. Examples include:

- the Director, IOT Administration;

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19 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 16.

20 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 16.

21 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 7.

22 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 7.



- an Operations manager on Christmas Island and the Cocos (Keeling) Islands;
  - an Economic Development Officer, and
  - a Land, Heritage and Environment Manager.<sup>23</sup>
- 2.25 The Department of Regional Australia also noted that the 'Australian Government supports economic development activities on Christmas Island (and the Cocos (Keeling) Islands) by ensuring appropriate policies and programs are in place to encourage sustainable economic development in the Territory'.<sup>24</sup>

## Committee conclusions

- 2.26 The Committee notes that issues of governance and its relationship with economic development have been dealt with in two of its previous reports, *Current and future governance arrangements for the Indian Ocean Territories* (2006) and the *Inquiry into the changing economic environment in the Indian Ocean Territories* (2010). It is apparent from the evidence collected during the Committee's most recent visit to the islands that many of the issues raised by the communities during those inquiries remain to be addressed.
- 2.27 The current governance arrangements were always intended as an interim measure.<sup>25</sup> The difficulties associated with those arrangements continue to be a source of irritation to the island communities and a brake on economic development. A way forward needs to be found.
- 2.28 To begin with, the Committee is of the view that the Australian Government needs to articulate a coherent vision for the future of the Indian Ocean Territories. At the very least, this needs to be achieved for the purposes of providing guidance to the Department, giving the Australian Government a framework in which to assess the outcomes and consequences of particular policy decisions within a broader context. The Australian Government needs to be conscious of the fact that decisions made in Canberra have a disproportionate effect on small, isolated, but strategically significant, island communities. Decisions regarding the casino licence, the phosphate mining leases and the detention of asylum seekers are proof of that.
- 2.29 The Committee notes that the Commonwealth has a special responsibility to develop and implement a future vision for the IOTs and respond to its

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23 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 7.

24 Department of Regional Australia, Local Government, Arts and Sport, *Submission 6*, p. 15.

25 JSCNCET, *Current and future governance arrangements for the Indian Ocean Territories*, Canberra, May 2006, p. 87.

social and economic and environmental needs as the IOTs don't have State Government representation on which to depend to undertake this work.

- 2.30 This vision needs to articulate better governance and administrative arrangements and a greater degree of administrative autonomy. It also needs to provide clear directions for the economic development of the IOTs, the provision of services, protection of the environment, and articulate how different aspects of government policy will be coordinated to produce a coherent outcome. Furthermore, this vision needs to be developed in direct consultation with the island communities. The vision needs to articulate the aspirations and needs of the island communities as well as the requirements of the Australian Government. The vision also needs to articulate the opportunities of having culturally diverse communities on the doorstep of Asia, with direct links to the countries of our near north.
- 2.31 The Committee notes the substantial annual funding provided by the Australian Government for the provision of services to the IOTs, but would like to see more transparency in the allocation of the funding to allow the communities to access the priorities of the Government.
- 2.32 Finally, the Committee is of the view that while the island communities benefit from the legislative and administrative links with Western Australia under the current governance arrangements, a formal mechanism should be put in place to allow consultation with and feedback from the island communities in relation to the application of Western Australian law to the IOTs and the negotiation and implementation of SDAs. The Committee understands in this regard, that since its visit the management of several SDAs with the Western Australian Government has been transferred to the IOTs, with the intention of enabling the agreements to become more responsive to local input.

## **Recommendation 2**

2.33 The Committee recommends that the Australian Government formulate a vision or strategic plan in direct consultation with the island communities for the future of the IOTs. This vision will articulate:

- better governance and administrative arrangements
- a greater degree of administrative autonomy
- a commitment to the funding and implementation of existing strategies commissioned by the Commonwealth in respect of
  - ⇒ economic development
  - ⇒ the provision of services
  - ⇒ protection of the environment
- the aspirations and needs of the island communities
- how different aspects of government policy will be coordinated.

## **Recommendation 3**

2.34 The Committee Recommends that the Australian Government develop a formal mechanism to allow consultation with and feedback from the Indian Ocean Territories' communities in relation to the application of Western Australian law to the IOTs and the negotiation and implementation of SDAs.

## **Recommendation 4**

2.35 The Committee recommends that the Australian Government conduct a full biosecurity assessment of the IOTs.