

Submission to the Joint Standing Committee on the National Capital and External Territories

INQUIRY INTO GOVERNANCE IN THE INDIAN OCEAN TERRITORIES

Background

I have some experience in relation to the Indian Ocean Territories (IOT), having spent the last 12 years working in various roles in the "Territories" space. These have included my primary role as a senior policy officer and stints as acting Administrator, acting Branch Head, and Executive Officer to the Administrator. I also have experience in relation to Norfolk Island and the Jervis Bay Territory. I have now retired from the Australian Public Service.

I have not been a resident of the IOT except for periods on postings and my submission is based on my experience in the Departmental role, interactions with individuals and groups in the IOT as well as having spent 29 years in Local Government in NSW as an Environmental Health and Building Surveyor.

I will not go into the history and formation of the current structure of the IOT as this has been covered by other submissions to the Committee. My aim is to make observations and recommendations on the long-term future of the IOT and add further comment addressing the specific terms of reference for the inquiry.

In my experience there has always been a fundamental tension with the state-type role the Department responsible for the IOT is expected to perform, on behalf of the Commonwealth, to administer the IOT. The legislation, policies and principles used to administer the IOT are not geared up to this state-type role. Examples include the difficulties in applying Commonwealth land management systems, financial controls and economic development policies in a state-type environment.

What I can say is that the people who work in Territories are dedicated and have the best interests of the residents of the IOT in mind while serving the Government of the day. In my experience the Department of Infrastructure and Regional Development suffers, like many other areas of Government, from a lack of adequate resources to cover the complexities of the IOT. In my 12 years in Territories this situation has gradually worsened, with reductions in staff numbers. This is exacerbated by a lack of a Government "vision" for the IOT. Without adequate resourcing and coordination across Government, the IOT will continue to suffer from short-term decision making.

The first part of my submission is based on the fundamental state-type role issue and my recommendations to the Committee reflect possible solutions to the current governance arrangements. Having said that, I am very aware of the difficulty in making even minor governance changes to the IOT.

Vision for the IOT

An Australian Government statement on the future of the IOT is essential for investor confidence and would assist its long-term economic future. At the very least a Ministerial statement should be made.

The Norfolk Island Road Map is an example of a relatively simple policy statement that could be used as a template for the IOT.

Any such statement or vision would provide a whole of government direction for the IOT and give confidence to the various Government agencies working in that space to link their operational plans to that shared vision.

Governance Models

The Committee may wish to reflect on the longer-term future for the IOT in making recommendations to Government about the specific terms of reference in the current inquiry. There are a number of models of governance that could be investigated should serious consideration be given to the long-term future of the IOT. Once again, I am under no illusions as to the difficulty in making fundamental changes to the governance structure of the IOT. Any proposed changes will require careful consideration and genuine input from the IOT community. In order of preference I have summarised some models of IOT governance below:

1. Incorporation into a State or Territory

This goes to the heart of the state-type role the Australian Government is trying to fulfil in the IOT. Incorporation into a state or territory would allow a much smoother roll out of state services in the IOT leaving the Commonwealth to manage only those arrangements that apply to the Federal Government. This would also allow IOT residents to be on the same footing as citizens in states when it comes to representation. Logically WA would be the first choice, as the laws of WA apply as state-type laws and there is a community of interest between WA and the IOT. Incorporation into the NT or ACT would be less desirable for legislative, administrative and social reasons. In either scenario there would need to be a thorough knowledge of any constitutional issues and how the financial arrangements would be transferred to that state or territory before work progressed very far. Incorporation should be investigated in the first instance.

2. Formation of a Statutory Authority

While this is less desirable than incorporation, it has the advantage of providing more say to the IOT community on many of the state responsibilities being rolled out in the IOT.

This model would constitute a formal IOT Administration with an elected Advisory Board, probably chaired by the Administrator. The Authority could comprise a number of Directorates or Departments such as health, state services (SDAs), municipal services, community/economic

development and corporate. The Board could be serviced by the Department and receive advice, research, capacity building and Government liaison support.

A Commonwealth entity such as this would be subject to the relevant provisions of the *Public Governance, Performance and Accountability Act 2013*, and as I understand it would need its own enabling legislation. There are a number of examples of these Commonwealth entities including CASA and Defence Housing. However the Authority would be closer to the Rottnest Island Authority in some ways.

The Minister probably should have power of veto over decisions, however it gives the elected Board much more say in the way the IOT is managed by setting policy direction, priority for services and allocation of resources within a defined envelope. It also enhances the role of the Administrator.

Two major changes would be that municipal services (ie both shires) would come under the Board as would the state-type services, or SDAs. The IOT community would, through the Board, have a much greater say in these services. I do not under-estimate the difficulty in establishing such a Board but it does give more structure to consultation with the IOT community, which has been a major issue for a section of the community over the years. My personal view is that the IOT probably already has a greater say in their affairs than many remote locations through Ministerial visits, elected representative visits (Federal representatives), access to the Administrator, the IOT Administration and through visits from Departmental staff.

3. Review and re-define the roles of the Department's Administration and Local Government

The IOT community is small in the scheme of things and one could question the value of having an IOT Administration and two shire councils in the one small jurisdiction. Should the two options above not be palatable perhaps there is scope to re-define how local government should be structured and deliver services, and how it fits in with the local IOT Administration (managed by the Department). Perhaps there is scope to enhance the role of local government through genuine capacity building and mentoring by established local government on the mainland. In relation to the IOT Administration, a similar review could take place to determine if particular services could be better delivered by the private sector. All of this would require a root and branch review of both entities.

4. Improve communication between the Department and Local Government

At the very least there should be a genuine attempt to improve communication at all levels between the Administrator, the Department, local government and the IOT Administration. On Christmas Island there is an existing Community Consultative Committee (CCC) that is run by the shire. As I understand it the CCC was established after 1992 as a filter for the new applied WA legislative system which rolled out the current state-type law regime. I think it was supposed to be informed by the Department and then inform the community of new laws being enacted in the territory. It is perhaps time for the CCC to be re-constituted across the IOT to provide for better two way communication. This should not be the only method of community consultation and a variety of

techniques should be used including existing methods such as the Administrator Conversations, Emergency Management Committees, the Interdepartmental Consultative Committee, Regional Development Committees and others.

Role of the Administrator

In my experience the Administrator has substantial "standing" in the IOT community but relatively limited decision making ability. I understand that at one time the Administrator had a much greater decision making role in the IOT, however this was before my time in Territories.

A review of the powers of the Administrator would be a useful piece of work, perhaps linked to a model of governance that may form the basis of a long-term plan for the IOT.

The Administrator takes on a vital role in the event of an emergency in the IOT. The Administrator also has a role in land management and public health. Most of the role is focused on influencing decision making, explaining government policy and promoting the Territories for economic development. Unless the role is reviewed and enhanced it may well become an anachronism over time.

Existing Consultation Mechanisms

There seems to be a range of consultative mechanisms used by the various agencies that have a role in the IOT.

Agencies visiting the IOT need to make it very clear whether they are there for genuine "consultation" or for "information sharing". Consultation has a number of parts including presenting options, taking on board comments, reflecting them back and demonstrating they were taken into account when decisions are made.

The Joint Standing Committee visits the IOT regularly and this is seen as an opportunity by the IOT community to raise issues of concern. While this is important, the community can become despondent when their views are not acted on, or not seen to be acted on. Like any community, the IOT needs to be reminded that the Committee can only make recommendations to Government and it is the Government who agrees to them or not. The Committee's recommendations in relation to Norfolk Island and the subsequent governance changes were not lost on the IOT community during the Committee's last visit.

Successive Administrators have undertaken various mechanisms to consult with the community. This should continue and form part of a suite of techniques used to gain opinion on a range of topics. The Administrator chairs a number of groups such as the Regional Development Organisations (RDO). In my view the RDOs would benefit from a review of their current functions

and if necessary, be provided with greater support to adequately represent the economic aspirations of the IOT community.

I mentioned the CCC above. This could be a useful mechanism and should be reviewed (in partnership with the shire) and adjusted to current conditions. It cannot be the sole consultative mechanism.

Ministerial visits are incredibly important to the IOT community and a way for the Minister to understand the unique nature of the IOT.

Consultative mechanisms have evolved over the years without any coherent plan and it is probably time to review and codify the core mechanisms. At an individual agency level this could be through a charter of service and at a whole of government level via a vision statement endorsed by Government.

Role of Local Government

As I mentioned above, Local Government can be enhanced and adapted to the desired governance model in the IOT. Obviously any changes outside the applied legislation would require substantial work. At the very least the model of Local Government in the IOT should be reviewed to see if it is still appropriate.

Having worked in Local Government for 29 years before joining the Commonwealth, I can see how important it is to the local community. Municipal services are an integral part of the governance structure in Australia and it has been a challenge by successive Departments with responsibility for the IOT and for various Commonwealth Grants Commission (CGC) reviews to compare the IOT to a similar remote community when it comes to service delivery. Perhaps it is time for the CGC to undertake another review to ensure services are commensurate with what is expected in such a remote part of Australia.

Economic Opportunities

I am not aware of any coherent economic development plan (supported by a vision statement) for the IOT. A number of submissions to the Committee have mentioned boom and bust cycles, particularly for Christmas Island. My opinion is that until we have a Government endorsed vision for the IOT there will be no substantive long-term economic opportunities.

One thing is clear, there needs to be some kind of air link to the north to underpin any real economic development. This has been said many times. The Australian Government underwrites the Perth/IOT flights to ensure there is a link to the mainland as no other viable option exists, however it cannot do the same to link the north. The current charter flights to Jakarta provide a

vital link to the north however their on-going viability is subject to more economic development opportunities for both Christmas and Cocos.

Going forward, the IOT would benefit from:

- A rejuvenated and supported RDO
- An opportunity for a casino to re-open on Christmas Island
- A coherent land management strategy
- High quality resorts on both Christmas and Cocos (linked to the land strategy above)
- Access within the National Park on Christmas Island for appropriate development
- Continuation of phosphate mining for as long as possible
- A strategy to seek investment, particularly from Asia
- Northern flights for both Christmas and Cocos including upgrading the airport on Christmas.

There are a number of small business enterprises on both islands that are to be congratulated and supported. They would benefit from larger investors coming to the IOT.

The current Community Development Grants Program (some \$1.5 million) provides small scale funding for a number of initiatives as approved by the Minister. Perhaps this could be suspended for a year and this funding allocated to one or two initiatives that will make a major economic difference to the IOT.

Conclusion

Finally, the IOT is a unique part of Australia and occupies a strategic location close to Indonesia. In my opinion it is time to think seriously about the long-term future of these islands.

Thank you for the opportunity to make this submission to the Committee and I would be happy to discuss any of the points I have raised.

Stephen Clay

8 August 2015