

Governance of the Indian Ocean Territories

Introduction

- 5.1 This chapter deals with three interrelated aspects of governance arrangements in the Indian Ocean Territories – the role of the shires, the aspirations of residents for more representative governance arrangements, and options for the reform of governance.
- 5.2 The Committee notes that any future role for the shires, whether along current lines or expanded to take on roles not traditionally part of local government, is intimately dependent upon broader governance outcomes. How the Australian Government and the local communities see the future governance of the IOTs unfolding will determine the role of the shires.
- 5.3 The options for future governance arrangements include:
- maintaining current governance arrangements with some refinement;
 - incorporation of the IOTs into the State of Western Australia; and
 - limited self government.
- 5.4 The Committee notes that which of these options will best meet the needs of the IOTs is a matter of contention. Broadly speaking, the Australian Government supports incorporation; the Christmas Islanders support self government; and the Cocos (Keeling) Islanders are seeking whichever solution best meets their needs, including the status quo.

- 5.5 However, one thing is clear from the evidence. The people of the IOTs want to be consulted on all the options being considered for the future governance of the Territories, before ultimately being left to determine which is the most desirable option for themselves.

The role of the shires

- 5.6 The evidence put before the Committee as to the role of the shires is complex and contradictory. The Committee observes that the current role of the shires – limited to the traditional role of local government – is predicated upon the eventual incorporation of the IOTs into Western Australia.
- 5.7 The current local government structure came in to effect in 1992. Prior to this, local government arrangements differed between Christmas and the Cocos (Keeling) Islands.
- 5.8 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 local government, such as power generation and distribution.
- 5.9 On Cocos, a Home Island Council was created under the *Local Governance Ordinance 1979*, with local government responsibilities for Home Island only. West Island was administered directly by the federal department responsible for territories.¹
- 5.10 The current model of local government operating in the IOTs – the shires of Christmas Island and Cocos (Keeling) Islands – was created in 1992 as part of the law reform package whereby Western Australian legislation is applied to the IOTs as Commonwealth law. According to DOTARS:

This followed the House of Representatives Standing Committee on Legal and Constitutional Affairs report, *Islands in the Sun* [1991], 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

1 Department of Transport and Regional Services, Submission no. 12, pp. 2-3.

discussions with the WA Government on the future of the IOTs, including the option of incorporation.²

- 5.11 Based on this approach, the Australian Government has adopted an interpretation of the role of the IOTs shires in close accord with the role of local government on the mainland:

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, i.e. 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.³

- 5.12 This view of the role of the shires is not satisfactory according to the Shire of Christmas Island, which argues in its submission that the Commonwealth has misinterpreted the role of the Shire from both a legal and historical perspective:

In essence the Commonwealth views the Shire as only having the role of a remote mainland local government whereas the Shire believes this was never the intention, as the Islands in the Sun recommendations and the subsequent legislative instruments which gave rise to the Shire, attest. There is an unbroken link between the Christmas Island Assembly and the Shire Council that must be understood. A broader role, including decision making power, beyond that of a local government was envisaged. As time has gone on, the Commonwealth have conveniently forgotten this link.⁴

- 5.13 The result of this, according to the Shire, is an unsatisfactory relationship between the local community and the Commonwealth, characterised by conflict and frustration:

The nub of the issue is this: the community want a similar level of involvement in decisions that are normally the province of State Government, and look to the Shire as the means of having this say, whereas the Commonwealth wants to keep State Government type decisions as its exclusive province. While the Government keeps

2 Department of Transport and Regional Services, Submission no. 12, p. 3.

3 Department of Transport and Regional Services, Submission no. 12, p. 3.

4 Shire of Christmas Island, Submission no. 10, p. 156.

articulating its policy of incorporation of the Territory into the State of Western Australia as the solution to the community's desire for involvement in decision making – but never does anything about it – the community are held captive to an empty promise. The Commonwealth has its cake and eats it too, and the community is left with bread and circuses.⁵

5.14 Specific issues of contention between the Shire of Christmas Island and DOTARS include:

- Shire assets remaining under Commonwealth ownership⁶ (although DOTARS claims to be addressing this issue⁷); and
- Factoring back of local government grants, meaning the Shire gets approximately 92% of recommended funding (which is in line with experience on the mainland and, therefore, part of the 'normalisation' process⁸).

5.15 Much of the frustration felt by the Shire of Christmas Island also relates to the issues raised in chapters three and four. The long term solution sought by the Shire is the transformation of governance along more representative lines, with the IOTs communities having a greater say in the delivery of state-type services and greater control over those services. In the meantime, the Shire has identified five measures to provide short term relief to the residents of Christmas Island:

1. The Commonwealth and the Shire agree and implement a service delivery framework for local government and community service provision. This framework to be based on community need and effective service provisions as distinct from "core" local government concepts, take into account all state and local government services currently provided, and new or unmet needs.
2. The Commonwealth and the Shire agree and implement an asset transfer plan based on freehold transfer of all community facilities necessary to support the service delivery framework.
3. The Commonwealth and the Shire negotiate funding arrangements for the Shire based on the agreed service delivery framework. The funding to be calculated based on actual identified need rather [than] a factor back methodology.

5 Shire of Christmas Island, Submission no. 10, p. 157.

6 Shire of Christmas Island, Submission no. 10, p. 171.

7 Department of Transport and Regional Services, Submission 12, p. 3.

8 Shire of Christmas Island, Submission no. 10, pp. 174–7.

4. The Commonwealth and the Shire settle disputed property matters concerning the Christmas Island Laundry and the Christmas Island Supermarket.
 5. Legislative arrangements are established to enable the Shires of Christmas Island and Cocos (Keeling) Islands effective means to enter into regional local government type cooperation agreements.⁹
- 5.16 In contrast to the position adopted by the Shire of Christmas Island, the Cocos (Keeling) Islands Shire Council has adopted the view that ‘irrespective of the ultimate form of future governance’, the shires should ‘continue in their current roles’.¹⁰
- 5.17 In evidence before the Committee, Mr Bill Price, Chief Executive Officer of the Cocos (Keeling) Islands Shire Council, stated that the Shire was not yet ready to take on an expansion in its areas of responsibility and was happy, for the time being, to focus on its traditional local government roles:
- We need to concentrate on our local government areas first. We have only been a true local government for the last 14 years so there are some areas we probably need to tidy up first before we take on those state type areas. At the moment we would not have the capacity. I am not saying that in future that is not an area we could look at once our capacity has been improved.¹¹
- 5.18 This is not to say that there has not been tension between the Cocos (Keeling) Islands Shire Council and DOTARS on occasion. In his submission, Mr Robert Jarvis, former Chief Executive Officer of the Shire Council, noted the Shire’s frustration at the factoring back of local government grants; and cited the case of goat importation as an example of the Shire and DOTARS working at cross purposes:
- 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

9 Shire of Christmas Island, Submission no. 10, p. 192.

10 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 8.

11 Mr B. Price [Cocos (Keeling) Islands Shire Council], *Transcript of Evidence*, 1 February 2006, p. 4.

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.¹²

- 5.19 In assessing the evidence presented to it, the Committee notes that a broader role for the shires of the IOTs was contemplated in the *Islands in the Sun* report. Recommendation 7 of that report provides:

The Committee recommends that the Commonwealth accelerate the development of administrative and political reform on Christmas Island to ensure the progressive development towards the establishment of a local government body on Christmas Island with an expanded role, including direct access to the Commonwealth Minister in respect of laws to apply on the Island, for reviewing Western Australian laws for their appropriateness to the Territory.¹³

- 5.20 Recommendation 19 makes almost identical provision for the Cocos (Keeling) Islands:

The Committee recommends that the Commonwealth, in consultation with Territory residents, develop a mechanism, such as a local government body with an expanded role, including direct access to the Commonwealth Minister in respect of laws to apply on Cocos (Keeling) Islands, for reviewing Western Australian laws for the appropriateness to the Territory.¹⁴

12 Mr Robert Jarvis, Submission no. 3, p. 2.

13 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra, rec. 7.

14 House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra, rec. 19.

Aspirations of residents for more representative governance arrangements

- 5.21 The Committee believes that whatever the ultimate policy outcome with regard to the future governance of the IOTs, the aspirations of residents must be taken into account. This means that future governance arrangements should be the result of deliberate consultation and a definitive test of Islander opinion, such as a referendum. The Committee notes that there is a substantial difference in the aspirations for more representative governance arrangements between Christmas Island and the Cocos (Keeling) Islands. These differences must be addressed by any process intended to result in a change of governance arrangements.
- 5.22 Mr Gordon Thomson, President of the Shire of Christmas Island, told the Committee: 'We want change in order to put our community on a surer and fairer footing so that we can realise that our future is in our hands.'¹⁵ He continued:
- We do not want to be characterised as mendicants fighting over titbits and craving reassurances from a colonial master. We do not want to be treated like children by a paternalistic service provider, which makes decisions and controls our lives for our own good... We want past discrimination redressed and we want the opportunity to contribute to our own future – to have a real say in what happens here.¹⁶
- 5.23 In its submission, the Shire of Christmas Island makes clear its desire for more representative governance arrangements. The submission argues that 'it is clear that the community is dissatisfied with current governance arrangements', and that 'the community has demonstrated its aspirations for a greater say in its own affairs'.¹⁷ This does not mean independence or free association, but integration 'based on comparable levels of political rights, a modern governance system without any vestige of colonial institutions/administrative systems, fair and effective decision making, and adequate resources to provide relevant and comparable standards and services.'¹⁸
- 5.24 In its submission, the Christmas Island Chamber of Commerce stated that 'effective governance based on self-determination is the only way the

15 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3.

16 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 4.

17 Shire of Christmas Island, Submission no. 10, p. 193.

18 Shire of Christmas Island, Submission no. 10, p. 195.

Indian Ocean Territories will attain sustainable economic development and social cohesion'. It further argued:

The current colonial style administration has demonstratively failed this community. It has demoralised our economy, destroyed investment confidence and has critically undermined the Island's sense of community.¹⁹

5.25 According to the Chamber of Commerce, it is 'in the best interests of the Commonwealth to have both of the Indian Ocean Territories, populated by small but vibrant communities, fully integrated politically and economically with mainland Australia'.²⁰

5.26 Similarly, the Cocos (Keeling) Islands Economic Development Association (CKIEDA) argued that continuing the current governance arrangements into the long term was not an option:

The continuance of the CKI and CI as non-self governing territories is no longer a valid option as a form of future governance. It provides no democratic representation, at the equivalent of state level, for the territories' residents. It is essential that an elected form of representation at the equivalent of state level be achieved to provide dynamic leadership and direction for the IOTs.²¹

5.27 In his evidence and submission, Mr John G. Clunies-Ross, a resident of the Cocos (Keeling) Islands, argued that Australia should either complete the process of integration of the Islands following the Act of Self Determination in 1984 or abandon the process 'and create a real program to achieve the required dynamic state of evolution towards self-government in any of its forms'.²² He noted that 'the Commonwealth brought to the table the possibility of integrating into Australia and they have been unable to discharge that part of the bargain, and it is the base part of the bargain'.²³ Integration had failed, Mr Clunies-Ross argued, and it was time to move on.²⁴ Moreover, he argued, self government should not be impeded by budget considerations – the issue of economic self-sufficiency was separate from the issue of self government:

19 Christmas Island Chamber of Commerce, Submission no. 4, p. 1.

20 Christmas Island Chamber of Commerce, Submission no. 4, p. 4.

21 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 22.

22 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 33.

23 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 35.

24 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 36.

The financial responsibility of the Commonwealth and the territory has little or no bearing on the governance of the territory. Most of the money spent on Christmas Island is on the federal issue of immigration. Christmas Island does not have an immigration problem. The vast lump of the budget spent in the territories in the last three years has been on nothing to do with Cocos or Christmas Island; it has everything to do with a federal budget issue. If you said to us, 'You can put up an immigrant and we will give you \$80,000 a year,' I would have them as a house guest; it would not worry me at all. The fact of the matter is that you have built a low security place on Christmas Island. You have spent a lot of money on that and I cannot see that it has any relevance to me, to Christmas Island or to the governance of the island.²⁵

- 5.28 However, the view from the Cocos (Keeling) Islands is generally more tentative than that adopted by Mr Clunies-Ross or CKIEDA. Mr Clunies-Ross stated: 'The majority of residents on Cocos are content with the status quo, seeing rising living standards and housing as a reasonable reward for subjugation.'²⁶ In evidence received by the Committee, representatives of the Cocos (Keeling) Island Shire Council demonstrated an overall acceptance of the existing arrangements, and a willingness to accommodate themselves to the current system of governance. In evidence before the Committee, Shire President, Mr Ron Grant, stated:

At the moment we are a non-self-governing territory of Australia. The way the shire here looks at it, our parliament is the federal parliament, we have approximately 70 senators and 150 members of the House. We have elected members that represent us in the House of Reps and the Senate, but we do not restrict ourselves to just the members representing us; we believe we have access to any senator and any member of the House who has expertise and experience in areas we would like to promote. Whoever has the numbers will have the government of the day. The government of the day will appoint a minister to oversee policy and the application of legislation. The quality of the legislation can be applicable to Australia as a whole or very specific to the Cocos (Keeling) Islands. The Commonwealth has its representative the administrator, and to assist the minister in the performance of his portfolio responsibilities we have DOTARS.

25 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, pp. 37-8.

26 Mr J. G. Clunies-Ross, *Transcript of Evidence*, 1 February 2006, p. 34.

We work within the current framework...We believe that while we are looking at future governance options, which will take some time, we have to use the current system as effectively as we can and that is what we are doing at the present time. The key area we have access to is policy that has been developed that is specific to the Cocos (Keeling) Islands.²⁷

5.29 This is not to say that the people of Cocos are not interested in reform of governance; rather, at this early stage, they are more interested in the process by which decisions are made than the outcome. In its submission, the Cocos (Keeling) Islands Shire Council does not advocate reform of governance, but insists that prior to any change, residents of the IOTs must be consulted – it is for the IOTs communities to determine their own future.

5.30 According to the Shire, the process of change must begin with the education of the community. There must be an education program delivered by a neutral party to provide residents with sufficient information to make an informed decision on this complex issue. This must be followed by a referendum of residents of both IOTs communities. Whatever decision is reached must be applied to both Territories, and a realistic time frame has to be established for each step in the process.²⁸

5.31 In evidence before the Committee, Mr Price summed up the position of the Shire Council as follows:

We are trying to stay very neutral. Council's position is that the community need to make that decision. We feel it is community's decision to make. Council is in the same position as the community in that we really do not know what the implications would be if we came under the Western Australian state. We understand that the islands are heavily subsidised in a lot of areas. Is that still going to be the case under a Western Australian arrangement? With electoral reform, we do not know what representation we could have up here. As a community and as a council we are sitting fairly neutral at the moment. We need to be educated on the options and the implications.²⁹

27 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, pp. 31–2.

28 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 59.

29 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 5.

Proposals for reform

- 5.32 The Committee notes that options for the reform of governance in the Indian Ocean Territories fall into three categories:
- maintaining current governance arrangements with some refinement;
 - incorporation into the State of Western Australia; and
 - limited self government.
- 5.33 The first of these options has already been addressed; the other two are further investigated below. Other issues raised in evidence include direct federal representation for the IOTs as a separate electorate;³⁰ and United Nations intervention in the reform of governance process.³¹ The Committee notes that while separate representation for territories is not unprecedented – both the Northern Territory (1922) and the Australian Capital Territory (1948) gained federal representation before self government and while their populations were still relatively small – it regards the current arrangement, whereby the people of the IOTs vote for, and are represented by, Northern Territory Members of the House of Representatives and Senators, as satisfactory. The Committee also acknowledges the role of the United Nations in the initial governance of the Cocos (Keeling) Islands, but believes questions of future governance for the IOTs are matters best left to the IOTs communities and the Australian Government to resolve.

Incorporation into Western Australia

- 5.34 Incorporation into Western Australia is the stated policy of the Australian Government for the long term future governance of the IOTs. In its submission, DOTARS stated:

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

30 Shire of Christmas Island, Submission no. 10, p. 205.

31 Shire of Christmas Island, Submission no. 10, p. 198–201; Mr J. G. Clunies-Ross, Submission no. 15.

provide national programmes and discharge Commonwealth responsibilities, as in any other Australian community.³²

5.35 DOTARS also notes in its submission that incorporation 'is some years away'. Incorporation will require a referendum in Western Australia, with DOTARS submitting that the Australian Government 'would also be seeking the support of the IOTs' communities before such a referendum was undertaken'.³³ In the interim, the Government has 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'.³⁴

5.36 The Australian Government's immediate focus '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'. Tying service delivery in the IOTs into the Western Australian framework is laying the foundation for eventual incorporation:

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.³⁵

5.37 The Committee notes that plans for incorporation are not well advanced. In evidence before the Committee, DOTARS explained:

The decision on how to move and at what point would ultimately be a government decision. There was obviously some exploration at a fairly preliminary level with the relevant Western Australian government at the time ['some years ago'] and it was decided that there would be no point in proceeding further.³⁶

5.38 The Committee also observes that without the cooperation of Western Australia and the IOTs communities, incorporation may not be viable. Ms Virginia Miller, representing the Western Australian Government, advised the Committee that there had been 'no structured discussion with that on

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

33 Department of Transport and Regional Services, Submission no. 12, p. 4.

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

35 Department of Transport and Regional Services, Submission no. 12, p. 4.

36 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 20.

the agenda in all the time I have been in this position'.³⁷ She further noted that:

There has never been a formal analysis of the pros and cons or benefits and pitfalls of the incorporation of the territories into Western Australia. That would need to be done before the state would even countenance incorporation.³⁸

5.39 Ms Miller also questioned the cost to Western Australia of running the Territories after incorporation. Then there is the vexed question of what the IOTs want for themselves.³⁹ The view from Western Australia, set out in a letter to Mr Gordon Thomson, President of the Shire of Christmas Island, by then Premier of Western Australia, Dr Geoff Gallop MLA, indicated that Western Australia would only consider incorporation if it were agreed to by the IOTs communities in the first instance. In this letter, dated 25 August 2004, Dr Gallop wrote:

Notwithstanding any impression which may have been created by Senator Campbell [then federal Minister for Territories], I can assure you that incorporation has not been raised with me at a political level by him or any other Commonwealth Minister. I note the objections in your letter to the position put forward by Senator Campbell and support your desire for Referenda in the Territories on this issue. It seems only fair and reasonable for Australian citizens in the Territories to have the same rights as those on the mainland.⁴⁰

5.40 In evidence presented to the Committee, there is little indication of support for incorporation, and much opposition. The Shire of Christmas Island regards incorporation as 'a remote and unsatisfactory outcome'.⁴¹ In its submission, the Shire argued that incorporation would simply shift the locus of current problems from the federal to the state level. It also questioned the rationale for Western Australia to accept responsibility for the Territories – exchanging cost neutral service delivery arrangements for the full cost of running the Territories – and the likelihood of such a proposal passing a referendum.⁴² It urged an alternative solution:

37 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 5.

38 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 13.

39 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, pp. 13–14.

40 Government of Western Australia, Submission no. 11, Attachment 2.

41 Shire of Christmas Island, Submission no. 10, p. 193.

42 Shire of Christmas Island, Submission no. 10, p. 205.

If the Commonwealth's treatment of the community 'just like a remote mainland community' is indicative of how the Island would be treated if it was incorporated into Western Australia, then the community can't see this as a desirable step. The community also can't see this as having the potential to be realised. If the Commonwealth have been advocating this move for some time and done nothing to advance the proposition, if the Constitutional steps required present a barrier to such incorporation in that it relies on the Government and the people of Western Australia agreeing, and if the lack of a Constitutional right for the people of Christmas Island to have a say cannot be unequivocally guaranteed by some other means, an alternative approach could and should be developed.⁴³

- 5.41 In evidence before the Committee, Mr Russell Payne, President of the Christmas Island Chamber of Commerce, described the Commonwealth's incorporation policy as a clear violation of the right to self determination provided for under international law. He argued that the United Nations Charter and Resolution 1541 set out clear obligations and processes by which the Commonwealth was bound, providing for the democratic resolution of a non-self governing territory's status, obligations the Commonwealth had ignored:

However, despite these very clear processes, in 2000 the Commonwealth, in an unambiguous violation of its obligations under international law, unilaterally decided to impose a policy of full integration with the state of Western Australia onto the peoples of the Indian Ocean territories. This policy was written in Canberra, by Canberra, for Canberra. The policy was compiled in secret without any consideration to the aspirations or democratic rights of the peoples of the Indian Ocean territories. It took 3½ years for this policy to be officially promulgated. Residents of the territories were not informed of the existence of this policy until January 2004.⁴⁴

- 5.42 The view from Cocos, expressed by Shire President, Mr Ron Grant, was that incorporation would be disastrous – mainly because it would add another layer of complexity to the governance of the islands. He preferred the existing arrangement:

43 Shire of Christmas Island, Submission no. 10, p. 194.

44 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 29.

I think it would be an absolute disaster – not so much that it is not a good thing, but let me give you an example. If the Cocos (Keeling) Shire was a local shire of Western Australia and we wanted to discuss an issue on local government, regional development, education, health or community development, we would have to deal with four government departments and four separate ministers. Here we have one-stop shopping: one minister; one department. If you have a very good political strategy and you have the respect of that minister and the department so that they can see that you know where you are going, it works far more effectively than if you incorporate into WA. But you must know the game, how it is played politically and within the department to make it as effective as possible. So the current system would work far better than being incorporated into WA, which would add another layer of governance.⁴⁵

5.43 Similar sentiments were expressed by Shire Council CEO, Mr Bill Price:

My personal opinion, not council opinion, is that we probably have a pretty good arrangement with the Commonwealth now and there is a possibility of opening those channels and remaining on that. My experience in Western Australia is that there is a lot of concentration on the high population areas and not a lot of concentration on small population rural areas. It is my personal opinion that it could be the same case for out there. Again, whether Western Australia have the capacity to fund – it is always probably going to be a Commonwealth responsibility anyway.⁴⁶

5.44 Mr Robert Jarvis, a former CEO of the Shire of Cocos (Keeling) Islands, believed incorporation was unlikely to garner sufficient support to succeed, and that a more popular outcome in both Territories would be some form of self-government:

A view that I still hold is that it is very unlikely that the two communities would want to become part of Western Australia, and I understand that is still the proposition of the department – that the two territories should become part of Western Australia. I am not sure, because it has never been tested, whether or not the people of Western Australia would want to inherit the two Indian Ocean territories. If I am correct in those assumptions, I believe the

45 Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 36.

46 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 10.

people in the territories would like to see some form of self-government so that they have some say in some of the decisions that are made about their day-to-day lives.⁴⁷

Self Government

5.45 The Committee notes that there are, broadly speaking, three positions on self government for the IOTs articulated in the evidence – the Australian Government opposes self government; the Christmas Islanders support it; and the Cocos Islanders are unwilling to commit themselves without first being able to examine the implications of any proposal. What the two communities in the IOTs do have in common is the belief that any decision on future governance arrangements should be an informed decision made by the communities themselves.

5.46 The Australian Government's position on self government for the IOTs is outlined in DOTARS' submission to the inquiry:

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 [Commonwealth Grants Commission] 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.⁴⁸

47 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 50.

48 Department of Transport and Regional Services, Submission no. 12, p. 9.

The view from Christmas Island

5.47 The Committee notes that the Shire of Christmas Island is not advocating any particular models of self government; 'rather it is proposing that given the resources, information and time, an appropriate model could be developed'.⁴⁹ Moreover, the Shire itself acknowledges the shortcomings of the Norfolk Island model in relation to the IOTs:

Despite earlier consideration of the Norfolk model of self government, the Shire is not advocating this system. While in 1999 the Shire perceived similarities with Norfolk, considered self government as superior to non self government and identified that the Norfolk self government model was at least an example of an alternative in the Australian context, the financial/funding arrangements pertaining to Norfolk did not translate easily into the Indian Ocean Territories context, particularly the differences in the level of economic self sufficiency enjoyed.⁵⁰

5.48 From the perspective of the Shire of Christmas Island, developing an effective process by which questions of future governance can be worked out is the essential first step towards some form of self government. However, as the Shire acknowledges, 'a better system of governance can be developed only if there is a will on the part of the Commonwealth to work with the community to decide appropriate arrangements'.⁵¹ The key ingredient is the willingness of the Commonwealth to consider alternatives to the current arrangements and examine the possibilities of self government.

5.49 The first step in the process identified by the Shire of Christmas Island is agreement to work towards a better system of governance:

Importantly, as the Shire has emphasised, the process can only begin if there is agreement that there is – and should be – a better way to govern the Island: that it is agreed that non-self government is neither desirable nor effective; that the community are the permanent residents of the Island and should be accorded due recognition and respect; that greater autonomy is about community development and fair democracy, not a threat to Australian sovereignty; and that community rather than

49 Shire of Christmas Island, Submission no. 10, p. 194.

50 Shire of Christmas Island, Submission no. 10, p. 193.

51 Shire of Christmas Island, Submission no. 10, p. 194.

bureaucratic control is desirable as framed by Commonwealth policy and fair and effective accountability mechanisms.⁵²

- 5.50 The next step is establishing a set of broad principles and commitments to guide the process:

As the Shire has highlighted, community distrust and suspicion of the Commonwealth is deeply ingrained. By establishing principles, by making commitments, such distrust and suspicion can give way to trust and confidence. It will also give the process a much better chance of success. The Shire has identified a number of ways in which the Commonwealth could give a clear commitment to the community by word and by deed. The fundamental commitment is of course to work with the community to develop better governance arrangements.⁵³

- 5.51 An essential ingredient to the process from the Shire's perspective is engaging an 'honest broker' – a 'person or organisation acceptable to both parties', to keep the process 'on a firm footing'.⁵⁴ The Shire regards United Nations supervision of the process as the ideal, but concedes that 'it is possible to replicate this process through other means'.⁵⁵

- 5.52 The Shire also argues that the process must involve immediate steps towards change to address issues of accountability, economic development, applied law, service delivery and local government service provision, already identified as requiring attention. The Shire notes that 'not only are immediate improvements necessary, their implementation would give considerable confidence to the longer term process and resultant arrangements'.⁵⁶

- 5.53 The Shire of Christmas Island calls for an agreed framework and timeframe for change:

A framework to commence the process of developing a better form of governance would need to be established at the outset. This framework should also identify the representative group to work closely with the independent broker and Commonwealth on behalf of the community. Realistic timeframes and the identification of resources required would ensure the parties had a clear forward agenda that could be communicated to all. Again,

52 Shire of Christmas Island, Submission no. 10, p. 210.

53 Shire of Christmas Island, Submission no. 10, p. 210.

54 Shire of Christmas Island, Submission no. 10, p. 210.

55 Shire of Christmas Island, Submission no. 10, pp. 200-1.

56 Shire of Christmas Island, Submission no. 10, pp. 210-11.

the establishment of the framework would build confidence in the process.⁵⁷

- 5.54 The Shire's submission notes that gathering and disseminating information, such as economic data, information about constitutional issues and potential means of advice need be part of the process. Investigating possible governance models and identifying how well they apply to the IOTs is also important. 'Once the investigation has concluded, and information collated, these should be brought together as the basis for developing options that could be realised.'⁵⁸
- 5.55 The submission also notes that, as part of the process, the manner of enabling the community to democratically decide on the preferred option needs to be considered. This must include consideration of who is entitled to vote, the timeframe for community education and discussion, the manner of voting and the timetable for implementation. Once an option is agreed, the focus will switch to implementation. The Shire notes that this 'in itself could take considerable time and would need careful management through its early stages'. Finally, once implementation has occurred, 'mechanisms need to be introduced and maintained to support the new governance arrangements, troubleshoot any problems and settle new issues not envisaged in the development of the options'.⁵⁹
- 5.56 In its evidence to the inquiry, the Christmas Island Chamber of Commerce took a similar stance to that adopted by the Shire of Christmas Island. The 'mission statement' in the Chamber of Commerce's submission reads:
- It is the wish of the peoples of Cocos (Keeling) Island and Christmas Island that Cocos (Keeling) Island and Christmas Island achieve, over a period of time, internal self government as a single Territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and other separate political and administrative institutions.⁶⁰
- 5.57 Amongst proposals for 'the way forward', the Christmas Island Chamber of Commerce suggests creating a single political entity, combining the Cocos (Keeling) Islands and Christmas Island, to be known as the Indian Ocean Territories; and establishing a Legislative Assembly, 'with powers to create and repeal legislation applicable to the provision of all non-

57 Shire of Christmas Island, Submission no. 10, p. 211.

58 Shire of Christmas Island, Submission no. 10, p. 211.

59 Shire of Christmas Island, Submission no. 10, p. 212.

60 Christmas Island Chamber of Commerce, Submission no. 4, p. 7.

commonwealth services'. The Assembly will have 'all those powers, obligations and responsibilities normally the function of the parliament in a state of the Commonwealth of Australia'. The Assembly will continue the practice of endorsing Western Australian legislation as law applying to the Territories. This will have cost benefits for the Territories and maintain the quality and integrity of the law applying to the islands. The Assembly will also be better able to scrutinise the legislation than the present system and filter out inapplicable legislation. All interests in current SDAs held by the Commonwealth with Western Australia are to be assigned to the Assembly. Maintenance of the SDA system will become the responsibility of the Assembly. The submission also notes that 'the Assembly will need to maintain a technically competent bureaucracy to administer the business of the Assembly'.⁶¹

- 5.58 In evidence before the Committee, Russell Payne, representing the Chamber of Commerce, expressed confidence that the IOTs could run state-type services on their own behalf using applied laws and SDAs:

I believe that we can run an entire state government level of services on the island, with SDAs where they are needed. I agree with the shire's submission that a lot of those SDAs could be amortised and run by a bureaucracy that is based here...

I have absolutely no problem at all with understanding that we could give an internal local assembly running our entire state level services, based on the model that actually exists on the island now, where we receive Western Australian law and we receive the bureaucratic support from SDAs through Western Australia. It takes that onus away that, as you are all very well aware – and it goes on at Norfolk Island – where generally legislation is done after the horse has bolted. There is a very small population base to get the intellect and the life experience to develop good laws that really protect their people, and that is where they are failing badly at the moment. They really should look at a model very similar to the way that we receive our state government legislative base. We can do it here if we use that system.⁶²

- 5.59 He emphasised that under this system, SDAs 'would be with the legislative assembly based on Christmas Island, not with the

61 Christmas Island Chamber of Commerce, Submission no. 4, pp. 17-19.

62 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, pp. 35-6.

Commonwealth government'.⁶³ He also emphasised that the beginning of the process 'is to educate people, to start this process where self-determination can happen really well'.⁶⁴

The view from the Cocos (Keeling) Islands

5.60 In its submission, the Cocos (Keeling) Islands Shire Council considered three options for future governance – no change to non-self governing territory status; incorporation into Western Australia; and self government. The Shire did not commit itself to any of these options, rather it argued that whatever option was taken it must first be preceded by an education program then a referendum.⁶⁵ The submission proposed the following timetable for deciding upon and implementing any agreed proposal:

Within twelve months of the JSCNCET presenting its report to Parliament the Commonwealth should have completed the proposed education programme as to the alternate forms of future governance for the IOTs' communities, and referendums to have been held as to the forms of future governance of the IOTs.

Based upon the results of the referendum, if the alternative of remaining non-self governing territories is rejected, within a period of five years of the lodgement of the JSCNCET's report to the Parliament, that the IOTs' communities wishes, either to be incorporated into Western Australia, subject to this being possible from a Western Australian government's point of view, or to become self-governing territory, be complied with and actually achieved.⁶⁶

5.61 The Cocos (Keeling) Islands Economic Development Association (CKIEDA), took a similar view, presenting two options – incorporation and self government – but stating that the 'choice of the future form of government is a matter to be decided by the residents' of the IOTs, after an 'appropriate education program'.⁶⁷ The Cocos Congress, representing the Cocos Malay community also urged that:

63 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 37.

64 Mr R. Payne (Christmas Island Chamber of Commerce), *Transcript of Evidence*, 30 January 2006, p. 36.

65 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 59.

66 Cocos (Keeling) Islands Shire Council, Submission no. 5, p. 11.

67 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 23.

...if there is to be any change in future Governance Arrangements for the islands that there needs to be an extensive education process (in both Malay and English versions) for the whole community explaining the options and their implications prior to the community having a referendum on the preferred option.⁶⁸

- 5.62 In its submission, CKIEDA took the view that self government could provide 'a unique opportunity for the development of a small dynamic self governing territory in close proximity to Southeast Asia'. The new territory would retain Western Australian applied laws and the system of SDAs. The only concern raised by CKIEDA was over whether such a small population 'has the capacity and capability for self governance as a territory'. The question of the appropriateness or otherwise of self government remained open.⁶⁹
- 5.63 Examining the option of self government in its submission, the Shire of Cocos (Keeling) Islands made the following points:
- that it would be unlikely that two self-governing territories would be established, the most likely outcome being the creation of a new Indian Ocean Territory;
 - the communities would have to demonstrate to the Commonwealth that self government was a realistic option for such a small community;
 - the communities in the IOTs must advance self government through exemplary leadership at the local government level, and by promoting regional cooperation through an IOTs Regional Council and IOTs Economic Development Corporation;
 - the new Indian Ocean Territory would require its own elected assembly, supported by its own professional bureaucracy;
 - the existing local governments would continue in their current roles;
 - that Norfolk Island not be used as the model;
 - that population size should not be used to deny self government; and
 - a self governing Indian Ocean Territory would be well placed to take advantage of its close proximity to Southeast Asia in relation to economic development.⁷⁰

68 Cocos Congress Inc., Submission no. 14, p. 3.

69 Cocos (Keeling) Islands Economic Development Association, Submission no. 6, p. 23.

70 Cocos (Keeling) Islands Shire Council, Submission no. 5, pp. 61-4.

- 5.64 Commenting on the Cocos (Keeling) Islands Shire Council's submission, CEO, Mr Bill Price, emphasised that 'as far as advocating self-governance, we have not got that in our submission'.⁷¹ He also indicated that the Cocos Islanders were seeking a more limited form of self government than the Christmas Islanders – a regional council rather than an assembly:

The initial submission we put in years ago was for an assembly arrangement but I think council is possibly looking more at just a regional type council arrangement with Christmas Island, where there is representation of council, community, economic development, certain areas. We have not really addressed the make-up of that committee, but a good cross-representation of the community. We feel there is a need for a regional council so that we have a bit more clout with Canberra.⁷²

- 5.65 Mr Price expanded further on this point, indicating that while there was ground for common action between Cocos and Christmas Islands, there were also substantial differences:

Senator JOYCE – The Cocos Islands and the Christmas Island are 900 kilometres away from each other. Do you think that you can effectively coordinate aspirations? They are two completely different island cultures with two completely different geographies. Do you feel a nexus; do [you] feel you would be able to effectively engage in a common arrangement with Christmas Island?

Mr Price – Not on all occasions because we are quite different from each other. We are trying to open channels in areas like tourism, for example. We are trying to market our tourism as a joint thing but as two different experiences. Christmas Island can offer ecotourism with their rainforests and wildlife whereas we have a different experience, more the tropical island, beach, relaxed type of environment. We have some eco with our lagoon and turtles and things like that. We are quite unique. They are largely economically driven with their mine, they have a different economic base from the community here, so there are differences there. There are some areas where we could work together and some areas that we would never be able to agree upon.⁷³

71 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 8.

72 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, pp. 9–10.

73 *Transcript of Evidence*, 1 February 2006, p. 15.

- 5.66 In evidence before the Committee, Shire President Mr Ron Grant also framed the issue of self government in terms of greater cooperation between Christmas and Cocos rather than action by a single autonomous territory:

CHAIRMAN—Would you believe that your penchant for more self-government—I am loath to mention a system—would be enhanced by having the one assembly for the two Indian Ocean territories?

Mr Grant—I believe any cooperation between the two territories can only be mutually beneficial. The facts are that both territories have a small population and both territories have a degree of infrastructure and resources. If the two territories could work far closer together, you could most probably streamline the resources that you are using and prevent some duplication. I think also by making the two fairly unique territories work closely together from an economic development point of view, it becomes very attractive for, for example, tourism or other resources to attract investments and people from South-East Asia.⁷⁴

- 5.67 Like others on Cocos, Mr Grant was cognisant of the limited financial and human resources in the IOTs. He regarded self government as ‘a real two-edged sword’:

If you had, for example, an elected assembly, would it be in a position to make decisions that related to economic development, and subsequent social development, faster than the current system? Or does the current system that we have provide us with greater areas of support and access to larger resources than you might have as an elected territory government? As I said previously, it will always come back to this: what does the community want, and, when the government accepts the preferred option of the community, does the community have the capacity and the capability to really go to another level of government? That is going to be the crux of it. Are the human resources in the territory basically up to making a territory with a local assembly more effective in economic and social development than the current system? That is in a nutshell. It really does come back to human resources.⁷⁵

⁷⁴ *Transcript of Evidence*, 22 February 2006, p. 36.

⁷⁵ Mr R. Grant (Cocos (Keeling) Islands Shire Council and Cocos (Keeling) Islands Economic Development Association), *Transcript of Evidence*, 22 February 2006, p. 35.

5.68 Mr Robert Jarvis urged a small start, with close cooperation between the Commonwealth and the IOTs' shires and a gradual devolution of functions to the IOTs:

I still believe that a small start, with considerable Commonwealth involvement – because, as you mentioned, they are the major funder of the two territories – and the involvement of the two shires, being the only two elected local governments because there is no state government, would be an ideal model to test the waters. I believe that, if they were given the opportunity to jointly receive funds for various issues, to carry out some services which the Commonwealth wishes to devolve – and at various times the department has been very keen to devolve certain responsibilities to the territories – then it would be a way of seeing if that worked, if it had the support of the community, and the federal government could then consider further advances. The two shires, I believe, are still willing to join together for that purpose and I think it would be a very useful way of giving the residents a feeling that they have some say in their own position.⁷⁶

5.69 According to Mr Jarvis, such a body, including the Commonwealth, the shires and other community representatives, would be 'a useful first step in perhaps considering a broader involvement of the community in self-determination'.⁷⁷ It could trial a range of responsibilities, including application of Western Australian laws, and oversight of local government activities and other Commonwealth activities, giving locals a greater say in government and service delivery.⁷⁸

Committee conclusions

Options for reform

5.70 The Committee observes that there is some need and desire for reform of governance arrangements in the IOTs. The options raised in evidence before the Committee include:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and

⁷⁶ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 50.

⁷⁷ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 51.

⁷⁸ Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 53.

- limited self government.
- 5.71 The Committee believes that the process by which any options for future governance are determined requires:
- a commitment from all parties;
 - an agreed framework and timeframe for examining options;
 - collation and dissemination of information on the political and economic ramifications of any proposals;
 - public education of the IOTs communities; and
 - a referendum on the options for future governance.
- 5.72 The Committee is of the opinion that formal proposals should be drawn up by the Australian Government in consultation with the IOTs' communities, sufficient time and resources set aside to explain the ramifications of any proposals, and options put to the communities via referendum. The Committee suggests that proposals for reform of governance be put to the people of the Indian Ocean Territories by the end of June 2009.
- 5.73 The Committee notes that the Australian Government has committed itself to the option of incorporating the IOTs into Western Australia. The Committee acknowledges the significant opposition to incorporation evident in the IOTs and the lack of interest, or incentive to cooperate, on the part of Western Australia. These factors need to be addressed through consultation and education. If the majority of the IOTs population votes in favour of incorporation at the proposed referendum on governance options, the Committee suggests that the proposal for the incorporation of the IOTs into Western Australia be put to the people of Western Australia by the end of June 2009.
- 5.74 The Committee appreciates that, as part of this process of consultation and referendum, the people of the IOTs may wish to have before them the option of some form of limited self government. The Committee believes, based on the experience of Norfolk Island, that any model of self government proposed for the IOTs must be strictly limited. A model of limited self government based on the creation of a single Indian Ocean Territory, governed by a Legislative Assembly responsible for state type matters, with ongoing use of Western Australian applied law and SDAs, would require adequate financial and administrative support from the Australian Government. The Committee stresses, however, that self government should be limited strictly to state and local government responsibilities; would operate within the framework of Western

Australian applied law; and would require use of SDAs for delivery of most major services, such as health and education. Any modification of WA laws would require the assent of the Administrator based on advice from DOTARS. Much of the administrative support would also still have to be supplied by Commonwealth officers, perhaps operating on secondment from DOTARS Territories Branch.

- 5.75 Such a model could go a long way towards satisfying the aspirations of the people of the IOTs for a greater say in how they are governed. However, the process by which governance options are examined must account for the different needs and concerns of the Christmas and Cocos Islanders.
- 5.76 In the interim, preceding the proposed referendum, the Committee is of the opinion that if the current arrangements are to remain in place, then some alteration of those arrangements, broadly along the lines advocated in *Islands in the Sun*, is both necessary and desirable. If the shires are to remain the only effective representative bodies in the IOTs, then their roles should be refined to reflect this, to include:
- direct representation of the communities with the Minister for Territories; and
 - a formal advisory capacity with regard to applied laws and service delivery arrangements.
- 5.77 Moreover, if the current governance arrangements are to remain in place, then the shires should be:
- fully funded on the basis of an agreed service delivery framework;
 - given freehold title to all assets required to carry out their functions; and
 - able to jointly enter into a regional local government type cooperation agreement.

Recommendation 12

5.78 The Committee recommends that the Australian Government alter the governance arrangements of the Indian Ocean Territories to provide the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands with an expanded role. The shires should have:

- direct representation of the communities with the Minister for Territories; and
- a formal advisory capacity with regard to applied laws and service delivery arrangements.

Moreover, the shires should be:

- fully funded on the basis of an agreed service delivery framework;
- given adequate title to all assets required to carry out their functions; and
- able to jointly enter into a regional local government type cooperation agreement.

Recommendation 13

5.79 The Committee recommends that the Australian Government undertake to develop options for future governance for the Indian Ocean Territories in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands, with a view to, where practical, submitting options to a referendum of those communities by the end of June 2009. Possible options could include but should not be limited to:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and
- a form of limited self government.