

# Legislative and governance structures in Australia's Indian Ocean Territories

## A brief history

### Christmas Island

- 2.1 Australia's Indian Ocean Territories (IOTs) consist of Christmas Island and the Cocos (Keeling) Islands.
- 2.2 Christmas Island, named on the day it was formally discovered by Captain William Mynors in 1643<sup>1</sup> has a relatively small land area of around 135 km<sup>2</sup> with a geomorphology of volcanic rock and coral.
- 2.3 Christmas Island's physical isolation has assisted in the creation of its own unique flora and fauna with an abundance of land crabs and sea birds. In recognition and protection of its natural wealth, approximately 63 percent of Christmas Island has been declared National Park.<sup>2</sup>
- 2.4 Christmas Island's current estimated population of 1348<sup>3</sup> has a diverse cultural heritage comprised of approximately: 60 percent Chinese, 25 percent Malay, and 15 percent European.<sup>4</sup>

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1 Christmas Island was formally discovered by Captain William Mynors of the British East India Company on 25 December 1643. Joint Standing Committee on the National Capital and External Territories, May 2006, *Current and Future Governance arrangements in the Indian Ocean Territories*, Parliament of the Commonwealth of Australia, Canberra, p. 8.

2 Joint Standing Committee on the National Capital and External Territories, February 1995, *Delivering the Goods*, Parliament of the Commonwealth of Australia, Canberra, p. 17.

3 This figure is taken from the 2006 Census data, Attorney-General's Department, *Submission 15*, p. 3.

- 2.5 For over a century Christmas Island's economy has been reliant on phosphate mining.<sup>5</sup> Annexed and settled by the British in 1888, following the discovery of phosphate deposits, a British mining operation commenced on Christmas Island in 1897. Mine workers were settled on Christmas Island from what is now Malaysia.<sup>6</sup>
- 2.6 In 1900, Christmas Island was incorporated into the British Crown Colony of the Straits Settlements with Singapore as its capital. During the Second World War from March 1942 until 1945, Christmas Island was occupied by the Japanese armed forces.
- 2.7 In 1948, the phosphate mining operation was purchased by the Australian and New Zealand Governments.<sup>7</sup>
- 2.8 On request in 1958, sovereignty of Christmas Island was transferred from the United Kingdom of Great Britain to the Commonwealth of Australia.<sup>8</sup> The 'laws of the Colony of Singapore' which were in force prior to transfer, were continued.<sup>9</sup>
- 2.9 In 1987, the mine closed and was reopened in 1990 by a private company – Phosphate Resources Limited, trading as Christmas Island Phosphates.<sup>10</sup>
- 2.10 In order to enable mining to continue over the next decade, Christmas Island Phosphates has recently applied for new mining leases which are currently under consideration by the Minister for the Environment.<sup>11</sup>

## Cocos (Keeling) Islands

- 2.11 The Cocos (Keeling) Islands consist of 27 coral islands with a combined land area of 14km<sup>2</sup>. The two largest of these islands (atolls) - Home and West Islands are permanently inhabited. Wildlife common to the islands include: frigatebirds, boobies, mutton birds and land crabs. Shallow wells

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4 Attorney-General's Department, *Submission 15*, p. 3.

5 Christmas Island Phosphates, *Submission 6*, p. 1.

6 Joint Standing Committee on the National Capital and External Territories, February 1995, *Delivering the Goods*, Parliament of the Commonwealth of Australia, Canberra, p. 17.

7 Waters, L, 1983, *The Union of Christmas Island Workers*, Allen and Unwin, St Leonards, pp 2-4.

8 Joint Standing Committee on the National Capital and External Territories, May 2006, *Current and Future Governance arrangements in the Indian Ocean Territories*, Parliament of the Commonwealth of Australia, Canberra, p. 8.

9 Waters, L, 1983, *The Union of Christmas Island Workers*, Allen and Unwin, St Leonards, p. 4.

10 Joint Standing Committee on the National Capital and External Territories, February 1995, *Delivering the Goods*, Parliament of the Commonwealth of Australia, Canberra, p. 17.

11 Christmas Island Phosphates, *Submission 6*, p. 1.

- give access to natural reservoirs of fresh ground water sourced from rainfall.
- 2.12 The Cocos (Keeling) Islands have an estimated population of 572<sup>12</sup> with a cultural heritage composition of Cocos Malay and European.<sup>13</sup>
- 2.13 Approximately 80 percent of the population is Cocos Malay and lives on Home Island maintaining a traditional lifestyle in accordance with religious and cultural customs. The remaining 20 percent of the population reside on West Island and are mainly of European decent. Commonwealth facilities, including the administration areas, airport and animal quarantine station are located on West Island.
- 2.14 Although discovered in 1609, the Cocos (Keeling) Islands were uninhabited until the 1820s when a party led by Alexander Hare, consisting predominantly of people of Malay origin, settled on the islands. The Islands were subsequently settled by a party led by Captain John Clunies-Ross in 1827, which began harvesting the coconuts for which the Islands were named.
- 2.15 In 1857 the Cocos (Keeling) Islands were annexed to the Crown and in 1886 Queen Victoria granted all land on the islands to the Clunies-Ross family.<sup>14</sup>
- 2.16 Having previously been administered as a dependency of Britain's Singapore colony, the Cocos (Keeling) Islands became a Territory of Australia on 23 November 1955 with the enactment of the *Cocos (Keeling) Islands Act 1955*.
- 2.17 In 1978, the Government purchased for the amount of \$6.25 million, the remainder of the property on the islands owned by the Clunies-Ross Family, with the exception of the family's estate on Home Island - Oceania House.<sup>15</sup>
- 2.18 In 1984 through an Act of self determination, the Cocos population voted for integration with Australia. The vote was witnessed by the United Nations Visiting Mission appointed by the Secretary-General. At the time, the Government made a commitment that over the next decade it would raise the standard of living for the Cocos Malay community so that it

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12 This figure is taken from the 2006 Census data, Attorney-General's Department, *Submission 15*, p. 3.

13 Attorney-General's Department, *Submission 15*, p. 3.

14 Certain rights were reserved by the Crown.

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

reflected the living standards of mainland Australia. The 1993 Commonwealth Grants Commission report found that the level of service provided was now at or very close to mainland standards.<sup>16</sup>

- 2.19 Communities on Christmas Island and the Cocos (Keeling) Islands maintain family and business links with Malaysia.<sup>17</sup>

## Law reform and the legal framework applied in the Indian Ocean Territories

- 2.20 The Government acquired the IOTs by virtue of section 122 of the Australian Constitution. The IOTs were accepted by the Commonwealth through enactment of the *Christmas Island Act 1958* (Cwlth) (the CI Act) and the *Cocos (Keeling) Islands Act 1955* (Cwlth) (the CKI Act).<sup>18</sup>

- 2.21 Through its 1991 report on the legal regimes of Australia's external Territories, the Standing Committee on Legal and Constitutional Affairs made a number of recommendations including:

- Laws of Western Australia (WA) be applied to the IOTs, and
- an extended role for local government in the IOTs.<sup>19</sup>

- 2.22 In 1992, these recommendations were implemented through enactment of the *Territories Law Reform Act 1992* (The Law Reform Act). The Law Reform Act replaced existing colonial laws<sup>20</sup> with modern state laws (WA laws were applied in the IOTs). Commonwealth legislation was also applied to the IOTs. Prior to these changes, Commonwealth legislation did not apply to the IOTs 'unless specifically expressed to do so.'<sup>21</sup> These

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16 Attorney-General's Department, *Submission 15*, p. 3.

17 Attorney-General's Department, *Submission 15*, p. 3.

18 Attorney-General's Department, *Submission 15*, p. 5.

19 House of Representatives Standing Committee on Legal and Constitutional Affairs, March 1991, *Islands in the Sun*, Parliament of the Commonwealth of Australia, Canberra, pp xx to xxvii.

20 The colonial laws of Singapore together with certain regulations made by the Administrator of the IOTs during the period 1 January 1958 to 30 October 1958 were retained after the transfer of Christmas Island to Australia. Waters, L, 1983, *The Union of Christmas Island Workers*, Allen and Unwin, St Leonards, p. 4.

21 Waters, L, 1983, *The Union of Christmas Island Workers*, Allen and Unwin, St Leonards, p. 4.

legislative changes meant that the IOTs were extended the 'same rights, responsibilities and obligations' as the mainland.<sup>22</sup>

- 2.23 WA laws were applied to the IOTs through the Law Reform Act by inserting section 8A into the CI and CKI Acts. Section 8A serves the purpose of applying 'the laws in force in [WA] from time to time' to the IOTs. 'Laws applied under section 8A are considered subordinate Commonwealth laws.'<sup>23</sup>
- 2.24 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>24</sup>
- 2.25 The CI and CKI Acts provide that the Minister with responsibility for the Territories<sup>25</sup> 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 service delivery arrangements.<sup>26</sup>
- 2.26 Further, through an Ordinance, the Governor-General may amend, repeal or suspend WA laws applied in the IOTs. Under sections 9 and 12 of the CI and CKI Acts, the Governor-General is also able to create ordinances for the peace, order and good government of the IOTs.<sup>27</sup>
- 2.27 It has been the policy of successive governments to include coverage of Commonwealth legislation to the IOTs where relevant. However, while the *Trade Practices Act 1974* (Cwlth) applies to the IOTs in regard to trade or commerce,<sup>28</sup> the *Corporations Act 2001*<sup>29</sup> (Cwlth) does not apply to the IOTs which 'may have implications for future economic development.'

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22 Joint Standing Committee on the National Capital and External Territories, May 2006, *Current and Future Governance arrangements in the Indian Ocean Territories*, Parliament of the Commonwealth of Australia, Canberra, p. 6.

23 Attorney-General's Department, *Submission 15*, p. 5.

24 Attorney-General's Department, *Submission 15*, p. 5.

25 The Minister for Home Affairs.

26 Attorney-General's Department, *Submission 15*, p. 5.

27 Attorney-General's Department, *Submission 15*, p. 5.

28 Australian Competition and Consumer Commission, *Submission 29*, p. 1.

29 The Corporations Act provides for the regulation of Australian companies including their operations and the fiduciary duties of directors.

The Attorney-General's Department (AGD) is currently exploring ways to extend Corporations Law to the IOTs.<sup>30</sup>

## **Governance framework and service delivery**

### **Role of the Government**

- 2.28 AGD, on behalf of the Minister for Home Affairs, through the CI and CKI Acts administers the IOTs. In addition, other Australian Government agencies hold responsibility for matters within their portfolios such as customs, quarantine and taxation.
- 2.29 The Administrator of the IOTs is the Government's senior representative and resides on Christmas Island.<sup>31</sup> The office of Administrator of the IOTs as 'head of Government on the island was established on 1 May 1968 through an ordinance which provided that appointment be made by the Governor-General.'<sup>32</sup>
- 2.30 Residents of the Cocos (Keeling) Islands have access to AGD through regular staff visits from the Canberra and Perth offices, in addition to telephone, email and facsimile.<sup>33</sup>
- 2.31 AGD delivers essential services to the IOTs in three ways: directly; through contracts with the private sector; or through service delivery arrangements in place with the WA Government.<sup>34</sup>
- 2.32 The services provided through AGD are those services which would usually be provided at the state level on mainland Australia. These services include: 'electricity, freight and passenger ports, ferry services, education, land and asset management, environmental and industry regulation, and health.' Additional services such as law enforcement and community policing are provided by the Australian Federal Police.<sup>35</sup>
- 2.33 Table 2.1 lists the state agencies providing services to the Government through service delivery arrangements (SDAs) for the IOTs. The listed SDAs have been in place since March 2007.

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30 Attorney-General's Department, *Submission 15*, p. 17.

31 Attorney-General's Department, viewed 20 November 2009, <[www.ag.gov.au](http://www.ag.gov.au)>.

32 Waters, L, 1983, *The Union of Christmas Island Workers*, Allen and Unwin, St Leonards, p. 4.

33 Attorney-General's Department, *Submission 15.3*, Answer to Question 10.

34 Attorney-General's Department, *Submission 15*, p. 3.

35 Attorney-General's Department, *Submission 15*, p. 3.

Table 2.1 Service delivery arrangements in place between the Commonwealth Government and the Government of Western Australia for services provided to the IOTs<sup>36</sup>

| Agency   | Services provided   |
|--|---|
| BreastScreen WA                                  | Screening and diagnostic mammography services   |
| Department of the Attorney-General               | Access to the justice system including: <ul style="list-style-type: none"> <li>• Court Services;</li> <li>• Registry Office;</li> <li>• State Solicitors Office; and</li> <li>• Public Advocate</li> </ul>  |
| Department for Community Development             | Professional supervision and support for the Indian Ocean Territories (IOTs). Social Worker to promote responsibility and growth in family and community life and contribute to the protection and care of children.<br><br>Information and support to licensed and proposed childcare providers, and administration of the applied legislation concerning working with children. |
| Department of Consumer and Employment Protection | Information to business and consumers, and the development and enforcement of consumer protection legislation.<br><br>Information to employers and employees, and the development and enforcement of occupational safety and health legislation, including resources safety and the storage, transport and handling of dangerous goods.<br><br>Energy safety regulatory services. |
| Department of Corrective Services                | Offender management services.   |
| Department of Culture and the Arts               | Broad policy and planning services, arts development services (including art funding administration), art gallery services, museums services, and cultural planning services.   |
| Disability Services Commission                   | Support and services to people with disabilities in the IOTs.   |
| Department of Education and Training             | Monitoring and assessment of the compliance of IOTs vocational and adult education and training providers with legislative requirements.<br>Registration and monitoring of IOTs apprentices and trainees.   |
| Office of Energy                                 | Advice on energy policy and regulatory matters in the IOTs.   |
| Department of the Environment and Conservation   | Protection and enhancement of the IOTs environment and water resources through the implementation of applied environmental protection law, including protection of water resources, regulation of prescribed premises, emissions and wastes, and incident protection and response.  |
| Equal Opportunity Commission                     | Information and advice on equal opportunity and human rights issues and the investigation of complaints under the applied equal opportunity legislation.  |
| Economic Regulation Authority                    | Promote economically efficient outcomes in the IOTs at the lowest practicable regulatory cost through efficient and effective independent regulation, independent advice to the Commonwealth and advancing the debate on economic regulation.   |

36 Attorney-General's Department, viewed 20 November 2009, &lt; www.ag.gov.au &gt;.

| Agency   | Services provided   |
|--|---|
| Fire and Emergency Services Authority  | Support to volunteer brigades including planning, training, and equipment.<br><br>Community education on safety issues, and compliance with building safety requirements.   |
| Department of Fisheries  | Procedural and technical advice in relation to aquaculture proposals and management of fish resources.  |
| Department of Health   | Regulatory, advisory and other support services as required in the delivery of whole-of-health services.  |
| Office of Health Review  | Handling of complaints about the provision of health services in the IOTs.  |
| Department of Housing and Works  | Advice and support to the Administration Housing Unit for the effective administration of social housing in the IOTs.   |
| Department of Industry and Resources   | Registration of IOTs mineral titles and advice on associated environmental matters.   |
| Department of Land Information   | Land information services, including registration of title, and geographic and cadastral information.<br><br>Impartial valuation services supporting asset management and revenue collection.   |
| Legal Aid Commission   | Quality legal services to those in need, and assistance to the community in accessing justice.  |
| Department of Local Government and Regional Development                        | Ensuring compliance with applied local government legislation, and facilitating the development of local government for the elected body, and the communities.  |
| Main Roads WA  | Provision of road funding and traffic management in cooperation with local government.  |
| Medical Board of WA  | Monitors the conduct of doctors and the standards of medical treatment provided in the IOTs according to applied legislation.   |
| Nurses Board of WA   | Regulates the practice of nurses in accordance with applied legislation to ensure appropriate and safe standards of nursing care are promoted and maintained in the IOTs.   |
| Parliamentary Commissioner for Administrative Investigations (State Ombudsman) | Provides a system for handling complaints about the administrative actions of State government agencies in the IOTs which are within the Commissioners jurisdiction.  |
| Department for Planning and Infrastructure                                     | Planning, legal and administrative advice to ensure the use and development of land in the IOTs is consistent with strategic planning, policy guidelines and planning standards.<br><br>Provision of advice and assistance to the Commonwealth on a broad range of transport issues.<br><br>Administration of Crown land in the IOTs. |
| Public Trustee Office  | Trustee services, including the preparation of wills and provision of executor and administrator services for IOTs residents.   |
| Department of Racing, Gaming and Liquor  | Liquor licensing services, including compliance audits and investigations.  |
| Small Business Development Corporation   | Provision of specialised information, referral and business facilitation services, and representation of small business interests in WA policy development.   |



| Agency                             | Services provided  |
|------------------------------------|--|
| Department of Sport and Recreation | Provides advice on the sporting and recreational infrastructure needs in the IOTs, and support and advice to sporting and recreational groups in the IOTs.   |
| State Library of WA                | Provides IOTs local authorities and associated bodies with leadership, library materials, information and support services.  |
| Department of Treasury and Finance | Collects and remits State-type revenue to the Commonwealth in accordance with applied legislation.<br><br>Provides purchasing, contracting and consulting solutions to the Commonwealth as required. |
| Workcover                          | Administers the applied workers compensation legislation for the benefit of injured workers.   |

2.34 The WA Department of Education and Training also operates the Christmas Island District High School and Cocos (Keeling) Islands District High School. School based education is provided for Kindergarten to Year 10 on the Cocos (Keeling) Islands and up to Year 12 on Christmas Island. Students follow the WA schools curriculum.<sup>37</sup>

## Role of the shire councils

2.35 A second tier of government applicable to the IOTs, established in 1992, is provided at the local level through 'Shires', similar to the shire councils which operate on the mainland. The shires operate under the provisions of the applied *Local Government Act 1995 (WA)* and are governed by councils.<sup>38</sup> The first shire councils for the IOTs were elected in 1993.

2.36 The Shire of Christmas Island Council is comprised of nine councillors who hold four year terms. The council is responsible for electing its own President and Deputy President and with the exception of January, meets monthly. Councillors also participate on council formed committees.<sup>39</sup>

2.37 The Shire of Cocos (Keeling) Islands Council is comprised of seven councillors holding four year terms and meets monthly. Elections are held every two years with three or four Councillors retiring at each election. The President is directly elected by the Council and holds office for two years.<sup>40</sup>

37 Attorney-General's Department, viewed 20 November 2009, <[www.ag.gov.au](http://www.ag.gov.au)>.

38 Attorney-General's Department, *Submission 15*, p. 5.

39 Shire of Christmas Island, viewed 20 November 2009, <[www.shire.gov.cx](http://www.shire.gov.cx)>.

40 Shire of Cocos (Keeling) Islands, viewed 20 November 2009, <[www.shire.cc](http://www.shire.cc)>.

- 2.38 Services provided at the local level are similar to those that are provided by local governments on mainland Australia. In addition, the councils act as agents for the Commonwealth Government in the provision of some services. (Eg. operation of the motor vehicle registry).
- 2.39 Shire Councils are able to raise a limited amount of revenue through rate collection. As the IOTs shire councils are not eligible for funding under the Financial Assistance Grants (FAG), they receive funding from the Government 'through the Territories Administered budget, calculated by the WA Local Government Grants Commission.' This funding is FAG-equivalent and is calculated in the same way as FAG. This funding 'constitutes the bulk of shire funding and is untied.' Broadly, the range of grants available to the shires is comparable with that available in WA.<sup>41</sup>

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41 Attorney-General's Department, *Submission 15*, p. 6.