

# CHRISTMAS ISLAND CHAMBER OF COMMERCE

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1 July 2005

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

Dear Committee Secretary,

Thank you for the opportunity to make this submission to the Committee. The Christmas Island Chamber of Commerce welcomes this inquiry into governance. We feel that effective governance based on self-determination is the only way the Indian Ocean Territories will attain sustainable economic development and social cohesion. The current colonial style administration has demonstratively failed this community. It has demoralized our economy, destroyed investment confidence and has critically undermined the Islands sense of community.

The form of the Chambers submission combines an extensive report on state level governance plus other articles of correspondence and opinions the have been published by the Chamber of the past two years.

Our compilation 'SELF DETERMINATION FOR THE DELIVERY OF STATE LEVEL GOVERNANCE IN THE INDIAN OCEAN TERRITORIES' was published in the 'Islander' in two parts on 30th January and 13 February 2004. Discussion Paper #3, published on the 27 February, covered the 'Package of Changes' agreement of 1991 between the Commonwealth and the Christmas Island Local Assembly facilitating the legal reform process. Discussion Paper #4, published on 12<sup>th</sup> March, covered the status of Non Self Governing Territories under the United Nations. Discussion Paper #5, published on the 26 March, covered aspects of the Australian Constitution with regard to amendments to state boundaries.

This series of articles quite clearly shows;

- 1 That the Indian Ocean Territories do have differences in the administrative, political, juridical, historical, and economic elements than those of mainstream Australia and would be classified in a 'position of subordination' under U.N. Resolution 1541 (XI).
- 2 The Commonwealth is obliged under International Treaty to develop self-government, to take due account of the political aspirations of the residents of the Indian Ocean Territories, and to assist them in the progressive development of their own free political institutions.
- 3 The Federal Parliament, the West Australian Parliament and the people of Western Australia will never assent to an amendment of the Western Australian state boundaries to include those of the Indian Ocean Territories, unless those legislators and peoples involved in the process are convinced that incorporation was primarily in their best interests and, just as significantly, the result of the freely expressed wishes of the Indian Ocean Territories' peoples.
- 4 The residents of the Indian Ocean Territories have the right to express their wishes through informed and democratic processes, impartially conducted and based on universal adult suffrage. They have the right to vote on this issue.

- 5 The status quo is not acceptable from a whole of governance view. The Indian Ocean Territories will never realise the aspirations of its peoples or attain any form of sustained economic development while it endures a colonial style administration.

While this status of subordination persists, the Commonwealth continues to fail the residents of the Indian Ocean Territories, not only under International Treaty but more importantly, in its moral duty to provide those residents with the same rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government as those enjoyed in mainstream Australia.

As part of this submission we also include selfdet#2, selfdet#3 selfdet#4 and selfdet#5, items of correspondence between the Chamber and the previous Minister for Territories, Senator Ian Campbell, with regard to the Government's current policy on self-determination for the Indian Ocean Territories.

We also attach four articles placed in the local 'Islander' newsletter for the purpose of generating local debate and awareness of the question of self-determination. These articles are titled 'Reckless', 'A Matter of Sovereignty', 'For Sale by Public Tender' and 'WA Inc.'.

This Chamber has been actively pursuing self-determination for the Indian Ocean Territories since its formation in 1991. We have had a continuing discourse with the Shires of both Christmas Island and Cocos Keeling Island on this issue for a number of years and are in broad consensus on this issue with those elected bodies. We have also been trying to engage the Commonwealth in discussions on self-determination but have failed to find any responsible politician or bureaucrat willing to discuss the issue at length.

As demonstrated in the attached documents this Chamber has some very definite ideas on the model of self-determination that we think is appropriate for the Indian Ocean Territories and look forward to an opportunity to expand on the issue with the Committee.

Yours Sincerely,

Capt. N. P. (Don) O'Donnell  
President

# **CHRISTMAS ISLAND CHAMBER OF COMMERCE**

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**SUBMISSION**

**TO**

**THE MINISTER FOR TERRITORIES,  
LOCAL GOVERNMENT AND ROADS**

**The Hon. Ian Campbell  
Senator for Western Australia**

**ON**

**SELF DETERMINATION  
FOR THE DELIVERY OF STATE LEVEL GOVERNANCE  
IN THE INDIAN OCEAN TERRITORIES**

**N.P (DON) O'DONNELL  
PRESIDENT  
1 DECEMBER 2003**

## FOREWORD

This submission is arguably the most important document the Christmas Island Chamber of Commerce has produced since its inception in 1991. It is presented against an economic decline of severe proportions, a decline brought about directly by Government policy decisions in 2002/2003 – affecting the entire community.

The Executive of this Chamber combine in experience to present over 40 years of living on Christmas Island and, as a group reinforced by its collective membership, is very well placed to present this thought provoking submission to Government.

When the Christmas Island Act of 1958 was proclaimed the Australian history of this Island began, a history that has been marked in the interim by colonialism, industrial turbulence, rapid and continual social change and painfully slow economic development.

Equally slow has been the evolution of governance, affected by the vagaries of change of the Commonwealth Government – but which is now advancing through the “NORMALISATION” process, by introducing a wide range of Service Delivery Agreements with the West Australian State Government. These SDAs provide a range of Government services that are provided to, and expected by, communities in remote locations throughout the Commonwealth.

Both of the Indian Ocean Territories have, and without elaboration, geo-political importance to the Commonwealth, particularly since the Tampa Incident and the on going events which commenced in New York on Sept 11 2001, which is now have escalating regional significance.

It is therefore, 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.

This document is unique in that it examines past legislation and recommendations, present day outcomes, current reality and the economic decay caused by a Government Department acting as a “STATE LEVEL OF GOVERNMENT”.

As such it gives a compelling and realistic argument for the next, and perhaps final, step in governance, evolution and normalisation for the Island communities.

The research source material clearly expresses political advancement as an achievable and necessary outcome.

This submission has the full and considered support of the Membership of this Chamber.

N. P. (Don) O'Donnell  
President  
Christmas Island Chamber of Commerce  
December 2003

## AUTHORITY

### Extracts From Minutes

#### Regular monthly meeting held 20 May 2003.

Following discussion in General Business about Administration Bulletin 40/2003, outlining the new Administration arrangements.

**Motion: *It was agreed that an appropriately strong letter be sent to Minister Tuckey expressing our disappointment of what would appear to be the relocation of Government Territorial Services, without consultation, to the Perth and Canberra Offices of DoTARS..***

#### Regular monthly meeting held 12 August 2003

Following discussion in General Business about SDAs and the lack of consultation with the CCC.

**Motion: *A Subcommittee be formed to monitor the SDAs and the application of laws relating to the SDAs on Christmas Island.***

Subsequent to the motion the following members accepted the nomination to serve on the sub committee, D O'Donnell, R Payne (Chair), A Thornton and P Maberly.

#### Regular monthly meeting held 11 November 2003

The following is an extract of the minutes in General Business matters addressing the Agenda of the meeting.

***R Payne – Executive Member/ Chair of the Sub Committee monitoring SDA arrangements – led discussion on the proposal for Self Government of Christmas Island and Cocos (Keeling) Islands. The initial draft was circulated to members. The move was encouraged by Senator Ian Campbell on his recent and first visit to the Islands. He requested the Chamber prepare a discussion paper for his attention. Much discussion ensued. R Payne to make alterations to the document and circulate prior to the December meeting.***

## SOURCE MATERIAL

***‘Cocos (Keeling) Islands Act 1955’***

***‘Christmas Island Act 1958’***

***‘Commission of Inquiry into the viability of the Christmas Island Phosphate Industry’***

W. W. Sweetland (Commissioner) 1980

***‘ISLANDS IN THE SUN - The Legal Regimes of Australia’s External Territories and Jervis Bay Territory’***

House of Representatives Standing Committee on Legal and Constitutional Affairs  
March 1991

***‘1991 Package Of Changes’***

Agreement between the Minister for the Arts Tourism and Territories in Sept 1991  
and the Christmas Island Assembly in Nov 1991

***‘Territories Law Reform Bill 1992’***

***Hansard Records***

Senate – pages 4668 to 4682 Thursday 25 June 1992

House of Representatives – pages 4047 to 4053 Thursday 25 June 1992

***‘Report on Christmas Island Inquiry 1995’***

Commonwealth Grants Commission

***‘Report on Indian Ocean Territories 1999’***

Commonwealth Grants Commission

***‘Suspension of WA Acts by the Commonwealth’***

Report to the Shire of Christmas Island

T. Heng Ee and Associates 15 July 2003

## A MISSION STATEMENT

**“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.”**

## PREAMBLE

This document was produced following a request from the Hon. Ian Campbell, Minister of Territories during our initial meeting at the offices of the Administrator at Christmas Island on the 23 October 2003.

The Minister asked for more information on the Chamber's thoughts about the future governance of the Indian Ocean Territories. He indicated his concern over the existing levels of local representation in the Territories and expressed a view to enter into a dialogue with the Chamber and others over matters relating to future governance.

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. All of the mainland states and the Northern Territory enjoy a three tiered system of government. It is a good proven system that ranks as one of the most effective and equitable democratic processes in the world.

While the residents of the Island Territories enjoy full democratic circumstances at the Federal and Shire levels of government, the middle tier of government, which is usually provided by an elected state government, is a non representative, colonial style administration provided by the Commonwealth Department of Transport and Regional Services. Policy direction and funding for these important, domestic, community level services are entirely based on the policies of the Territories Office and the Commonwealth Government with very little input from the people who live in the Territories.

There are substantial inequalities in the rights, obligations and responsibilities enjoyed by the peoples of the mainland states and territories when compared with those who live in the Indian Ocean Territories.

Australian citizens who live in the Indian Ocean Territories are currently disenfranchised.



## A NEED FOR CHANGE

The *Islands In the Sun Report*, a review into the legal regimes of Australia's Territories carried out in 1990-91 by the House of Representatives Standing Committee on Legal and Constitutional Affairs Recommendation 7;

***“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 to the Island, for reviewing Western Australian laws for their appropriateness to the Territory. (para3.10.17)***

The ‘1991 Package of Changes’ which outlined the introduction of the West Australian State legal regime clearly states that the residents of Christmas Island were to be provided

***‘with the same rights, opportunities, obligations and responsibilities as apply to comparable communities elsewhere in Australia.’***

The ‘1991 Package of Changes’ further states that the Commonwealth should

***‘be responsible for the provision of the normal range of state type functions and services’***

and

***‘is to continue to provide for, and deal in a timely manner with, proposals for economic development and diversification’.***

The residents of Christmas Island through their then elected representative body, the Christmas Island Assembly, agreed to the implementation of the terms and conditions defined in the ‘1991 Package of Changes’ in return for the introduction of ‘selective’ West Australian Legislation as Commonwealth Law applicable to Christmas Island. Implicit in this agreement was an acceptance of the taxation levied by the new legislation.

The Territories foundation legislation, The Christmas Island Act (1958) and Cocos (Keeling) Islands Act (1955) were amended by the Territories Law Reform Bill to facilitate the introduction of the new legislation. The Liberal Party and the Democrats debated the Act’s passage through the Senate because they were concerned that it did not contain any effective local consultation mechanisms.

## THE DEBATE

Senator Spindler, Australian Democrat's Senator for Victoria during the Senate's consideration of the Territories Law Reform Bill,

*'Senate Hansard 25 June 1992 - p4678',*

said

***"Some way had to be found to ensure that the laws were not imposed on the people of Christmas and Cocos Islands without them having some possibility not only for consultation but also some effective influence through this Parliament"***

and in conclusion *'p4679'*

***"Therefore I request the Minister to give an unequivocal assurance to this House so that is in Hansard that the Commonwealth Government accepts the responsibility to ensure that consultation takes place and to provide adequate resources to the people of the Christmas and Cocos (Keeling) Islands so that consultation may take place.***

The Hon. Wendy Fatin, Minister for the Arts and Territories responded during debate on the Second reading in the Lower House

*House of Representatives Hansard 25 June 1992- p4053'*

***"I am happy to give that assurance. I have already given such assurances in a letter of the 18 June 1992 to the Chairman of the Christmas Island Assembly. The Commonwealth Government fully supports consultation with both local communities".***

and further,

***"I will continue to provide whatever assistance I can to ensure that there is effective consultation."***

## REPRESENTATION

The Territories Office under instruction from the Government of the day, then instituted and set up funding for a Community Consultative Committee on both Islands, to allow active involvement by the residents of the Indian Ocean Territories.

The CCC was given the role of reviewing and providing comment on the incoming legislation and participating in the Service Delivery Agreement arrangements. The Committee is not an elected body and is made up government section heads and representatives of prominent community organisations and stakeholders.

The CCC exists as a quasi Shire sub committee. It was given an annual budget of \$35,000 to enable the provision of independent legal advice.

The creation of the CCC satisfied the Opposition controlled Senate and the Territories Law Reform Bill, was passed into law on 1 July 1992. Unfortunately for the Christmas Island community the CCC was formed under a departmental policy rather than being incorporated into the amended Christmas Island Act.

Senator Spindler found that,

*'Senate Hansard - P4679',*

***“In discussion with the Minister and the departmental officials, it was agreed that it was impractical to put the provision of resources for the consultative process into legislation.”***

This unfortunately left the CCC vulnerable to the machinations of the Department.

## THE DECLINE

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.

The 1995 CGC ‘*Report on Christmas Island*’ stated that the CCC’s role

***‘is limited to providing comments on the proposed laws’.***

The 1999 CGC ‘*Report on Indian Ocean Territories*’ states

***‘The re-invigoration of the Community Consultative Committee on both Territories would be a useful first step.’***

## THE ECONOMY

The Territories Office has had the responsibility for the provision of West Australian State type services since 1991. It has successfully overseen the upgrading of the Islands domestic infrastructure and has provided an increasing number of good quality services to the Islands, but it has fundamentally failed in its role to provide normal State level governance.

This failure has manifested itself in many ways, but none more crucial than the critically inadequate level of economic activity in the Island Territories.

The Territories' economy, with the exclusion of the economic activity generated by the phosphate mine, a pre existing venture, is entirely dependent on the provision of publicly funded infrastructure projects, public asset maintenance and public servants wages.

Any failure by the Commonwealth to continue public funding Island projects causes an immediate collapse of the economy. This is plainly evident after the Commonwealth's devastating decision to suspend the construction of the IRPC.

## RESPONSIBILITY

One of the basic charters of this Chamber is to foster private sector economic development by supporting and maintaining economic activity on Christmas Island and encouraging the diversification of industry. The Chamber well recognises the critical state of our economy but is continually frustrated by a lack of will, expertise and commitment from a bureaucracy over which it has no influence.

The maintenance, support and growth of the local economy is one of the key strategic roles of any government, yet this Chamber and its members are continually and publicly berated for maintaining pressure for more government spending.

The Territories Office preoccupation with the machinations of its own affairs, rather than taking responsibility for the 'whole of governance' role in the Territories, has resulted in their failure to provide the necessary economic infrastructure for the Islands economy to progress into a normal level of privately funded economic activity.

The 1999 CGC *'Report on Indian Ocean Territories'* states

***'The State based institutional business support framework that exists on the mainland is not available on the Island'***

and further

***'It does not seem that the Commonwealths policy of fostering the economic development of the Territory is being met.'***

The preconditions that lead to these conclusions are still valid today.

Members of this Chamber and our employees have a vested interest in the effective governance of the Territories. We have made substantial personal investments in the Territories and feel we should have a same say in the political and administrative decisions that affect our livelihoods as the rest of the Australian community.

## A BACKWARD STEP

The 2003 decision by the Department to reduce It's 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 they are not prepared to live here and share the challenges we face in our daily endeavours.

The 1995 CGC '*Report on Christmas Island*' states

***'The prospect of having more day-to-day decisions about service delivery on Christmas Island made in Perth, or worse still in Canberra, can only be a step backwards from ensuring that local conditions are sufficiently well considered when services are being designed to match mainland standards.'***

The 1999 CGC '*Report on Indian Ocean Territories*' states;

***'ensuring that the authority to make decisions and accountability for those decisions rests as close as possible to where the decisions are to be implemented.'***

The 2003 decision closed the small avenue we enjoyed to participate in the decisions that affect us. Personal realisation of the effects of Departmental policies by Island based officers placed a reasonably effective control mechanism in their decision-making processes. This now has been removed and we fully expect all future decisions to be far more arbitrarily implemented.

## THE FUTURE

The Christmas Island Chamber of Commerce has long held the belief that internal, self-government for delivery of non-Commonwealth government services should be implemented in the Indian Ocean Territories.

Since the introduction of the legal reform process in 1992 with the availability of good quality legislation through the offices of the Parliament of Western Australia, the Chamber has always maintained that the Indian Ocean Territories should manage their own affairs.

The Chamber has a firmly held belief that self-determination is the most equitable, cost effective and efficient method for the Commonwealth to provide state level government services to the Indian Ocean Territories.

The 1995 CGC '*Report on Christmas Island*' was

*'in favour of autonomy for Christmas Island'*

and that

*'...there be a review to determine how best to enhance the political representation and autonomy of the community'*

In their view,

*'The Christmas Island community is,....., capable of providing a group of sufficiently competent people to take responsibility for State type government.'*

The Federal Government still faces the question of the full integration of the Cocos (Keeling) Islands into the Australian Federal sphere. It has made obligations under the United Nations to provide the Cocos Malay people with the same degree of self-determination enjoyed by the remainder of the Commonwealth of Australia.



## THE WAY FORWARD

The following is a list of notes of issue to the question of self-determination. These points are not 'set in stone'. They may not be particularly accurate in a legislative context. Their purpose is to encourage a broad debate over the issues of governance. To take the first steps in solving a problem which will not go away, a problem that needs to be resolved.

- 1 The Minister of Transport and Regional Services to change the territorial boundaries of the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island to combine the two Territories into a single political identity called The Indian Ocean Territories.
- 2 Indian Ocean Territorial representation in both houses of Federal Parliament should pass to the Federal Seat of Canberra.
- 3 The Commonwealth Government to provide enabling legislation (ie Indian Ocean Territories Act) for the formation of an Indian Ocean Territories Legislative Assembly with powers to create and repeal legislation applicable to the provision of all non-Commonwealth services.
- 4 The full authority of the assembly should be phased in over a five-year period to help alleviate any transitional problems in the enabling legislation or the structure of the bureaucracy.
- 5 The Assembly will consist of eight members, with electoral representation from both Territories, constituencies to be determined by the Australian Electoral Commission.
- 6 Members of the Assembly will be elected in a general election by compulsory vote of all electors listed on the electoral role as resident in the Indian Ocean Territories.
- 7 Electors will use the preferential system of voting
- 8 The Assembly will sit for a term of three years.
- 9 The Chair of the Assembly shall be an elected member appointed by the members of the Assembly.
- 10 The Administrator will represent the Commonwealth Government's interests in the Indian Ocean Territories and will assent all legislation endorsed by the Assembly.
- 11 The responsibilities of the Administrator should mirror those of a state Governor.
- 12 The enabling legislation will bind the Assembly to continue the practice of endorsing Western Australian legislation as law applying to the Territory.

- 13 It is of considerable cost benefit to the Territories to continue this practice. It will maintain the quality and integrity of the law applying to the islands at a level that is Australian best practice.
- 14 It will also ensure that the rights obligations and responsibilities of the residents of the Territories are maintained at Australian best practice.
- 15 The Assembly will vote on all applicable legislation.
- 16 The Assembly will be procedurally bound by the enabling legislation to maintain the integrity of all the West Australian legislation it passes into Indian Ocean Territories law to preserve unambiguous access to the Indian Ocean Territories judicial system by West Australian legal practitioners.
- 17 The Assembly will be able to better scrutinise the legislation than the present system and will be able to filter out West Australian specific legislation.
- 18 The enabling legislation will confer on the Assembly, all those powers, obligations and responsibilities normally the function of the parliament in a state of Commonwealth of Australia.
- 19 All interests in the existing Service Delivery Agreements held by the Commonwealth with the State of Western Australia are to be assigned to the Assembly.
- 20 Maintenance of the Service Delivery Agreements system will become the responsibility of the Assembly.
- 21 Portfolio responsibilities proclaimed in legislation should pass to the Assembly member charged with the corresponding portfolio responsibility.
- 22 Each member of the Assembly will have responsibility for a number of normal state level portfolios and oversee the application of their related Service Delivery Agreements.
- 23 Accountability issues can be handled by a mix of electoral and legislative control.
- 24 The Assembly will need to maintain a technically competent bureaucracy to administer the business of the Assembly.
- 25 The formation of the Indian Ocean Territories Legislative Assembly will maintain the current separation of powers that exist in Australia's federal system of Government.
- 26 Assembly Members will be paid with salaries and conditions set by the Commonwealth's Remuneration Tribunal.
- 27 The Chair of the Assembly would be a full time salaried position.

- 28 Funding for the Territory should be along similar lines to that used for the Northern Territory using the office of Estimates Committee.
- 29 The creation of the Indian Ocean Territories Legislative Assembly would satisfy the United Nations requirements on self-determination for the Cocos (Keeling) Islands and would facilitate their final step to full integration.
- 30 The Indian Ocean Territories Assembly will oversee the operation of a single shire council constituted under applicable Local Government legislation.
- 31 The Indian Ocean Territories Assembly and the Indian Ocean Territories Shire Council will share bureaucratic resources and premises.
- 32 The Indian Ocean Territories Shire Council will have the same powers and provide the same services as any shire council in the State of Western Australia.

**Like all citizens who enjoy democracy we feel a need to be involved in the governance, development and character of the place where we have invested our lives. We believe we have that right.**

## **DISCUSSION PAPER #3**

The following paper is the agreement between the Commonwealth and the Christmas Island Assembly signed in November 1991. It was implemented as a result of the findings of the 'Islands in the Sun' Report (March 1991) into the legal regimes of Australia's external territories. As a document that outlines the relationship between the Commonwealth and the residents of Christmas Island, it is effectively the current **Constitution of the Territory of Christmas Island.**

### **1991 PACKAGE OF CHANGES**

#### **PROPOSED PACKAGE OF CHANGES EXTENDING TO THE RESIDENTS OF CHRISTMAS ISLAND RIGHTS, OPPORTUNITIES AND OBLIGATIONS EQUIVALENT TO THOSE OF THEIR FELLOW AUSTRALIANS IN COMPARABLE COMMUNITIES**

##### **Background**

This paper sets out a range of changes to be made to the legal, economic, funding and administrative arrangements applying to Christmas Island. The changes are designed to provide residents of the Island with the same rights, opportunities, obligations and responsibilities as apply in comparable communities elsewhere in Australia. They also align conditions and standards on Christmas Island with those of comparable communities elsewhere in Australia.

##### **Agreement**

###### **Legal and Administrative Issues**

1. The existing legal regime is to be replaced by the legal regime of Western Australia, which includes both Commonwealth and State laws.
2. All Commonwealth legislation not currently applying to the territory is to be progressively extended except where the government determines that this should not be the case. The Government's recognition of these circumstances will require the demonstration that there is a detrimental effect on the community that can not be shown for similar communities elsewhere in Australia.

###### **Commonwealth Functions**

3. The appropriate Commonwealth agencies are to be made progressively responsible for the provision of the normal of Commonwealth functions and services on Christmas Island. Those agencies are to be directly responsible in their relevant reporting line for the delivery of services.
4. The levels of service and charges levied are to be the equivalent of those applicable in a comparable community elsewhere in Australia and standard criteria shall be adopted.

### **State-type Functions**

5. The Commonwealth is to continue to be responsible for the provision of the normal range of State-type functions and services on Christmas Island, and it is to utilise Western Australian agencies for these functions and services where possible.
6. The levels of services and charges are to be equivalent of those available in a comparable community in Western Australia based on Western Australian criteria.

### **Local Government Functions**

7. From the 1<sup>st</sup> January 1992 or sooner if so arranged, the Commonwealth is to pay the Christmas Island Assembly a grant to meet salary and related costs of a Local Government Adviser for a period of one year. The Adviser will assist the Assembly in establishing procedures and practices based on those followed in Western Australia. It shall be the Assembly's responsibility to select the Adviser who will work directly to the Assembly. Assistance with selection will be provided if necessary.
8. The Christmas Island Assembly and the Christmas Island Services Corporation are to be merged and known as the Christmas Island Shire Council effective from 1 July 1992. The Shire Council is to have the range of powers, functions and responsibilities applicable to local government in Western Australia. Voting will be restricted to Australian citizens.
9. The Shire Council's municipal area is to include all the land in the Territory except areas specifically notified by the Commonwealth. Local laws are to extend throughout the municipal area and shall apply to areas of Commonwealth land except where the Commonwealth indicates otherwise.
10. The Shire Council is to keep its accounts on the same basis as local government authorities in Western Australia.
11. The Commonwealth is provide to the Shire Council a local government assistance grant having regard to assessments made by the Local Government Grants Commission of Western Australia of the assistance applicable if Christmas Island had been under the auspices of the body.
12. In relation to payments for specific purposes provided directly by the Commonwealth from 1<sup>st</sup> July 1992 the Shire Council is to be eligible to participate in all programs of assistance available to local government authorities on the mainland, on the same criteria.
13. In relation to the payments made by State governments to local government, the Commonwealth will, from 1<sup>st</sup> July 1992 provide funding equivalent to that which would be available to the Shire Council were it eligible for payments made from the Western Australian Government. The Western Australian Government's procedures and principles will be followed to the fullest extent practicable.

14. Council shall introduce general rates and user pays charges for its local government services, consistent with Western Australian local government practice, and these charges should be fully in place not later than 1<sup>st</sup> July 1992.
15. Appropriate consultative and representational links between the community and the Commonwealth shall be maintained in an identical fashion to similar communities elsewhere in Australia.

### **Capital Works/Infrastructure Upgrading**

16. The Commonwealth is to consider the funding of the upgrading of infrastructure on Christmas Island with the objective of bringing Christmas Island standards of services and infrastructure up to Australian Standards. This program will include, where appropriate, the demolition of existing structures. Any such works by the Commonwealth will not release the mine venture from its contractual obligations for demolition work.
17. The Commonwealth is to endeavour to schedule any such works in a way that effectively uses local labour to the maximum extent possible, consistent with cost efficiency objectives.
18. The Commonwealth is to consult with the Shire Council in regard to such works and is to consider submissions from the Shire Council on the extent, priority and timing of these works. However, decisions about works shall rest solely with the Commonwealth.
19. Further local government works and facilities beyond any upgrading by the Commonwealth, as well as repairs, maintenance and replacement of works and facilities are to be the responsibility of the Shire Council. The Commonwealth is to consider, against mainland criteria, submissions from the Shire Council for additional assistance required to meet Australian standards on a case by case basis.

### **Economy, Industry and Employment**

20. Consistent with its normal role and objectives, the Commonwealth is to continue to provide opportunities for economic development and diversification.
21. The Commonwealth may progressively release freehold property for private residential and small-scale commercial uses. Larger commercial properties and land reserved for the Commonwealth or its agencies may be the subject of a lease, grant or freehold as the Commonwealth determines.
22. The Commonwealth is to put in place arrangements to utilise private sector service agencies where this is consistent with its normal policies and practices.

23. Where practicable and appropriate, the Commonwealth is to put in place arrangements to privatise services, including existing trade related services, and shall include appropriate training mechanisms to allow residents the opportunity to participate in this process.
24. From 1<sup>st</sup> July 1992, if not earlier, the Commonwealth is to employ, under the Australian Public Service Act, those staff it requires to discharge its functions. Long-term employees performing these functions are to be initially employed as continuing employees with a view to subsequent appointment. Employment would be subject to a review process to be conducted as soon as practicable after 1<sup>st</sup> July 1993 to establish the continued requirement for the positions. Objective merit selection processes will be followed in selecting other staff. Staffing levels will be kept to a minimum consistent with efficient and effective service delivery.
25. Commonwealth employees shall receive the salary and conditions applicable under relevant APS awards. Persons employed by state agencies shall receive coverage under relevant State awards. The Shire Council employees' wages and conditions shall be aligned with those of local government employees in Western Australia.
26. The Commonwealth is to continue to relevant the training needs of the residents to ensure that they have the opportunity to obtain qualifications and training appropriate to their current or prospective jobs.
27. The Commonwealth is to continue to provide skills acquisition and training programs on Christmas Island, in co-operation with local employers using timeframe base on the emergence of alternative industries and the creation of related employment opportunities.

### **Housing and Other Services**

28. Housing policy is to continue to be developed by the Commonwealth with the following long term objectives:
  - reduction of the number of properties under Commonwealth control to the minimum required to meet its obligations;
  - the creation of a private sector market for housing and commercial properties;
  - encouragement of a private sector rental market.
29. Consistent with its normal standards and conditions, the Commonwealth will continue to meet its obligations to provide housing to those residents for whom no other options exist.
30. Th Commonwealth may choose to fill its demand for public sector housing by lease/rental arrangements with the private sector.
31. Individuals, groups and organisations on Christmas Island are to be eligible to participate in all programs of assistance provided by the Commonwealth not later than 1<sup>st</sup> July 1992.

32. From 1<sup>st</sup> July 1992, the Commonwealth is to provide individuals, groups and organisations on Christmas Island with all forms of assistance normally provided by the Western Australian Government. The Western Australian Government procedures and principles will be followed to the fullest extent possible.
33. The Commonwealth is to provide access to legal aid through the Western Australian Legal Aid Commission subject to those terms and conditions applied by the Commission.
34. The cost of medical evacuations of all persons with a legal right of residency in Australia from the Territory hospital to a hospital elsewhere in Australia is to be met by the Commonwealth using the same criteria as applies in Western Australia from time to time.

### **Taxes and Charges**

35. With effect from 1<sup>st</sup> July 1992, and subject to efficient local operations and manning levels the Commonwealth or its agent is to apply the same rates and conditions for electricity supply as are applied from time to time by the State Energy Commission of Western Australia or the local production cost (including capital), whichever is the lesser.
36. Telecom rates for all the telephone services are to apply from 1<sup>st</sup> July 1992. Local calls will be charged at the Telecom rate.
37. Taxes and charges under Territorial Ordinances are to cease with effect from the date of proclamation of relevant Commonwealth or State legislation.
38. All Commonwealth taxes and charges are to apply in the Territory with the exception that the Commonwealth will consider not extending, at this time, sales tax, excises, customs duties and bank accounts debits tax to Christmas Island.
39. The Commonwealth will apply State-type taxes and charges for State-type services and licensing (eg school fees, motor vehicle registration, drivers licensing) based on Western Australian rates effective from the date of proclamation of the relevant legislation, expected to be 1<sup>st</sup> July 1992.

### **Information Programs and Consultative Process**

40. The Commonwealth is to arrange information programs and consultative processes with the Christmas Island Assembly on the new legal regime and amending legislation as it is introduced over time.



## **DISCUSSION PAPER #4**

In the previous three issues of the 'Islander' the Chamber has discussed the inequities in our system of governance, the mechanics of a model of self determination and the current agreement between the Commonwealth of Australia and the peoples of Christmas Island. In this paper we will discuss our status under international treaty.

### **The United Nations**

The name "United Nations", coined by United States President Franklin D. Roosevelt, was first used in the "Declaration by United Nations" of 1 January 1942, during the Second World War, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Powers.

In 1945, representatives of 50 countries, which included Australia, met in San Francisco at the United Nations Conference on International Organisation to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, in the United States during August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries. Poland, which was not represented at the Conference, signed it later and became one of the original 51 Member States.

The United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States and by a majority of other signatories.

### **The Charter of the United Nations**

The Charter has 111 Articles divided into 29 Chapters. Chapter 11 contains Articles 73 and 74 concerning the "Declaration Regarding Non-self-governing Territories". Article 73 is reproduced below;

#### *Article 73*

*Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:*

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;*
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of development*
- c. to further international peace and security;*

- d. *to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialised international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and*
- e. *to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.*

Under this Article all member nations who administered dependant territories were obliged to ***'develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions'***. Under sub section (e) the member nation was also obliged to provide regular reports to the UN General Assembly outlining the steps taken towards the objectives of Article 73.

On the 9th February 1946, during the 27th plenary meeting of the first session of the United Nations, Resolution 9(1) titled 'Non-Self-Governing Peoples' was passed. Resolution 9(1) defined what the UN considered the circumstances that characterised peoples who had not yet attained a full measure self-government. This definition has been refined by a number of other resolutions and is currently described in Resolution 1541 (XI) that was passed in the 21st Session on the 15th December 1960.

The Annex to Resolution 1541 contains 12 principles to ***'guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73(e) of the Charter of the United Nations'***

*Principle IV* states that an obligation exists if the dependent territory is ***'geographically separate and is distinct ethnically and/or culturally from the country administering it'*** and, if differences in the ***'administrative, political, juridical, historical, and/or economic elements'*** places the Non-Self-Governing Territory in a ***'position of subordination,'*** then Principle V clearly indicates a need to report.

While the Christmas and Cocos (Keeling) Islands were dependencies of the Colony of Singapore, the Parliament of the United Kingdom recognised their obligations under Article 73 and regularly reported to the General Assembly. When the Commonwealth of Australia assumed responsibility for the Indian Ocean Territories they recognised an obligation for the Cocos (Keeling) Islands but refuted any obligation for Christmas Island. The Commonwealth was of the view that ***'Christmas Island has no indigenous population and therefore cannot be regarded as being distinct ethnically and/or culturally from Australia'***.

An interesting comment from a government that has regularly proclaimed two Chinese New Year and two Hari Raya public holidays each year since 1958. It is a very clear official recognition of the distinct cultural and ethnic identity of Christmas Island. The reporting criterion does not stipulate an indigenous population. The Commonwealth's opinion in this regard has never been legally tested so it is only supposition that they do not have a responsibility to report.

If a position of subordination exists the Commonwealth has a responsibility not only to report to the UN General Assembly but should also be promoting a **'dynamic state of evolution and progress towards a full measure of self government'** for any non self governing territory. This means the Commonwealth should be actively engaged in a process for the full integration of the Indian Ocean Territories into Australia.

*Principle VIII states 'Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.'*

Do we have equal rights and opportunities for representation and effective participation in the introduction of Western Australian legislation as Christmas/ Cocos (Keeling) Island law? Laws that can, among other things, imprison us, impose taxation on us and govern our family life and business operations? The communities of the Indian Ocean Territories quite clearly do not, and as such still remain in a position of subordination to the Commonwealth of Australia under *Principle V*.

*Principle IX states; 'Integration should come about in the following circumstances:*

*(a) The integrating territory should have attained an advanced stage of self government of free political institutions, so that it is clear that its peoples would have the capacity to make a responsible choice through informed and democratic processes.*

*(b) The integration should be acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems necessary, supervise these processes.*

It should be noted that in April 1984 the peoples of Cocos (Keeling) Island voted for integration with the Commonwealth of Australia in an Act of Self-Determination under UN Resolution 1541 (XV). Exactly twenty years later the Cocos community still has not achieved *'equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.'*

The Chamber has no desire what so ever to have the United Nations involved in this process but we do expect the Commonwealth to adopt an equitable and supportive approach to this issue. We expect the Commonwealth to ensure that the same democratic principles that apply to the rest of the Australia are freely applied in the Indian Ocean Territories.

It is quite clear that Parliament of Australia's still has an obligation, under international treaties, to provide the UN General Assembly with reports on the Government's progress towards providing the Indian Ocean Territories with '**equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.**' It is also clear that the form and content of this representation should be '**the result of the freely expressed wishes of the territory's peoples.**'

## **DISCUSSION PAPER #5**

In the previous issue of the 'Islander' the Chamber clearly outlined the Commonwealth's responsibilities and obligations, declared under international treaties, towards the development of self-government for the Indian Ocean Territories. This paper will examine the processes set out in the Constitution of the Commonwealth of Australia, which relate to the creation of new states and the amendment of existing states.

### **The Australian Constitution**

The Australian Constitution was the result of two Constitutional Conventions held in the 1890s, that ultimately adopted a constitution based on a combination of models utilizing monarchy and parliamentary government from Britain, federalism from the United States, the use of the referendum from Switzerland. The constitution was approved by the voters in each of the six colonies. The Constitution comprises a preamble, thirteen chapters and a schedule. The thirteen chapters contain 128 Sections. Chapter XI, titled 'New States', contains Sections 121 to 124 is reproduced below;

#### *Chapter VI. New States.*

*121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission The Parliament or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.*

*122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.*

*123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.*

*124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.*

In December 2003 the Chamber presented a paper titled 'SELF DETERMINATION FOR THE DELIVERY OF STATE LEVEL GOVERNANCE IN THE INDIAN OCEAN TERRITORIES' to the Minister for Territories, Local Government and Roads, the Hon. Ian Campbell. The content of this submission was the subject of the Chamber's discussion papers 1 and 2 that were published in earlier editions of the 'Islander'.

The Minister, in his response to our paper stated ***'The Australian Government believes that the best way to provide state level representation for the Territories is through incorporation with an existing state or territory. Given the ties between Western Australia and the communities of Christmas Island and the Cocos (Keeling) Islands, I believe incorporation with that state is the best option'***.

This was the first time this policy had been officially promulgated. The subject of incorporation with Western Australia has only ever been officially raised as Option 6 for Christmas Island in the 1991 *'Islands in the Sun'* report into *'The Legal Regimes of Australia's External Territories'* by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

In the conclusion for Option 6 the report stated; ***'Planning for the future administration of Christmas Island should not exclude the possibility, following consultation with each resident of the Territory, of it's inclusion within the boundaries of Western Australia.'*** The adoption of this Policy by the Commonwealth Government is further proof of the status of subordination under international treaty that exists in the Indian Ocean Territories. There was no ***'consultation with each resident of the Territory,'*** this policy was imposed from Canberra. It is another example of the Territories Office's practice of systematically ignoring those parts of parliamentary reports that require a consultative process for the sake of their own bureaucratic expedience.

The *'Islands in the Sun'* report actually recommended the adoption of combination of Options 4 (a) and 5 which called for the adoption of Western Australian legislation as Christmas Island law and ***'the continued development of a program for increasing the level of self regulation by the Christmas Island community, and the devolution of greater powers to its elected body (The Christmas Island Local Assembly), is essential.'***

Option 4(a) was adopted but the Assembly was transformed into the Christmas Island Shire Council limiting the function of the Assembly to the bounds of the Local Government Act. The responsibility and power to regulate the introduction of West Australian legislation as Christmas Island law was passed to the Department of Territories, once again promoting a status of subordination for the Indian Ocean Territories under international treaty.

As a point of interest the members of the Standing Committee for the *'Islands in the Sun'* report included Mr. P Costello MP, Mr. J Anderson MP and Mr. P Ruddoch MP. With three senior members of the current Government supporting ***'the continued development of a program for increasing the level of self regulation by the Christmas Island community, and the devolution of greater powers to its elected body (The Christmas Island Local Assembly), is essential,'*** the residents of the Indian Ocean Territories should feel secure that these recommendations would be carried out, once these matters have been refreshed in the minds of the honourable members

The process of incorporation involves an amendment to Western Australia's territorial boundaries to incorporate the boundaries of the Territories of Cocos (Keeling) Islands and Christmas Island. To achieve this outcome the Government must overcome three major hurdles. In Section 123 (see above) the Constitution requires agreement with both houses of Federal Parliament. When this is achieved it will then require approval from both houses of the West Australian State Parliament. After approval by the State Government the question must then be put to the people of Western Australia by way of a referendum called for this purpose.

In the current and foreseeable political climate, both federally and at a state level, all three of these steps will be doomed to failure unless those legislators and peoples involved in the process were convinced that incorporation was primarily in their best interests and '*the result of the freely expressed wishes of the territory's peoples.*' The Constitution does not call for a vote from the peoples of the external territories because it assumes that this action would be '*the result of the freely expressed wishes of the territory's peoples.*'

It is quite clear that the Government has no option under its international and national obligations to hold a referendum in both Territories to ascertain the wishes of the people, '*their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage*'. The questions that need to be raised should cover the incorporation into the state of Western Australia or the merging of the two Indian Ocean territories into a single territory with a legislative assembly elected to manage the introduction of state type law and oversee the implementation of these laws.

**Russell Payne**  
**Executive Member and Chair**  
**Governance Sub-Committee**

Senator the Hon Ian Campbell  
MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS  
MANGER OF GOVERNMENT BUSINESS IN THE SENATE

COPY

29 Jan 2004

Mr N P O'Donnell  
President  
Christmas Island Chamber of Commerce  
P O Box 510  
Christmas Island  
INDIAN OCEAN 6798

Dear Mr O'Donnell

Thank you for forwarding the Submission on Self-Determination for the Delivery of State Level Governance in the Indian Ocean Territories on behalf of the Chamber of Commerce. I am pleased that the Chamber is committed to consider the issues affecting the Territories and its residents.

The Submission canvasses a number of issues relating to governance arrangements for the Indian Ocean Territories (IOTs). Among these, state representation for residents is clearly an important issue that needs to be addressed. I do not agree, however, with the Chamber's proposal that the establishment of a legislative assembly for the IOTs is the most effective way to proceed.

The Australian Government believes that the best way to provide state level representation for the Territories is through incorporation with an existing state or territory. Given the ties between Western Australia and the communities of Christmas Island and the Cocos (Keeling) Islands, I believe incorporation with that state is the best option.

To this end, a number of reforms of the legislative, administrative and institutional frameworks applying in the IOTs are being undertaken. This 'normalization process' will minimize the difference between the territories and Western Australia, thus facilitating incorporation. The development and expansion of the service agreements will also progress incorporation by bringing service delivery into line with Western Australian practices.

The submission also discusses some issues that arise from the current situation where Western Australian legislation is applied to the territories. I anticipate that incorporation will ameliorate this situation, as residents to lobby their local state members. It is, however, currently appropriate that representation about matters of substance be made directly to myself, in my capacity as the minister responsible for Territories, or to the Administrator of the Indian Ocean Territories, as the Government's representative.



As you would be aware the Christmas Island Shire is funded to assist in community consultation by the Australian Government and the community Consultative Committee appears to be an efficient means of drawing together the community's views. I would urge you and the rest of the Chamber to take the opportunity to feed through your views in this forum as well.

Thank you for raising these issues with me. The Chamber of Commerce can play a significant role in gaining state representation for the Territories by working with the Australian Government to achieve incorporation and I look forward to your support in this.

Yours Sincerely,

(Signed)

IAN CAMPBELL

# CHRISTMAS ISLAND CHAMBER OF COMMERCE

P O Box 510 Christmas Island Indian Ocean 6798  
Ph 08 9164 8249 Fax 08 9164 8648  
[info@cicommerce.org.cx](mailto:info@cicommerce.org.cx)

20 February 2004

Senator the Hon. Ian Campbell  
Minister for Local Government Territories and Roads  
Parliament House  
CANBERRA ACT 2600

Dear Senator Campbell,

Thank you for your reply to our submission. We look forward to a constructive dialogue with you and the achievement of a level of self-determination that best reflects the political aspirations of the peoples of Christmas and Cocos (Keeling) Islands.

The Christmas Island Chamber of Commerce has already discussed this document with the Community Consultative Committee, the Christmas Island Shire Council and the Cocos (Keeling) Island Shire Council and it has received broad in-principle support. The Chamber will be assisting these organizations with the production of a policy statement for self-determination to be ratified by the electors of both territories. This document is to be endorsed by all of the major community organizations and should be released at the time of the joint sitting of the Councils to be held on Christmas Island in June 2004.

The Chamber's concern over the current level of community consultation is exemplified by the Commonwealth Government's policy of incorporation with the State of Western Australia. The policy's foundation is firmly based in the corridors of Parliament House in Canberra. It is a policy that was produced without the participation of those most affected, the residents of the Indian Ocean Territories. There is no support for incorporation amongst either Island communities.

We are of the opinion that any move by the Commonwealth to incorporate the Indian Ocean Territories into Western Australia without the full support of the Island communities will fail because of the provisions governing amendments to the limits of a State in the Constitution.

Section 123 of the Constitution requires amendments to state territorial boundaries to have the endorsement of the Parliaments of the both the Commonwealth and Western Australia, then the electors of W.A. must approve the changes in a referendum called for that purpose. We cannot foresee any circumstance where either of the Parliaments or the Electors of Western Australia will support incorporation unless it was the freely expressed wish of the people who live here.

The rights of the local communities to maintain their territorial boundaries and freely choose their model of government may still fall within the United Nations guidelines regarding Non Self Governing Territories. The Commonwealth asserts that Christmas and Cocos (Keeling) Islands are 'fully integrated' within the Australian political arena, yet it could be viewed differently on examination of *Principle VIII* in the Annex to UN Resolution 1541 XV, which states;

***Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.***

Do we have equal rights and opportunities for representation and effective participation in the introduction of Western Australian legislation as Christmas/ Cocos (Keeling) Island law? Laws that can, among other things, imprison us, impose taxation on us and govern our business operations? The communities of the Indian Ocean Territories quite clearly do not, and as such remain in a position of subordination to the Commonwealth of Australia under *Principle V* of the above Resolution.

It should be noted that in April 1984 the peoples of Cocos (Keeling) Island voted for integration with the Commonwealth of Australia in an Act of Self-Determination under UN Resolution 1541 (XV). Exactly twenty years later the Cocos community still has not achieved '*equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.*'

While this status of subordination remains there is a reasonable argument that the residents of the Indian Ocean Territories can still choose their future governance. *Principle IX* in the Annex to UN Resolution 1541 XV, states;

***Integration should come about in the following circumstances:***

***(a) The integrating territory should have attained an advanced stage of self government of free political institutions, so that it is clear that its peoples would have the capacity to make a responsible choice through informed and democratic processes.***

***(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems necessary, supervise these processes.***

While the Chamber has no desire what so ever to have the United Nations involved in this process we do expect the Commonwealth to adopt an equitable and supportive approach to this issue. We expect the Commonwealth to ensure that the same democratic principles that apply to the rest of the Australian people are freely applied to the Indian Ocean Territories.

We believe that the local communities still have the right to choose the type of governance they want. As a Chamber representing the business interests of Christmas Island, we cannot support the Commonwealth's policy of incorporation because it does not have broad-based support within our community. We would like to work with the Commonwealth to implement an alternative policy that truly reflects the aspirations of the people who live in the Indian Ocean Territories.

Once again, we look forward to continuing this discussion with you. If we can be of any assistance, please do not hesitate to contact us.

Yours Sincerely,

Don O'Donnell  
President

Senator the Hon Ian Campbell  
MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS  
MANGER OF GOVERNMENT BUSINESS IN THE SENATE

COPY

13 APR 2004

Mr N P O'Donnell  
President  
Christmas Island Chamber of Commerce  
P O Box 510  
CHRISTMAS ISLAND WA 6798

Dear Mr O'Donnell

Thank you for your letter of 20 February 2004 concerning self-determination for the Indian Ocean Territories.

I agree with your analysis that in accordance with Section 123 of the Australian Constitution, Christmas Island and the Cocos (Keeling) Islands could only be incorporated into a State subject to the consent of the Parliaments of the Commonwealth and that State, and the approval of the majority of the electors of the State.

The Australian Government remains committed to pursuing policies which seek to maintain for residents of Christmas Island and the Cocos (Keeling) Islands the same opportunities, rights and responsibilities as they would enjoy if resident in any remote mainland community.

How we might later proceed with integration of the Islands into, say, the State of Western Australia is a matter about which I remain committed to open and transparent consultation with the Island's communities.

I look forward to a constructive relationship with the people of the Indian Ocean Territories and would like to thank you for raising the matter with me.

Yours Sincerely,

(Signed)

IAN CAMPBELL

# CHRISTMAS ISLAND CHAMBER OF COMMERCE

P O Box 510 Christmas Island Indian Ocean 6798  
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28 March 2004

Senator the Hon. Ian Campbell  
Minister for Local Government Territories and Roads  
Parliament House  
CANBERRA ACT 2600

Dear Senator Campbell,

Please find attached a compilation of a series of discussion papers we had published in 'The Islander'.

Our submission 'SELF DETERMINATION FOR THE DELIVERY OF STATE LEVEL GOVERNANCE IN THE INDIAN OCEAN TERRITORIES' was published in two parts on 30th January and 13 February and is re-included in this compilation. Discussion Paper #3, published on the 27 February, covered the 'Package of Changes' agreement of 1991 between the Commonwealth and the Christmas Island Local Assembly facilitating the legal reform process. Discussion Paper #4, published on 12<sup>th</sup> March, covered the status of Non Self Governing Territories under the United Nations. Discussion Paper #5, published on the 26 March, covered aspects of the Australian Constitution with regard to amendments to state boundaries.

This series of articles quite clearly shows;

- 1 That the Indian Ocean Territories do have differences in the administrative, political, juridical, historical, and economic elements than those of mainstream Australia and would be classified in a 'position of subordination' under U.N. Resolution 1541 (XI).
- 2 The Commonwealth is obliged under International Treaty to develop self-government, to take due account of the political aspirations of the residents of the Indian Ocean Territories, and to assist them in the progressive development of their own free political institutions.
- 3 The Federal Parliament, the West Australian Parliament and the people of Western Australia will never assent to an amendment of the Western Australian state boundaries to include those of the Indian Ocean Territories, unless those legislators and peoples involved in the process are convinced that incorporation was primarily in their best interests and, just as significantly, the result of the freely expressed wishes of the Indian Ocean Territories' peoples.
- 4 The residents of the Indian Ocean Territories have the right to express their wishes through informed and democratic processes, impartially conducted and based on universal adult suffrage. They have the right to vote on this issue.
- 5 The status quo is not acceptable from a whole of governance view. The Indian Ocean Territories will never realise the aspirations of its peoples or attain any form of sustained economic development while it endures a colonial style administration.

While this status of subordination persists, the Commonwealth continues to fail the residents of the Indian Ocean Territories, not only under International Treaty but more importantly, in its moral duty to provide those residents with the same rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government as those enjoyed in mainstream Australia.

This Chamber urges you to approach Cabinet with a view to supporting our call for a referendum of the peoples of the Indian Ocean Territories. The referendum should cover the topics of self determination and incorporation. The *status quo* is most assuredly not an option. The Chamber supports a referendum to coincide with the next federal election some six months hence. We feel that there should be sufficient time to organise such an event and that it would be both politically and financially expedient.

The referendum will resolve the issue of the 'freely expressed wishes of the Territories peoples'. The Commonwealth can then proffer policies that have the support of the residents of the Indian Ocean Territories and we can all move forward with confidence towards full participation in mainstream Australian democracy.

Once again, we look forward to continuing this discussion with you. If we can be of any assistance, please do not hesitate to contact us.

Yours Sincerely,

Capt. N. P. (Don) O'Donnell  
President

To the Editor

**rēckless** *a.* regardless of consequences,  
without care, rash, heedless. [E]

The Cabinet decision to cancel Walter Construction Group's contract to build the IRPC project two years ago simply amazed the then Territory's Minister, Mr Wilson Tuckey. He could not believe how quickly the decision was made. *Five minutes* was all it took. *Five minutes* to dash the aspirations of all those people who had chosen to invest their lives and fortunes on Christmas Island. *Five minutes* to destroy the endeavours of the local business sector. *Five minutes* to force 600 people to pack up and leave Christmas Island forever.

The corporate psychopaths of Canberra had a win. They saved all of those hard earned taxpayers dollars from being wasted. As a consequence they also condemned Christmas Island into a crippling economic recession during a period when the rest of Australia was experiencing unprecedented economic growth. That didn't bother the Canberra cartel one bit. You can't be a psychopath and care at the same time. We know this decision was taken *regardless of the consequences* it would have within this community, *without care* for our welfare, and in a *rash* and *heedless* manner.

Then, twelve months later, just when we thought our economy was about to turn, our then Minister, Senator Ian Campbell, decided that; 'In the interests of the Christmas Island community, the Australian Government has decided to make legislative changes to prohibit casino operations on Christmas Island.' While this might sound like Senator Campbell actually *cared*, reality reveals yet another **rēckless** decision. Our Government had quite purposely destroyed Christmas Island's only strategic economic catalyst. Millions of dollars of private investment, many years of research, reports and development, tens of thousands of hours of human endeavour have been cast aside. In our interest?

Then just after Christmas those members of this business community who had approached the Department of Finance for "Act Of Grace" payments for compensation for losses incurred by the IRPC decision were told that the Government had found itself under no 'moral' obligation to pay compensation. The Department did not even bother investigating one of the claims, they just rejected them out of hand. In their opinion the Christmas Island business community did not sustain any losses that could be attributed to some 'unintended consequences' of any decision on the Government's part.

For eighteen months the Island's economy has been in an appalling state, entirely caused by our government. But, to quote Keating, was this 'the recession we were meant to have'? Apparently not! We now find that the very reason for that **rēckless** IRPC decision has now been completely invalidated. Two years later our Government has accepted a tender that is some 50% higher than that originally considered entirely unacceptable. Our 'caring' Government had inflicted all of those losses, all of that pain on this community for absolutely bloody nothing.

The 'IRPC' decision, the 'Casino' decision and the 'Acts of Grace' decision are all symptomatic of **rēckless** governance. They show a degree of arrogance that would not be acceptable elsewhere in Australia. These decisions also show a complete absence of any of the principles of duty of care in governance that apply throughout the mainland states and territories. The Commonwealth fully understands it has the power to act with impunity within the Indian Ocean Territories. They fully understand that the people who live in the Indian Ocean Territories do not have the same rights and opportunities for political representation as those enjoyed by every other citizen of Australia. They know we cannot effectively participate in the same levels of the executive, legislative and judicial organs of government as every other citizen of Australia. Yet they don't care.

The Oxford Dictionary just about says it all, maybe our coat of arms should be changed to reflect the true nature of the beast.



Administratonis  
Inconsiderata

Russell Payne

To the Editor,

**WA Inc.**

The following is an extract from Senates Estimates Committee Hansard record for the hearing of 26 May 2005, the full text of this part of the hearing was published by the Shire in the last edition of *The Islander*.

- Senator O'BRIEN** — *Am I correct in understanding that the government's preference is Western Australia but it would be content for the Indian Ocean Territories to be incorporated into another state?*
- Ms Varova** — *I do not think another state, but perhaps a territory. Certainly the preference is Western Australia, not surprisingly, because of proximity and the service delivery arrangements already in place. The legal regime is an applied Western Australian legal regime.*
- Senator CROSSIN** — *What consultation occurred then with people on the Indian Ocean Territories prior to that policy announcement.*
- Ms Varova** — *I would have to take that on notice, unless Mr Wilson has some information. My knowledge of that part of it is limited.*

The answer to Senator Crossin's question is no. There was never any consultation with this community. In fact, the first time this policy was publicly released was in a letter from the then Minister, Senator Ian Campbell, to the Christmas Island Chamber of Commerce in January 2004. Three and a half years after the policy was adopted. An extremely effective consultative process?

In my recollection in around 2000 Ms Sema Verova was the First Assistant Secretary, Regional Services, Development and Local Government, and it was her colleague, Dr Andy Turner, Assistant Secretary, Non Self Governing Territories Branch who produced the policy document advocating incorporation with Western Australia. Given her portfolio responsibilities, it would have been very unusual for Ms Verova's not to be involved in the drafting of this policy. Ms Varova would have also been aware if any consultation had actually taken place within the Territories.

**consult'** *v.t. & i.* take council (*with*); seek information or advice from (person, book, &c.); take into consideration or do one's best for (person's feeling, the interests of &c.) **cōnsultā'tion** *n.* consulting, meeting to consult. [F f. L *consolo* (prec.)]

There you go! Just so everybody understands what **it** means. There certainly did not appear to be much understanding of **it** in the upper echelons of the Department around 2000, neither was there too much of **it** going on within the community that was directly affected by the policy. The Department of Territories has very effectively relegated **it** to political rhetoric, an archaic phrase only to be used when answering those tedious questions at Parliamentary Committee hearings.

The Government required a policy for self determination for the Indian Ocean Territories because they could no longer ignore our status under international law as non self governing territories, They realised that they had an obligation to provide us with self determination so we can enjoy the same rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government as our fellow Australians.

The 1991 'Package of Changes' agreement between the Commonwealth and the Christmas Island Assembly reflected this obligation stating; *The changes are designed to provide residents of the Island with the same rights, opportunities, obligations and responsibilities as apply in comparable communities elsewhere in Australia.*



This Government is also fully aware of their obligations to the peoples of the Indian Ocean Territories under International Law. They know they should be reporting regularly to the United Nations General Assembly under Article 73(e) of the Charter of the United Nations' outlining their progress towards the provision of self determination to the Territories. They are also fully aware that self determination must be the result of the freely expressed wishes of the Territories' peoples.

By arbitrarily imposing their policy of incorporation the Government has not only comprehensively failed to provide these island communities with our fundamental democratic rights, it has also adopted a policy which is fatally flawed, a policy that will never become a reality. It is little wonder the Department steadfastly avoids any discussion or hypothesis on their policy.

This Government has quite purposely engaged in the politics of avoidance on this issue, hoping that their policy will ultimately prevail. The problem with avoidance politics is that you have to avoid facts. This means you have to be very careful to limit consultation processes because the facts are against you. This is clearly evident as we continue with the Hansard record;

**Senator O'BRIEN** — *What would have to happen for the government's preferred options for the Indian Ocean Territories to be incorporated into a state or a territory?*

**Ms Varova** — *In my understanding, there would need to be a referendum in Western Australia, as the proposal is related to changing the borders of that state, and a majority of Western Australians would need to vote in support of it.*

**Senator O'BRIEN** — *What about for a territory?*

**Ms Varova** — *My understanding is that it is not a necessity for the territories to vote. We are talking about what legally needs to happen.*

The answer to Senator O'Brien's first question lies in Chapter VI Section 123 of our Constitution. Both houses of Federal Parliament, both houses of the West Australian State Parliament and the people of Western Australia voting in a referendum have to agree to amend the West Australian territorial boundary to include those of the Indian Ocean Territories.

While the Government may have control of both Federal Houses of Parliament for the next term, the Premiers Department in WA has already acknowledged that they will never proceed without the support of the peoples of the Territories and I cannot imagine the people of WA voting against our wishes, especially 67% of them.

Ms Verova's answer to the second question totally and quite deliberately ignores our democratic rights and the Commonwealth's obligations under international law where, our wishes must be expressed through an informed and democratic process, impartially conducted and based on universal adult suffrage. (*United Nations Resolution 1541- Principle IX; (on full integration)*) As a signatory to the Charter of the United Nations the Commonwealth of Australia has a mandatory obligation (erga omnes) as a member of the international community to respect these principles.

Two more wrong or incomplete answers, it is pretty good stuff isn't it? This is the Executive Director of the Territories and Local Government section, the head of our self proclaimed 'State Government' that purports to provide our governance. Don't lose sight of the fact that avoidance politics does not want all of the facts.

Russell Payne

TO THE EDITOR

DEAR SIR,

**FOR SALE BY PUBLIC TENDER**

**SOVEREIGNTY**

OF THE

**AUSTRALIAN EXTERNAL TERRITORY OF CHRISTMAS ISLAND**

**WE, THE PEOPLE OF CHRISTMAS ISLAND,**

A NON SELF GOVERNING TERRITORY OF AUSTRALIA,

CLASSIFIED IN A 'POSITION OF SUBORDINATION' UNDER U.N. RESOLUTION 1541 (XI),

BEING GEOGRAPHICALLY SEPARATE AND CULTURALLY DISTINCT AND DENIED  
EQUALITY IN THE ADMINISTRATIVE, POLITICAL, JURIDICAL, HISTORICAL, AND  
ECONOMIC ELEMENTS AS OUR ADMINISTRATING STATE OF AUSTRALIA,

THUS ATTAINING, UNDER INTERNATIONAL LAW THE RIGHTS TO MODIFY THE STATUS  
THE TERRITORY UNDER PRINCIPLE VI OF THE ANNEX TO UN RESOLUTION 1541 (XV)  
FOR INTEGRATION OR FREE ASSOCIATION WITH AN INDEPENDENT STATE,

**DO HEREBY CALL BY PUBLIC TENDER FOR EXPRESSIONS OF INTEREST FROM  
INDEPENDENT STATES WISHING TO OBTAIN SOVEREIGNTY OVER THE TERRITORY.**

CHRISTMAS ISLAND LIES AT 10.5° SOUTH AND 105.5° EAST IN THE INDIAN OCEAN, IS  
STRATEGICALLY LOCATED 200NM SOUTH OF THE SUNDA STRAITS, HAS A DISTINCTLY  
ASIAN CULTURE AND BOASTS BRAND NEW SERVICES AND PUBLIC UTILITIES.

OTHER ASSETS INCLUDE A VIBRANT MULTICULTURAL POPULATION OF 1300 PEOPLE, A  
LARGELY UNDER DEVELOPED TOURISM POTENTIAL, A DYNAMIC, HIGHLY SKILLED  
WORKFORCE THAT SUPPORTS A DIVERSE, TECHNICALLY ADVANCED, SERVICE  
INDUSTRY.

WE ALSO OFFER A CHRONICALLY UNDER-UTILISED CASINO RESORT, A PROFITABLE  
PHOSPHATE MINING INDUSTRY, A BRAND NEW \$300M IMMIGRATION RECEPTION AND  
PROCESSING CENTRE, A \$6M SPORT AND RECREATION CENTRE, AN APPROVED  
SATELLITE LAUNCHING VENTURE AND, WITH JUST A SMALL AMOUNT OF IMAGINATION,  
AN UNLIMITED POTENTIAL FOR ECONOMIC DEVELOPMENT.

THE SUCCESSFUL TENDERER MUST BE; FINANCIALLY SECURE, HAVE A PROVEN  
RECORD OF DEMOCRATIC GOVERNMENT BASED ON THE PRINCIPLES OF UNIVERSAL  
SUFFRAGE, UNDER A FEDERATED STATES SYSTEM, BE A FULL SIGNATORY TO THE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS,

AND

**MUST PROVIDE THE PEOPLES OF CHRISTMAS ISLAND WITH THE POLITICAL STATUS  
TO PURSUE THEIR OWN ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT  
THROUGH SELF DETERMINATION.**

Russell Payne, Gaze Road, Settlement

**To the Editor  
The Islander**

**Dear Sir,**

**A matter of sovereignty**

Australia asserted sovereignty over Christmas Island through a transfer from Britain in 1959 by means of complimentary British and Australian legislation and by continuous governmental and judicial activities ever since. There has never been any suggestion internationally that Australia's sovereignty is in question.

However, the Australian government's continued inability to provide complete equality between the peoples of the Indian Ocean Territories and those living in the mainland States and Territories has produced a situation under international law where sovereignty can be challenged.

But by who?

In the Islander on the 12<sup>th</sup> March 2004 the Christmas Island Chamber of Commerce published its Discussion Paper #4 on Self Determination, which covered the status of Non Self Governing Territories under the United Nations.

In that article the Chamber established that the Indian Ocean Territories are geographically separate and ethnically and/or culturally distinct from Australia and that we do have differences in the administrative, political, juridical, historical, and economic elements than those of mainstream Australia. The Territories would be classified in a 'position of subordination' by the United Nations under Principle V of Resolution 1541 (XV).

Under international law the residents of Indian Ocean Territories can petition the United Nations Special Committee for Decolonization to supervise a UN sponsored 'Act of Self Determination' under Principle VI of Resolution 1541 (XV).

The UN Special Committee will then negotiate with the federal government on our behalf and broker a referendum for the Territories. An Act of Self Determination will provide 4 choices for the peoples of the Indian Ocean Territories

- 1 Free association with the administering Power *or another independent state* as a result of a free and voluntary choice by the people of the Territory expressed through an informed and democratic process.
- 2 Integration with the administering Power *or another independent state* on the basis of complete equality between the peoples of the Non Self Governing Territory and those of the independent state.
- 3 *Independence* as a sovereign state
- 4 Retain the status quo as long as this is freely determined by the people, expressed through an informed and democratic process.

It is quite clear that if you are a person eligible to vote and are on the electoral role as resident of Christmas Island you have the power to determine the sovereignty of Christmas Island. You have a choice of becoming an independent sovereign nation or entering into an association with either Australia, as the administering Power *or any other independent state*.

Have a think about it. I really cannot understand how the Commonwealth has left itself so exposed considering all of the information it has in it's possession. And what about you? Just how many more insensitive and unintelligent decisions will you tolerate from Canberra before saying 'enough is enough'.

Russell Payne