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Indian Ocean Group Training Association

Submission to the Joint Standing Committee on the National Capital and External Territories Inquiries 2021 -

Economic, Social and Environmental Sustainability in the Indian Ocean Territories

Submitted by

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Background of IOGTA

The Indian Ocean Group Training Association (IOGTA) is a not-for-profit incorporated association in the Indian Ocean Territories (IOTs) funded by the Department of Infrastructure, Territories, Regional Development and Communications (DITRDC) to facilitate vocational education and training, including training of apprentices in the IOTs.

IOGTA was founded in 1995 by the Union of Christmas Island Workers and the Department of Territories following the 1992 amendments to the *Christmas Island Act* 1958, which applied the laws of Western Australia to the IOTs. The IOGTA operates within the framework of Western Australian law with respect to the need to formalise training and apprenticeship regimes under that WA legal framework.

IOGTA's management committee comprises of the major community institutions in the IOTs being as follows -

Christmas Island

Shire of CI
Union of CI Workers
CI District High School

Cocos (Keeling) Islands

Shire of CKI
Cocos (Keeling) Co-operative Society
CKI District High School

Its Objects of Association include supporting, promoting and indenturing trainees and apprentices in the IOTs with local business and government agencies as well as promoting employment, economic and community development on Cocos (Keeling) Islands and Christmas Island.

IOGTA operates several other contracts apart from the primary DITRDC contract including with the Department of Human Services for Centrelink services and the Community Development Program. It also has a labour hire arm which provides personnel for government and private sector work on Christmas Island.

Submission to the Economic, Social and Environmental Sustainability in the Indian Ocean Territories

IOGTA is concerned that the governance framework of the IOTs at times puts Islanders at a great disadvantage to mainlanders. This is present especially in the training field which IOGTA's core business.

Islanders face structural and institutional barriers in training and education that makes it more difficult, more costly and less likely that they can get the training they need to for job reskilling or upskilling.

Islanders pay more than mainlanders and even International Students for the same TAFE courses.

These additional fees do not pay for lecturers to fly to the Island to deliver courses; the students have to fly to the mainland to be assessed by lecturers as they complete their modules remotely.

Furthermore IOT residents do not have access to any of the Concession Prices for TAFE programs in WA. Concession students include those on any kind of welfare support (Job Keeper, ABSTUDY, etc), if you are between 15-24 years old, holding a health care card, are a Department of Vet Affairs health benefits card holder or dependent of person who is an inmate in a custodial institution.

In addition, IOT residents do not have access to the Price Schedule for other Australians in WA which is currently supported by the "*Lower Fees - Local Skills 2021 Initiative*." This initiative has halved or in some instances, reduced the regular fees by 72% of priority list courses¹. A total of 140 courses have been included in this program, with all of those courses capped at \$1200.

¹ <https://www.southmetrotafe.wa.edu.au/courses/skills-ready>

Below is the cost comparison for the Diploma of Early Childhood Education between IOT residents and WA residents. An IOT resident would have to pay a rate **more than 10 times** the cost of the present WA price, and a rate **higher** than an International Student.

Qualification	WA Resident (concession price 2021)	WA Resident (normal price pre-COVID)	WA Resident (Lower Fees Local Skills 2020-2021 initiative)	International Student (2020 fee schedule)	IOT Resident (2020 fee schedule)
CHC50113 Diploma of Early Childhood Education and Care	\$400 ²	\$9,756 ³	\$1,200 ⁴	\$13,060 ⁵	\$13,380.00

This is not sustainable.

IOT residents pay the full measure of income tax which helps fund technical and further education in Australia. We should not have less access to the services our taxes provide through virtue of a separate schedule of fees forced upon us because of the governance framework we find ourselves in. TAFEs are operated by the States. We are governed by WA law but we do not enjoy the same level of services as WA residents. It is a poor outcome.

Federal Government Programs Denied to Islanders

Christmas and Cocos Islanders are routinely ruled out of federal development programs including –

- Northern Australia Infrastructure Fund, 2016-2021
- Job Trainer, 2020-21
- Community Sport Infrastructure Grant Program, 2018/2019
- Tourism Demand Driver Infrastructure Program, 2016/17

² <https://www.southmetrotafe.wa.edu.au/courses/diploma-early-childhood-education-and-care>

³ 2018 Course Fee schedule for South Metropolitan TAFE

⁴ <https://www.southmetrotafe.wa.edu.au/courses/diploma-early-childhood-education-and-care>

⁵ <https://www.tafeinternational.wa.edu.au/Documents/schedule-of-fees.pdf>



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The Joint Standing Committee for Northern Australia reported in its 2018 June *"Northern Horizons- Unleashing Our Tourism Potential, Report on the Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia"* that *"..The Office of Northern Australia advised that the Indian Ocean Territories are ineligible for NAIF funding, as the NAIF legislation only pertains to mainland Australia and ten nautical miles out to sea. The Office of Northern Australia advised that amending the NAIF legislation to include the Indian Ocean Territories 'would be helpful.'"*⁶

The *Job Trainer* program under the Department of Education, Skills and Employment (DESE) will *provide around 300,000 additional training places that are free or low fee, in areas of identified skills need such as health, aged and disability care, IT and trades for job seekers and young people, including school leavers.*⁷ The Indian Ocean Territories were restricted from access to this program. IOGTA contacted DESE in August 2020, and received notification in December 2020 that we were not eligible to apply. We wrote to the Commonwealth's representative on the Island Administrator Natasha Griggs on December 23rd 2020 as per the directions of the Department of Education, Skills and Employment on 10th December 2020 for further assistance and have yet to receive a response to our query.

With the Community Sport Infrastructure Program, the guidelines for the program stated proposed projects *'...must be located in Australia,'* the definition of Australia was given to specifically exclude Christmas and the Cocos (Keeling) Islands in the appendix⁸.

The *Tourism Demand Driver Infrastructure Program* was rolled out with each state and mainland territory's peak tourism bodies to rank applications for the Minister to approve; the CI and CKI tourism bodies were left out.

IOT residents consistently cannot access Commonwealth programs that its federal income tax helps to provide for.

This is not sustainable.

⁶ 4.12 of the Northern Horizons – Unleashing Our Tourism Potential, Report on the Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia, Joint Standing Committee on Northern Australia, June 2018 https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/TourismIndustry/Report

⁷ <https://www.dese.gov.au/jobtrainer>

⁸ https://www.sportaus.gov.au/grants_and_funding/community_sport_infrastructure_grant_program/resources2/CSI_Grant_Program_guidelines.pdf

Norfolk Island VET Financial Assistance Initiative

DITRDC has a different approach to the external territory of Norfolk Island in regards to the vocational education and training needs of their residents compared to Cocos and Christmas. The below extract from the Department's website describes a situation where Norfolk residents are supported by the payment of the difference in costs for training on Norfolk Island and t on the mainland.

"From 2 January 2019, the Norfolk Island VET Financial Assistance Initiative starts to make it easier for Norfolk Island residents to access vocational training. The initiative will reimburse Norfolk Island resident VET students the difference between the course fee they pay and the fee they would pay, for the same course, in another state or territory. The department has partnered with People Plus to deliver the Initiative and provide information to Norfolk Island residents on the financial support now available to them⁹."

There is no mechanism available to an IOT resident to be reimbursed the difference in course costs.

In the IOTs a resident can enrol in a training course subsidised by the DITRDC through IOGTA, providing it is financially feasible to run (based on student numbers, Registered Training Organisation cost, and availability of flights/accommodation). Subsequently some training programs cannot be delivered because of a lack of student numbers and other factors that do not constitute a feasible student size. There are many cost factors militating against a higher participation of those whose opportunities for employment and social fulfilment would be enhanced by a fully supported training and education regime here.

The DITRDC in this Norfolk Island assistance initiative will mirror the programs in force by a state government to subsidize training.

For example, from 1 July 2018, the NSW Government introduced fee-free apprenticeships for residents of New South Wales. Should a Norfolk Island resident enrol with NSW TAFE for the course component of an apprenticeship being undertaken on Island, the Australian Government will fully reimburse the course fees¹⁰.

The Norfolk Island initiative specifically advises in its guidelines that *"the Norfolk Island VET Financial Assistance is being delivered by the Australian Government to fill an assistance gap on Norfolk Island as residents are unable to access subsidies by state and territory governments¹¹."*

⁹ https://www.regional.gov.au/territories/norfolk_island/vet-financial-assistance-initiative.aspx

¹⁰ https://www.regional.gov.au/territories/norfolk_island/governance/files/VET_Financial_Assistance-Factsheet.pdf

¹¹ https://www.regional.gov.au/territories/norfolk_island/governance/files/VET_Financial_Assistance-Guidelines.pdf



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In the previous example of the Diploma of Childhood Education and Care, an IOT resident will pay \$13,380 whereas a Perth person will pay \$1,200 under the present WA Government 'Lower Fees – Local Skills' 2021 initiative.

IOGTA is uncertain about why this initiative applies to Norfolk Island and not Christmas and Cocos (Keeling) Islands also. IOGTA sees the application of this initiative in the IOTs as delivering on Terms of Reference B through to E.

Unsatisfactory Governance Arrangements in the IOTs

IOGTA refers to the following observation by the JSNCET Committee in their 2006 *'Current and Future Governance of the Indian Ocean Territories Inquiry'*:

"The Committee observes that...effective governance is an important component of economic sustainability, for...poor decision making within the context of an inadequate governance framework can undermine economic development."

IOGTA Chairperson Chris Su had quoted the above at the 9th April 2015 hearing JSCNCET Inquiry on *Governance in the Indian Ocean Territories* on Christmas Island.

IOGTA supports the 2006 Committee's position that effective governance underpins economic sustainability. Unfortunately the lack of effective governance in 2021 still hampers the IOTs in the training field as discussed above and is a source for confusion on the Cocos (Keeling) Islands in economic development.

The Commonwealth Corporations Act (2001) is the federal legislation that controls the creation of Companies and sets the standards on various aspects of the corporate world including the issuing of shares, debentures and the winding up of companies. References to the Australian Securities and Investment Commission (ASIC) are throughout the Act as the authority that regulates this space in Australia.

On the Cocos (Keeling) Islands, it seems that the Corporations Act (Cth)(2001) does not apply. *The Companies Ordinance* applies on the Cocos (Keeling) Islands as amended and in force under the Cocos (Keeling) Islands Act 1955¹².

¹² <https://www.legislation.gov.au/Details/C2004H03782>



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TERRITORY OF COCOS (KEELING) ISLANDS

The Companies Ordinance

comprising Chapter 174 of the Revised Laws of the Colony of Singapore in its application to the Territory as amended and in force under the

Cocos (Keeling) Islands Act 1955

Consolidated as in force on 17 February 2000

(includes amendments up to Ordinance No. 2 of 1973)

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Source: *Federal Register of Legislation*,
<https://www.legislation.gov.au/Details/C2004H03782>

The Companies Ordinance comprises of '*Chapter 174 of the Revised Laws of the Colony of Singapore in its application to the Territory as amended and in force under the Cocos (Keeling) Islands Act 1955*'.

It seems the laws of a foreign parliament are in force on the Island through an Ordinance passed by the Commonwealth Government.

Similar to the Corporations Act (Cth)(2001), this Companies Ordinance sets the standards for issuing of shares, debentures and sets the protocols for winding up of a company.

IOGTA Chairperson Chris Su wrote to ASIC 30th April 2021 to seek clarification on how the Ordinance exists alongside the Corporations Act for the Cocos (Keeling) Islands.

A response was received on 5th May 2021:

Enquiry Number 1-43190579060

Dear Chris Su



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Thank you for your enquiry....We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you. It is your responsibility to determine your obligations.

Kind regards

ASIC

Referring again to the 2006 JSCNCET Committee's position on how governance underpins economic sustainability, it is unsustainable for the Cocos governance framework around something as mundane as setting up a Company is so unclear that the regulatory authority ASIC cannot be certain that they and the Corporations Act (2001) have jurisdiction there.

It should not be incumbent upon Indian Ocean Territories residents to '*seek professional advice*' on something so mundane that would not cause confusion for any entrepreneur on the mainland or in the mind of ASIC as to whether or not they had jurisdiction.

The Companies Ordinance refers to entities such as the Federation of Malaya which ceased to exist in 1963. Provision 19 places restrictions on persons who want to register a name containing the word *Royal* or *Imperial* in case the public is confused that it is in connection with the *Ruler of any Malay State*. Note 108 clarifies that the expression *Her Majesty's dominions* includes India and any state or territory which is under Her Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by Her Majesty.

Part 289 Audit of Accounts, proscribes that *the accounts of the Official Receiver and the Accountant-General shall be audited by the Director of Audit, Malaya, in the prescribed manner.*

There is no mention of ASIC.

Conclusion and Recommendation

There are a range of institutional and systemic blockages that stop IOT residents from being treated the same as mainlanders. This stymies sustainable economic development.

The Commonwealth hold as their benchmark for service provision in the IOTS "*the underlying principle of policy development, service delivery, and capital works is to ensure*



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that the Territories communities are provided with services and infrastructure comparable with those provided to equivalent WA mainland communities¹³

The IOTs are not being provided with the same services as comparable WA mainland communities. This is not as much a question of insufficient funding being allocated to the IOTs, but moreover, the ineffectual utilisation of it because of the governance arrangements that the IOTs and DITRDC find ourselves in.

The governance arrangements are so complex that it seems the Corporations Act (Cth)(2001) does not apply to the Cocos (Keeling) Islands. This raises the question of whether or not it applies to Christmas Island? And if so, how did it come to pass that it is the law of the land for one island and not the other? Or is there no legal framework for the establishment of companies on the external territory of Christmas Island at all?

Without resolving these long standing governance issues that help to achieve the 'comparable with WA mainland communities' principle and addressing the possible application of anachronistic legal frameworks to the Islands, progressing Terms of Reference A through to E will be hampered and considerably troubled to the point of being ineffectual.

IOGTA's Objects of Association include *promoting employment, economic and community development on Cocos and Christmas Island.*

Accordingly IOGTA makes the following recommendations for consideration:

Recommendation1:

That DITRDC assign a governance desk contact in its department for IOT organisations to refer anomalies in governance and legal framework application for resolution.

That this governance desk meet with Island stakeholders in the IOTs including the two Shires, the Christmas Island Community Consultative Committee at least twice a year and to also write an annual report to the JSCNCET to document their resolutions and outstanding items every calendar year.

Recommendation 2:

That the Commonwealth Government mirror the Norfolk Island VET Financial Assistance Initiative in the Indian Ocean Territories through the Indian Ocean Group Training Association.

¹³ [Service Delivery Information Kit, Department of Infrastructure and Regional Development 2015](#)

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Recommendation3:

That the Committee restate their Recommendation 11 of their JSCNCET 2006 '*Current and Future Governance of the Indian Ocean Territories Inquiry*':

The Committee recommends that section 8 of both the Cocos (Keeling) Islands Act 1955 and the Christmas Island Act 1958 be amended to include a framework for consultation with the Indian Ocean Territories communities in relation to service delivery arrangements with the State of Western Australia, and in the review of Western Australian legislation which is applied in the territories as Commonwealth law.