

SUBMISSION  
TO  
JOINT STANDING COMMITTEE ON THE NATIONAL  
CAPITAL AND EXTERNAL TERRITORIES

Inquiry into Governance in the Indian Ocean Territories  
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(By email)

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## **Introduction and Summary**

May I begin by thanking the Committee for the opportunity to make a submission and for the grant of an extension of time in which to make it. My submission is informed by my term of office as Administrator for Christmas Island and Administrator for Cocos (Keeling) Islands from October 2009 to October 2012, collectively the Indian Ocean Territories. I note that the Committee has visited and conducted public hearings in the Indian Ocean Territories. I have read the transcripts of evidence given before the Committee on the Cocos (Keeling) Islands on 8 April and Christmas Island on 9 and 10 April 2015.

The Committee members will have observed in the course of their visits to the Cocos (Keeling) Island and Christmas Island that each has a unique and attractive natural environment. Both have a rich living cultural heritage. The preservation and development of these qualities require good governance, good government services and an environmentally sustainable economy that is underpinned by government and strong private investment.

It is instructive to reflect briefly on the evolution of governance in Indian Ocean Territories as two of Australia's seven external territories.

The Cocos (Keeling) Islands and Christmas Island effectively became Australian territories respectively on 23 November 1955 and 1 October 1958. Australian administration of each was the responsibility of an Official Representative of the Australian Government respectively from 1955 and 1958.

The arrangements for the administration of the territories were changed with the appointment of an Administrator for Christmas Island in 1968 and Cocos (Keeling) Islands in 1977, each of whom reported to the Minister for Territories. Since 1997 however the Indian Ocean Territories have shared a single Administrator resident at Christmas Island.

In 1985 a Christmas Island Assembly was established under the *Christmas Island Assembly Ordinance 1985*. The assembly was an

elected body of 9 persons. Its principal function was to run the Christmas Island Services Corporation. It was dissolved in 1987.

A Cocos-Malay council was established in 1992. The first Shire Council of Christmas Island was elected in 1993. Today the Shire Councils of Christmas Island and Cocos Keeling Islands exist under the *Local Government Act 1995 (WA) (CI)* and the *Local Government Act (WA) (CKI)* respectively.

My commission as Administrator for each of the Indian Ocean Territories took effect on 5 October 2009. The office of Administrator was vacant for almost two years before my appointment. In that period officers of the Department of Territories as it then was, within the Attorney General's Department, acted in and performed the role of Administrator. During my term of office the functions of the Department of Territories were transferred to the Department of Regional Australia, Regional Development and Local Government (the Department) with offices in Canberra, Perth, Christmas Island and the Cocos (Keeling) Islands.

As Administrator I exercised a range of delegated powers under applied Western Australian and Commonwealth laws. These were powers, which by and large were impractical for the Minister to exercise on a daily basis. Upon my appointment I was given also a charter to:

- assist in the development of an environmentally sustainable economy;
- assist in developing the capacity of the Shire Councils and local community organisations;
- assist the community to maximize opportunities in immigration activities on Christmas Island;
- promote social cohesion in Christmas Island and Cocos Keeling Islands; and
- act as an advocate for the residents of the Territories.

In addition I was required to perform ceremonial functions as the senior Government representative in the Territories. This included receiving official guests to the Territories and presiding over official functions such as Australia Day and ANZAC day celebrations.

In the submissions that follow I discuss aspects of my decision making role and experience as Administrator in the context of:

- the associated consultative mechanisms,
- the role of local government in supporting and representing communities in the Indian Ocean Territories,
- creating opportunities to strengthen and diversify the economy,
- my endeavours to secure an appropriate framework for private sector activities, and
- an efficient and effective land release policy that would have promoted private investment and development in the Indian Ocean Territories.

The *Administration Ordinance 1968* (CI) and the *Administration Ordinance (1975)* (CKI) (Ordinances) mandate the role of the Administrator. It is to “administer” the Territories.

I submit there is a strong case for the Administrator to have the resources that will give her/him the capacity to take on a stronger role in order to ensure that the governance structure of the Administrator and the administration remain efficient and effective over time.

In my submission I propose that the Committee ought to make recommendations that:

***The Minister for Infrastructure and Regional Development delegate to the Administrator power and authority to direct the public administration of the Indian Ocean Territories as it is administered from the offices in Perth and the Indian Ocean Territories.***

***The Minister delegate to the Administrator, as the Minister’s representative, such of the Minister’s discretionary powers as are exercisable under Western Australian legislation in order to secure the integrity of the service delivery arrangements for the Indian Ocean Territories.***

On the issue of consultation mechanisms I have noted that the service delivery arrangements that were in place during my tenure as Administrator were made in Perth and Canberra. Local conditions

and requirements were not sufficiently well considered when services were being designed to meet island requirements.

I propose that the Committee recommend that:

***The day-to-day decisions about service delivery be made on Christmas Island and Cocos (Keeling) Islands by the Administrator in consultation with the local governments.***

***An audit of the services that are actually provided under the service delivery arrangements be carried out on a regular periodic basis.***

In relation to the issue of local government support and representation I discuss the importance of democratically elected Councils in the Indian Ocean Territories. I note also the relatively high level of per capita support that the local governments of the Indian Ocean Territories require compared with most mainland communities.

I respectfully propose the Committee acknowledge the Indian Ocean Territories local governments as the democratically elected representatives of their communities and their aspirations. I further propose that the Committee recommend that:

***The Australian Government take such action as is necessary to strengthen the ongoing representative and support role of Indian Ocean Territories' local governments.***

***The Department provide proper and adequate funding for the purposes of local government to provide the services necessary for a community the size of those in the IOT.***

On the issue of economic development I posit that the Indian Ocean Territories have considerable potential for development. There are however a number of disincentives to private investment. These include the absence of a Government statement of a clear vision of the future for the Islands, access to and availability of land and red and green tape. There is an urgent need for the Government to undertake the mapping of the basalt as a precursor to any major development.

I propose that the Committee recommend that:

***The Australian Government formulate a vision or strategic plan for the future of the Indian Ocean Territories***

***The Administrator in consultation with local government prepare a Crown Land Disposal Ordinance that provides for long term lease of Crown Land and unsolicited proposals***

***The Australian Government issue such new mining leases for the mining of phosphate on Christmas Island as will allow an orderly transition to a sustainable diversified economy***

***The Australian Government undertake the mapping of Christmas Island deep geology to ensure the orderly management and protection of fresh water resources.***

***The Department of Infrastructure and Regional Australia in consultation with the Administrator formulate a strategic plan for the development and ongoing maintenance of the Indian Ocean Territories' public infrastructure***

***The Administrator for Christmas Island take all necessary steps to release the vacant detention centre infrastructure for productive economic activity***

***The Australian Government upgrade the Christmas Island airport facilities with all necessary equipment as is necessary to meet international standards***

***The Australian Government give favourable consideration to proposals for the issue of a casino licence for Christmas Island***

**A. *The role of the Administrator of the IOT and the capacity (and appropriateness) of the Administrator taking on a stronger decision-making role.***

1. The *Administration Ordinance 1968* (CI) and the *Administration Ordinance (1975)* (CKI) respectively prescribe the role of the Administrator of the IOT. That role is to administer the Territory of Christmas Island on behalf of the Commonwealth and the Territory of Cocos (Keeling) Islands on behalf of Australia. The Administrator is to exercise her/his powers and perform her/his functions in accordance with Minister's instructions.
2. The respective Administration Ordinances do not expressly confer any power on the Administrator. The Ordinances do however authorize the Minister and the Governor General to delegate powers to the Administrator. For the most part the Minister acts on the advice of the relevant Department, currently the Department of Infrastructure and Regional Australia.
3. Other formal powers are conferred on the Administrator by other legislative instruments, e.g. the *Importation of Cats and Dogs Ordinance 1973*.
4. Since the enactment of the *Territories Law Reform Act 1992* (Cth) a Western Australian based legal system was introduced to the Indian Ocean Territories from 1 July 1992. The federal Government has also agreed with the Western Australian State Government for it to administer the new laws with respect to the Indian Ocean Territories on an agency basis on behalf of the Commonwealth. This is conducted on a contract basis.
5. Subject to the preserved existing laws and the laws of the federal Parliament as they apply to each Territory, the laws of Western Australia are also deemed to be in force for each of the Territories. However an Ordinance by the Governor-General relating to any of the Territories may amend or repeal any law of Western Australia. Alternatively, the Western Australian Parliament may terminate the operation of a Western Australian statute in either of the Territories.



6. The Minister for Infrastructure and Regional Australia has extensive powers under applied Western Australia and Commonwealth laws. Many of these powers are of an administrative nature and relate to government services. For the most part they are impractical for the Minister to exercise on a daily basis. There is no apparent bar to these powers being delegated to the Administrator.
7. I consider it appropriate for the Administrator to take on a stronger decision making role. The Administrator ought to have a stronger decision making role, including in matters pertaining to:
  - the management of the administrative affairs of the Territories;
  - the release of Crown land for private and public purposes;

Whether the Administrator has the capacity to take on these functions is problematic under current administrative and organizational arrangement. In my time as Administrator the only staff directly answerable to me were a Personal Assistant and an Economic Development Officer. The Personal Assistant was a shared resource who was required to provide reception and secretarial services for the Director in the Department's Christmas Island Office.

8. The Department was to be available to offer advice and support as needed. While freely offering advice it was seldom supportive of proposals and initiatives emanating from the community through the formal consultative processes that had been established on the islands. In fact the Department paid scant regard to my recommendations on the issue of land release, capacity and use. Furthermore it was always slow to respond to requests for action in relation to administrative processes that were necessary to give effect to proposals for private investment in the Territories.
9. The issue of the Administrator's capacity to take on a stronger decision making role might be addressed by a reorganization of the current administrative arrangements.

10. In my term of office I expressed concerns about the content and delivery of service under a couple of Service Delivery Arrangements. I was concerned that in some cases the Indian Ocean Territories were not receiving the services to which they were entitled under the agreements. Subsequently I was advised that it was not part of my role to become involved in the Government's service delivery activities. In my view the Administrator should have power and authority to monitor and maintain the integrity of services that are applicable to the Indian Ocean Territories.
11. From my perspective very little was seen of many of the agencies contracted to provide services to the Indian Ocean Territories. I should acknowledge one SDA under which the Territories did receive value for money and that was the Department of Commerce. At my request it provided training and advice to small businesses on Christmas Island and the Cocos Keeling Islands about corporate governance, legislative requirements for unincorporated associations and incorporation under the *Associations Incorporations Act 1987 (WA) (CI)* and *Associations Incorporations Act (WA) (CKI)*.
12. As a matter of principle and good governance there needs to be clarity of purpose and interaction that justifies the Administrator having a stronger decision making role. In my view the single most important purpose of strengthening the Administrator's decision-making role is to have a more cost efficient and direct administration of the Territories.
13. A more cost efficient and direct administration of the Territories will ensure that they are administered according to the statutory mandate for the Administrator to administer the Territories and the Minister's objectives. To that end a clear and unambiguous statement of the Government's vision and strategic direction that reflects the aspirations of the local communities should underpin the Administrator's role for the IOT.
14. The Administrator ought to take on a stronger decision making role. If the Administrator is to have the capacity to take on a stronger decision making role it will be necessary for the Administrator to be better resourced. The Administrator ought

to have the capacity, as the Minister's representative to direct and evaluate the public administration in Department's Indian Ocean Territories and the Perth Office.

15. In my respectful view an appropriate course would be for the Minister to delegate to the Administrator power and authority to direct the public administration of the Indian Ocean Territories as it is administered from the offices of Perth and the Indian Ocean Territories. In my submission the Committee ought to make a recommendation that would give effect to such an arrangement.
16. Furthermore, I respectfully submit that the Committee ought to recommend the Minister delegate to the Administrator, as the Minister's representative, such of the Minister's discretionary powers as are exercisable under Western Australian legislation in order to secure the integrity of the service delivery arrangements for the Indian Ocean Territories.

**B.** *Existing consultation mechanisms undertaken by government representatives, including the IOT Regional Development Organisation and best practice for similar small remote communities' engagement with Australian and state governments*

17. I note that it was of assistance to me during my time as Administrator to consult broadly with the community and the agencies on the islands. On Christmas Island that consultation process took place through fortnightly meetings with the Shire President and CEO and the various committees and group meetings that I chaired. These included the Christmas Island Coordination Forum; a weekly meeting with the heads of each agency on the island, periodic meetings with the Health Consultative Group, the Emergency Management Committee, the Economic Development Consultative Group, the Islamic Council and the Chinese Literature Association.
18. In the Cocos (Keeling) Islands my meetings were held with the Shire President and CEO, Health Consultative Group, the Emergency Management Committee, the Economic Development Consultative Group, Cocos Island Cooperative Council and the Islamic Council on my visits to the island about every six weeks.
19. From time to time I would receive courtesy visits from officers of State agencies and the Territories' Perth office. These visits would occur during a review of the some of the service delivery arrangements. The day-to-day decisions about service delivery however, were made in Perth and Canberra. As it appeared to me local conditions and requirements were not sufficiently well considered when services were being designed to meet island requirements.
20. The list of Service Delivery Arrangements for the IOT as at November 2013 can be found at the following link <http://www.regional.gov.au/territories/christmas/governanceadministration.aspx>.
21. Included in the submission about the Administrator's role above is a brief narration of my limited experience with

service delivery arrangements as Administrator. I simply add that there is a case for the Administrator to take a stronger decision making role in relation to service delivery. There is also a case for a major audit of the services that are actually provided under the service delivery arrangements.

22. I have made mention of the good service that the WA Department of Commerce provided. I should also acknowledge the good services that were provided in health, water, sewage and electricity.
23. The Regional Development Organisation (RDO) did not exist at the time of my departure from the IOT. It was a body that was established on my initiative, albeit I was not in favour of the Administrator being a member of the Board.
24. The concept of the RDO was born out of my frustration with the Department's adverse influence in developing a sensible, efficient and effective property disposal policy that would facilitate private investment and development of Crown land on Christmas Island and the Cocos (Keeling Islands) and its general unresponsiveness to proposals for economic development programmes and projects that the Economic Development Consultative Groups recommended for approval or funding consideration.
25. According to the Crown Land Management Plan (CLMP) there are 379 Crown land parcels on Christmas Island. Of these 216 had been committed leaving 163 parcels uncommitted. The CLMP also identifies certain parcels of land suitable for commercial, tourism and other uses. The Department was mostly unresponsive to my calls for a land disposal or release policy that was less restrictive than the policy that existed at the time.
26. It was, and remains my view that the RDO would act as a conduit through which the community would identify community projects and infrastructure for the most efficient land use. The RDO would also be a vehicle or facilitator for attracting investment and promoting development of Crown Land to meet the community needs. The Administrator would consider and assess the RDO's recommendations and any

approvals for land development would pass through the usual local government processes under the Town Planning Scheme.

27. As indicated above the Administrator ought to have a role in maintaining the integrity of the service delivery arrangements for the Territories. In my view the Administrator and the communities would be well served by the Administrator consulting regularly with the local governments of the Indian Ocean Territories as the democratically elected representatives of their peoples and more broadly with community groups so as to ensure local conditions are sufficiently well considered when services are being designed to meet the needs of the people of the Territories.

*C. Local Government's role in supporting and representing communities in the Indian Ocean Territories*

28. The role of local governments in the IOT is defined in its essential aspects by the *Local Government Act 1995 (WA) (CI)* and *Local Government Act 1995 (WA) (CKI)*. The Councils that govern their affairs are democratically elected by and from the communities in which they sit. The local governments play an important role in the governance of the IOT and in the representation of their constituents. As such the IOT local governments are an important and tangible symbol of the democratic process for the people of the IOT.
29. There exists within the communities of the Indian Ocean Territories a grievance about being governed by laws that are made by a Parliament in which the communities have no elected representation and in respect of which they have no voice. It is important therefore that the IOT Shires continue in their representative role and as a cohesive source of views and information for the Administrator of the communities' aspirations.
30. As to the issue of community support the local governments of the Indian Ocean Territories have limited resources principally because of the rate base. Furthermore they do not have the benefits that WA local governments enjoy from the royalties for regions programmes. These are factors that inhibit the capacity of the local government to support their communities and necessitate federal government funding which is provided through Community Support and Local Government Budgets. Clearly economic sustainability on Christmas Island and Cocos Keeling Island will require a relatively high level of per capita support compared with most mainland communities.
31. In the course of time there has been a breakdown in trust between the IOT local governments and the Department. This has led to a breakdown in communication between them. This has had an adverse affect on communication between the community and the department, particularly in the sphere of

infrastructure maintenance and development. There has been much waste in time and resources as a result.

32. Local government is an important institution in any community and no less so in the Indian Ocean Territories. It is respectfully submitted that the Committee should acknowledge the Indian Ocean Territories local governments as the democratically elected representatives of their communities and their aspirations.

33. It would be appropriate in my view for the Committee to recommend such action as is necessary to strengthen the ongoing representative and support role of Indian Ocean Territories' local governments. This would entail a recommendation that the Department provide proper and adequate funding for the purposes of local government to provide the services necessary for a community the size of those in the IOT.



**D.** *Opportunities to strengthen and diversify the economy, whilst maintaining and celebrating the unique cultural identity of the Indian Ocean Territories*

34. The Islands have considerable potential for development. Potential investors are dissuaded however from undertaking major projects by the impression that the Australian Government does not have a clear vision of the future for the Islands. Availability of land and red and green tape provide even more disincentives. There are two other matters that require urgent attention as a precursor to sustainable economic development in the Territories, *viz*:

- the mapping of the basalt; and
- the development and adoption of a Crown Land Disposal Ordinance.

The Crown Land Disposal Ordinance should include provisions for due diligence and the roles of parties and the Government in relation to due diligence with respect to geotechnical surveys and environmental controls. It is important that a Crown Land Disposal Ordinance facilitate unsolicited proposals for development. If the ordinance does not facilitate such proposals there ought to be a policy for such development. I would be pleased to expand on these issues should the Committee so require.

35. The issue of diversification of the economies of the Indian Ocean Territories has been the subject of consideration by the Indian Ocean Trade and Investment Forum, a group of volunteers with a passion for the sustainability of the Indian Ocean Territories. In particular I have had detailed discussions on this topic with Mr Herve Calmy as a member of the Forum and during my term as Administrator in the process of the development of the urban design master plans for Christmas Island and the Cocos Keeling Islands. I understand that Mr Calmy is making a submission to the Committee.

36. There are numerous reports, reviews, inquiries and assessments on the ways and means of attaining an

environmentally sustainable and diversified economy for the IOT and, in particular Christmas Island. In almost all cases the reports, reviews, inquiries and assessments have involved broad community consultation and resulted in recommendations about what and how to achieve sustainability in the IOT. Based on the several reports, each of the former Economic Development Consultative Groups for the IOT, the Shires of Christmas Island and Cocos Keeling Islands and Regional Development Australia Mid West Gascoyne have published vision statements and/or strategic plans for economic development of the IOT.

37. A synthesis of the several reports, plans and recommendations identify five primary opportunities for diversifying the economies of the IOT. These are horticulture, aquaculture, tourism, a dive resort and education. In addition to these five areas of potential economic development I note that between 2009 and 2012 the Cocos Keeling Islands Economic Development Consultative Group received five unsolicited proposals; one for the development of coconut water, one for algae cultivation, two for a high end tourist resorts and one for growing and harvesting *bêche-de-mer* (sea cucumber). Each proposal would have required use of the former Quarantine Station. The proposers for the unsolicited proposals ultimately became frustrated by the Department's indecision and/or red/green tape.
38. Phosphate mining has been pivotal in maintaining the Christmas Island economy since 1992. It continues to make a major contribution to its economy. In my view it is critical for the Government and for the Christmas Island economy that phosphate mining operations continue for so long as it takes to establish an orderly transition to a diversified sustainable economy. To that end it will be necessary for the Government to issue new mining leases to extend the life of the mine.
39. There is little likelihood that any single new industry or sector will provide the necessary economic activity to sustain the Christmas Island community. There is a need for more than one of the potential new fields of economic activity in order to sustain the Island's economy. Opportunities for

diversification do exist however in the fields of education, tourism, horticulture and a casino operation.

40. On Christmas Island the education sector is one area in which new economic activity may be initiated in the near term with comparatively little financial investment. The school was recognized as an international school. A number of situations and circumstances prevailed to thwart its operation as an international school. I note the reason given by Mr Thornton in his evidence before the Committee on 8 April. It was my understanding that the building and operation of the detention centre was an issue in the plan not proceeding.
41. The Christmas Island School did run a camp school during my term as Administrator. That ceased as a result of the detention centre activities, which necessitated the school making provision for asylum seeker children and the consequent demand on housing and accommodation for the increased island workforce.
42. In a recent visit to Christmas Island I noted that the Phosphate Hill and Construction Camp detention centres had been vacated. The vacant centres could provide ready-made accommodation for a camp school and/or operate as a separate campus for the development of an international school. It was my understanding that the buildings included accommodation, kitchens and recreation and school facilities.
43. In light of the partnership between University of Western Australia and Christmas Island Phosphates in the Mining-To-Plant-Enterprise (MINTOPE) project on Christmas Island, tertiary education and research could be part of the Christmas Island economy. This also may be an alternative use of the existing vacant detention centre buildings.
44. Infrastructure deteriorates very quickly on Christmas Island if it is not used and regularly maintained. Accordingly it is essential that the vacated detention facilities be maintained as a resource for economic development, whether in the field of education or otherwise.

45. The Christmas Island Resort is another facility that is now standing idle. It was recently refurbished. The Resort is equipped to operate as a casino. The members of the Committee may be aware that there is at least one proponent for the issue of the casino licence for the Resort. It would appear that given a casino licence the Resort could commence operations almost immediately.
46. I have mentioned horticulture. Christmas Island Phosphates and the University of Western Australia have been researching and trialing different crops on the island for the past four years. This is the Mining to Plant Enterprise (MINTOPE) mentioned above. The trials have been very successful and show promise of a viable economic enterprise. I understand a submission has been made to the Committee on behalf of MINTOPE.
47. Another existing economic activity on Christmas Island is tourism. In the past five years tourism has suffered a significant set back as a result of the detention centre activities. From 2010 to 2012 flights to the island and accommodation were filled with personnel associated with or engaged in the operations of the detention centre. While there is some capacity for rebuilding the tourist trade it is a long-term prospect and it is unlikely that it alone would be a substitute for phosphate mining.
48. Tourism operators are capable of meeting immediate demand for diving, fishing, bird watching and other nature attractions, such as the red crab migration. These activities are confined to a fairly discrete part of the community. There is little indirect flow on in terms of employment, social engagement or entertainment
49. Other potential new tourist attractions could include an international dive resort, an eco-friendly rainforest retreat, a high-end resort, the Chinese museum and other historical attractions including former mining sites and equipment and relics of WW II and the Japanese occupation. The historical attractions would require a good deal of remedial work and development. This could be a short to medium term project for the Shire.

50. The development of most of these other tourist attractions would need a long-term plan – say 15 years. Such attractions would require significant investment in infrastructure, including an upgrade of the airport to an international standard with all necessary emergency services, and regular reliable air services that are affordable – preferably air services between mainland Australia and South East Asia that transit Christmas Island and the Cocos Keeling Islands.
51. With a clear vision for the future of the Islands, favourable land release conditions, and a significant reduction in red and green tape, private entrepreneurs could be encouraged to invest in a rainforest retreat and a high-end resort. The other necessary infrastructure for air services and other public facilities would require Commonwealth funding.
52. It is essential in my view for the Government to develop a long term strategic plan for development and maintenance of public infrastructure.
53. Opportunities for strengthening and diversifying the economy of Cocos (Keeling) Islands include tourism, manufacture of coconut water, production of coconut sugar, horticulture and aquaculture.
54. Like Christmas Island tourism in the Cocos (Keeling) Islands would require significant private and Government investment, particularly in infrastructure.
55. Other significant issues that are likely to impede the strengthening of the economy for both Christmas Island and the Cocos (Keeling) Islands are shipping and insurance. There have been on-island attempts at competition by chartering ships from Asia. Anecdotally this generally resulted in retribution for the competitors when they have tried to ship freight from Perth either by increased shipping costs and damaged or delayed delivery of freight.
56. The issue of insurance was an issue that I raised with the Department on many occasions. Ultimately, the Department

commissioned an inquiry into access to insurance for the IOT. I understand a report was furnished to the Department, but it was not published or provided to me before my departure despite my requests for it.

57. In all of these matters there is a role for the Regional Development Organisation to develop and implement a strategic plan for attracting private investment for the development of industries and sectors in the Indian Ocean Territories. The plan should prioritise the industries and sectors for development and be implemented as a matter of urgency.