

## Schedules 2 and 3 – Amendments relating to Australia’s Indian Ocean Territories

### Background

- 6.1 Proposed schedules 2 and 3 of the Territories Law Reform Bill 2010 (the Bill) make identical amendment to the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Islands Act 1955* (Cwlth) ‘to provide an automatic vesting mechanism for powers and functions under the Western Australian (WA) laws applied in the Indian Ocean Territories’ (IOTs).<sup>1</sup>

### Summary of key sections

- 6.2 The following sections apply to identical amendments contained in Schedule 1 which relates to Christmas Island, and Schedule 2 which relates to the Cocos (Keeling) Islands.
- 6.3 **Proposed new section 8G** establishes an arrangement for vesting and delegating powers under WA laws applied in the IOTs.
- 6.4 **Proposed subsection 8G(1)** provides that powers of a Minister, Governor or Governor-in-Council of WA by a WA law in force in the IOTs are instead vested in the Commonwealth Minister.
- 6.5 **Proposed subsection 8G(5)** provides that if a person or authority is subject to an arrangement under section 8H, the Commonwealth Minister is taken to have vested those powers under WA law applied in the IOTs that the

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1 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 2.

person or authority would normally hold in WA in that person or authority.

- 6.6 **Proposed subsection 8G(6)** allows the Commonwealth Minister to direct that subsection 8G(5) does not apply to a specified power, despite the existence of an arrangement under section 8H.
- 6.7 **Proposed subsection 8G(10)** clarifies that the operation of section 8G does not interfere with the application of WA laws to Christmas Island under section 8A.

## **Proposed new section 8G – arrangements for vesting and delegating powers under WA laws applied on Christmas Island and the Cocos (Keeling) Islands**

### **Background**

- 6.8 The Bill will repeal the existing section 8G. The current section 8G:
- provides that once WA laws are applied to the IOTs, powers and functions under these laws become vested in the Commonwealth Minister
  - ‘establishes a mechanism for the Commonwealth Minister to vest or delegate powers and functions under WA law.’<sup>2</sup>
- 6.9 Common delegations by the Minister include: ‘Commonwealth officers, WA Government officers and authorities, administration staff in the IOTs, local government authorities and other qualified people.’<sup>3</sup>
- 6.10 The proposed new section 8G is different from the current section 8G as it ‘will include an automatic vesting mechanism for certain powers.’<sup>4</sup> In particular:
- new subsection 8G(1) ‘ensures the powers of a WA Minister and the WA Governor remain vested in the Commonwealth Minister and are not subject to automatic vesting or delegation.’<sup>5</sup>

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2 Attorney-General’s Department, *Submission 7*, p. 9.

3 Attorney-General’s Department, *Submission 7*, p. 9.

4 Attorney-General’s Department, *Submission 7*, p. 9.

5 Attorney-General’s Department, *Submission 7*, p. 9.

- new subsection 8G(5) provides that where a 'WA Government officer or authority is acting in these Territories under a Service Delivery Arrangement (SDA) with the Commonwealth, the officer or authority is automatically vested with those powers ordinarily used when acting in WA.'<sup>6</sup>
- new subsection 8G(6) allows for the Commonwealth Minister to 'remove an automatic vesting or delegation, either completely or subject to conditions.'<sup>7</sup>

## Analysis

- 6.11 The *Law Reform Act* (Cwlth) provides for WA laws to be applied to the IOTs. Laws applied under section 8A of the *Law Reform Act* are considered subordinate Commonwealth laws.<sup>8</sup>
- 6.12 This legislative framework allows the Commonwealth to retain control over legal arrangements as the applied laws scheme provides that a list of any new laws enacted (at the state level, which may apply to the IOTs) are to be tabled in the Commonwealth Parliament every six months. These laws may be terminated by either House of the Commonwealth Parliament by passing a motion.<sup>9</sup>
- 6.13 The Christmas Island and Cocos (Keeling) Islands Acts provide that the Minister with responsibility for the Territories may delegate or vest the powers and functions contained in the applied laws to the IOTs Administrator or Commonwealth and WA government officials. The most common delegation is from the Minister to WA Government officials through a SDA.<sup>10</sup>
- 6.14 SDAs between the Commonwealth Government and WA State agencies are currently in place for a wide range of areas including: health, education, consumer and business advocacy, public housing and emergency services.<sup>11</sup>

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6 Attorney-General's Department, *Submission 7*, p. 9.

7 Attorney-General's Department, *Submission 7*, p. 9.

8 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

9 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

10 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

11 Attorney-General's Department, viewed 20 April 2010, <[www.ag.gov.au](http://www.ag.gov.au)>.

- 6.15 The Attorney-General's Department stated the intent of the proposed changes to the Christmas Island and Cocos (Keeling) Acts is to provide certainty for delegations made by the Commonwealth Minister under SDAs. The Attorney-General's Department commented:

The purpose of this amendment is to ensure that all delegations that are vested in the Minister – and they are all still vested in the minister – also automatically follow the Western Australian delegation regime so that the Western Australian government officer who carries that delegation in the normal course of events in Western Australia can also use them when they go to the Indian Ocean territories without the need for a separate and specific delegation instrument. Its effect should essentially be to provide greater certainty about the operation of delegations, because they all operate automatically.<sup>12</sup>

- 6.16 The Attorney-General's Department advised the changes would provide for a more efficient and effective process for managing delegations and stated:

We have had legal advice on various ways of making the process more efficient and effective, and this was suggested as being the most appropriate way, in that most delegations fall automatically to the relevant Western Australian officer without impacting on the Minister's ultimate authority to give direction on any particular delegations or indeed to withdraw them should that be appropriate.<sup>13</sup>

- 6.17 Further, the Attorney-General's Department stated the changes would be beneficial for the IOTs Shires and communities by providing greater certainty for relevant delegations for WA officers when they visit the IOTs. The Attorney-General's Department stated:

I am of the view that the operation of this will in fact improve things for the shires and the community in, as I said, providing greater certainty that the relevant delegations for the Western Australian officers, when they visit the IOTs, are in fact effective.<sup>14</sup>

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12 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 7.

13 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 8.

14 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 8.

## Conclusions

- 6.18 The proposed changes to the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Acts 1955* (Cwlth) will repeal the current section 8(G) and replace it with a new section 8(G) to provide an automatic vesting mechanism for powers and functions under the WA laws applied in the IOTs.
- 6.19 The proposed new section 8G is intended to increase the efficiency of and provide greater certainty for relevant delegations vested in the Commonwealth Minister in regard to the delivery of services for the IOTs provided by WA public servants and authorities.