

Background

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

Cocos (Keeling) Islands: a brief history

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

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

2 Certain rights were reserved to the Crown.

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

Christmas Island: a brief history

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

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

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

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

Australia's Indian Ocean Territories

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

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

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

Law reform in the Territories

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

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

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

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

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

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

Australian Government policy

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

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

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

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

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

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

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

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

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

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

Community service delivery

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

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

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

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

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

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

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

Service delivery arrangements

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

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

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

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

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

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

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

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

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

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

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

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

Table 2.3 SDA Expenditure Extract from 2003/04 Performance Report

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

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

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

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

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

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