

Inquiry into Current and future governance arrangements for the Indian Ocean Territories

Submission by:
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Joint Standing Committee on the
National Capital and External Territories

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Secretary: *John Bah*

To the Committee.

I wish to make a submission on several of the matters under inquiry, and believe that I am well qualified to do so having been the CEO of the Shire of Cocos (Keeling) Islands between April 1998 and October 2004. During that time I was actively involved in the discussions between the Shire's of Cocos and Christmas Islands on the need to overhaul the governance arrangements and the involvement of the communities in the decision making process.

Accountability and transparency of decision making in relation to the Indian Ocean Territories

The cause of greatest concern for the Shire's and many residents is the role of the head of the Territories section of the Department of Transport and Regional Services who has become by default the equivalent of the state government for the two territories. This is not just a perception on his or residents' part, but is often manifested in decision making over issues that are of real consequence to residents without consultation. The development of heritage buildings on Cocos by the Commonwealth without referral to the Shire or the Heritage Commission is one recent example, when the Shires have been told stridently of their responsibilities with regard to approvals for changes to Heritage buildings, and have complied with those directives. There appears to be no accountability for these actions, or repercussions despite concerns being lodged with the Department.

The absence of any involvement by State Ministers of Health, Planning, etc. in the administration of applied legislation places the State Departments, who provide assistance to the Commonwealth (on a fee recovery basis) in the position of being contractors to the Commonwealth, and their priorities and actions are prescribed by Commonwealth Bureaucrats. This does not provide for a transparent and accountable process, nor does the Minister for Territories fulfilling the function of any body mentioned in the State legislation that is applied for which there is no Commonwealth equivalent. In developing Commonwealth land or assets, the Commonwealth has been the proponent, the State and Federal Government, the employer of the State agencies which provide the advice, and the appeal body in the event of any dispute, as well as being able to direct the local governments.

The roles of the two Shires

The two Shires attempt to perform the roles that are typical of any mainland Shire, and are funded with the equivalent of Financial Assistance Grants as determined by the WA Local Government Grants Commission. The Commonwealth has at various times provided full equalization grants citing the importance of the two Shires, or factored back the grants as if they were WA Local Authorities. It is important to note that both the Commonwealth Grants Commission and the WA Local Government Grants Commission have recommended full equalization payments to the Shires, and in recent years this has been ignored and the two Shire's factored back. The Grants Commissions both have recognised that there are no comparable communities on the mainland and the disability factors are unique enough to warrant full equalisation.

The Cocos Shire is in a unique position of owning most of the Territory, albeit with a caveat requiring the Shire to hold the land in trust for the benefit and advancement of the Cocos Malay community. This custodian role has caused conflict with some European Australian residents who do not recognize the Shire's ownership of the land or understand the process through the United Nations that led to the special circumstances. Ironically, the Shire is land rich but cash poor and yet is expected to make land available for purposes that the Commonwealth deems to be appropriate and to encourage economic development.

The Commonwealth has at times ignored the Shire's ownership in dealings with private enterprise, and a recent example is that of DOTARS staff giving permission for goats to be sent to Cocos without the Shire's knowledge or approval, and although DOTARS required the importers to seek all necessary approvals, no mechanisms, at a local level, exist to ensure that the conditions of the export permit or DOTARS own conditions were complied with. As a result the goats are currently on Commonwealth land without formal approval and the Shire has resolved not to allow them on Shire land believing them to be potentially an environmental disaster – a claim supported by several Commonwealth staff within Environment Australia. The goats came on a special flight chartered by DOTARS, and yet the Shire was not consulted on the fact that goats were being imported with Shire land quoted as the destination. The Shire's role in such circumstances becomes difficult, and some in depth discussions should take place to clearly demarcate those roles that will be the Shire's and those that are Federal and State type roles. This has become more urgent as DOTARS continues to reduce its physical presence in the territories and relies on other agencies.

Aspirations of residents

A number of documents have been sent to the Minister and DOTARS by the Shire's and the Christmas Island Chamber of Commerce calling for more representative and accountable decision making. These have included calls for a combined Territory assembly and/or a Regional local government such as exist in WA. Those documents are comprehensive in their arguments and I will not add to them.

Link between governance and economic sustainability

Local self determination on the imposition of fees and charges and the changes to Commonwealth supplied services would assist in ensuring that potential investors are confident of stability. I am aware of substantial delays in the processing of an application for a fisheries license for Cocos because of the need to first approach the relevant Federal Minister, and then needing to negotiate directly with the head of Territories at DOTARS who is then required to look at the applied laws and the need for State Departments in WA to become involved. There does not appear to be an articulated approval process, but rather an ad hoc *lets see what DOTARS thinks* approach to any new initiative.

The Quarantine Station on Cocos was advertised for expressions of interest as a tourist resort without consultation with the Shire, the community, or other relevant Commonwealth Departments such as Environment Australia – ignoring the sensitivity of the site and the Shire's Town Planning Scheme. The advertisement did not stress the Shire's planning approval role, but rather tended to stress its road making and waste collection roles.

WA applied laws

The application of WA law in the territories has by and large been appropriate, but anomalies have not been identified or resolved as part of the introduction process, and a State Government body mentioned in legislation can have a specific role in WA that does not apply anywhere else, and yet remains in the legislation as it is applied which would require the Federal Minister to carry out the function or dismiss it as having no relevance. The WA joint house committee that deals with uniform local laws is a good example. The Local Government Act as it is applied requires the Shire's to submit draft laws to this body to see that they don't conflict with other laws in WA. The relevant department advises that it not only shouldn't happen but can't happen as Territory business does not come under this body's responsibilities.

Service delivery

Most of the agreements struck with WA agencies work well, particularly where all of the roles are handled by that agency and not shared with DOTARS. Those occasions where the agency has been asked to prepare a particular study for DOTARS on a proposed method or approach, it is more difficult to see how that agency can objectively respond to alternative views or submissions by residents.

Reform proposals

As mentioned previously, several substantial submissions have been sent to DOTARS and the Minister on proposals for change to governance arrangements, and I am sure that these will be supplied to the Committee.

However, it is clear that there is no local review mechanism for the introduction of new applied legislation, the increases in fees (based on WA circumstances) or any form of representative body, with or without Commonwealth membership, that can demonstrate some recourse to or accountability to the residents of the two Territories.

It should be noted that the Australian Local Government Association has several resolutions stemming from National Congresses with recommendations to the Federal minister on these and other matters, and a report prepared by the Commonwealth Grants Commission exists with many recommendations pertinent to the above that have not been enacted.

Signed

Robert Charles Jarvis

22 June 2005