



Our Ref: 200507016



Senator the Hon. Ross Lightfoot
Chairman
Joint Standing Committee on the National Capital
and External Territories
Parliament House
Canberra ACT 2600

Dear Senator Lightfoot

INQUIRY INTO CURRENT AND FUTURE GOVERNANCE ARRANGEMENTS FOR THE INDIAN OCEAN TERRITORIES

In response to your letter of 1 June 2005, a submission from Western Australia in relation to the above inquiry is attached.

I note that the Committee intends to hold public hearings in Canberra, Perth and in the Indian Ocean Territories, and I would ask that you contact Ms Virginia Miller, from my department, on (08) 9222 8743, should you require assistance with coordination of State agencies for the inquiry or any further information.

Thank you for the invitation to contribute to the inquiry.

Yours sincerely

DR GEOFF GALLOP MLA
PREMIER

- 4 AUG 2005

Joint Standing Committee on the
National Capital and External Territories

Submission No: 11

Date Received: 9 August 2005

Secretary: *Jan Bl*

**WESTERN AUSTRALIA'S SUBMISSION FOR THE
INQUIRY INTO CURRENT AND FUTURE GOVERNANCE
ARRANGEMENTS FOR THE INDIAN OCEAN TERRITORIES**

An Inquiry into the Current and Future Governance Arrangements for the Indian Ocean Territories was referred by the Senate to the Joint Standing Committee on the National Capital and External Territories, on 11 May 2005.

The terms of reference for the Inquiry are:

"That the following matter be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry and reporting by the last sitting day in June 2006:

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 in 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."*

Western Australia wishes to comment only on the following issues of relevance:

- 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. The operation of Western Australian applied laws.

In March 1991, the Commonwealth House of Representatives Standing Committee on Constitutional and Legal Affairs recommended the replacement of the legal regimes applying to the Indian Ocean Territories of Christmas and the Cocos (Keeling) Islands with Western Australian laws.

The *Territories Law Reform Act 1992* amended the *Christmas Island Act 1958* ('the Christmas Act') and the *Cocos (Keeling) Islands Act 1955* ('the Cocos Act') to apply the laws of Western Australia in the Territories as Commonwealth laws.

Part III of the Christmas and Cocos Acts set out the laws which apply in the Territories, namely:

- Commonwealth Acts, unless expressed not to extend to the Territories;
- Ordinances as in force from time to time;
- Laws in force in the Territories before 1 July 1992 and specified in the Schedules to the Christmas and Cocos Acts; and
- Laws of Western Australia as in force in Western Australia from time to time.

There is provision that applied Western Australian laws may be amended, repealed or suspended by Ordinance, made by the Governor General under section 9 of the Christmas Act, and section 12 of the Cocos Act. Where an applied Western Australian law is inconsistent with a Commonwealth Act or an Ordinance, it has no effect.

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. In order to interpret applied Western Australian laws some basic terms and definitions in the applied *Interpretation Act 1984 (WA) (CI) (CKI)* have been amended to suit the Territories, for example:

"police officer" means a member or special member of the AFP

"the State", "this State" or "Western Australia" means the Territory.

Under section 8G of the Christmas and Cocos Acts, all non-judicial powers in applied Western Australian legislation are vested in the Commonwealth Minister for Territories, who may exercise, delegate or vest those powers. Western Australian Government Ministers are not delegated any powers under the Indian Ocean Territories' applied Western Australian laws.

Western Australia therefore has no role in the manner in which State legislation is applied as Commonwealth law in the Territories. This is wholly a Commonwealth responsibility, with the Commonwealth Government taking action to apply, amend, suspend or repeal State legislation, as it sees fit in the Territories.

2. Community service delivery including the effectiveness of service delivery agreements with the Western Australian Government.

In 1992 the Western Australian Government agreed to assist the Commonwealth Government to fulfil its constitutional obligations in the Territories and provide equivalent State services to administer applied Western Australian legislation in the Territories, as requested by the Commonwealth.

To remove obstacles to service delivery, the Western Australian Government enacted the *Indian Ocean Territories (Administration of Laws) Act 1992* ('the State Act'). The Premier, as Minister for Public Sector Management, is responsible for the State Act.

Section 4 of the State Act provides that:

The State, or a State authority with the approval of the Minister, may enter into arrangements with the Commonwealth for –

- (a) the exercise of any power or the performance of any function in or in relation to a Territory;*
- (b) the provision of any service in or in relation to a Territory; or*
- (c) any other purpose related to the application or administration in or in relation to a Territory of a law in force in the Territory.*

Currently, the State, as an agent of the Commonwealth, provides services in the Indian Ocean Territories through the following agencies:

Department for Community Development (DCD)

- Professional supervision and support for the Territories' Social Worker, (employed by the Commonwealth Government) to promote responsibility and growth in family and community life and contribute to the protection and care of children.
- Information and support to licensed and proposed childcare providers.

Department of Consumer and Employment Protection (DOCEP)

- Information to business and consumers, and the development and enforcement of consumer protection legislation (Consumer Protection).
- Information to employers and employees, and the development and enforcement of occupational safety and health legislation (WorkSafe).
- Mine safety inspection, including investigation and compliance enforcement, certification and licensing, safety education and training, assessment of safety practices and proposals; and storage, transport, handling and licensing of explosives and dangerous goods (Resources Safety).

Department of Culture and the Arts (DCA)

Broad policy and planning services, arts development services (including art funding administration) art gallery services, museum consultancy, and cultural planning services.

Disability Services Commission (DSC)

Support for local communities in providing assistance, access to services, and protection of the rights of people with disabilities, their families and carers.

Department of Education and Training (DET)

- Monitoring and assessment of the compliance of Indian Ocean Territories' vocational and adult education and training providers with legislative requirements. Registration and monitoring of Territories' apprentices and trainees (Training).
- Education services have been provided in the Territories by the Western Australian Department of Education and Training preceding the reform of the legal regimes of the Territories in 1992, but a Service Delivery Arrangement has not been formalised.

Office of Energy (OOE)

Advice on energy policy and regulatory matters in the Territories.

Department of Environment (DOE)

Professional advice and assistance on environmental protection and prevention, control and abatement of pollution.

Equal Opportunity Commission (EOC)

Information and advice on equal opportunity issues and the investigation of complaints under the applied equal opportunity legislation.

Fire and Emergency Services Authority (FESA)

- Support to volunteer brigades, including planning, training and equipment.
- Community education on safety issues and compliance with building safety requirements.

Department of Fisheries (DOF)

Procedural and technical advice in relation to aquaculture proposals and management of fish resources.

Department of Health (DOH) (under Review)

Advisory and some support services, on request from the Commonwealth, pending final determination of health service provision by the Commonwealth.

Office of Health Review (OHR)

Handling of complaints about the provision of health services in the Territories.

Department of Housing and Works (DHW)

- Policy advice and support for the effective administration of social housing in the Territories.
- Provision of purchasing, contracting and consulting solutions for Public Works in the Territories.
- Support the effective management of Commercial and Community Property leases.
- Timely information on amendments to Building Codes and Regulations.

Department of Industry and Resources (DOIR)

- Registration of the Indian Ocean Territories' minerals titles and collection of royalties on behalf of the Commonwealth.
- Assessment and evaluation of mining proposals, environmental management plans and rehabilitation plans.

Department of Justice (DOJ)

Access to the justice system, including:

- Court services
- Offender management
- Registry Office
- State Administrative Tribunal

Department of Land Information (DLI)

- Land information services, including registration of title, and geographic and cadastral information.
- Impartial valuation services supporting asset management and revenue collection (Valuer General).

Legal Aid Commission (LAC)

Legal services and assistance in accessing justice.

Department of Local Government and Regional Development (DLGRD)

Providing assistance to ensure compliance with applied local government legislation, and facilitating the development of local government for the elected body and the communities (Local Government).

LotteryWest

Assessment of grant applications from the Indian Ocean Territories.

Main Roads

Provision of road funding, advice and assistance in traffic management in cooperation with the Territories' local governments.

Medical Board

Ensures registration of doctors and monitors the conduct of doctors and the standard of medical treatment in the Indian Ocean Territories, in accordance with the applied legislation.

Nurses Board

Registers nurses and regulates the practice of nursing in accordance with the applied legislation, to ensure appropriate and safe standards of nursing care are promoted and maintained in the Territories.

Parliamentary Commissioner for Administrative Investigations (State Ombudsman)

Provides a system for handling complaints about the administrative actions of State Government agencies in the Indian Ocean Territories, which are within the Commissioner's jurisdiction.

Department for Planning and Infrastructure (DPI)

- Planning, legal and administrative advice to ensure the use and development of land in the Indian Ocean Territories is consistent with strategic planning, policy guidelines and planning standards.
- Advice and assistance with administration of Crown land in the Territories.
- Advice and assistance to the Commonwealth on a broad range of Transport issues.

Public Trustee

Trustee services, including the preparation of wills and the provision of executor and administrator services for Territories' residents, consistent with services provided for mainland residents.

Department of Racing, Gaming and Liquor (Liquor Licensing) (DRGL)

Liquor licensing services, including compliance audits and investigations.

Small Business Development Corporation (SBDC)

Provision of specialised information, referral and business facilitation services.

State Library

Provision of library materials, information and support services.

Department of Treasury and Finance (DTF)

- Collect and remit revenue in accordance with Western Australia's applied laws (State Revenue).
- Provide purchasing, contracting and consulting solutions to the Commonwealth, as requested (Government Procurement).

WorkCover

Administers the applied worker's compensation legislation for the benefit of injured workers according to the appropriate jurisdiction.

The length of time formalised Service Delivery Arrangements operate is generally three years, after which time they are subject to a review, jointly conducted by the State and the Commonwealth. The terms of reference for the reviews are:

1. A review of services provided in the Indian Ocean Territories by a State agency shall be undertaken by a Review Team comprising the Commonwealth (represented by the Department of transport and Regional Services) and the State (represented by the Department of the Premier and Cabinet).
2. The Review will consider:
 - (i) Achievement of service delivery objectives
 - (ii) Relevance of Service delivery Arrangement Performance Indicators
 - (iii) If services are comparable with those provided in similar localities on the mainland.

In addition, the Review Team shall establish whether:

- (iv) Any improvements in service delivery are needed under a renewed Arrangement; and

(v) The State Agency and the Commonwealth have mutually complied with Service Delivery Arrangement obligations.

Following review, the Service Delivery Arrangement is then recommended for termination or renewal, generally for a further four years.

A figure of Service Delivery Arrangements reviewed from 1997 to 2005, and projections for review in 2006 and 2007, is at Attachment 1.

To date, all reviewed Service Delivery Arrangements have been renewed for continuing service delivery (100% renewal), suggesting overall satisfaction with the services provided by State agencies.

3. Proposals for reform of governance arrangements

There has been no approach by the Commonwealth Government to the present Government of Western Australia regarding reform of governance arrangement for the Indian Ocean Territories.

On 4 August 2004, the Presidents of the Shires of Christmas Island and the Cocos (Keeling) Islands wrote to the Premier of Western Australia raising a number of governance issues, including comments made by the then Minister for Territories, Senator the Hon Ian Campbell, regarding the Commonwealth's proposed objective of incorporation of the Territories into a mainland State. The State's response to the issues raised in that letter is at Attachment 2.

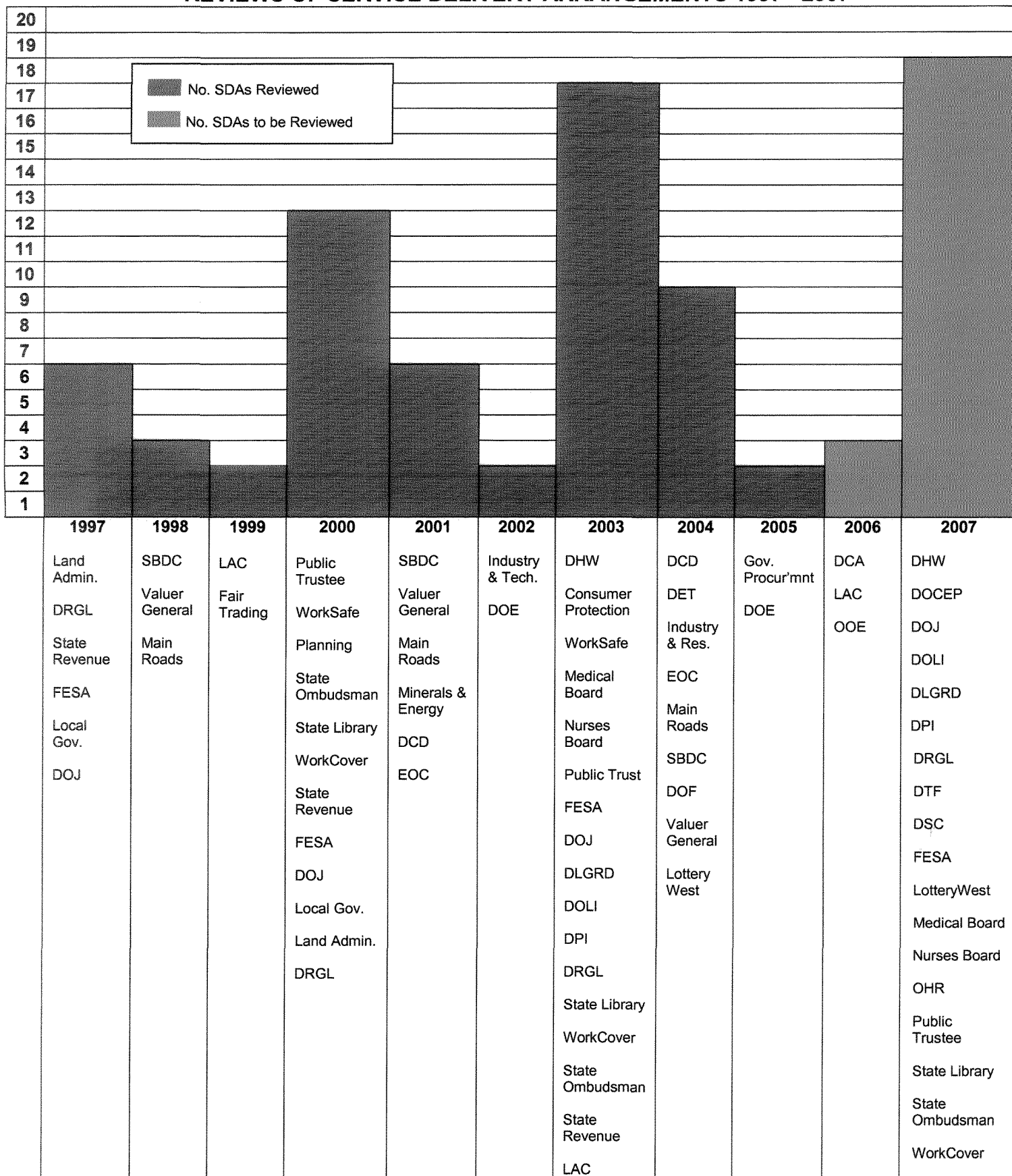
To date there has been no further discussion on this matter.

For further information the contact officer is:

Ms Virginia Miller
Project Manager, Indian Ocean Territories
Office of Federal Affairs
Department of the Premier and Cabinet
197 St Georges Terrace,
PERTH Western Australia 6000

Telephone: 08 9222 8743
Facsimile: 08 9222 9952
Email: vmiller@dpc.wa.gov.au

REVIEWS OF SERVICE DELIVERY ARRANGEMENTS 1997 - 2007





Our Ref: 200410495

Mr Gordon Thomson
President
Shire of Christmas Island
PO Box 863
Christmas Island
Indian Ocean 6798

Dear Mr Thomson

INDIAN OCEAN TERRITORIES: GOVERNANCE AND SERVICES ISSUES

Thank you for your letter of 4 August 2004, which was written in conjunction with the Shire of Cocos (Keeling) Islands.

Your letter referred to a number of governance issues for the Territories, such as lack of formal territorial representation and the Commonwealth Minister for Territories' control over services which are generally the domain of State/Local Governments. On these matters I am unable to respond, as the Commonwealth Government is constitutionally responsible for the Territories and the State of Western Australia has no jurisdiction.

However, you have also voiced concerns about statements made by Senator the Hon Ian Campbell, former Minister for Territories, regarding the Commonwealth's long-term objective of incorporation of the Territories into a mainland State, preferably Western Australia.

Notwithstanding any impression which may have been created by Senator Campbell, 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.

You have also raised the matter of seeking a direct relationship with me and my Department in regard to service provision and policies in the Territories.

Under Commonwealth legislation, all political responsibility for the Territories is vested in the Commonwealth Minister and the State does not determine policy on behalf of the Territories, other than that agreed with the Commonwealth under Service Delivery Arrangements. Also, under State legislation, service arrangements are between the Western Australian Government and the Commonwealth Government, not another party. I understand that informal channels for discussion already exist between the Shires of Christmas and the Cocos (Keeling) Islands and my Department and invite you to contact Ms Virginia Miller on (08) 9222 8743 if further information on this matter is required.

I have written a similar letter to Mr Ron Grant, President of the Shire of the Cocos (Keeling) Islands, and thank you for bringing these issues to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Gallop", with a horizontal line extending to the right.

DR GEOFF GALLOP MLA
PREMIER

25 AUG 2004