

**DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES SUBMISSION
TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL
AND EXTERNAL TERRITORIES
INQUIRY INTO CURRENT AND FUTURE GOVERNANCE
ARRANGEMENTS FOR THE INDIAN OCEAN TERRITORIES**

The Australian Government, through the Department of Transport and Regional Services, provides the breadth of essential services to the communities of the Indian Ocean Territories (IOTs) that would normally be delivered by state level governments elsewhere. Services delivered by the Department in the IOTs include electricity, freight and passenger ports, ferry services, education, land and asset management, environmental and industry regulation and health. Services are delivered through contracts with the private sector, service delivery arrangements (SDAs) with the Western Australian (WA) Government, or directly by the Department.

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

In the interim, the Government decided that, to the maximum extent possible, Commonwealth policies towards the IOTs should prepare them for incorporation, including by 'normalising' legislative, administrative and institutional frameworks.

In applying this policy the Department works towards provision of 'state level' services that provide communities of the IOTs with the same rights and responsibilities as comparable communities on the mainland. These services are increasingly being provided through SDAs between the Australian Government and the WA State Government. The Department also provides other Commonwealth transport and regional programmes (eg Roads to Recovery) in the same way as it does to mainland Australia and in the same way as the Government expects other Ministers and portfolios to implement their programmes in the territories.

In 2004, the Government moved the IOTs funding out of Departmental funding and made it an Administered Programme. This change makes government spending decisions in relation to the IOTs more transparent and provides the community and Parliament with additional lines of accountability for decision making and reporting.

Within this context, the Department will address the Committee's terms of reference.

Accountability and Transparency

The Department has officers responsible for oversight of the IOTs located on Christmas Island, in Perth and in Canberra. The Department's office on Christmas Island is staffed with two Departmental officers and 16 full time equivalent locally employed staff. The Territories Minister, in relation to the IOTs, has delegated many of his

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

The Department has a range of measures in place to ensure it consults with the communities before decisions are made, including:

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

The Territories Minister has also endorsed protocols for a new committee of the Shire of Christmas Island whose objective will be to facilitate communication between the community and the Minister. The Minister will be represented on this committee by the Administrator – the Administrator is the Minister’s representative for the IOTs, based on Christmas Island, and reports directly to the Minister.

Other initiatives to ensure information is shared with the communities include:

- the Territories Minister provides a regular newsletter to the Islands every 4-6 weeks providing updates about the activities, plans and outcomes of the Australian Government for the Islands; and
- Departmental Bulletins are issued regularly on both Islands explaining important community information.

The role of the Administrator has also been modified to provide a better division between the Department and the Government. The Administrator’s role is independent from the Department and is now more focussed on facilitation and economic development rather than daily administration. The Administrator provides IOT residents with a direct and independent avenue of communication with the Government.

The Department acknowledges that the importance of effective consultation with the communities of the IOTs is accentuated by their geographic isolation and is conscious of the need to continually review its performance in this area.

Role of the Shires

The current structure of the Shires came into effect in 1992. Prior to 1992, ‘local government’ arrangements were different for both Christmas and the Cocos (Keeling) Islands. On the Cocos (Keeling) Islands, a Home Island Council was established under the *Local Governance Ordinance 1979* which had local government responsibilities for Home Island only. West Island was administered by the then Federal Department with responsibility for territories.

On Christmas Island, the *Christmas Island Assembly Ordinance 1985* allowed for an elected assembly to direct a Christmas Island Services Corporation established under

the *Services Corporation Ordinance 1984*. This Corporation had responsibility for a broad range of functions, including utilities not normally the responsibility of a local government, such as power generation and distribution.

The current model of Shire councils was created in 1992 as part of the territories law reform package whereby WA legislation is applied to the territories as Commonwealth law (see below under WA Legal Regime for details). This followed the House of Representatives Standing Committee on Legal and Constitutional Affairs report, *Islands in the Sun*, which explored options for the future governance of the territories, including self government and incorporation. In exploring these options the Committee consulted with the community and included hearings in the territories. The Committee recommended that the Commonwealth initiate discussions with the WA Government on the future of the IOTs, including the option of incorporation. Accordingly, the Australian Government decided to implement legislative, administrative and institutional frameworks for the territories that are comparable to those applying through the rest of the country, ie three tiers of government with:

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

Although local government is well established in both territories, some refinement of Shire asset ownership and functions is anticipated to enable the Shires to provide the range of services which are normally provided by Shires in similar jurisdictions. Initial discussions have been held with both Shires to identify shire service provision responsibility and the assets required to provide those services. The Department's work programme provides for these issues to be progressed this financial year.

Political Structures and Representation

In local government terms, the people of the IOTs have comparable local government representation and accountability structures as the majority of other Australians. Changes since the normalisation of arrangements in 1992 have also provided essentially the same Federal Government structures and representation as that provided across Australia. That is, Federal Government agencies are directly responsible for provision of their services (such as quarantine, customs etc) to the IOTs. The residents of the IOTs vote as part of the Northern Territory for the Senate and are included in the Lingiari electorate. Thus in respect of Shire and Commonwealth services, the IOT communities have the same opportunities to influence policies concerning the provision of services as other Australians.

The IOTs, however, have a different model of 'state government' representation compared with mainland Australian communities. While the IOT communities do not have the same recourse to state elected representatives regarding state services, they do have a high degree of access to the Australian Government. As well as their NT elected representatives, they have regular access to the Federal Territories Minister, both directly and through the Department. The Administrator, who is the Australian Government's direct representative, resident on Christmas Island, provides another

avenue to access and influence the Australian Government at a senior level. While lacking a direct state government link, the territories communities therefore could be said to have greater Federal representation and access than many other Australian residents.

While the Government's objective is incorporation, such a move will require a referendum of the WA population and is some years away. The Government would also be seeking the support of the IOTs' communities before such a referendum was undertaken. The Government's immediate focus, therefore, has been on improving service delivery, which is a prerequisite of incorporation and is essential to the well-being and economic development of the IOTs. By having the majority of state government-type services provided through SDAs with the WA Government, progress is being made toward a seamless transfer of responsibilities to WA, should incorporation occur, and is enhancing the connection between the territories and WA.

Should incorporation be achieved, the communities will have direct state government representation comparable with that enjoyed by any other community in a state.

Economic Sustainability

The economies and population base of the IOTs are small and are susceptible to impacts from factors that would not normally affect larger, more robust economies. Relatively minor decisions on government capital investments and programme funding often have a significant impact on their small economies.

Until the late 1980s, Christmas Island was a source of high grade phosphate for Australia and New Zealand and this was the main industry on the Island. While that supply is now significantly diminished, the mine continues to be a core employer on the Island with mining operations based around lower grade phosphate exported into South East Asia. The remaining life of the mine is dependent on the success of applications that have been made for additional mine leases. Reserves on existing mine leases may only provide for a continued mine life of five to ten years given current industry conditions.

The largest area of private sector activity on the Cocos (Keeling) Islands is in the provision of services which most often involves contracts for the provision of government services. Tourism continues to grow slowly and some Island interests are considering developing a range of small 'cottage' industries. While there has been some further interest in aquaculture ventures, associated quarantine issues are still being resolved.

Overall, Departmental activity has continued to focus on creating a climate conducive to private sector development by 'normalising' structures and governance arrangements to reduce impediments to economic development. The Government has worked towards ensuring adequate provision of core government services and infrastructure to the communities, including guaranteeing the continuity of crucial services such as air services to the territories to allow private enterprise to develop. This is consistent with arrangements on the mainland where government provides the underlying infrastructure and private enterprise drives development by making use of the economic advantages of the region.

Specific ‘normalisation’ initiatives include:

- Town Planning Schemes and Local Planning Strategies developed to give territory wide perspectives on opportunities, resources, infrastructure, demographics, environmental issues and so forth. A Land Release Strategy allowing direct land sales for proponents of innovative business projects in both territories is also in place;
- the Government divesting itself of assets which are not needed in providing core services. The Australian Government is the major asset holder in the Territories, owning houses, commercial and community buildings, golf courses, temples etc. A key component of the divestment process is identifying the normal asset holdings for local governments the community and religious bodies, with a view to transferring these types of assets from the Australian Government to the Shire and community. While negotiations with the Shires have been slower than hoped, the Department is confident of finalising this issue with the Shire of Cocos (Keeling) Islands this financial year. Negotiations with the Shire of Christmas Island will be a Departmental priority with a view to progressing the transfers; and
- reform of the housing markets. The Australian Government, in its ‘state role’ provides public housing in the IOTs. WA public housing policies and practices are applied and the Department has implemented a Rental Sales Scheme to provide eligible tenants with the opportunity to purchase their property or another available property. Through the Rental Sales Scheme and the Government policy of divesting itself of unnecessary assets, the Department is disposing of surplus housing. However, stock will be retained to ensure the Government meets its obligations to provide welfare housing. The disposal of excess stock will provide an added benefit of increasing private home ownership and increasing opportunities for private redevelopment.

The annual capital works programme of the Government forms an important part of the economies of the IOTs and the Government has committed to a \$19 million capital funding programme for 2005-06. Around \$8.4 million of this funding has been committed to improving freight facilities on the Cocos (Keeling) Islands. Christmas Island has been allocated \$5.2 million primarily for the replacement of hospital and power station equipment. The Department is attempting to schedule capital projects in a way that does not strengthen any boom bust cycle of the local economies.

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

The private sector has a proposal in the planning stages for a resort on Cocos (Keeling) Islands and the Department is also in the process of developing a Request for Proposals

for the development of a resort on Cocos. These resorts would target different markets and therefore would enhance economic sustainability, rather than compete in a limited market. The Department has undertaken on-island consultation on its proposal and has put forward an offer to the Shire to incorporate Trust land in any proposal.

The Government provides funding and support for economic development, particularly to encourage the private sector. One of the Administrator's key responsibilities is to facilitate economic development by working with the private sector to identify development opportunities. The Administrator has commissioned the development of a strategic plan for economic development of the IOTs to be undertaken in conjunction with the Island Economic Development Associations (EDAs), the Christmas Island Chamber of Commerce and other interested parties.

The aim of the strategic plan is to create an agreed long-term economic development strategy which would be directed towards self-sufficient, self-sustaining outcomes driven by the local community, but which would also clearly reflect Australian Government policy for the territories. The Territories Minister has indicated a willingness to consider development assistance required under the plan, on a case-by-case basis.

The Department also funds the EDAs on each Island to support local initiatives. These associations promote economic development through the identification and promotion of small projects which will provide business opportunities and employment. On Cocos (Keeling) Islands the EDAs have supported export initiatives for live clams and fish for the aquarium trade and provided funding to develop local fresh produce. On Christmas Island support has been given to promote the Island as a tourist destination.

The Department will continue to encourage the Christmas Island Chamber of Commerce, the Shires and the EDAs to take a lead role in efforts by the community to attract private sector investment and identify new opportunities.

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

WA Legal Regime

As non self-governing territories, the ultimate responsibility for all Commonwealth, state and local government services and regulation in the IOTs lies with the Australian Government. Almost all Australian Government legislation applies in the territories and Federal Ministers and agencies are directly responsible for Australian Government activities in the territories in the same way as in other parts of Australia.

In 1992, the Australian Government 'adopted' the WA legal regime as the territories laws to provide a contemporary body of state equivalent laws in the Islands. This replaced a body of outdated Singapore laws which applied from when the Islands were

UK colonial possessions. The reforms were implemented by way of the *Territories Law Reform Act 1992* (Cth) which amended the *Christmas Island Act 1958* (Cth) and the *Cocos (Keeling) Islands Act 1955* (Cth).

It is important to note that these WA laws, when applied in the territories, are Australian Government laws, not WA laws. Under this model, the Territories Minister has ultimate responsibility for state and local government matters.

New and amended laws in WA automatically flow on as Australian Government laws in the territories unless the Australian Parliament decides otherwise. By Ordinance made by the Governor-General on the recommendation of the Territories Minister, these laws of WA can be amended in whole or part, deferred or disallowed.

All powers and obligations under these 'mirrored' WA laws are vested in the Australian Government (and specifically the Federal Territories Minister). The Minister has delegated most of these powers to the Administrator, Departmental officers (on Christmas Island, in Perth and in Canberra) and to WA Government officials under SDAs. Given the long term nature of the Government's objectives and the reform process being undertaken by the Department on behalf of the Government, the range of delegations that support these objectives are reviewed regularly.

Service Delivery Arrangements

The Australian Government provides services to the IOTs:

- through SDAs made with the WA Government;
- through contracts with third party providers arranged through regular market testing and tender processes; and
- directly through the Department.

WA agencies and specialist private organisations such as airport and hospital management companies are generally able to provide state type services to the Australian Government at the marginal cost of including the IOTs in their existing systems. Without these contracts and SDAs, the Australian Government would either need to perform these functions itself, or source other providers to duplicate the systems and processes in accordance with applied WA law. Given the size of the territories, this would not be conducive to efficiency or represent value for money.

The services provided by WA Government departments in the IOTs are totally funded by the Australian Government and are cost-neutral to WA. The Department reports annually against the performance of its SDAs with the WA Government. The latest report, for the 2003/04 year, is attached.

Significant progress has been made in reviewing and market testing non-core Island administration functions/services. Water and wastewater activities on both Islands are undertaken by WA Water Corporation. Western Stevedores is now managing the operation of the Christmas Island Port. Management and delivery of IOT health services, an area where WA officials have advised that they are currently unable to accept responsibility, is currently being market tested. While contracts for the provision of services with the private sector include a margin for profit, they are only entered into

where they provide greater efficiency and effectiveness compared with Commonwealth provision.

Where the Australian Government still provides services directly, it is reliant on the skills and knowledge of key individuals who normally do not have career development opportunities with the Australian Government because of the limited need for such specialised expertise. This is a significant risk exposure for the Australian Government because of the lack of technical support and the loss of corporate knowledge should key individuals leave and the limited pool of expertise from which to replace them. Some of these services are to be either re-engineered to meet WA legislation and procedural standards to eventually be covered by a SDA with WA, or market tested with a view to being offered for competitive tender. Where either the SDA or market testing process fails to find a suitable service delivery agency or contractor, then that service will, of necessity, be continued by the Department.

This reform of service delivery has and will continue to result in both staff reductions as well as increases in some areas. While a shift in employment from the public to private sector is also occurring, new service providers usually source all or most expertise locally in the form of pre-existing staff as it is not cost-effective to do otherwise. In circumstances where pre-existing staff are made redundant the Department offers financial and career planning, and individual counselling. In engaging in market testing, the Department has also made it clear that, other factors being equal, proposals which offer the greatest opportunity for local participation will be favoured.

Market testing of services is not a measure to avoid the Commonwealth's responsibilities towards the Islands and the Commonwealth recognises that there will be a continued need to subsidise many of these services in order to make provision viable. Rather, it is about having services provided by those best placed to recruit the required expertise taking account of the value for money for the Commonwealth. Any savings made from market testing are not lost to the programme but are instead available for reallocation towards service provision areas not currently well serviced. Indeed, it is vital that efficiencies are gained to enable this reallocation to occur.

The current level of funding for services on the IOTs is based upon the findings of the Commonwealth Grants Commission (CGC) published in their *Report on the Indian Ocean Territories 1999*. The report provides advice on the appropriate level of funding to provide the range of services typically provided by state governments and how that level of funding might be adjusted annually. The CGC found that, like any isolated area, there are some services provided in the IOTs that are above standards for similar sized mainland communities and some which are poorer. Generally speaking, the level of service provision provided was considered to be comparable to remote mainland communities.

This approach to servicing the IOTs – the continuing alignment of services with WA and the use of WA agencies to provide services where they are best placed to do so – was endorsed specifically by the Government in August 2000 when it considered the long term directions for the IOTs. It was re-endorsed in a government decision within the 2004/05 Budget process to improve accountability by moving the IOTs funding from the Departmental budget to an Administered Programme.

Alternative Governance Models

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

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

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

Incorporation with WA will more accurately reflect the way small, remote communities are dealt with under the normal Federal/state/local government structures. It will avoid the complexities and difficulties associated with self-government, while still ensuring more effective and efficient delivery of services to the IOTs' residents. Residents will have direct state representation and services will be provided under 'normal' state and local government arrangements. The Federal Government will provide national programmes and discharge Commonwealth responsibilities, as in any other Australian community.

There are a number of isolated islands around the Australian coastline which are adequately governed and serviced by the states – Lord Howe Island, Thursday Island and Flinders Island for example. As a comparison, Christmas Island has a population of 1500, is 2600km from the nearest state capital, and is a Commonwealth territory. Thursday Island has a population of around 2300, is 2200km from the nearest state capital, and has been part of Queensland since 1872.

Conclusion

Future governance of the IOTs was examined in 1991 as part of the *Islands in the Sun* report. Internal reviews by successive Governments since that time have not altered the Government view that the best outcome for the territories will be incorporation with WA.

In working towards this goal, service delivery on the Islands has improved and the IOTs' residents are now enjoying services which are in the main equivalent to those of their fellow Australians.

In the longer term, incorporation with WA will provide IOTs' residents with comparable representation and influence over their governance consistent with other

Australian communities. This approach will not risk creating a self-governing territory with few prospects for economic sustainability, which may increase the risk of deterioration of basic services and standards of living. It will ensure the IOTs' residents have the same rights and responsibilities as the rest of Australia's citizens, have representation at all three levels of government, and that state type services are being provided and consistently maintained by those best placed to provide them – ie an established state government with service provision expertise, established structures and a sustainable economic base.

In the short term, the Department will continue to normalise the delivery of services and to seek more efficient and cost effective methods of delivering services to the IOTs.