# 4

# Applied WA law and community service delivery

## Introduction

4.1 This chapter addresses two of the inquiry's terms of reference:

- the operation of Western Australian applied laws; and
- community service delivery including the effectiveness of service delivery arrangements (SDAs) with the Western Australian Government.

4.2 In this chapter, the Committee examines the effectiveness of having a body of WA law applied (as Commonwealth law) in the Indian Ocean Territories. In particular, the Committee addresses the various complexities arising from this arrangement, owing to the inapplicability of many laws which are automatically extended to the Territories and confusion over delegated authorities under applied legislation.

4.3 This chapter also analyses the effectiveness of the delivery of services in the IOTs, which, under the Australian Government's policy of 'normalisation', are increasingly being provided through SDAs with the WA State Government or are being delivered through contracts with the private sector following a market-testing and tender process.

4.4 In addressing these two terms of reference, the adequacy of consultation with the IOTs communities emerges as a key issue. Evidence from both

Christmas and the Cocos (Keeling) Islands identified significant flaws in the Government's consultation processes in both the consideration of applied laws and the negotiation of SDAs. Before concluding with its views on these matters, the Committee examines the way in which the role of Christmas Island's Community Consultative Committee has changed since its inception, and how this has affected community input into matters that impact directly on Territory residents.

## The operation of Western Australian applied laws

4.5 As discussed in chapter two, the enactment of the *Territories Law Reform Act 1992* saw the laws of Western Australia extended to the IOTs in 'so far as they are capable of applying'.[1] WA laws are applied in the Territories as Commonwealth laws and all non-judicial powers in applied WA legislation are vested in the Commonwealth Minister for Territories.[2] Therefore WA State ministers have no jurisdiction, delegations or powers under the Act.

4.6 As new legislation is passed by the WA Parliament or existing WA legislation is amended, the new laws automatically apply to the IOTs as Commonwealth laws unless the Australian Parliament determines that this should not be the case. By Ordinance made by the Governor-General on the recommendation of the Federal Minister for Territories, WA laws can be amended, deferred or disallowed.[3] Ordinances are used to adjust WA laws either to accommodate the special circumstances of the IOTs, including cultural differences, or to address potential inconsistencies between WA and Commonwealth law.[4]

4.7 While there is no question that the previous Singapore-based regime no longer held relevance for the IOTs communities and that comprehensive legal reform was necessary, it has been acknowledged that the current arrangements can generate confusion. During a Senate Estimates hearing in 2005, a representative from DOTARS stated:

> The applied Western Australian legal regime is a very complex arrangement. Many people become confused and believe that they are living under Western Australian law. It is not necessarily an

1 *Territories Law Reform Act 1992* (Cth), Section 6, 8A(1).

2 Department of Transport and Regional Services, Submission no. 12, p. 7.

3 Department of Transport and Regional Services, Submission no. 12, p. 7.

4 Commonwealth Grants Commission, 1999, *Report on the Indian Ocean Territories 1999*, CanPrint Communications Pty Ltd, Canberra, p. 22.

> easy concept. In addition to that, any amendments to the applied legislation et cetera makes it even more complex.[5]

4.8 This complexity can also be attributed to the fact that many of the WA laws which are automatically applied to the IOTs have little or no relevance for the Territories themselves. DOTARS further stated:

> The body of legislation, as it stands, does not necessarily have a targeted effect on the Indian Ocean territories. There are a large number of laws that I am aware of that would not really relate at all.[6]

4.9 The Committee received evidence which suggested that of those WA laws currently applied as Commonwealth law in the IOTs, over 50 per cent are irrelevant.[7] In addition, the Shire of Christmas Island stated:

> The argument that not all laws apply equally to every region or area within Western Australia is not valid in the Christmas Island context. While a person in Western Australia can understand that a law has no relevance to where they live, they can understand that it applies somewhere within the State. In the territory context there is no relevance.[8]

4.10 It was suggested that in many cases, the inapplicability of certain laws is due to WA Government bodies being included in legislation applied to the Territories despite having no formal role. This situation was explained by former CEO of the Cocos (Keeling) Islands Shire Council, Mr Robert Jarvis, who stated:

> At times, I believe Commonwealth legislation has been applied when it needed to be modified before it was applied. I will give an example. The Western Australian Local Government Act requires that a copy of a local law is sent to the joint house committee, which is a Western Australian parliamentary committee. No such body exists in the Commonwealth, and we ran into a dilemma when someone contacted a lawyer and challenged one of our local laws. The reason they challenged it was that it had not been to the joint house committee. When I spoke to the department of local

5 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 26 May 2005, p. 137.

6 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 27 May 2005, p. 7.

7 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 16.

8 Shire of Christmas Island, Submission no. 10, p. 98.

> government in Western Australia, they asked, 'Why would you send it to us?' It is a Western Australian committee and has no jurisdiction over the Commonwealth. It is there to look at compatibility with other Western Australian laws, rather than with Commonwealth laws. That is a simple example. When laws from the state are applied in the territories, there should be some consideration given to certain elements of those pieces of legislation which do not quite fit. In that case, it was the basis for someone prepared to make a legal challenge against a shire's local law-making ability.[9]

4.11 The WA Department of the Premier and Cabinet explained that the application of irrelevant laws was a resource-saving measure on the part of the Commonwealth:

> …you have got a lot of those acts in the territories that have no mechanism to trigger them, and that is fine because it would cost a lot of money to go to repeal processes and have all the parliamentary requirements of repealing acts and putting the acts on the table. What the Commonwealth has done is just applied those acts and commonsense dictates whether or not those acts apply in the territories.[10]

4.12 Evidence received by the inquiry suggests that for those people residing in the Territories, things are a little more complicated. Apart from confusion over knowing exactly which laws apply in the Territories, the Committee was told that the extraneous nature of certain laws can also result in police exercising discretion in their enforcement—as was suggested by Mr John G. Clunies-Ross in the case of bicycle helmet laws, which are only enforced for minors in the Cocos (Keeling) Islands, due to the lack of risk factors affecting cyclists on-Island.[11] Mr Clunies-Ross described the failure to review legislation to ensure its suitability to the Territories as 'insulting'.[12] He further stated:

> All in all WA legislation has addressed the limited view of Australia, but has significant legal problems outlined previously. There are also procedural issues, in that the Territory's budget written by the Commonwealth does not reflect the initiatives, social and or economic put forward by WA state government. The

9 Mr R. Jarvis, *Transcript of Evidence*, 22 February 2006, p. 48.

10 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 4.

11 Mr J. G. Clunies-Ross, Submission no. 15, p. 5.

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

> budget is fixed prior to and separate to the WA budget, and has no flexibility to address initiatives put up by WA even though the Commonwealth levies WA taxes.[13]

4.13 In 1991, the '*Islands in the Sun*' report of the House of Representatives Standing Committee on Legal and Constitutional Affairs recognised the need for the IOTs communities to be involved in the reviewing process in respect of WA laws to be applied to the Territories. This was primarily to ensure that the particular circumstances of the Territories were not adversely affected by the extension of a law.[14]

4.14 However, in its 1999 report on the IOTs, the Commonwealth Grants Commission identified concerns about the process by which WA law was being applied in the Territories. While the Commission was unable to pinpoint the underlying cause of ongoing community concern, it advocated improvements to consultative processes generally. The Commission stated:

> …[community concerns] could be addressed by ensuring that the IOT communities have better access to the laws that apply and to adequate information on how the legal system operates. The re-invigoration of the Community Consultative Committee on both Territories would be a useful first step.
>
> [DOTARS] should also consider whether a more streamlined process for applying new legislation to the IOTs and for culling irrelevant legislation could be developed.[15]

4.15 While acknowledging that there could be greater consultation between DOTARS and the local community, the Cocos (Keeling) Islands Shire Council appeared generally satisfied with the current arrangements in place with regard to the applied WA laws. Shire Council CEO, Mr Bill Price, stated:

> We feel that the operation of Western Australian applied laws are quite relevant to us. At the moment we are quite happy with the majority of the legislation that is applied here, although we feel that there may need to be more consultation with the local community to tailor the legislation to accommodate the local

---

13 Mr J. G. Clunies-Ross, Submission no. 15, p. 6.

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.

15 Commonwealth Grants Commission, 1999, *Report on the Indian Ocean Territories 1999*, CanPrint Communications Pty Ltd, Canberra, p. 31.

> community a little bit more, taking into consideration their culture and things like that.[16]

4.16 The Shire of Christmas Island was more vocal in its criticism of the applied laws system, largely due to the lack of input or influence the Shire believes the island community has in the process. While acknowledging that the applied laws system was an improvement on the Singapore-based regime, the Shire submitted that 'the level of bureaucracy and complexity arising makes it only marginally better'. The Shire stated:

> The applied laws system denies the Territory any real say in the laws that apply, exacerbated by the fact that the laws apply immediately they are proclaimed in Western Australia, and that requests for changes to laws are ignored.[17]
>
> The Commonwealth hasn't provided sufficient resources, information or advice to either manage the system of laws or facilitate community understanding of these laws.[18]
>
> Despite some initial efforts, the Shire has not been the conduit for effective monitoring of the effects of the applied laws system and has not had direct access to the Minister in respect of laws to apply. In essence, the question of effective community involvement in the application of Western Australian laws has now been abandoned. The absence of effective consultation and access arrangements has rendered a marginally fair system unfair.[19]

4.17 One of the confusing aspects of the applied law system is determining who has delegated authority where a WA law is applied in the Territories. The Shire of Christmas Island raised the issue of the effectiveness of such delegations where a particular level of expertise or qualifications is required. For example, for the purposes of the *Health Act 1911 (WA) (CI)*, the Administrator is delegated the same authority as the Executive Director of Health in WA. Similarly, the Administrator is delegated the equivalent role of child welfare officers within the WA Department of Community Development for certain child welfare/protection issues.[20]

---

16 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

17 Shire of Christmas Island, Submission no. 10, p. 75.

18 Shire of Christmas Island, Submission no. 10, pp. 125–6.

19 Shire of Christmas Island, Submission no. 10, pp. 81–2.

20 Shire of Christmas Island, Submission no. 10, pp. 103–4.

4.18 The Shire stated that where recent delegations had been published in the Territory of Christmas Island Government Gazette, the general trend had been:

- where the Minister has the authority in the WA law, to delegate authority to the Administrator; and
- where an officer has the authority in WA law, to delegate authority to that person in WA.[21]

4.19 During discussions, DOTARS acknowledged that it 'could not say that (the department's) examination of local government legislation is systematic or (its) highest priority'.[22]

4.20 However, DOTARS did inform the Committee that it was developing a program for reviewing WA legislation applied as Commonwealth law in the IOTs. The Department advised that it had been working through the legislation to identify where laws needed to be amended and, in particular, where the delegations needed to be updated.[23]

4.21 As yet, however, the Committee noted that there has been no consultation with the WA Government and DOTARS was not in a position to advise whether there was a plan to consult with the IOTs shire councils throughout the process.[24]

## Committee conclusions

4.22 While the Committee acknowledges the practicality of having a system of applied WA law in the IOTs, it is troubling that many of the concerns about the implementation of this system, which were identified in the early stages of the transition, have yet to be addressed.

4.23 In the Committee's view, the model which sees WA laws applied to the IOTs is, at present, the most appropriate one, regardless of the Commonwealth's stated policy for the long-term incorporation of the Territories into WA.

4.24 However, the effectiveness of this model is dependent on the preparedness of the Australian Government to contribute sufficient

21 Shire of Christmas Island, Submission no. 10, p. 103.

22 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

23 Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

24 Ms A. Clendinning (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 32.

resources to ensure that the laws which are applied to the IOTs communities are not only tailored to the efficient functioning of the territories, but also recognise their unique culture.

### Recommendation 8

4.25 **The Committee recommends that, as a matter of priority, the Australian Government allocate sufficient resources to implement a program for reviewing all Western Australian legislation currently applied as Commonwealth law in the Indian Ocean Territories, with a view to repealing, or amending, all legislation which cannot be practically applied in the Territories.**

4.26 While an all-encompassing review of the existing applied laws is required in the first instance, it is equally important that the Commonwealth commit resources for the ongoing monitoring of the suitability of WA legislation as it is applied in the Territories. The current situation, whereby anomalies in legislation appear to be addressed in an ad hoc manner only in the event that an incompatibility arises in practice, is unsatisfactory.

4.27 In the Committee's view there needs to be a working party tasked with considering in detail each piece of legislation as it is applied in the IOTs, with the view to identifying any perceived problems right at the beginning. This working party should have a collaborative relationship with the Shires of both island communities, in line with legislative changes proposed by the Committee in Recommendation 11.

### Recommendation 9

4.28 **The Committee recommends that, following a review of existing applied Western Australian legislation, the Australian Government allocate sufficient resources for the ongoing monitoring of new, amended, or proposed Western Australian laws which apply, or will apply, in the Indian Ocean Territories as Commonwealth law.**

# Community service delivery

4.29 As the Australian Government pursues its policy of 'normalisation' for the IOTs, one of its objectives has been to reduce the number of DOTARS staff in the Territories by devolving functions where possible. Under this policy, community services are increasingly being delivered through SDAs with WA agencies or through the private sector following market-testing and tender processes. The effectiveness of these arrangements is discussed below, as are the impacts being felt throughout the IOTs communities as a result of this transition.

## Service delivery arrangements (SDAs)

4.30 Since 1992, the WA Government has acted as an agent of the Commonwealth to provide equivalent State services to the IOTs, as requested by the Commonwealth.

4.31 As discussed in chapter two, the position of Project Manager for the Indian Ocean Territories within the WA Department of the Premier and Cabinet provides advice to the Premier and develops policy in relation to service provision in the IOTs. In evidence to the Committee, current Project Manager, Ms Virginia Miller, outlined mechanisms available for residents of the IOTs to have a say in the process by which SDAs are formalised:

> The service delivery arrangement process is as transparent as it possibly can be in as much as the residents of Christmas and Cocos islands have access to the actual documents that are prepared, which show the services to be provided, the aims and objectives of the service delivery arrangement and the costs. Each year the state agencies are required to prepare performance reports. These are documented by DOTARS and are available to the Christmas Islanders and Cocos Islanders. In addition, an audit is undertaken by the Western Australian Auditor-General, so that it is a very stringent process. At the end of the life of the service delivery arrangement, it is reviewed by a joint team from the Commonwealth and the state— me being the state— and the residents of Christmas and Cocos islands are invited to input at that point or earlier, if they so choose. At any stage of the way if there is a dissatisfaction with the way services are provided, there is opportunity for those concerns and comments to be heard. In addition, every service delivery arrangement has a contact officer and that contact officer is generally well known to the

> stakeholders who have need of the service delivery arrangement. So there is that mechanism in place where the residents can actually contact the state contact officers if they have a problem in the first instance or they can contact or let their concerns be known to DOTARS. At the end of the service delivery arrangement, if nobody likes the services that are being provided, then we would recommend that that service delivery arrangement be terminated.[25]

4.32 While consultation on SDAs is a Commonwealth responsibility, evidence received by the inquiry suggested that the process described above is not followed consistently by DOTARS. The Shire of Christmas Island used the example of a recent SDA with the WA Department of Sport and Recreation as 'one of many' examples of where the community was denied any opportunity to participate in negotiations over a service delivery that directly impacts on it.[26] The SDA was signed between the State and the Commonwealth on 18 December 2005. The Shire stated:

> One of the key points about it is that we did not even get advice that this SDA was being considered or was being negotiated at all…Normally we are at least given the courtesy of being told what the agenda is for Commonwealth-state negotiations about SDAs.[27]

4.33 While the Shire acknowledged that the WA Department of Sport and Recreation may well be able to provide a valuable service, as the largest on-Island recreation provider the Shire was very concerned that it had been denied an opportunity to comment on the proposal.[28]

4.34 DOTARS acknowledged the Shire's concerns over this particular SDA, but suggested that this was an anomaly, adding that 'in the overwhelming majority of cases there is formal consultation'.[29]

4.35 There was a significant contrast in the views submitted by the Shire of Christmas Island and the Cocos (Keeling) Islands Shire Council on the overall effectiveness of SDAs with Western Australian agencies. While on Cocos, the Shire Council stated that it was 'very happy' with the current

---

25 Ms V. Miller (WA Department of the Premier and Cabinet), *Transcript of Evidence*, 22 February 2006, p. 7.

26 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 8.

27 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 7.

28 Ms M. Robinson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 8.

29 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, pp. 3–4.

SDA process,[30] the Shire of Christmas Island described the SDA system as 'problematic for a range of reasons' and again highlighted the lack of community involvement in the decision-making process as a major concern.[31]

4.36 It was suggested to the Committee that the Cocos (Keeling) Islands Shire Council was in the advantageous position of being a trustee of six-sevenths of the land, which may in part explain the inconsistency in views between the two Shires on the issue of consultation.[32] It was also suggested that the withdrawal of DOTARS staff from Cocos (Keeling) Islands had opened communication lines and given council the opportunity to represent the community.[33]

4.37 In regard to SDAs applying to the Cocos (Keeling) Islands, the Shire Council, stated:

> We are quite satisfied that the majority are very relevant to us. We have an opportunity as a council through negotiation with DOTARS to review those SDAs that are relevant to us. If we feel they are not relevant we can throw that SDA away.[34]

4.38 Some of the concerns the Shire of Christmas Island raised about the SDA system included:

- the exclusive arrangement between the Commonwealth and the State for the provision of services;
- the lack of accountability and transparency arising from this arrangement; and
- the lack of community involvement in decisions about effective service provision.[35]

4.39 The Shire stated:

> The Commonwealth has failed to acknowledge its greatest asset: the community. If the Commonwealth was committed to effective

30 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

31 Shire of Christmas Island, Submission no. 10, p. xii.

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

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

34 Mr B. Price (Cocos (Keeling) Islands Shire Council), *Transcript of Evidence*, 1 February 2006, p. 3.

35 Shire of Christmas Island, Submission no. 10, p. xii.

> community service provision, and to developing community capacity to take initiative and be involved in decision making, tangible benefits would flow.[36]

4.40 DOTARS was asked how it assessed whether the Commonwealth was getting value for its dollar in entering SDAs with WA agencies. DOTARS responded that the funding provided to the WA Government for the delivery of services to the IOTs is finite, and therefore the interest of the WA Government is in providing the most efficient service.[37]

## Third party contracts

4.41 Where the Australian Government provides services to the IOTs directly there is a substantial impost on resources, as well as a reliance on specialised expertise which poses a significant risk to the Government should that expertise be lost through the departure of individuals employed in key positions. Therefore, the Australian Government introduced a policy whereby a number of these services are increasingly being:

> …either re-engineered to meet WA legislation and procedural standards to eventually be covered by a SDA with WA, or market tested with a view to being offered for competitive tender. Where either the SDA or market testing process fails to find a suitable service delivery agency or contractor, then that service will, of necessity, be continued by the Department.[38]

4.42 Services that have been contracted out include water and wastewater, power, port management, airport management, airline services and TV and radio broadcasting. DOTARS reported that significant progress had been made in reviewing and market testing non-core Island administration functions and services. In circumstances where the outsourcing of services renders pre-existing staff redundant, DOTARS offers financial planning, career advice and individual counselling.[39] DOTARS stated:

> Market testing of services is not a measure to avoid the Commonwealth's responsibilities towards the Islands and the Commonwealth recognises that there will be a continued need to

36 Shire of Christmas Island, Submission no. 10, p. 154.

37 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 8.

38 Department of Transport and Regional Services, Submission no. 12, p. 8.

39 Department of Transport and Regional Services, Submission no. 12, p. 8.

> subsidise many of these services in order to make provision viable. Rather, it is about having services provided by those best placed to recruit the required expertise taking account of the value for money for the Commonwealth. Any savings made from market testing are not lost to the programme but are instead available for reallocation towards service provision areas not currently well serviced. Indeed, it is vital that efficiencies are gained to enable this reallocation to occur.[40]

4.43 The Shire of Christmas Island made it clear that it is strongly opposed to the Government's policy of market-testing. The Shire stated:

> DOTARS current policy for the Indian Ocean Territories continues to create policy and administrative uncertainty and to undermine economic self-sufficiency. This policy promotes market testing, contracting out, divestment of non-core assets and the removal/reduction of DOTARS direct on-Island presence.
>
> All that this policy has done is undermine the local community's employment and service base and created suspicion in the minds of many that the policy is against local residents, both in terms of accessing jobs and opportunities to provide outsourced services. The Government's decision not to advertise market testing "opportunities" on Island is further evidence that the Government is not committed to service delivery by residents or Island based organisations.[41]

4.44 In relation to services being market-tested by the Government, DOTARS commented that 'we certainly leave open the possibility that IOT shire councils could deliver them'.[42] In 2005, DOTARS acknowledged that where the Shire councils had the resources to deliver services, this option would be favoured. A representative from the Department stated:

> Our intent would be that if local government can deliver it on-island—they have the capacity to do so—that is always preferable in the sense that they are there, they are on the spot and, if they have the support and the capacity, that is much better for the community there.[43]

---

40 Department of Transport and Regional Services, Submission no. 12, p. 8.

41 Shire of Christmas Island, Submission no. 10, pp. 66–7.

42 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 8.

43 Ms S. Varova (Department of Transport and Regional Services), *Transcript of Evidence*, Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, 27 May 2005, p. 6.

4.45 However, the Shire of Christmas Island disputed the Government's willingness to engage the local councils for service delivery. The Shire pointed to the fact that for the airport, the health service, and school and hospital cleaning services, expressions of interest were not advertised on-Island and instead were advertised through the State Department of Treasury—who the Shire stated 'don't "normally" advertise on island.'[44]

4.46 The Shire used the privatisation of the management of the Christmas Island airport to illustrate the social impact on Island residents. The Committee was advised that eight local people who were employed at the airport are no longer employed there, and the majority of labour required at the airport is fulfilled on a casual basis, largely due to an increase in security requirements.[45] In light of this, the Shire expressed concern over the decision by the Australian Government to undertake a market testing process for the management and delivery of health services for the IOTs. Shire President Mr Gordon Thomson stated:

> Why is the government contracting out the management of that health service instead of talking to this community about how health services could be delivered locally? Why hasn't the government encouraged the training and employment of locals in nursing roles, for example, and instead destabilised the service with fly-in, fly-out agency staff—at great expense, I might add? Why hasn't it looked at the contracting out of airport management and water and sewerage? Permanent jobs were lost in each case, to be replaced by short-term employment contracts—no certainty for those taken on by the incoming contractors and no future for those who lost their jobs.[46]

4.47 The Shire submitted that there may be local solutions for the effective delivery of certain services without the Government contracting services out to third parties.[47] Mr Thomson stated:

> We believe that involving the community in decisions about state type services will lead to more effective and efficient service provision that supports our economy. Local jobs and local delivery can be very effective given our small size and remoteness and our particular stage of development.

---

44 Shire of Christmas Island, Submission no. 10, p. 67.

45 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 19.

46 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 5.

47 Shire of Christmas Island, Submission no. 10, p. 154.

> In this context, the current government policy of market testing and contracting out of state type services is wrong and undermines both service quality and economic sustainability. It detracts from permanent job creation, from which certainty and confidence will flow.[48]

4.48 When DOTARS was asked whether there was an analysis of the overall economic impact of changes resulting from outsourcing, including on employment, the Department commented:

> I do not think it was done in a comprehensive way. There would be decisions made in relation to the letting of individual contracts, and indeed some of them do provide for the employment of local staff. Whether I could put together a picture over the life of market testing arrangements, I am not sure.[49]

## Committee conclusions

4.49 While the Committee advocates employment opportunities for the local community, it also recognises the benefits the community derives from SDAs, where suitably qualified professionals from WA agencies are engaged to deliver often essential services.

4.50 However, with regards to the Government's policy of increased 'market testing' of government services with a view to outsourcing/privatising, the Committee is strongly opposed to the recruitment of outside labour where an appropriate skill-base exists on-Island. The precarious nature of the Territories is such that even the smallest number of job losses can have a significant social and economic impact on the communities.

4.51 The Committee was therefore surprised to learn that there had been no comprehensive analysis of the overall economic impact of changes resulting from outsourcing, including on employment. If the Australian Government was intent on pursuing a policy of market testing and outsourcing of services, the Committee believes it was incumbent upon the Government to monitor the social and economic effects of this policy on the IOTs communities. The Committee therefore recommends that this policy be abandoned.

---

48 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 5.

49 Ms S. Page (Department of Transport and Regional Services), *Transcript of Evidence*, 27 March 2006, p. 12.

**Recommendation 10**

4.52 **The Committee recommends that the Australian Government cease its policy of market-testing and outsourcing to third parties services which it currently provides to the Indian Ocean Territories, with a view to promoting the development of community capacity within a framework of enhanced local/regional government.**

## The Community Consultative Committee

4.53 Much of the criticism levelled at the Australian Government for its lack of consultation with the IOTs communities on applied WA laws and SDAs can be attributed to what the Shire of Christmas Island and the Christmas Island Chamber of Commerce described as the diluting of the role of the Community Consultative Committee (CCC).

4.54 The CCC was established by the Christmas Island Assembly shortly after the new legal regime was introduced to the Island. The CCC is made up of various representatives of community groups and government agencies and its role is to facilitate community consultation on the implementation of law reforms.[50]

4.55 The Committee was advised that initially, consultation occurred between the community, the Australian Government (through the Australian Government Solicitor and DOTARS' Legal Section) and WA government officials about the application of laws and related service delivery via the CCC. The Shire of Christmas Island explained that DOTARS would produce a brief which set out an impact statement for each new law being applied to the communities, and these were circulated to members of the CCC, who would take this information back to their various organisations to develop awareness of the new laws.[51]

4.56 However, the Shire has submitted that this process was disbanded in 1996, and impact statements are no longer provided, nor are lists of bills or Acts,

50 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 3. The CCC is a standing committee of the Shire Council whose current members include all Shire councillors, the Christmas Island Women's Association, the Chinese Literary Association, the Poon Saan Club, the Malay Association, the Islamic Council of Christmas Island, the Union of Christmas Island Workers, Christmas Island Phosphates, the Christmas Island Chamber of Commerce and the Austasia Business Council.

51 Shire of Christmas Island, Submission no. 10, p. 85.

and an annual review of laws does not occur.[52] The Christmas Island Chamber of Commerce outlined the reduction in the CCC's role and the effect this has had on community consultation. The Chamber stated:

> The Territories Office moved quickly and quite deliberately to marginalise, then after 1995 exclude, the influence of the CCC in its decision making process to the point where the CCC can no longer provide any informed consultative function or opinion.
>
> 'Selective' laws became 'all' legislation because the Territories Office did not have the will to procure the resources necessary to closely monitor the suitability of all of the West Australian legislation.
>
> The CCC budget was withdrawn in 1995 because the Territories Office deemed any further consultation after that time was unnecessary. This decision, which at best, defies logic when the West Australian Parliament continues to pass new legislation and amend existing legislation which are then automatically applied to the Christmas and Cocos Island legislation.
>
> Legislative changes and SDAs are now presented to the CCC by the Territories Office as a fait accompli. Dozens of pieces of new legislation are condensed to single A4 page explanatory notes usually after the new legislation has become law.[53]

4.57 Furthermore, the Shire of Christmas Island advised that during discussions with DOTARS in 2003, the Shire was told that 'the law reform process was over'.[54]

4.58 The Shire argued that the role of the CCC has been reduced to disseminating information about new applied laws throughout the community and commenting on SDAs on the basis of advice only. In the view of the Shire, this does not accord with the recommendation in the '*Islands in the Sun*' report that the Shire should have:

> …direct access to the Commonwealth Minister in respect of laws to apply to the Island, for reviewing Western Australian laws for their appropriateness to the Territory.[55]

---

52 Shire of Christmas Island, Submission no. 10, p. 89.

53 Christmas Island Chamber of Commerce, Submission no. 4, p. 12.

54 Shire of Christmas Island, Submission no. 10, p. 90.

55 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, p. 58.

4.59 Shire President, Mr Gordon Thomson added:

> …as I understand it, the department does not have those resources any more to provide that sort of advice…the service delivery arrangements are between the Commonwealth and the state government, and neither the Premier's office representatives from the WA state government nor the Commonwealth will agree that we should have a formal role. We never have had, and we do not have, a formal role.[56]

## Recent progress on consultation

4.60 The Committee was encouraged to learn that during March 2006 representatives from the Shire of Christmas Island held productive meetings in Perth with officers from DOTARS' Perth office, the Liaison Officer from the WA Department of the Premier and Cabinet and representatives from six WA agencies. The Shire's visit was just prior to a review of five SDAs and its purpose was both to discuss SDAs and build and strengthen relationships. Importantly, one of the items discussed included:

> …the potential to review and expand the Shire's Consultation Deed with the Commonwealth as a means to resource improved consultation and information.[57]

4.61 A report on the Shire's visit in *The Islander* stated:

> …the visit was a success both in terms of relationship building and information exchange. State and Commonwealth officials responded positively to the Shire's interest in service delivery issues and there was support for increasing local and Shire capacity to deliver services over time.[58]

4.62 The ensuing SDA review meeting was held with the Community Consultative Committee and representatives from DOTARS and the WA Department of the Premier and Cabinet. *The Islander* reported that members of the committee were able to provide feedback on the operation of SDAs and also to discuss the review process. The next review is scheduled for September 2006.[59]

---

56 Mr G. Thomson (Shire of Christmas Island), *Transcript of Evidence*, 30 January 2006, p. 11.

57 *The Islander*, 24 March 2006, p. 3

58 *The Islander*, 24 March 2006, p. 3

59 *The Islander*, 24 March 2006, p. 3

## Committee conclusions

4.63 The Committee recognises that addressing the appropriateness or otherwise of those laws applied in the Territories represents a significant task. In the Committee's view, it is one which can only be achieved effectively with the involvement of the IOTs communities themselves. Not only are the local communities well placed to advise of situations where anomalies exist in applied legislation, they can also provide insights into the unique cultures of the Territories.

4.64 Based on the evidence before it, it would appear to the Committee that in the vast majority of cases the IOTs communities are provided adequate opportunity to comment on draft SDAs before they are finalised. However, in the absence of any formal arrangement, there still exists an opportunity for community consultation to be circumvented and for SDAs to be conferred on the territories with little or no notification—as appeared to be the case with the recent SDA between the Commonwealth and the WA Department of Sport and Recreation, where Christmas Islanders were not even advised that the SDA was being considered.

4.65 While it is inevitable that decisions taken by DOTARS will not always be to the satisfaction of all in the Territories, the Committee believes that tensions would be minimised if members of the community were kept informed as new arrangements were being developed and at the very least, invited to contribute their views during the process.

4.66 In the view of the Committee, the most effective way to ensure that community consultation is not bypassed is to establish a legal requirement for community consultation, in both the development of SDAs and in reviewing the application of WA laws in the IOTs.

### Recommendation 11

4.67 **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.**