



OUR FUTURE IN OUR HANDS

**Shire of Christmas Island
Submission to the Inquiry into
Governance Arrangements in the
Indian Ocean Territories**

August 2005



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EXECUTIVE SUMMARY

Chapter 1 – The Inquiry in Context

It is essential for the Inquiry to understand the Island in context. This context includes the numerous inquiries, reviews and reports about the Island over the past 25 years, the Island's history, its legal framework including Constitutional and statutory base, its externality, and its definition as a non-self governing external territory.

Attempts to bring the Island 'into the mainstream of Australian life' will only be successful if these elements are given their due regard. Substantive change is possible, including more effective governance arrangements, but only if the Islands' history is understood, the situation of residents acknowledged and a commitment to comprehensive action in the community's interest given.

Across the terms of reference for this Inquiry a number of changes could be implemented to put the Island and its residents on a surer and fairer footing into the future; to enable Islanders to believe and realise that "our future is in our hands".

Chapter 2 – The Christmas Island Community

The community, its cultural groups and practices, and the Island's history are all relevant to the Governance Inquiry. This chapter provides information about the demographics and cultures of the Island and highlights historical facts and experiences still relevant today. It also raises broad community concerns about the Government's practices and policy, particularly as these deny the community its history and culture.

Historical facts include:

- Christmas Island was part of a British controlled, United Nations recognised Non-Self Governing Territory until 1958
- The Australian Government's employment arrangements until the early 1980's ensured that Christmas Islanders didn't achieve permanent residency status
- Despite becoming part of Australia in 1958, the Australian Government continued with discriminatory practices well into the 1980's
- The Australian Government has recognised on two occasions since it assumed responsibility for the Territory that if it didn't take appropriate steps, Christmas Island could attract United Nations interest as a non-self governing territory
- Since the early 1980's a permanent and culturally distinct population has developed on Christmas Island

Despite the development of a permanent population on the Island from the early 1980's, the community have continued to have concerns that the Island is treated like a colonial possession of the Commonwealth.

The community's concerns, as they relate to the Island's demography, history and culture, centre on the continuation of discriminatory practices by a Government that is still paternalistic but becoming less benevolent as time goes on. In essence the unchanging overarching control of the Island by the Government has enabled it to



continue to treat Islanders in detrimental ways, despite considerable emphasis on both the unique character of the Island and its peoples, and recommendations aimed at retaining and strengthening this character.

In the community's view, the beneficial 'normalisation' of the Island in the early 1980's has given way to a detrimental normalisation policy aimed at making Christmas Island like a community on the mainland. 'Treat alike' has become 'make the same'. Its effects are particularly detrimental to long term Asian residents.

Long term residents the right to call the Island their permanent home. Commonwealth recognition of the right to self-determination, as envisaged by the United Nations, should follow. If this occurred, many benefits could flow in terms of improved self esteem and confidence for the community and less dependency (whether asked for or not) on the Commonwealth. Without this recognition, the community will continue to feel threatened and insecure, without a sense of a future, and suspicious of Commonwealth policies and practices.

Three key points arise:

- A lack of recognition of the existence of a permanent population on the Island directly impinges on the question of whether the Island is a non-self governing territory, as defined by the United Nations. Further, if the Island could attract the interest of the United Nations, then by definition the process of decolonisation has not yet concluded.
- Colonialism and racism go hand in hand. In this context it is not surprising that claims of racism continue to be made. The continuing segregation of social organisations and institutions, as well as occupation segregation on racial lines, easily give rise to perceptions of colonialism and racism. Commissioner Sweetland pointed out in 1980 that the Island wasn't a colony. However, this legal fact must also have a practical reality: it is not sufficient to say something is not true if policies and practices continue which appear to belie this truth.
- The lack of recognition of and respect for the permanent population including its unique culture and history is a key impediment to the social and economic development of the Island. While Islanders carry in their hearts and minds experiences and perceptions of discrimination, feel suspicious of Government motives, and believe the Government wants to deny them a future on the Island, no amount of structural or administrative change will be of itself effective.

For these reasons the following proposals are made as key precursors to effective change:

1. The Government thank long term Asian residents of the Island and their forebears for the significant contribution they made as phosphate mine workers to the Australian economy over the period 1949 – 1987. Further, the Government acknowledge that this contribution was made at a cost to these workers in terms of low wages, a denial of "Australian" rights and discriminatory practices. This would go a considerable way towards creating a spirit of reconciliation, providing an opportunity for old wounds to heal.
2. Steps are taken to realise substantive equality for long term Asian residents of the Island. It is not sufficient for the Government to say Islanders are



being treated the same as people on the mainland. Only through programs that create a real equality – that recognise the different experience of islanders including past discrimination – will this be achieved.

3. Remaining funds provided by PMCI and set aside for the benefit of Christmas Islanders (resettlement and other purposes) are identified and disbursed to the intended recipients and/or provided to the community for its beneficial use.

Chapter 3 – Accountability & Transparency in Decision Making

It is the Shire's submission that the Government isn't accountable to this community and doesn't believe that it is required to be. Further, the Government pays lip service to consultation and has no sense of or concern about the impact of its decisions on the community.

This lack of accountability is closely allied to the fact that the community is non-self governing and has little decision making rights of its own.

It is also the Shire's submission that there are insufficient mechanisms to make the government accountable for its decisions. The limited accountability mechanisms available are relatively inaccessible to this community. They are also ineffective in that they are largely ignored by those being called to account. The Shire has attempted to utilise the available mechanisms to raise the level of accountability, and to create its own, but is overall dissatisfied with the Government's unwillingness to account to the community for its decisions.

Colonial style decision making by its nature is largely unaccountable. Decisions are paternalistic; that is, they are for the community's 'own good' whether they like it, or understand it, or not.

Transparency is also absent when decisions are made at a distance, not locally, and aren't announced or explained. Decisions are made solely from a bureaucratic or political perspective, not a community perspective. Allied to this is the attitude that commitments previously made can be conveniently put aside, ignored or forgotten. There is no continuity. Further, the connection with the community is so tenuous, communications so disjointed, and lines of decision making so unclear that the community can't 'keep the bastards honest'.

Current Government decision making about Christmas Island has all these characteristics: decision making has shifted away from the Island to Perth and Canberra, paternalistic justification is given in place of considered and informed explanation, and there is no interest in community impacts. In essence, there is no accountability, no transparency and no responsibility.

Using examples such as the 'no casino licence' decision, the 2003 policy decision, land use decisions, and decisions about community facilities and services, this chapter attempts a characterisation of current Commonwealth decision making. Key elements include:



- Not being accountable to the community
- Ignoring community impacts & issues when making decisions
- Ignoring the recommendations of inquiries and reports
- Ineffective community consultation

Formal accountability mechanisms are also considered. The lack of such mechanisms and the ineffectiveness of these to call the department into account are highlighted.

Overall, there is a culture within DOTARS of unaccountability, supported implicitly by a Government that does not or cannot call it to account, and is likewise uninterested in being accountable to the community. DOTARS don't effectively engage with the community, ignore criticism and positive suggestion, waste money and time, don't encourage complaints, renege on commitments and self-servingly seek out advice that supports their own position. The community suffer as a result, both in terms of deleterious impacts and in being unable to develop their own self-sufficiency or capacity.

The community are subordinate to a Department and a Minister who have a pervasive influence on their everyday lives but refuse to be accountable for their actions. Being a non-self governing territory means that the Department and the Minister can take a higher degree of control on Christmas Island than they would have anywhere else. While their decision making role remains ascendant, nothing is likely to change. Measures for greater accountability may improve the situation, but it will not change the hegemony that the Government enjoy.

There are a number of immediate and longer term actions that could be taken to generate greater Government accountability to the community:

Immediate

1. Prepare and publish a customer service charter for the Territories Branch of DOTARS.
2. Establish complaint mechanisms that are transparent and readily accessible to the community.
3. Produce and publish an annual report about the Territories Branch of DOTARS activities in the Indian Ocean Territories, disaggregated by Territory.
4. Document lines of decision making within the Department's offices in Canberra, Perth and Christmas Island and by the Minister and publish this information in the community.
5. Agree and establish clear lines of communication and information dissemination about Commonwealth activities in the Indian Ocean Territories.
6. Cease further market testing or out sourcing of government services to the community.
7. Commit to reviewing services already contracted out when the contract expires, with a view to local management of these services wherever possible.



8. Agree to review decision making arrangements within the Department in consultation with the community on the basis of locating decision making as close as possible to the community and identifying all areas and activities the subject of decision making.
9. Agree a timeframe and resources to establish an effective consultation arrangement about the health service, using the Alberton Consultants report as a starting point.
10. Establish the Ministerial Advisory Committee in the terms proposed by the Shire of Christmas Island.

Longer term

11. Submit the 2003 policy and all details of current plans for existing services being delivered by the Department to the community via the Shire for comment and change.
12. Establish an agreed effective mechanism for direct community participation in decisions about expenditure on service delivery programs for the Indian Ocean Territories
13. Agree a framework and timeframe for progressively transferring decision making to the community.
14. Negotiate, agree and establish an effective health advisory arrangement.

Chapter 4 – Economic Sustainability

Economic sustainability is a key component of effective governance. It is particularly an issue for non-self governing Territories: self-determination must be built on economic sustainability. As the United Nations' recognises, member countries are, in the administration of non self-governing territories, "to ensure, with the due respect of the people concerned, their political, economic, social and educational advancement, their just treatment, and their protection against abuses".

The Human Rights and Equal Opportunity emphasised the link between self determination and economic development in it's submission to the Islands in the Sun Inquiry, saying that whatever the Commonwealth's eventual objective for the Territory of Christmas Island was, "the degree of consultation and control which the local community should enjoy in process, including in determining how economic development is to proceed" must be given attention.

Over the years, the Government has given the question of economic development considerable attention. From 1982 on, the issue of economic development has been considered by numerous inquiries and from a number of viewpoints as the Island was expected to be normalised and integrated into Australia. Further, both the 1995 and 1999 Commonwealth Grants Commissions have analysed the question of economic development as part of the broader question of 'mainland comparable standards'.



For all this activity and interest, why is it that economic development is still such an issue of concern? Why is it that the community remains reliant on the Commonwealth to create economic development opportunities and has managed to achieve so little for itself, despite all the ideas and possibilities recommended?

While there is a raft of factors that beset small, remote or isolated communities everywhere, the problems cannot all be attributed to these factors. Such communities can prosper and Christmas Island has many unique and interesting features to favour prosperity rather than decline.

In the Shire's submission the fact that the Commonwealth has done effectively very little to involve, engage or facilitate the community in its own economic development is the key. If, as the United Nations says, economic development goes hand in hand with self determination, then the opposite is true: economic development does not work in a context of non-self determination.

In support of this submission, a number of inter-related points are made about problems with the Commonwealth's attitudes and actions around economic development. These include:

- The lack of support for community based economic self sufficiency
- The high level of Government involvement in the economy of the Island
- The lack of a secure base for local economic sustainability due to Commonwealth policy, employment & business practices and decision making

Despite policies and commitments by the Government to support the economic development of the Indian Ocean Territories, particularly economic self-sufficiency, the Government has done very little to support this direction and have, instead, undermined the community's capacity or confidence that this is achievable.

The reasons for this stem from the fact that the Island is a non-self governing territory, and the Commonwealth wants to keep it that way. It wants the Island to be dependent on it, provides fillips via capital works instead of long term sustainability measures, places its own strategic interests above that of the community, and provides lip service salves in any effort to create a perception that it is doing something when in fact it is doing very little. As a result the community is suspicious and distrustful of Commonwealth motives and is left to crave reassurances, and fight over the titbits offered like mendicants.

The Shire submits that a range of actions could be taken to provide a base for effective and fair sustained economic development of the island. These actions have been identified repeatedly, but are repeated here along with some additional immediate steps to put Christmas Island on the economic sustainability footing it deserves.

Immediate Term

1. Cease all market testing and contracting out of government services.
2. Agree to enter into negotiations with the Shire and the community about how to best deliver Government services based on the principles of local employment enhanced by expert advice and training as required and focused on meeting community need and interest. These principles could be



- immediately applied to the health service, public housing, court services, school services, and power generation and distribution.
3. Issue a statement of commitment to the community in terms of long term economic sustainability and self-sufficiency in partnership with the community and meeting community objectives for employment and effective service delivery.
 4. Provide information to the community about the Government's long term plans regarding immigration detention and related defence presence and how these will impact on the community. This should encompass the interests and intentions of DOTARS, DIMIA, & the ADF in relation to the new IRPC (including any intended different use of the facility once constructed), the temporary IRPC (including when the centre will close and what will happen to the infrastructure and land thereafter), and the Thredbo and related housing for detention officers.
 5. Set a timeframe for a decision on the APSC development. If the proponent does not meet its commitments as per the APSC ordinance, the industry assistance funding earmarked for the project is either spent on the planned upgrades (such as the extension and improvements to the airport) or applied to other industry assistance for the benefit of the community, utilising an assessment process agreed by the community.
 6. Fund fire services at the airport to allow international flights the level of safety measures they require, as recommended by the PWC in 2002.
 7. Undertake a study of the cost of living on the Island, particularly the impact quarantine and freight costs have on this cost.
 8. Link Christmas Island into the ACC network on the same terms and conditions that apply elsewhere.
 9. The Government and the Shire to enter into a memorandum of agreement to establish an Economic Development Board as the primary agency for economic development in the Indian Ocean Territories. The EDB to have the roles and functions outlined in the 2004 Economic Development Strategy. This agreement to commit the parties to the establishment of the Board within the following parameters
 - o The Board has a statutory base
 - o Sufficient resources are provided by the Government to effectively staff the Board for a minimum of five years and to provide significant development funds
 - o The Indian Ocean Territories' Shires decide the majority of Board members
 10. The major land stakeholders on the Island (Commonwealth, Shire, Christmas Island Phosphates, and Parks Australia) enter into a memorandum of agreement regarding access to land in accordance with the Land Planning Strategy.

Longer term



11. The Economic Development Board is established and funded.

Chapter 5 – The Applied Laws System

The Islands in the Sun Parliamentary Inquiry recommendations are the basis for the current applied laws regime, as introduced by the *Territories Reform Act 1992*. The Shire is dissatisfied with the applied laws regime, particularly that -

- It has not been implemented within the package of initiatives as envisioned by Parliamentary Inquiry that recommended it (eg administrative and political reform)
- It is arguable that the Commonwealth has abdicated its Constitutional responsibility in introducing such a system of applied laws
- 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.
- Effective consultation about laws has not occurred, as envisaged when the law reform process was introduced.
- The system of applied laws is more complex than the system applying in Western Australia or, for that matter, anywhere on the mainland
- Many in the community and those providing services to the Territory are confused about the system of laws, erroneously believing that Western Australian laws and related arrangements are in force
- Many applied laws are irrelevant, and the Commonwealth has done nothing to address this irrelevancy
- The impacts of applied laws may not be fully understood until an issue of application occurs
- The role of the Commonwealth as the State Government within the applied laws system is not well understood by either the Commonwealth or the community, resulting in confusion about the applicability and effect of laws
- Parts of the system of laws are rendered ineffective as the Commonwealth has repealed significant legislation or amended or interpreted laws in ways that limit effective application
- Service delivery arrangements and other arrangements such as statutory boards need to be made in many cases to give proper effect to the applied laws
- The inter-linkages of laws, as supported by policies, programs and resources, in the Western Australia context don't occur in the Territory context



Taken together, it is the Shire's submission that the Commonwealth has failed to provide a transparent or fair system of state-type laws in the Territory.

The *Territories Reform Act 1992* is also the basis for the wholesale extension of Commonwealth law to the Territories, unless such law expressly provides otherwise. The Commonwealth system of laws cannot be ignored as part of the overall legal regime applying to the Indian Ocean Territories. Despite the extension of Commonwealth laws, many of these laws have been amended in ways to exclude or limit application to the Territory. These amendments and exclusions result in unfair or less than adequate circumstances for the Territory when compared to mainland States and Territories.

Some circumstances relate to the fact of the Territory being an external Territory and the related Constitutional status of the Territory. Despite this fact, the Shire submits that the Commonwealth has not done enough to understand or redress resultant problems of application.

The Shire submits that there are serious deficiencies in the system of laws applying to the Territory. The system is complex, uncertain, incomplete, and unfair as compared to the system applying of laws applying in mainland States and Territories. As the Shire flagged in 1995, the value and positive input of the law reform process has been lost.

The HREOC warned against enacting law by reference, concerned that such a system would have the same problems of ascertainment as the old Singapore law system, and against allowing a new system of law to develop that had the same problems of a lack of interest on the part of the Commonwealth. The Islands in the Sun report recommended that the applied laws system would only work fairly if it was implemented within a broader framework of administrative and political change and with an effective system of consultation with the community. What HREOC warned against, and the Islands in the Sun report tried to avert, has occurred.

The system may be better than the one it replaced, though the level of bureaucracy and complexity arising makes it only marginally better. Without an effective system of service and policy delivery to give proper effect to laws, the system empties of its promise.

At the heart of the problem is a Commonwealth uninterested in creating a system of fair laws for the community, uninterested in understanding their role in the system, and uninterested in engaging the community in the process. The Commonwealth hasn't provided sufficient resources, information or advice to either manage the system of laws or facilitate community understanding of these laws.

As a result, the system of laws does not serve the community. If the benefit of the law is in the service or security it provides, then against this measure the system fails the community on a number of counts. In many respects the Commonwealth has abdicated its responsibility to provide for the good government on the Territory and has failed its citizens in the process.

If change can occur, the Shire proposes the following program to address the deficiencies described in both the short and longer term. This program of course is



only part of the program required to bring more representative governance to the community of Christmas Island.

Immediate

1. The Commonwealth allocate additional resources to addressing issues relating to the system of laws applying in the Territory. These resources should include access to legal information and advice both within DOTARS and direct to the community.
2. The *Christmas Island Act 1958* is amended to allow a sixth-month gap between the proclamation of laws in Western Australia and their application to the Territory. This could be readily achieved by an Ordinance pursuant to sections 9 & 10 of the *Christmas Island Act 1958*.
3. Alternatively or additionally the *Christmas Island Act 1958* is amended to require the Commonwealth to resource effective information provision and consultation arrangements to ensure the community are given the opportunity to consider the impact of a law prior to it coming into effect.
4. An agreed mechanism is established to enable applied laws to be suspended or repealed on the request of the community where consideration has not been concluded within the available time. This mechanism should be straightforward, automatic and accessible.
5. DOTARS implement a program of culling all irrelevant Western Australian laws in consultation with the community via the Shire of Christmas Island.
6. DOTARS establish and maintain a register of delegations arising from the applied laws system that is readily accessible to the Christmas Island community.
7. The Commonwealth and the Western Australia Government clarify and improve their understanding of the operation of the applied laws system, particularly the role of the Commonwealth as the crown within state applied laws
8. The Commonwealth work with the Shire and the community to clarify Commonwealth legal responsibilities as the "State Government". Specific attention to be given to matters pertaining to land & planning laws, welfare laws, building laws, and public interest/ anti-corruption laws.
9. The Commonwealth agree a framework for reviewing all relevant applied laws with the aim to create a body of direct territory law as opposed to a body of Territory law by reference to Western Australian State laws.

Longer Term

10. The Commonwealth work with the Shire/on-Island Government and the community to establish a direct body of relevant Territory law to apply to Christmas Island. At the minimum, formal endorsement by the Shire/on-Island Government should be required.



11. The Commonwealth develop the legislative framework to enable the enactment of Territory laws via the Shire/on-Island Government.
12. The Commonwealth commit to a full review of the application of Commonwealth laws to the Territory of Christmas Island. Where issues of non-application arise due to the Territory's constitutional status, the Commonwealth work with the Shire/on-Island Government to find practical solutions to overcome any deficiencies or unfairness arising.

Chapter 6 - Community Service Provision

The relationship between the applied laws system and service delivery agreements between the Commonwealth and the Western Australian Government is also integral to the package of changes introduced by the *Territories Reform Act 1992*.

The Western Australian Government also legislated to allow it to take on the exercise of powers or performance of functions on behalf of the Commonwealth. *The Indian Ocean Territories (Administration of Laws) Act 1992* essentially allows the Commonwealth and the State to make arrangements "as the parties see fit" about the exercise or performance of duties including the Commonwealth funding such arrangements and indemnifying the State against any liability.

In the Shire's submission the SDA system is in many cases ineffective and community service delivery needs, including the manner in which they are being delivered, are not being met. Specific concerns include:

- The system is piecemeal: Not all services that can be delivered by SDA's are being delivered. This applies within existing SDA's as well as to "missing" SDA's. The Shire is not necessarily advocating more SDA's. Rather, it points to the concern that the Commonwealth decides on how and what services are being delivered, and what is given priority and attention, without any overall plan.
- The community interest is not being served: The Shire's view is that service delivery should be about delivering meaningful community services in an effective manner. Developing community capacity, not relying on sometimes expensive and ineffective arrangements with a third party, should be the focus.
- The arrangements between the Commonwealth and the State of Western Australia are not transparent: SDA's are negotiated between the DOTARS and the Western Australian Government. There is no community engagement in setting the requirements or specifications for an SDA and the community is not party to the agreements. At best the community via the CCC is asked to comment on SDA's as part of the review process and is told what SDA's the Government is working on. Further, the direct client/provider relationship is not transparent. Departments on the mainland operate in a public service domain. In the Indian Ocean Territories they operate as service providers on a contract. It is a case of he who pays the piper calls the tune. Transparency is lost and confidence in the service delivery undermined.
- Arrangements between the Commonwealth and the State are inefficient: the monopoly with Western Australia means there is no assessment of efficiency and



effectiveness. On an agreed cost neutral basis, Western Australian Government departments and agencies can, in effect, name their price. Possibilities for over servicing and over costing arise.

- Community consultation about SDA's is ineffective: In essence, comment on SDA's is a relatively ineffectual and ad hoc process. Not enough information is provided, CCC comment doesn't have any weight, the community can't decide what's in an SDA, and their comment is often about service issues beyond the scope of the SDA's. It is a lip service review process.

In summary, the SDA system is problematic for a range of reasons including the exclusive arrangement the Commonwealth has with the State, the lack of accountability and transparency arising, including the lack of accountability to or community engagement in the process, the apparent inconsistency with current Government policy, and the fundamental lack of the community's involvement in decisions about effective service provision. Community needs are ignored as a result and service delivery becomes bogged down in costly, overly bureaucratic and unfair service arrangements.

Service delivery to meet community needs is essential. However, a number of policy and practical barriers stand in the way these needs being met. These barriers include Commonwealth disinterest in effective engagement with the community, the Commonwealth's market testing and outsourcing policy approaches, undesired community dependence on the Commonwealth, and a lack of access to advice and resources to develop community capacity. In short, the Commonwealth does not appear interested in meeting community need and is not, despite its policy rhetoric, interested in community initiative to meet these needs.

Direct community – Commonwealth partnerships and the development of community capacity are required to meet community needs, as opposed to remote, indirect and superficial means. A community development perspective is proposed as a means to creating more effective governance arrangements.

A community development approach could deliver real benefits to the community over time. It would require Commonwealth commitment to the community and to the community development principles of partnership, inclusiveness and self sufficiency to achieve these benefits on a long term basis. While the Commonwealth view their responsibilities as ones of merely funding a narrow range of activities or maintaining SDA arrangements, and have a policy of moving away from the community, these things will not be achieved.

Developing the community's capacity to strengthen self reliance and have "can do" confidence is vital to any shift in decision making to the community. Community involvement in developing and providing services to meet its own needs is a good place to start. Community development principles can extend into all aspects of community life, can build economic self-sufficiency, and can contribute to a vital, forward looking community in control of its own future.

The Commonwealth struggles to deliver efficient and effective community services, makes costly and ineffective arrangements with the State of Western Australia, has no clear planning about service provision and excludes the community from decision making. As a result, the Commonwealth has failed to acknowledge its greatest asset:



the community. If the Commonwealth was committed to effective community service provision, and to developing community capacity to take initiative and be involved in decision making, tangible benefits would flow.

Community service delivery and community development are at the heart of the issue of better governance arrangements. Decision making about community service provision is a key place to start. Decisions in community hands about the best way to solve issues of community need in culturally appropriate and locally effective ways will create the best outcomes while developing community capacity in other ways. It would also engender much needed confidence that the community's future is in its own hands.

Steps to achieve this transformation could include:

Immediate

1. The Commonwealth agree to review all SDA's irrespective of current end date.
2. The community through the Shire/on-Island Government become a party to SDA's that involve direct service provision to the community.
3. The Commonwealth agree to the community participating in the specification of all SDA's. This specification setting to be a properly resourced and informed process.
4. The Commonwealth put all community service provision, including that provided direct by the Commonwealth, on the table for community engagement in planning effective delivery arrangements.
5. The Commonwealth support the establishment of a community development agency to advocate for and develop the community as an effective resource in decision making about community service provision.

Longer Term

6. Community service provision arrangements are progressively handed over to the Shire/On-Island government within an agreed timeframe and with an agreed level of resources.

Chapter 7 – The Role of the Shire of Christmas Island

It is the Shire's submission that the role of the Shire of Christmas Island must be viewed in its historical and legal context. This includes the legal transfer of responsibilities from the Christmas Island Assembly and Christmas Island Services Corporation in 1992, when the Western Australian Local Government Act was applied, and the greater and developing role envisaged for the Shire in the absence of a State Government.

It is also the Shire's submission that the Commonwealth has overlooked or ignored the role of the Shire from both a legal and historical perspective. This is wrong and unfair. In essence the Commonwealth views the Shire as only having the role of a



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

There are legislative and organisational barriers to the Shire being a local government “just like on the mainland”. The Shire has attempted to clarify its legislated local government role, to establish a fair asset base, to utilise “mainland” systems of local government advocacy and advice, and to access systems and arrangements available to mainland local government. Despite these efforts the Shire remains different from mainland local government.

The lack of a comparable electoral franchise is also a key distinguishing feature. While a vote in Federal Government via the Northern Territory is in itself problematic, the very fact of a lack of state type representation means the Territory has less political representation than is the norm.

In turn, the relationship with the Commonwealth government is problematic. While the Commonwealth attempts to provide two levels of government in one, the relationship will never be easy. In essence, the absence of the middle tier of Government, of effective and fair electoral franchise/ political representation, means that responsibility for “state-type” issues is contested ground. The Shire has fought for a greater say in state-type responsibilities and the Commonwealth has resisted any relinquishment or sharing of its “state-type” powers.

The nub of the issue is this: the community want a similar level of involvement in decisions that are normally the province of State Government, and look to the Shire as the means of having this say, whereas the Commonwealth wants to keep State Government type decisions as its exclusive province. While the Government keeps articulating its policy of incorporation of the Territory into the State of Western Australia as the solution to the community's desire for involvement in decision making – but never does anything about it – the community are held captive to an empty promise. The Commonwealth has its cake and eats it too, and the community is left with bread and circuses.

It is the Shire's submission that there is another approach. That is, to do something now: to work with the community via the Shire to achieve substantive and practical changes that enable the community to have a fair level of involvement in decisions that affect their everyday lives. While longer term solutions to effective and fair governance are resolved, the Shire can be an immediate means to transfer or share decision making. The Commonwealth can facilitate this, if the will is there. It requires a fundamental shift in the relationship between the Commonwealth and the community, based on the principles of equality, respect, honesty, working in partnership, resource and power sharing, and sustainability.

The Shire in the 13 years it has been operating has made significant progress towards undertaking its local government roles in a highly competent manner, notwithstanding difficulties regarding financing, its limited asset base, and the interpretation of the system of laws applying on the Island. The Shire has an effective community consultation system and to the best of its ability engaged with



the Commonwealth on issues of concern to the community arising from the applied laws system, economic development and community service provision. The Shire has also attempted to utilise all available forums to advance its local government role and to exercise its political role to advocate for change in the interest of the community.

The Shire believes that a lot can happen to advance community interests now. Using the current legal and administrative structure of the Shire, many steps could be taken to improve community service provision, create efficiencies in service delivery and provide a better base for expanding local government activity in the longer term.

Immediate

1. The Commonwealth and the Shire agree and implement a service delivery framework for local government and community service provision. This framework to be based on community need and effective service provision as distinct from “core” local government concepts, take into account all state and local government services currently provided, and new or unmet needs.
2. The Commonwealth and the Shire agree and implement an asset transfer plan based on freehold transfer of all community facilities necessary to support the service delivery framework.
3. The Commonwealth and the Shire negotiate funding arrangements for the Shire based on the agreed service delivery framework. The funding to be calculated based on actual identified need rather a factor back methodology.
4. The Commonwealth and the Shire settle disputed property matters concerning the Christmas Island Laundry and the Christmas Island Supermarket.
5. Legislative arrangements are established to enable the Shires of Christmas Island and Cocos (Keeling) Islands effective means to enter into regional local government type cooperation agreements.

Chapter 8 – The Aspirations of Residents/ More Representative Governance Arrangements

Through the Shire’s work with the community over the past thirteen years, it is clear that the community is dissatisfied with current governance arrangements. Through a number of forums and actions, the community has demonstrated its aspirations for a greater say in its own affairs. For many longer term residents, this dissatisfaction has increased as perceived promises for a greater level of consultation and decision making have not come to fruition. The recognition accorded the community through the Sweetland inquiries, the Islands in the Sun inquiry, law reform, and the Commonwealth Grants Commissions and other parliamentary inquiries thereafter, have not led to community expectations being met.

At this point the Shire does not have a specific proposal for a different system of governance. It is the Shire’s submission that a more effective governance system has to be developed with and for the community. While the community know in



general terms what they want, the means to achieving this is less clear. There are a number of models that could be considered as a starting point. The Shire is not advocating any of these models; rather it is proposing that given the resources, information and time, an appropriate model could be developed. A key aspect however must be a move away from a colonial form of non self government to progressively a move towards greater self determination whereby residents are equipped with the knowledge and skill to effectively decide their future.

The Shire does have ideas about the way to approach the development of more effective governance.

The Shire points to the United Nations decolonisation process as the way to approach developing a better form of on-Island government. The underlying position of the Shire is that the Island would continue to be integrated with Australia, but on better and fairer terms.

Further, consideration of the underlying administrative, political and economic aspects of non-self governance is a good place to start in drawing the framework or context in which better governance can be developed. This requires consideration of current arrangements and how these can be improved upon. While not intending to be an exhaustive analysis of these arrangements, some consideration is given to the current character of these arrangements and suggested ways that they could be changed in the move to a new governance arrangement.

These elements must be fully drawn such that the effects of subordination to these elements are realised and decolonisation achieved. The process of engaging the community in meaningful consideration of options can then commence.

First and foremost this is a process:

- It is a reconciliation process whereby past discrimination and exploitative treatment is acknowledged and let go
- It is a trust and confidence building process whereby suspicion, doubt, poor communication and low accountability gives way to partnerships, honesty and mutual respect
- It is a future building process whereby solid and certain foundations are established to foster economic sustainability, community self sufficiency, and community capacity
- It is a learning and clarifying process to build knowledge, create effective and relevant laws and services, and gain understanding of both the limits and opportunities for the Territory
- It is a relationship building process whereby the Commonwealth and the community can work together, share responsibility, make good decisions and celebrate achievements

In the Shire's submission the steps in this process are –



- Agreement to work towards a better governance
- Establishing principles & commitments
- Engaging an honest broker
- Taking immediate steps to make change
- Agreeing a framework and timeframe for longer term change
- Gathering and disseminating information
- Investigating possible governance models
- Developing options
- Agreeing a mechanism for democratic consideration of a preferred option or options
- Implementing the agreed option
- Supporting implementation

Through concerted and consistent work, the community can achieve their future, in their hands.



Chapter 1 - The Inquiry in Context

The Shire submits that the Governance Inquiry needs to be considered in a broader context including inquiries that have preceded the current Inquiry and historical and legal factors that influence governance issues.

1.1 Indian Ocean Territories' Inquiries

Christmas Island has been the subject of numerous inquiries, reviews and reports over the past twenty five years¹. This is a pertinent consideration for the Governance Inquiry for a number of reasons:

- Many of the recommendations contained in these reports cover the same or similar ground as the terms of reference for this Inquiry².
- Many recommendations have been made again and again. While this may demonstrate the enduring relevance or robust quality of these recommendations, it also begs the question of why no action or implementation has occurred. Why is it that, for example, the establishment of an Economic Development Board has been recommended on at least five occasions since 1982 and never established³?
- A number of reasons for this lack of action are conjectured:
 - Recommendations are 'only recommendations' that the Government can take or leave⁴.
 - Considerable change at a Ministerial⁵ and bureaucratic level has led to a lack of 'corporate memory'⁶ or follow through.

¹ See Appendix One for a list and summary of these inquiries.

² For example both the 1995 & 1999 Commonwealth Grants Commissions canvassed issues relating to the system of laws, SDA's and governance arrangements.

³ Sweetland Inquiry 1982, Tourism Report 1992, Deloitte Ross Tohmatsu Report 1992, Economic Development Plan 1994, SKG Economic Development Strategy 2004

⁴ As was intimated recently by Minister Lloyd's representative at a Senate Estimates Hearing on 27 May 2005 in response to a question as to whether the Government would cooperate with the Governance Inquiry. However, this may be indicative of a wider level of Government disinterest in the recommendations of Parliamentary inquiries. On 20 June 2005 the *Sydney Morning Herald* reported that 46 Senate Inquiries had been ignored in the past 9 years.

⁵ There has been seven Ministers' for Territories in the past 10 years

⁶ Note for instance Andrew Wilson's comment at the May 2005 Senate Estimates Hearing that he did not know the answer to a question because it was 'before his time'.



- The Government's approach continues to be 'piecemeal and reactive'⁷.
- The Government doesn't want to 'let go of control' of the Territory, possibly for strategic or defence purposes⁸.
- The Territory has no political 'muscle' due to its limited political franchise.
- The Territory is too small, and too far away to be of much interest to anyone⁹ and the Government wants to keep it that way¹⁰.
- The Government believes the community is not capable to make its own decisions, or taking care of itself¹¹.
- This question is important for a number of reasons:
 - The problem of "the more things change, the more they stay the same" is real. The lack of an economic development board, to continue with the example, has arguably been a real disbenefit to the community. Economic development continues to be of real concern to the community, as the casino licence decision demonstrates.
 - Real change will only occur if successive Government's are committed to this community. There is no evidence that this is the case. Community sentiment can be summed up by a comment made to Minister Lloyd last year at the height of protest about the 'no casino licence' decision:

⁷ As described by DASET to the House of Representatives Standing Committee on Legal & Constitutional Affairs in 1991.

⁸ Christmas Island's role in the Government's immigration detention policy and related defence activities are examples of the Commonwealth's strategic interest in the Island. Continuing related concerns about retaining sovereignty may also be a factor in this need for control.

⁹ The legal situation as described in the 1991 Islands in the Sun Parliamentary report is a testament to this lack of attention to the rights of Islanders, as was the discriminatory conditions described by Commissioner Sweetland in his 1980 Report.

¹⁰ The exclusion of the Island from the Migration Act has effectively made the Island an "off shore place" for the purposes of the Government's immigration policy. The fact that the Hao Kiet group of Vietnamese boat refugees, while reaching Australia and attracting Australian immigration jurisdiction, were detained on Christmas Island, demonstrates that an offshore place is a place 'out of sight and out of mind'.

¹¹ This is implicit in the Government's current policy statement that the current level of Government activity "encourages people to look to the Commonwealth to solve any problems and this attitude stifles community initiative". Or the case of the Government's decision to refuse a casino licence on the basis decision that a casino would destroy the "social fabric" of the community.



“We have a vision for ourselves. Why can’t we work together to share a vision and future for the Island? We live here. You don’t. Ministers and bureaucrats will come and go. You have so little understanding about us. You deny our past, we live with it. You make decisions about our future, but leave us to experience the effects of your decisions.”¹²

- o The community suffers from consultation fatigue and has become cynical about the potential of any inquiry to deliver outcomes or benefits. Over many years the community has participated in inquiries and consultations, seen its issues recognised and a way forward recommended, but often nothing eventuating. The work becomes just another report to sit on the shelf and gather dust. In this context, there is little community confidence that the current Governance Inquiry will achieve anything.
- o The Government similarly suffers from “report overload”, but unfortunately as the reports add up, their significance or impact reduces. As one recent Minister for Territories¹³ put it “Christmas Island has been reported to death”. In effect however, the sheer volume of reports has inured the Government to both criticism and positive suggestion. Further, reports and reviews have taken the place of action, to the extent that the Government often instigates further reviews or reports if it doesn’t like the recommendations of a previous inquiry¹⁴.

The Shire submits that the Governance Inquiry must take proper account of previous recommendations made about similar issues. ‘Reinventing the wheel’ yet again will do a great disservice to the community by ignoring the community’s past efforts to contribute to proposals for beneficial change. It will also contribute to community cynicism that the Government won’t do anything as a result of the Inquiry.

Further, that if the Governance Inquiry is to achieve any outcomes for this community it must consider the underpinning lack of due regard the Government has

¹² Open letter to the Minister for Territories, 20 August 2004

¹³ Senator McDonald’s comments were made at a Shire meeting in 1999, the implication being that the reports should be forgotten.

¹⁴ The Shire has experienced this on a number of occasions such as the recent Recreation Centre consultancies and in the case of attempts to resolve waste management issues over the period 1992 - 2001. These issues are covered in more detail in Chapter 3 – Accountability.



for this community and the fundamental problem of why things don't change. The Inquiry should at least turn its mind to the reasons conjectured by the Shire.

Notwithstanding these concerns, the Shire is pleased to have the opportunity to make submissions to this Inquiry. It is the first time since the late 1980's that a comprehensive review of the legal system has been attempted and the first time that the community has the opportunity to directly focus on the question of future governance arrangements¹⁵.

However, the Shire is mindful not to expect too much from this Inquiry. At best this Inquiry may be nothing more than an opportunity to put community and Shire concerns on the record. That said the Shire has attempted to frame proposals for change, both in short and longer term. These proposals offer tangible and progressive actions to achieve real change, recognising that small steps towards better governance are more likely to succeed than grand schemes without detail.

Such an approach is also more attuned to needs and capacity of the community: incremental development is necessary to build community capacity to make effective decisions on its own behalf. Community involvement in decision making, as a key component of more representative government requires information, education, engagement and resources to be effective.

1.2 Broader considerations

In the Shire's submission, the terms of reference for the Inquiry must also be informed by other considerations:

- Historical

In recent years the Government has repeatedly commented that Islanders should 'forget the past'. This is wrong on a number of grounds as it ignores:

¹⁵ For example, while noting issues concerning governance arrangements, the main focus of the Islands in the Sun inquiry was on the legal regime, and the two Commonwealth Grants Inquiries on service delivery.



- Past discriminatory practices and the continued need for special measures to ensure substantive equality¹⁶ is achieved
- The relative newness of the incorporation of the Island into Australia and the slow pace thereafter of the introduction of Australian standards to the island
- Government commitments and arrangements previously made
- The unique circumstances and characteristics of the island resulting from its history

Although these factors have been considered or acknowledged to some degree in previous inquiries, fundamental issues remain; particularly that inequality and discrimination persist in this community. These issues are taken up in more detail in Chapter 2 – The Christmas Island Community.

- The Australian Constitution

The Australian Constitution should also be a contextual point of reference for the Governance Inquiry. The Commonwealth's powers in relation to Christmas Island derive exclusively from section 122 of the Constitution. Issues arising from this Constitutional power include:

- Whether or not the Commonwealth has abdicated its responsibility to law making for the Indian Ocean Territories under this power¹⁷
- The reduced rights of external Territories as distinct from internal Territories and States, including the lack of any right to have a say in changes to political arrangements such as the current Government's policy to incorporate Christmas Island in Western Australia

¹⁶ Substantive equality means taking into account historical, cultural, social and economic factors and providing special measures as necessary to ensure equality is achieved. It is quite different to the equality concept of treating everyone the same.

¹⁷ There is also a question about whether or not other sections of the Constitution, such as the right to compensation on just terms, apply. While this is beyond the scope of this Inquiry, and has not been legally tested, it points to the exclusivity of Section 122.



- o Governance arrangements that could arise from this power

Recent Governments have attempted to equate Christmas Island with a remote community on the mainland. This denies the different Constitutional status that the Indian Ocean Territories have as contrasted with mainland States and Territories. These differences are real, and should be acknowledged and understood.

Further analysis of constitutional arrangements is taken up in Chapter 6 – The Applied Laws System and in Chapter 8 – More Representative Governance Arrangements.

- Externality & Commonwealth laws

The physical fact that Christmas Island is external to Australia's territorial waters must be taken into account in the Governance Inquiry. This physical reality means that in many regards Christmas Island isn't and cannot be part of Australia. This is evidenced, for example, by the way in which Commonwealth laws apply (or don't apply) to the Island.

In turn, this impacts on the question of whether Christmas Island can have arrangements and standards comparable to the mainland. There will always be a gap between comparable mainland arrangements as a result. If this is not recognised and acknowledged, confusion will continue as to how Christmas Island 'fits' into Australia.

Further detail about the Commonwealth laws applying on Christmas Island is provided in Chapter 5 – The Applied Laws System.

- United Nations

The United Nations definition of a non-self governing territory and decolonisation arrangements are relevant to the Governance Inquiry. The Commonwealth defines Christmas Island as a non-self governing external territory. The Commonwealth should consider its arrangements for Christmas Island in the light



of the international standards and requirements set by the United Nations. The alternative is for Christmas Island is to pursue United Nations recognition as a non-self governing territory as a possible means to force the Commonwealth to act.

It is the Shire's submission that Christmas Island has all the characteristics of a non-self governing territory as defined by the United Nations, namely –

- o Geographical separateness
- o Ethnic or cultural distinctiveness
- o People are in a position of sub-ordination due to historical, administrative, political and/or economic elements

Further, that the decolonisation processes and outcomes envisioned by the United Nations could and should apply to Christmas Island.

Further explanation and comment on United Nations non-self governing territory arrangements are provided in Chapter 2 – The Christmas Island Community, Chapter 5 – Applied Laws and in Chapter 8 – More Representative Governance arrangements.

In summary, it is essential for the Inquiry to understand the Island in context. Attempts to bring the Island 'into the mainstream of Australian life' will only be successful if these elements are given their due regard. Substantive change is possible, including more effective governance arrangements, but only if the Islands' history is understood, the situation of residents acknowledged and a commitment to comprehensive action in the community's interest given. Across the terms of reference for this Inquiry a number of changes could be implemented to put the Island and its residents on a surer and fairer footing into the future; to enable Islanders to believe and realise that "our future is in our hands".



Chapter 2 - The Christmas Island Community

As noted in the Shire's preliminary comments, it is the Shire's submission that the community, its cultural groups and practices, and the Island's history are relevant to the Governance Inquiry. This section provides information about the demographics and cultures of the Island and highlights historical facts and experiences still relevant today. It also raises broad community concerns about the Government's practices and policy, particularly as these deny the community its history and culture.

2.1 Community Demographics

As at 2001¹⁸, the population of 1,500 around people had the following ancestry and cultural features:

- 50% of the population was born overseas & 50% born in Australia (including on Christmas Island)
- Of those born overseas, 83% were born in Malaysia, Singapore or Indonesia and 17% were born in Europe
- 63% of residents have Asian ancestry, 14% have Australian ancestry and 23% have European ancestry
- 35% of the population speak only English and 65% speak languages other than English
- Of those who speak other languages, 70% speak Chinese languages, 29% speak Bahasa Malayu and 11% speak Indonesian
- Of those who speak other languages, 63% also speak English although almost 50% of the group who also speak English say they don't speak English very well
- 75% of the population have a religion, with the predominant religions being Buddhism (44%), Christianity (30%) and Islam (26%)

Other demographic features of note include:

¹⁸ ABS 2001 Census – Basic Community Profile, Christmas Island. It is likely that the 2005 census will show a decrease in the permanent population and a diminution of overseas born and non-Australian ancestry.



- 65% of the population are Australian Citizens and 60% of citizens are eligible to vote (are over 18 years of age)
- 56% of the population are male
- 70% of the population are over 15 years of age
- Of the population over 15, 68% are in the labour force, including 8.1% unemployed
- Of those in the workforce, 19% earn no income, 33% earn under \$500 per week, 34% earn \$500 to \$1,000 per week and 14% earn over \$1000 per week
- 80% of the community live in families and 83% of families have dependent children

In many regards the composition and features of this community set it apart from mainland communities.

2.2 Island History

The Island's history of relevance to this Inquiry includes the following key points:

- Christmas Island was part of a British controlled, United Nations recognised Non-Self Governing Territory until 1958

Christmas Island became a Territory of Australia in 1958. It was transferred to Australia by Britain from the Colony of Singapore via the creation of the Colony of Christmas Island. As part of the colony of Singapore, Britain accepted that Christmas Island was part of a non-self governing Territory and reported to the United Nations about its activities in this territory. When the two-step transfer occurred, the Australian Government did not continue to report to the United Nations, as it held the view that the Island did not have a permanent indigenous population.

Notably, when the Cocos (Keeling) Islands were transferred to Australia in 1955, the Australian Government continued to report to the United Nations. Although Cocos didn't have an indigenous population, the Australian Government recognised that it did have a permanent population descendent from the original



Malaysian, Indonesian, Chinese, African and other workers brought to the Islands during the 1820's – 1850's.

- The Australian Government's employment arrangements ensured that Christmas Islanders didn't achieve permanent residency status

The British Phosphate Commissioners (BPC), a group established by the British, Australian and New Zealand Governments in the 1920's to manage phosphate mining on Ocean Island and Nauru, were commissioned in 1949 to manage Christmas Island phosphate mining for the Australian and New Zealand Governments. They continued in this role until 1981, when the Australian Government formed the Phosphate Mining Company of Christmas Island (PMCI)¹⁹.

Asian workers were employed by BPC on fixed term contracts of three years duration. Commissioner Sweetland, in his 1980 Inquiry commented about this arrangement as follows²⁰:

"The Commission of Inquiry accepts that the requirement to leave the Island after three years probably was a device to foil claims to the right of permanent residence on the mainland.

"At the moment, so-called restricted term workers and their families may be granted migrant entry under CIMETAS (Christmas Island Migrant Entry to Australia Scheme) approved by the Government late in 1978 when the life of mining on the Island was expected to be ten years or more. Entry approval by the department of Immigration and Ethnic Affairs in each case is subject to meeting various requirements, including a 5 year minimum service on the Island and the prior arranging by intending migrants of employment and accommodation in mainland Australia.

"Australian citizenship has been automatically granted to all residents born on the Island on or after 1 October 1958. Special provisions have been made for granting Australian citizenship to long term residents who are not there on a restricted term of residence basis. In the view of the Commission, it would be more apposite to say that

¹⁹ See *The Phosphateers: A History of the British Phosphate Commissioners and the Christmas Island Phosphate Commission*, M Williams & B McDonald, Melbourne University Press 1985

²⁰ Commission of Inquiry into the Viability of the Christmas Island Phosphate Industry (the Sweetland Inquiry) 1980 Report, pp 91-92



special provisions have been made to deny citizenship to so-called restricted term workers.

“The Commission of Inquiry arrived at the view that this discrimination was invidious and unwarranted.”

- Despite becoming part of Australia in 1958, the Australian Government continued with discriminatory practices well into the 1980's

Many practices of BPC discriminated against the Asian workforce. Housing, for example, was allocated on the basis of race and marital status, food outlets were restricted on the basis of racial and employment status, and workers were not given the opportunity to take on supervisory roles. European workers and their families were generally treated with privilege. Commissioner Sweetland described these discriminatory practices in the following terms²¹:

“It is not to the credit of the BPC, or the governments to whom the Commissioners report, that thirty-two years after the mining operation bought from the British Phosphate Company, only four workers of Chinese or Malay origin have attained supervisory positions in the island workforce.

“Christmas Island retains the vestiges of a system of colonial privilege and status that has been long since swept away in the countries that gave rise to it. Christmas Island is not a colony. It is an Australia territory whose only economic activity is phosphate mining, the objective of which is to supply Australia and New Zealand with phosphate at the lowest possible cost. It follows that workers who maintain the golf course should be charged to the club members and users, rather than the mining operation. The cleaning of the Christmas Island Club, which is said to impose an income qualification for membership, should be at the members' expense. Domestic servants, if they are employed at all, should be paid by the individuals who depend upon their services, not the mining operation.

“A review [of manning levels] should be undertaken ... It should have regard only to the criterion of industrial efficiency, and it should spare no quarter to staffing arrangements that have in the past served to maintain special privilege, or to indicate lines of social class”.

²¹ Op cit, pp 74 – 79; see also the transcript of proceedings.



“If new employees need to be recruited, it would be consistent with the island’s present ethnic and labour structure for those new employees to be sought from Malaysia. On the other hand, wage parity, coupled with other benefits enjoyed by island workers, may induce mainland Australians to seek employment in labouring and skilled trades’ areas. Some evolution in this direction would probably be to the island’s advantage. The main benefit would be to lay to rest the ubiquitous social and ethnic discrimination that has reserved nearly all supervisory and managerial employment to employees of Europeans descent and all other employment to workers of Malay and Chinese origins.

“It is not an easy task to build a well organised and responsible union amongst workers who have only limited experience of this mode of industrial organisation, and who are also seeking the right to negotiate on a footing of social equality with their employers. Equally, it is not easy for an employer who has relied on a combination of discriminatory and paternalistic labour practices to accept and adjust to the emergence from the community of demands to be treated as equals. Union spokesmen repeatedly referred ... to the social basis of what are effectively economic demands.

“Until the formation of the Union in 1975, the BPC employed no staff to handle industrial relations problems. .. The dual wage system and the preferential treatment accorded to mainland Australian employees on the Island seem to have contributed to a lack of communication and confidence between many supervisors and the workforce”.

The Commissioner for Community Relations, whose role required him to report to Parliament about race discrimination matters, received complaints of racial discrimination on Christmas Island during the late 1970’s. In his 1980 report to the Parliament²² he noted that –

“Discrimination in External Territories, particularly on Christmas Island, has been reported on briefly in my reports to parliament for 1976, 1977 and 1979. The Racial Discrimination Act 1975 (s.4) extends to Australia’s External Territories, and its provisions therefore apply fully on Christmas Island as in Australia itself. The most recent complaints of racial discrimination from Christmas Island were received in 1979”.

²² Commissioner for Community Relations, Fifth Annual Report 1980, Chapter 14



The Commissioner also reported that he had made a submission to the Sweetland Inquiry about “the kind of discrimination that has allegedly been practised and on the strength of resentment it has generated on the Island” and the recommendations Commissioner Sweetland had made to “effectively abolish all forms of racial discrimination on the Island”.

- The Australian Government has recognised on two occasions since it assumed responsibility for the Territory that if it didn’t take appropriate steps, Christmas Island could attract United Nations interest as a non-self governing territory
 - In 1973, a Senate Select Committee on Foreign Affairs and Defence “considered it possible” that the United Nations Committee of 24 might become interested in the Territory and recommended that “appropriate steps be taken to consolidate the relationship between Australia and Christmas Island”. The similarity with Cocos (Keeling) Islands was noted, with the Committee expressing some surprise that the United Nations had not asked Australia about its intentions at the time of transfer, as it had done in the case of Cocos. The Committee reported Australia’s official position that, as Christmas Island didn’t have a permanent or indigenous population, there was no requirement to report. However, “pressure might be applied in the future to re-establish the British practice of reporting on Christmas Island – particularly if a permanent population eventuates”²³.
 - In 1991, the Standing Committee on Legal and Constitutional Affairs considered advice from the Centre for Comparative Constitutional Studies (CCCS) that Christmas Island “might arguably have the status of a non-self governing Territory”. It also considered advice from the Department of Foreign Affairs and Trade (DFAT) that “Christmas Island has no indigenous population and therefore cannot be regarded as being distinct ethnically and/or culturally from Australia”. The Committee concluded that the CCCS advice was “at the very least arguable” but focussed on DFAT’s submission that “hastening the process of legal, administrative and political reform” would help dispel any possible moves in the United Nations (to be listed as a

²³ United Nations Involvement With Australia’s Territories, Senate Select Committee on Foreign Affairs and Defence, 1973 p 111



non-self governing territory)²⁴. However, to guard against this eventuality, the Committee also recommended that “the Commonwealth ensure, in its administration of Christmas Island, that the Territory not assume the characteristics of a non-self governing Territory within the terms of Chapter XI of the United Nations Treaty”²⁵.

- Since the early 1980’s a permanent and culturally distinct population has developed on Christmas Island:
 - Actions by the Government in the early 1980’s, designed to “bring the Island and its community into the mainstream of Australian life”²⁶ enabled Christmas Islanders to choose to stay on Christmas Island as permanent residents. These included:
 - ❖ The extension of the Migration Act to the Island in January 1981²⁷, conferring permanent residency on Islanders with temporary entry permits
 - ❖ The extension of the Social Security Act to the Island, enabling people to apply for aged and unemployment benefits
 - ❖ The cessation of repatriation or resettlement schemes that required workers to leave the Island on redundancy²⁸
 - ❖ Creation of a local government Assembly
 - ❖ Entitlement to vote in Federal elections
 - Cultural practices of Islanders have continued and strengthened over this time, to the point where a truly distinct Christmas Island culture has emerged. Evidence of strong and distinct cultural practices includes:

²⁴ Islands in the Sun: The Legal Regimes of Australia’s External Territories and the Jervis Bay Territory. Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, March 1991, pp 45-46.

²⁵ Islands in the Sun, Recommendation 12, p xxii

²⁶ The Christmas Island Administration (Miscellaneous Amendments) Act 1984 second reading speech. This Act provided for voting in the Federal elections, Medicare & Social Security.

²⁷ Migration Amendment Act (No. 2) 1980

²⁸ From 1985 the Redundancy Schemes did not require mine workers to leave the Island. On island retraining and job creation programs were given priority. After “inefficiency” the criteria for redundancy gave emphasis to people who were least likely to be adversely impacted due to family circumstances. The implicit intention was to favour those people most settled on the Island. However, the 1987 redundancy scheme, when the mine closed, required employees to leave the Island to obtain their resettlement benefits, said to facilitate the depopulation policy of the Government of the day. Many employees lost this benefit, either through their own decision not to leave or by a decision of the Administration that their resettlement was not legitimate, mainly because working spouses remained on the Island. The Government still holds the resettlement funds for these employees provided by the Liquidator. This issue continues as a grievance against the Government and should be investigated and remedied.



- ❖ Government gazettal of unique Christmas Island holidays for Chinese New Year, Hari Raya Puasa and Hari Raya Haji and non-observance of some holidays recognised on the Australian mainland (eg Easter Monday and Queens Birthday)
 - ❖ Community provided “Saturday school” for children to learn Malay and Chinese languages
 - ❖ Community provided Islamic School each day for Arabic and Islamic teachings
 - ❖ The first languages of the majority of school children are other than English (Cantonese, Mandarin, Hakka, Teow Chiew, Hokkien, Bahasa Malayu, and Tamil), and there is widespread use of Malaysian English (an officially recognised variety of English with its own unique linguistic and cultural features), and the emergence of Christmas Island English (described as a non-standard sociolect of Australian English)²⁹
 - ❖ Imbedded observance of traditions and festivals such as Hungry Ghost, Moon Cake Festival, Kumpang, Lion Dance, God’s Birthday celebrations, and Malay, Chinese and Indian dance
 - ❖ Maintenance of 17 temples around the Island (both Buddhist and Confucian) and a Mosque in the Kampong
- o Many Christmas Islanders have three – five generation connections with Christmas Island, despite not gaining the right to permanent residency prior to the 1980’s. Over the period of the recruitment of ethnic Malaysians, Chinese and Indonesians as contract workers for phosphate mining from 1900’s – 1980’s, successive generations of family members came to the Island. Typically an adult worker now will have had grandparents and parents who worked here before them, and have children, and possibly grandchildren, living with them on Island. They were either born on the Island or born off Island³⁰ and returned soon after. This long connection, albeit interrupted at

²⁹ CIDHS Linguistic & Cultural Context, Anne Price 2004

³⁰ Current Commonwealth policy does not allow children to be born on the Island. This policy is of concern to the community for reasons of social and economic impact associated with families leaving the Island for 6 – 10 weeks and the persistent suspicion that the Government doesn’t want people to have a link to the Island by birth right. The recent community health needs study, conducted by Alberton Consultants reported as follows: “Birthing and maternity services are an emotive issue for the Islanders. While many asked for birthing services to be returned to the Islands, others spoke of the need for the health service and for DOTARS to appreciate the significant impact of giving birth in Perth. One Islander commented “they are easy to make but difficult to have”. The main issues were the significant social impact of family members being separated for long periods, often months, and/or the financial impact of loss of wages and



- times, has led to a strong sense of identification with Christmas Island as home.
- o Many Christmas Islanders continue to have closer ties with Malaysian and Singapore society than to the Australian mainland, for a number of reasons including:
 - ❖ Geographic isolation from the Australian mainland but close proximity to Asia³¹
 - ❖ Continued existence of close family ties in Malaysia and Singapore
 - ❖ Annual holiday visits to Malaysia and Singapore via cheaper air routes and charters
 - ❖ Social isolation from the Australian mainland as demonstrated through greater interest and reliance on, and availability of, information and news from Malaysia and Singapore (via satellite and weekly newspapers purchased by the Shire of Christmas Island)³²
 - ❖ Historical factors such as educational segregation until 1975³³ and the lack of any Australian “rights” until the 1980’s

Overall, these aspects give long term residents the right to call the Island their permanent home. Commonwealth recognition of the right to self-determination, as envisaged by the United Nations, should follow. If this occurred, many benefits could flow in terms of improved self esteem and confidence for the community and less dependency (whether asked for or not) on the Commonwealth. Without this recognition, the community will continue to feel threatened and insecure, without a sense of a future, and suspicious of Commonwealth policies and practices.

living away from home. People asked that something be done to minimise the social and financial burden of childbirth, if maternity services could not be returned to the Islands.”

³¹ Geographic isolation means much of the Island’s foodstuffs are air freighted from the North, the postal service is a best once a week only, and the cost of travel to the Australian mainland is high

³² Australian free to air broadcasting was not available on Island until 1994. Prior to that a taped ABC program was available weekly and distributed via a local cable system. This “television” was augmented by locally produced programs. The cost of Australian newspapers means these are not readily available on Island.

³³ Asian children, now parents of school age children, were educated under a Singapore school system in a separate school to European children; CIDHS Linguistic & Cultural Context, Anne Price 2004.



2.3 Community Concerns

The community's concerns, as they relate to the Island's demography, history and culture, centre on the continuation of discriminatory practices by a Government that is still paternalistic but becoming less benevolent as time goes on. In essence the unchanging overarching control of the Island by the Government has enabled it to continue to treat Islanders in detrimental ways, despite considerable emphasis on both the unique character of the Island and its peoples, and recommendations aimed at retaining and strengthening this character.

These concerns are summarised as follows:

- The unique historical & cultural attributes of the community are being eroded

A key concern is that previous recognition of the Island as a special and unique place based on its history and culture, and the need to redress past discrimination, have given way to undermining its local cultures and ignoring its history.

The Sweetland reports of 1980 and 1982 and the Islands in the Sun report provide the main critiques of past discriminatory or poor practice on the Government's part. Examples of recognition of the Island's unique attributes include³⁴:

- Islands in the Sun – laws for the Territory should be considered in consultation with the community “to ensure the particular circumstances of Christmas Island and/or its residents are not adversely affected”.
- Christmas Island Administration strategic plan 1990 – 2000: “To preserve the Territory's unique environmental and cultural heritage”; and “the cultural and ethnic diversity of the Island will be recognised and the government's multicultural principles will apply”.

³⁴ See Appendix One – Reports & Inquiries about Christmas Island 1980 - 2004



- Christmas Island Strategic Plan 1991 – 1996: “To enhance economic development and protect the natural and cultural heritage”
- 1994 Economic Development Plan “Linking Christmas Island to SE Asia”:
“Christmas Island is a unique Australian community which prides itself on being an important bridge between Asia and mainland Australia. It has a diverse cultural ethos with established and expanding social and cultural links within the region and beyond.”
- Commonwealth Grants Commission 1999: “No communities in Australia are strictly comparable in every respect to the Indian Ocean Territories. They are unique in terms of their governance arrangements, physical location, and social and cultural composition.”
- PWC Inquiry 2002 – Common Use Infrastructure: “The Committee strongly believes that the following issues need to be considered by the Commonwealth in order to ensure that the local community is not disadvantaged ... by the proposed public works projects: a need for the Commonwealth to consider a social impact study on the island as a result of a possible rapidly rising population; ... education of visitors for awareness of cultural sensitivities; development of training programs for local people during the course of the projects in order to increase the skills base on the island ...”
- Senate Estimates Hearing 27 May 2005 – DOTARS representative, Ms Varova:
“If we talk about normalisation, we are talking about the communities in the Indian Ocean territories having rights and responsibilities that are equivalent to those of comparable communities on mainland Australia. There is no direct comparison; they are unique. There are unique circumstances. But we want to be assured that they have service levels that every Australian has access to.”
- Racial discrimination persists on the Island

Two allied issues are raised in the context of the history & culture of the community: vestiges of past discrimination can be seen in many aspects of



community life today and government policies and practices are still discriminatory.

Examples of vestiges of past discrimination and perceived current discrimination include:

- The right to buy housing in the early 1990's meant that residents were able to buy the properties they lived in. This meant the housing that had been previously allocated to them on the basis of race or marital status. To a significant degree, the community is, as a result, housed in racially segregated areas. For example, predominantly ethnic Malay in the Kampong, predominantly Chinese at Poon Saan and predominantly European in Settlement³⁵.
- Occupational segregation on racial lines continues, with Europeans holding all senior Government supervisory positions. For example -
 - ❖ The Director & Executive Officers of DOTARS, the General Manager of the Health Service, the Harbour Master and the CIPA General Manager are Europeans. Only two Asian employees hold supervisory positions in DOTARS – the Finance Manager & Property Manager but are located “downstairs” in the Administration office with the European managers located “upstairs”.
 - ❖ A Senior Support Services Manager position was created at the health service in 2002 and filled by a European over the top of Asian employees working in personnel, purchasing and accounting roles.
 - ❖ Only one resident Asian is employed as a teacher at the CIDHS (from 2005). Most if not all the Education Assistants are Asian.
 - ❖ The AFP full time officers are European, and all the Special Constables Asian.
 - ❖ The full time Customs officers are European and most of the part time customs officers are Asian.
 - ❖ Senior Management and specialist project roles at Parks Australia are all held by Europeans, with ranger and field officer positions largely held by Asian workers.

³⁵ A proposal in 2001 to create local government wards on Christmas Island was successfully challenged on the basis that it would, de facto, create racially-based wards.



- ❖ Four of the six senior management positions at the Shire are held by Europeans, to manage a staff of exclusively Asian workers.
- The lack of training of Asian workers that Commissioner Sweetland complained of in 1980 is still in evidence as many workers continue in positions they held at that time. For example, all the Asian enrolled nurses at the Health service have been there in excess of 25 years. No encouragement or opportunity has been to convert their EN status to RN status, despite their long years of service. Further, very little has been done to train younger people into more qualified roles, despite a plethora of recommendations spanning the last twenty years³⁶.
- Different employment conditions apply to DOTARS employees (APS conditions) and the Minister's employees (Union of Christmas Island Workers-Administration conditions). DOTARS employees are members of the Public Service providing departmental services, whereas the Minister's employees, who deliver services to the Islands, are not. Proposals to change this unfair distinction haven't been acted upon³⁷.
- Community organisations such as Indian Ocean Group Training Association, the Neighbourhood Centre and the Childcare Association are all managed by Europeans.
- Community organisations tend to be segregated along racial/cultural lines. For example, the committees of the Christmas Island Cricket & Sporting Association, the Christmas Island Club, the Chamber of Commerce, and Island Care are exclusively European. On the other hand, the committees of the Union of Christmas Island Workers, Christmas Island Women's Association and AustAsia Business Council are predominantly Asian. While reasons for the

³⁶ For example, Tourism in the Indian Ocean Territories, 1990: training and employment in ANWPS; PWC Christmas Island Rebuilding Program. 1992: training and employment in building trades; Public Health Policy, 1995: move to an employment model that creates opportunities for more local Chinese and Malay people; VET & Adult Community Education, 2001: ensure local people have the skills to take up employment opportunities; PWC Common Use Infrastructure, 2002: expects local employment and training opportunities; Alberton Health Study, 2004: train locally employed nursing staff; Strategic Plan for the economic development of the Indian Ocean Territories, 2004: maximise opportunities for local residents to gain employment.

³⁷ A commitment was given in the Government's 1992 package of reforms that all Commonwealth employees would be employed under the Public Service Act.



differences in membership are to some extent reflective of the Island's history and distinct social interests of the groups in question, the fact of this division is indicative of the considerable segregation of interests in the community, including colonial style segregation³⁸.

- o The cost of Government provided housing is differentiated unfairly between public housing and government employee housing. While government employees recruited off Island contribute to housing on the basis of the 1989 Heads of Agreement, public housing contributions have been "normalised". The differential, in both the cost and the standard of housing, is high³⁹.
- o The Government provided very substandard public housing until 2001 and some housing remains sub-standard. The housing in question was described in a 1997 study as follows –

"The public housing that is provided for single men in the quarters at Poon Saan and Kampong can be compared with the transitional housing for Aborigines inherited from the native Welfare Department in 1972. There is little option than to accept that this housing is inappropriate and must be replaced as a matter of priority."

Action by the Shire in 1999 in compiling and presenting a public housing report to the then Governor-General titled "Commonwealth Owned Christmas Island Housing – Our Shame" was the catalyst for finally doing something about this sub-standard housing.

- o Many in the community believe that 2003 normalisation policy of the Government particularly has reinforced discriminatory practices. In 2004 the

³⁸A recent example of this segregation is the revival of the Christmas Island Club. This Club, formed in the 1920's (which originally set an income test for membership which excluded Asians) aims "to bring together and foster co-operation between all residents of Christmas Island". Its activities, as recently promoted to the community, include Balls, Cocktail parties, Sundowners, Melbourne Cup luncheons, Cabarets, Quiz Nights, Mother's Day luncheons, Teddy Bear Picnics, Easter Bonnet parades and Romantic Valentine dinners. As advertised in *The Islander* Issue No. 328 8 April 2005

³⁹ The 1989 Heads of Agreement set employee contributions to housing (all owned by the Government) on the basis of type (eg "A" grade – 3 bedroom \$59.60; "B" grade – 2 bedroom \$54.10, "C" grade – breezeway unit or flat \$48.30 ; single quarters \$30). Rates were set until such time as the right to buy scheme was offered. While many did get the right to buy, other employees in the community continued to need public housing. Rates for public housing have now increased substantially. For example 'A' grade public housing is now in the region \$190 per week. Government employees in 'A' grade accommodation still pay \$59.60. Employees living in the sub-standard single quarters continued to pay \$30 per week until they were allocated better housing.



Shire approached HREOC about a range of concerns the community had about Commonwealth practices⁴⁰. Concerns were expressed in the following terms:

“Racial discrimination is still in evidence on the Island. It is more insidious than previous overt discrimination, but it is still there. The Australian Government has made policy decisions about how we are to be administered. This is a policy of “normalisation”, where we are supposed to be treated “like the mainland.” This is fundamentally insulting and unfair: our history, particularly past discrimination, means we are not the same as elsewhere. We want and have the right to substantive equality, taking into account our cultural, social and economic situation, not some slavish, ignorant and unfair “treat everyone the same” approach.

“Part of this normalisation is to contract out and privatise works and services provided by the Australian Government. Currently there are about 80 people employed by the Australian Government on Island in the areas of health, power generation and distribution, court services, land administration and education. Around 97% of these jobs are held by Islanders of ethnic Asian origin. These jobs are in semi and skilled areas in both blue and white collar occupations. We believe that the Australian Government is indirectly discriminating against the Islanders of Asian ethnicity by this policy of contracting jobs out.

“Contracting out means that people are employed on short term contracts. White Australians are taking these jobs. There are no other jobs on the Island for the Islanders losing their jobs, as many don’t or won’t meet formal qualification requirements set for the contract jobs. They will either go on the dole or leave. The “cultural mix” of the community is changing as a result: the percentage of the population of European descent/mainlanders is increasing while the population overall is decreasing.

“The Australian Government’s “normalisation” policy is implicitly racist. Its stated objective is to “increase the complexity and skill base of the local population.” We say this means that the Australian Government wants to change the cultural complexion of the community by bringing in skilled white people and forcing semi-skilled/less skilled Asians to leave. Even where there has been Government effort to “up-skill” local Asians, they don’t or won’t get the work. Barriers to these jobs

⁴⁰ Letter to Human Rights Commissioner Sev Ozdowski, 5 August 2004. The Commissioner undertook to raise the issues with the Minister for Territories, but to date the community haven’t received a response. A decision to formally make a complaint of racial discrimination hasn’t yet been made.



also arise because there are less of them and the conditions on which they are offered are much less beneficial than current conditions.

“The most highly qualified of Asian administrative workers have recently been subjected to a most crude discrimination. Where previously the Official Secretary delegated one of the two senior Asian managers to deputise on his behalf, the new Director has imported a European as her permanent deputy.

“Eight airport workers are another case in point. Until yesterday they had jobs. The Australian Government contracted out the airport management and made the 8 workers redundant. The contractor is doing the job with 3.5 people. All those who have lost their jobs are Islanders of Asian ethnicity. They were given “up-skilling” but still did not meet the university qualification requirement of 2 of the jobs. The conditions offered were “no choice” individual Australian Workplace Agreements. Eight local families have been displaced by the Government’s action. Eight families who are likely to leave the Island as there are no other jobs for them.

“In the late 1980’s the Australian Government had a policy of depopulation of the Island: it wanted people of Asian ethnicity to leave the island, either to resettle on the mainland or go back to their home countries of Malaysia and Singapore. The current policy also suggests a depopulation agenda. This is racist.

“Cleaners, gardeners, electricians, plant operators, clerks, enrolled nurses are next to go. All these jobs are currently held by Islanders of Asian ethnicity. We say the Australian Government is purposely targeting these jobs.

“The Australian Government is doing all of these things without any information provision, consultation, discussion, or negotiation with the local community. There is no substantive democracy here.”

In the community’s view, in essence, the beneficial ‘normalisation’ of the Island in the early 1980’s has given way to a detrimental normalisation policy aimed at making Christmas Island like a community on the mainland. ‘Treat alike’ has become ‘make the same’. Its effects are particularly detrimental to long term Asian residents.



These concerns can be related to the terms of reference for the Inquiry, particularly the questions of accountability of decision making and the links between effective governance and economic self-sufficiency, and are addressed in more detail in the corresponding chapters. For immediate purposes three key points are made:

- A lack of recognition of the existence of a permanent population on the Island directly impinges on the question of whether the Island is a non-self governing territory, as defined by the United Nations. As demonstrated, this question has been asked on two occasions (and argued against in each case solely in the basis of the absence of a permanent population), but remains unanswered. Further, if the Island could attract the interest of the United Nations, (like on Cocos (Keeling) Islands), then by definition the process of decolonisation has not yet concluded.
- Colonialism and racism go hand in hand. In this context it is not surprising that claims of racism continue to be made. The continuing segregation of social organisations and institutions, as well as occupation segregation on racial lines, easily give rise to perceptions of colonialism and racism. Commissioner Sweetland pointed out in 1980 that the Island wasn't a colony. However, this legal fact must also have a practical reality: it is not sufficient to say something is not true if policies and practices continue which appear to belie this truth.
- The lack of recognition of and respect for the permanent population including its unique culture and history is a key impediment to the social and economic development of the Island. The lack of effective or fair governance arrangements is also a key impediment but this is essentially a representation of this underlying lack of due regard. While Islanders carry in their hearts and minds experiences and perceptions of discrimination, feel suspicious of Government motives, and believe the Government wants to deny them a future on the Island, no amount of structural or administrative change will be of itself effective.



2.4 Proposals for Change

For these reasons the following proposals are made as key precursors to effective change:

1. The Government thank long term Asian residents of the Island and their forebears for the significant contribution they made as phosphate mine workers to the Australian economy over the period 1949 – 1987. Further, the Government acknowledge that this contribution was made at a cost to these workers in terms of low wages, a denial of “Australian” rights and discriminatory practices. This would go a considerable way towards creating a spirit of reconciliation as well as provide an opportunity for old wounds to heal.
2. Steps are taken to realise substantive equality for long term Asian residents of the Island. It is not sufficient for the Government to say Islanders are being treated the same as people on the mainland. Only through programs that create a real equality – that recognise the different experience of islanders including past discrimination – will this be achieved.
3. Remaining funds provided by PMCI and set aside for the benefit of Christmas Islanders (resettlement and other purposes) are identified and disbursed to the intended recipients and/or provided to the community for its beneficial use.



Chapter 3 - Accountability & Transparency of Decision Making

Term of Reference No. 1

Current and future governance arrangements for the Indian Ocean Territories ... in particular accountability and transparency of decision making in relation to the Indian Ocean Territories

3.1 Overview

It is the Shire's submission that the Government isn't accountable to this community and doesn't believe that it is required to be. Further, the Government pays lip service to consultation and has no sense of or concern about the impact of its decisions on the community.

This lack of accountability is closely allied to the fact that the community is non-self governing and has little decision making rights of its own.

It is also the Shire's submission that there are insufficient mechanisms to make the government accountable for its decisions. The limited accountability mechanisms available are relatively inaccessible to this community. They are also ineffective in that they are largely ignored by those being called to account. The Shire has attempted to utilise the available mechanisms to raise the level of accountability⁴¹, and to create its own⁴², but is overall dissatisfied with the Government's unwillingness to account to the community for its decisions.

Colonial style decision making by its nature is largely unaccountable. Decisions are paternalistic; that is, they are for the community's 'own good' whether they like it, or understand it, or not.

Transparency is also absent when decisions are made at a distance, not locally, and aren't announced or explained. Decisions are made solely from a bureaucratic or political perspective, not a community perspective. Allied to this is the attitude that commitments previously made can be conveniently put aside, ignored or forgotten.

⁴¹ For example, submissions to various JSCNCET and PWC Inquiries, and contributing questions to Senate Estimates hearings.

⁴² The Shire uses *The Islander* newspaper as a vehicle for questioning and raising awareness about Government decisions and has held informal referendums and public meetings on specific issues.



There is no continuity. Further, the connection with the community is so tenuous, communications so disjointed, and lines of decision making so unclear that the community can't 'keep the bastards honest'.

Current Government decision making about Christmas Island has all these characteristics: decision making has shifted away from the Island to Perth and Canberra, paternalistic justification is given in place of considered and informed explanation, and there is no interest in community impacts. And this from a Government who makes decisions that impact on the daily lives of Christmas Islanders, particularly in their role as the State government. In essence, there is no accountability, no transparency and no responsibility.

This chapter provides specific examples of the "no accountability" character of Government decision making and adverse impacts on the community arising. Proposals are also made as to how decision making could be more accountable, although the main way that this could occur is by a shift in decision making to, and in favour of, the community.

3.2 No Accountability

The 2004 'no casino licence' decision by the Minister for Territories and the 2003 Policy decision of the Department are both examples of 'no accountability' decision making. Both decisions were made in Canberra without any reference to the community. Both were paternalistic in justification, were made without consideration for the impact on the community, and conveniently ignored previous commitments, recommendations or understood/agreed direction.

- Casino decision

The reasoning given in the 'no casino licence' decision was, if it is to be believed, that the Government was "concerned about the impact a casino would pose to the social fabric of the Christmas Island community". This is paternalistic justification, not sensible reasoning based on fact or careful consideration. It also



ignored repeated emphasis on the casino as an important facilitator of economic development⁴³, and resultant community expectation.

The justification provided is also nonsensical. A casino operated on the Island within the CI Resort from 1993 to 1998. Over 300 jobs were created, many of them going to long term Island residents, and other social and economic benefits flowed into the community.

One study⁴⁴ was undertaken during this period about the casino's social and economic impact. There were some social problems associated with the casino⁴⁵, as there are social problems anywhere, but as the report identified, any negative impacts could have been addressed through programs for residents and workers at risk, measures to promote inclusiveness, cooperation and community cohesion, improved infrastructure, extended educational opportunities and a greater Government commitment to the Island.

Further, locating a casino on Christmas Island was considered to have a greater chance of being beneficial than elsewhere, because of its relative isolation and natural attributes. The researcher reported that:

“American research has confirmed that economic stimulus is greater when casinos are located away from population centres to promote the ‘export’ of gambling. They also advocate that they be located in areas with natural tourist attributes. Christmas Island fits both these criteria.”

The decision against a casino licence was unaccountable in all senses of the word. The community didn't believe the reason given, still don't, and are still waiting a reasoned explanation. As the community expressed it in their open letter to Minister Lloyd in August last year –

⁴³ Commissioner Sweetland was the first to recommend that a casino development be investigated (1982 Inquiry into the long term future of Christmas Island) From 1987 plans were being developed for a casino and taken into account in economic development planning from 1990 onwards, and the JSCNCET's 2001 Risky Business Report focused heavily on the expected re-opening of the casino.

⁴⁴ The Resort Casino of Christmas Island – An exploratory Study of the Social & Economic Impact, 1996

⁴⁵ Deteriorating cultural relationships and family conflicts, financial hardship and the depletion of quality relationships within families, a small but serious excessive gambling problem, an increase in domestic violence, money going to the casino rather than Poon Saan Club, thereby reducing the Club's capacity to fund community events, links between excessive gambling and abuse of drugs and alcohol, and impacts on children due to changed financial priorities of gambling parents were all identified as social problems.



“We look forward to more information about why this decision was made because we don’t believe your government when it says that it was concerned about the impact of a casino on our “social fabric”. Nothing else your Government does shows any real interest in our social fabric.”

Whatever the real reason for the decision (and there has been plenty of conjecture about what motivated the Government to ‘do a back flip’), it was not in consideration of, or support for, this community, and the government have never satisfied the community as to why it was made.

The way in which the ‘no casino licence’ decision was announced was also unaccountable. Since 2003 the Minister for Territories at the time, Senator Ian Campbell, had indicated his support for a casino licence⁴⁶. This support was still being given up until two days before he announced that a casino licence wouldn’t be granted⁴⁷. His last act as out-going Minister for Territories was to make this announcement. He escaped his critics – this community – and left the incoming Minister for Territories with the convenient answer ‘I don’t know why the decision was made’.

- 2003 Government Policy

The Government’s 2003 policy decision for the Territories is another good example of a lack of accountability, and a lack of interest in being accountable.

The policy was presented in the first instance to the JSCNCET, not to the community. The community were advised of the policy some 6 weeks later, as a bulletin of the Administrator⁴⁸, without translation into community languages. No community consultation or explanation occurred, despite the fact that the Government reported to the JSCNCET that it was in a “major reform process in relation to service delivery, administrative and management arrangements for the Indian Ocean Territories”.

⁴⁶ He made comments and commitments direct to the community, to the proponents, and via Senate Estimates hearings.

⁴⁷ As reported by the Christmas Island Chamber of Commerce.

⁴⁸ DOTARS Christmas Island Administration Bulletin No. 43/03



This policy is predicated on three vital misconceptions: (1) that the Indian Ocean Territories are directly comparable to 'remote communities of a comparable size' on the mainland; (2) that the level of direct on-Island service from the Commonwealth should be delivered by the private sector; and (3) that a high level of government presence 'stifles community initiative'. As a result, the 'solutions' proffered are misguided and ill-informed.

In the first case, the Government policy says that no other community "has such a large, direct Commonwealth or State presence". This misses the point that the Indian Ocean Territories are not like a small remote community on the mainland: they are external territories operating under a very different set of Constitutional and legal circumstances. It also ignores the Island's history, and denies the community of its perceived right to have relevant standards of service, sensitive to the unique and particular circumstances of the Island.

In the second case, that the private sector (or the Shire) is better placed to deliver services is in once sense true. Government bureaucrats in Perth or Canberra are employed to provide departmental services, not direct services to the community, and the Commonwealth generally isn't involved in direct community service provision. However, it misses the point that the Government is providing 'State type' services to a non-self governing territory, something it doesn't do anywhere else. Further, the stated reasons for this direction⁴⁹, reform for reforms sake and improvements in efficiency, are unjustifiable, as are the proposed approaches⁵⁰, market testing and contracting out, for a number of reasons:

- o Efficiency policies operating within a normal Commonwealth framework on the mainland don't translate effectively to the delivery of services of 'State type' services such as health and education.

⁴⁹ The justification is couched in the following terms: "Australia has gone through an extended period of reform to public service delivery with pressure of the public sector to provide its services more efficiently and effectively. Policies such as corporatisation, workplace reform, competition policy, market testing and demand management through more transparent pricing has led to significant improvements in the efficiency of the economy generally and in the performance of Government enterprise in particular. While reform has been occurring for some time on the Islands, the pace of change until recently has been limited."

⁵⁰ The approach is couched in the following terms: "The Government in recognising the need to ensure efficient services has decided that it should crucially examine its delivery mechanisms and where appropriate seek expressions of interest from the private sectors or the Shires as alternative delivery mechanisms".



- It is not 'normal' on the mainland for state governments to contract out such services.
- No evidence is presented about how the approach will lead to efficiency or effectiveness.
- The methods of achieving this movement away from direct service provision – outsourcing, market testing and the like – have been criticised for working against economic self – sufficiency⁵¹, a previous policy commitment of Government that is missing in the 2003 policy.
- No mechanisms for addressing community priorities or issues concerning community service or other 'broader framework' matters are provided. Is the government considering "accelerating the development of administrative and political reform" as envisaged by the Islands in the Sun report? No.

The third case, that a DOTARS presence stifles community initiative as it "encourages people to look to the Commonwealth to solve any problems", also doesn't stand up to scrutiny. It is a repugnant paternalistic concept in that it implies that the community lacks a sense of or drive towards self-sufficiency; that people are like lazy or unmotivated children. This is totally untrue. The Commonwealth have done very little to assist or enable greater self-sufficiency⁵². If the Commonwealth, in their plans to leave the Island, were also planning with the community how to make alternative effective arrangements that supported self-sufficiency, the community would no doubt welcome DOTARS departure.

In terms of accountability, moving away from the Island⁵³ makes Government less accessible, and makes community consultation and involvement in decision

⁵¹ For example, see the Commonwealth Grants Commission 1999 report regarding Industry assistance.

⁵² The point is discussed in more detail in Chapter 4 – Economic sustainability

⁵³ It is of note that DOTARS recently announced that they were not leaving Christmas Island, an about face of the 2003 policy decision. Again, this was not announced to the community, or decided in consultation with it, but presented to a Parliamentary Committee. What this means to the community in terms of the DOTARS 'normalisation' push is not clear.



making harder. It also ignores recommendations that decision making ought to be closer to the community⁵⁴, not further away.

Despite acknowledgement of the potential role of the Shires, the Government has done nothing to transfer roles to the Shire, and certainly hasn't set an agenda or discussed issues with the Shire⁵⁵. In effect, the Government hasn't even honoured its own policy commitments.

Through this policy the Government has sought to re-define its roles and restructure its commitments to the Island in a way that reduces previous commitments to social, economic and political reform to mere alignment of service delivery with remote mainland equivalents.

Both the 2003 Policy decision and the 2004 casino decision demonstrate that the Government doesn't believe it has to be at all accountable to the Christmas Island community. Worse still, it shows that the Government ignores the deleterious impacts of its decisions on the community.

3.3 Community Impacts and Issues Ignored

Government decision making can have significant deleterious impacts. The resultant destabilisation of the community, a lack of community confidence, job losses, and discrimination arising from the two aforementioned decisions are some of the deleterious impacts experienced. The community on Christmas Island has suffered over two years of uncertainty, and have also seen jobs lost and not replaced, despite patronising reassurances provided by the then Administrator to the contrary⁵⁶. Further, his promise of "significant planning and careful management" and "consultation with appropriate island individuals and authorities" has not occurred.

This lack of interest or concern for community impact is another key characteristic of current Government decision making, and is also indicative of a Government uninterested in being accountable for its actions. Social impact studies are never

⁵⁴ For example see Commonwealth Grants Commission, 1995: "The policy to reduce staff in the Administration office needs to be reassessed as a matter of priority and future decisions should be linked to the review of representation, responsibilities and resources".

⁵⁵ This issue is discussed in more detail in Chapter 7 – Role of the Shire

⁵⁶ Community Bulletin No. 43/03 – Commonwealth/Administration Role in the Indian Ocean Territories



undertaken, despite recommendations that such studies are carried out⁵⁷, and community views, when they are able to be voiced, are often ignored.

An allied aspect of this type of Government decision making is that considerable activity and emphasis is given to government projects, ostensibly in the national interest, often to the detriment of the community interest. As the Shire explained community views in its submission to the HREOC in 2004⁵⁸ –

“The Government has invested huge amounts of capital in their projects (refugee processing facilities, and a satellite launching facility) but have given very little scope for Islanders to invest in their own future. The government makes decisions all the time about how we will develop, but never asks us what we want or give us a chance to develop as we want. Our future is not in our hands.”

- The IRPC

The decision to build immigration processing facilities on the Island is a case in point. The Shire wrote to the Minister for Finance in March 2005 regarding community concerns that the IRPC would impact adversely on the community and its long term direction (economic diversification, particularly tourism) and sought Government support for a strategy “to minimise negative impacts on the community whilst ensuring benefits are maximised”. The Minister declined to participate or provide any support.

Detrimental impacts have also had more immediate impact, as is the case of the Government’s decision to build the temporary detention facility at Phosphate Hill. The Government decided to utilise land that had been previously committed to the Shire for a waste transfer station. This impacted severely on waste minimisation strategies, wasted considerable time and money, and left the issue of potential contamination of ground water unresolved⁵⁹. An abbreviated outline of this story is provided in the following timeline⁶⁰:

⁵⁷ See for example the Tourism in the Indian Ocean Territories Report, 1990; PWC Common Use Infrastructure Report 2002; and the Alberton Health Study, 2004

⁵⁸ Letter to Human Rights Commissioner Sev Ozdowski, 5 August 2004

⁵⁹ The issue of the tip leachate contaminating ground water was first raised in August 1994, when the University of Melbourne conduct a study on waste management on behalf of the Commonwealth.

⁶⁰ The Shire published a full timeline in *The Islander* in August 2004, possibly assisting in getting the Government to agree to the establishment of the waste transfer station at the current tip site.



- April 2001 – Shire suggests the establishment of waste transfer station at existing landfill site with waste minimisation strategies such as composting and shredding.
- May 2001 - Shire writes to the Commonwealth requesting \$860,000 to establish a waste transfer station at the existing landfill site.
- July 2001 - Commonwealth writes to Shire saying \$700,000 available to establish a waste transfer station. Commonwealth also say that the landfill site would be transferred to the Shire once a survey of the site is provided.
- August 2001 - Shire purchases Vertical Composting Unit (VCU) for \$350,000 from a New Zealand company and engages a waste management project officer to progress the development.
- September 2001 - Shire proposes land boundaries for the waste facility (transfer station and landfill site). Site encompasses vacant crown land and a mining lease. Commonwealth advise the Shire that mining lease land now promised to Christmas Island Phosphates as part of land swap with APSC and the vacant crown land was now being considered for Commonwealth “strategic development”.
- October 2001 – Work commences on temporary IRPC at the site earmarked for the Shire’s waste transfer station. Part of the land taken was designated for community purposed in the Shire’s Town Planning scheme. Shire writes to Commonwealth requesting “unambiguous advice and commitment” to land transfer to the Shire as per the September proposal including excision of part of mining lease prior to handover to CIP, a schedule for handover of the land the temporary detention centre is located on, Commonwealth commitment to pay for the electricity connection and cost of development of another refuse site if necessary.
- November 2001 - Commonwealth offer short term lease (5 years) over some areas of the proposed site and suggest a move to an alternative site (Ryan Hill) on the basis that the Commonwealth pay for costs of establishing the alternative site.
- December 2001 - Shire tell the Commonwealth that reduced land availability at existing landfill site means it is no longer viable for a waste transfer station - alternative site sought on Quarry Road LIA.
- January 2002 – VCU arrives on Island and is stored at Shire depot
- 2002 – 2004 - alternative sites explored at LIA and Ryan Hill with no result
- August 2004 - Shire request Commonwealth permission to erect the waste transfer station including VCU on land within the land fill site (still owned by the Commonwealth). The Commonwealth respond to Shire letter saying VCU can be erected on existing landfill site.
- November 2004 – VCU Company inspects equipment - considerable repair required due to length of time in storage



- March 2005 - Shire request DOTARS financial assistance to repair VCU estimated at \$260,00
- June 2005 – DOTARS get GHD to check veracity of VCU Company's written report and agree to provide \$200,000 funding for repairs

While the issues are now close to resolution, with the waste transfer station and equipment planned to be functional by May 2006, the delays caused by the Government's decision to build the temporary detention centre at Phosphate Hill has severely impacted on the community in terms of its environmental health⁶¹.

- The Community Recreation Centre

Even when the project is for the community's benefit, the Government ignores the community's interest. The new community recreation centre is a case in point.

In late 2003 the PWC inquired into the Government's proposal to build a recreation facility at Phosphate Hill. The Shire provided a written submission to the Committee, emphasising the lack of information provided about the proposal, the lack of community consultation, problems with the proposed location of the facility, and lack of information about how the facility would be managed. The PWC endorsed the Shire's concerns, particularly noting:

- The lack of detailed plans and drawings
- The lack of analysis/understanding of community needs and interests in using the centre & access to the centre
- The lack of any management plan for operating the centre

The Committee Chairperson expressed concern⁶² that the Centre could be an expensive white elephant:

"The concern is that you have a standing population of less than 2,000 people. Are we going to build a white elephant here that is inaccessible to the majority of the existing

⁶¹ In addition, the generation of waste from the IRPC projects has put more pressure on the current tip site.

⁶² PWC Inquiry, Hansard transcript of proceedings, page 3



residents on the island and about which the main organisations have not been consulted?"

While the PWC approved the project, it also recommended that further community consultation occur and that DOTARS negotiate a settlement with the Shire about the management of the Centre before construction commenced.

- The Indian Ocean Territories Health Service (IOTHS)

Another example of the Government ignoring community views and issues about community services is the case of the IOTHS "User Group Forum".

In August 2004 the IOTHS announced the establishment of this Forum to provide feedback on its services. Eight organisations were invited, with only one of these – the Shire – representing the community. The other organisations were DIMIA, Global Solutions Ltd (a contractor to DIMIA), the ADF, the school, Christmas Island Phosphates and the social worker. The Shire decided not to participate for the following reasons, setting these out in a letter to the Minister for Territories⁶³:

- The Forum representation was skewed towards government representatives and commercial users of the health service and against community users of the service. As the Shire explained -

"Five of the eight invitees are associated with or directly employed by your Government. DIMIA and the Australian Defence Force are Government departments. The High School is a Government agency. Global Solutions Ltd is a Government contractor and the Social Worker is a DOTARS employee.

"DIMIA, Global Solutions Ltd and the Defence Force are contract users of the Health Service. They are not on-going community users of the Health Service. They are merely user-paying clients of the service.

"Worse than the over-representation of Government agencies and employees on this Forum, is the exclusion of community groups.

⁶³ Letter to Minister Lloyd dated 24 August 2004



"That your bureaucrats have ignored every representative group other than the Shire, and all of the groups that represent the cultural diversity of the community, adds insult to injury. What about the interests of specific groups that use public health service such as women, seniors, or people from non-English speaking backgrounds? Your bureaucrats are discriminating against local interests."

- o The Government had ignored the community based Health Advisory Committee and were continuing to withdraw from effective community consultation. Again, as was explained to the Minister –

"The Shire of Christmas Island is also concerned that the Health Service has bypassed the community based Health Advisory Committee... Ignoring this committee shows contempt for the community, and for previously agreed mechanisms for consultation.

"Ignoring the Health Advisory Committee is 'par for the course' for a Government bureaucracy now totally uninterested in community consultation.

"Ms Robyn Jenkins advised the community in October 2003 that DOTARS would withdraw from all committees on the basis that it was 'unnecessary for the Australian Government to be represented on Committees which, in similar situations on the mainland, other State Governments would not'.

"The Shire will not waste its time explaining to you why we cannot be compared to the 'mainland situations' and the fact that nowhere on the mainland does the Australian Government act as a "state government". The point is that your Department has demonstrated a total lack of interest in effective consultation."

- o Government money was being wasted on the Health Service. This related to the number of reports the Government had sponsored over recent years and the fact the Government had in each case ignored advice to establish effective community consultation mechanisms.

"The Government has spent considerable money on reports about how the Health Service should be managed. Two recent reports called for effective community consultation arrangements.

"On the mainland communities get a say in health services and get to vote for state government's who set public health policy. We don't get that here, except



when your Department chooses to pay lip service to the community's needs and interests through consultancies that aren't acted upon and sham committees such as the Forum.

"What is most galling about your Department's approach is that it willingly wastes public money on reports and consultancies and then turns round and tells us, as you recently reinforced, that the health service is "heavily subsidised" and must be privatised".

While the Minister responded to this letter, mainly to explain that the health service wasn't being privatised – just the management – he did refer a response about the User Group Forum back to the IOTHS. A response has never been received.

The recreation centre, the waste management facility and the IOTHS are all examples of unaccountable government decision making that ignores community issues and needs. While the community may accept that national interest projects are unlikely to be in the community interest, it does, in the Shire's view, have a right to effective community service provision. These examples also demonstrate lip service community consultation, and wastage of public money. On any measure, including the Government's own policy, this is not efficient and effective government.

3.3 Inquiry & Review Recommendations Ignored

The Shire has commented about the number of inquiries and reports that have been generated about the Territory over the last 25 years and the lack of action arising. Four specific points are worth making in the context of Government accountability:

- The cost of reports

Of particular focus here are Departmental consultancies, as opposed to parliamentary inquiries. While arguably a Government can choose to ignore a report if it doesn't like its findings, it does so at a cost. This is the tangible cost of the report, including consultant's fees and costs, travel to the Indian Ocean Territories etc, and also the intangible cost of community resources and commitment.



It would be of interest to know how much the Territories branch of DOTARS has spent on consultancy fees over the past 10 years on matters concerning the Indian Ocean Territories. With five consultancy reports about the health service, three consultancies about recreation facilities, a couple of economic development consultancies, and a couple about education and training, the cost would be considerable. Then there are the funds provided to the Shire for consultancies, particularly about town planning and waste management, and the money paid to GHD⁶⁴ for consultancies about building projects and waste management. Has the tax payer got value for money? Not if successive reports have said the same thing and nothing has happened.

- Get another report approach

A related concern is the tendency for the Government to get confirming or successive reports about the same issue. The health service is an example of the latter case, where the consultancy becomes the objective rather than the means to achieving an objective. In the place of action, get another report done.

The recreation centre and waste management are examples of the former where another consultant's opinion is sought to analyse the first.

In the recreation centre case, as a result of the PWC's recommendation to negotiate a settlement with the Shire, the Shire proposed that a consultant be contracted to provide an operational and management model for the centre. DOTARS accepted this proposal and the YMCA was chosen as the consultant for the project. When the YMCA's draft model was presented after considerable community input, DOTARS decided that the model was "gold plated" and that they would seek another view from a different consultant. The Shire hadn't been given an opportunity to consider the YMCA's report and the YMCA was not asked to refine or reconfigure its model.

The consultant chosen was the one DOTARS had preferred in the first case, even though they had agreed to accept the Shire's choice. All communication ceased between DOTARS and the Shire on this issue, the Shire never got to meet or

⁶⁴ Guthridge, Hasting & Davey, a private company with offices on the Island and in Perth, who took on the privatised role of Works Australia, and are retained on a consultancy contract to DOTARS



speak to the consultant (though they visited the Island), and the next thing the Shire heard was that the consultant was recommending that DOTARS market test and contract out the management of the Centre.

This change of tack caused considerable concern, as was outlined to the Minister for Territories in November 2004 –

“At the time that the final draft was provided to the Shire, DOTARS advised that they were engaging a new consultant to assess the YMCA’s report and to develop a funding model for your endorsement. The main impetus for obtaining another opinion was DOTARS’ perception that the YMCA cost estimates were excessive. In effect, without giving the Shire a chance to consider the report or discuss issues with DOTARS, a unilateral decision was made to obtain another opinion.

“DOTARS have subsequently advised that the new consultant has “crunched” the YMCA figures to come up with a cheaper option which DOTARS prefer. The Shire has not been given any details as to how this has been achieved. While the Shire has considerable concerns with the tack taken by DOTARS, not least of which is the fact that they have used RMP & Associates, a company who made an unsuccessful bid for the original consultancy work and also designed elements of the new Centre, the Shire’s main concern is that it now appears that DOTARS have no intention of continuing to discuss or negotiate issues with the Shire.”

Another example in this vein is waste management consultancies.

In February 2000 the Shire engaged a consultant to progress plans for a new tip site and related waste management arrangements. As a result of the consultant advising that the new tip site would need to be lined (to stop leachate going into the groundwater), the Shire wrote to Commonwealth requesting additional financial assistance as costs of landfill development including lining of site were estimated at over \$1 million. The Commonwealth responded saying no commitment would be given without a detailed plan. After unsuccessfully exploring possibilities for establishing an unlined tip site elsewhere, the consultant then drew up a plan to line the tip site, estimating the cost at \$2 million.



The Commonwealth responded saying they would get advice from their consulting engineers, GHD about the funding submission, and subsequently GHD advised the Shire what the scope of their review would be. The Shire wrote to DOTARS complaining that GHD were doing nothing more than reviewing what had been done on at least two previous occasions. However, GHD continued with their review, recommending that Ryan Hill (the subject of a mining lease until 2018) should be developed as the tip site at a cost of \$1.09 million and operated at a cost of \$2.8 million over 17 years.

The Shire then wrote to the Minister for Territories requesting additional funds to develop a new landfill site. The Shire again criticised the GHD report as being merely a review of the report commissioned by the Shire, without addressing any environmental issues concerning the proposed Ryan Hill landfill site.

DOTARS then advised that they had requested that GHD commence environmental approvals for development of Ryan Hill as a landfill site and the Minister then advised the Shire that up to \$1m capital funding would be available to develop a new waste management facility. Further, that GHD would manage the project to hand over to the Shire when completed⁶⁵.

In December 2000 GHD called for tenders for a drilling program to assess the impact on groundwater of landfill site at Ryan Hill. No outcome eventuated.

In April 2001 the Shire wrote to the Administrator regarding the lack of progress by GHD in resolving a new landfill site. At this point waste minimisation measures (as outlined above) were agreed.

The question of the cost and who will pay for the lining of a new tip site when developed has not been resolved. However, the Shire and DOTARS have agreed that Ryan Hill is the preferred place for a new tip site, and DOTARS have taken steps to reserve the land for this purpose once the mining lease expires.

⁶⁵ This is an example of the Department not trusting the Shire to manage the project themselves. This attitude also surfaced in the proposed construction of the new Shire depot (successfully countered by the Shire who constructed the work for less than half the cost GHD had estimated) and in the project management of the recreation centre.



In essence these two examples (and there are others) demonstrate the Government's practice of getting another report when they don't like the recommendations or estimates of the first.

- Going back on commitments

Another related characteristic about the Government ignoring reports is the Government reneging on its commitments, even to the Parliament. The recreation centre again provides the example.

Under the *Public Works Act 1969* recommendations of the Committee go through a formal parliamentary process before the work in question can proceed. The steps as the Shire understands them are as follows:

- PWC Report tabled in Parliament.
- Report reviewed by the Department of Finance (DoFA). DoFA obtains the views and comments of the proponent Department and then writes a statement in support of the motion to proceed with the work.
- Notice of Motion given. The notice of motion to proceed with the work is then given to the House of Representatives. The Minister (or his delegate) moves this in the House, with the ministerial statement in support.
- Recommendations of a PWC Inquiry are usually contained within the ministerial statement of support: "The Committee believes that the statement in support of the motion should address all recommendations contained in the report. If this is not done, the Committee will seek a written response to its recommendations."
- Expediency motion. The House votes on the motion, which is usually agreed to "on the voices" without requiring a formal division.

Implicit, and usually explicit, in the process is endorsement of the recommendations by the proponent department. In the case of the Recreation Centre the statement in support of the motion largely reflects DOTARS original submission to the PWC Inquiry – rather than detailing the recommendations of the Committee – although it was reported that DOTARS accepted the recommendations of the Committee⁶⁶.

⁶⁶ House of Representatives, Hansard 3 December 2003



However, from DOTARS actions, the recommendations weren't adhered to. Particularly, DOTARS did not adhere to the recommendation that a settlement with the Shire occur before construction commenced, nor, as a result, did it allow an effective opportunity for further consultation about the Centre's plans. The Department were intent on doing what they wanted, and clearly had no intention of observing the PWC's recommendations, despite indicating that they would.

As the Shire complained to DOTARS following a DOTARS "consultation visit" in February 2004⁶⁷ –

- o No ongoing process was established.
- o The community's opportunity to have a say in the centre plans and designs was virtually non-existent. It appears that the only opportunity left for a say is at the level of final fit out (eg identifying what courts should be marked out in the sports hall).
- o Commercial contractual agreements are already in place and are dictating the pace of the development.
- o By the time of this visit earthworks had already commenced, making any significant change impossible.
- o Your department representatives were clearly not aware of community issues around sport and recreation facilities. The desire for a stand-alone soccer pitch is a case in point. They also had very little concept about effective consultation and were ill prepared to undertake the same.

"Council is also concerned that the PWC recommendation that DOTARS 'negotiate a settlement with the Shire to clarify ongoing maintenance of the recreation centre prior to the construction of the facility' is not being adhered to. Council notes your commitment to the PWC to work through the issues raised by the Shire and Sports Association "before construction commences" is unlikely to be met.

"The view expressed by department representatives during their visit in February was that there is no impediment to finalising designs and commencing construction prior to any negotiation with the Shire about ongoing maintenance of the centre. According to your department, negotiation with the Shire is merely about maintenance issues, which don't need to be resolved prior to the works commencing. As you are well aware, the PWC saw the issue of the on-going management of the centre as "pivotal". As was reported to the parliament, "The Committee was concerned to learn at the

⁶⁷ Letter to Assistant Secretary, DOTARS Territories Branch, 9 March 2004



public hearing that no arrangements had been made by DOTARS for the ongoing management and maintenance of the new facility.”

Despite commitments to adhere to the recommendations of the PWC, construction went ahead before any negotiations or consultation with the community could occur.

- Impervious to criticism

This characteristic of DOTARS lack of accountability is particularly concerning and is best described by an example that speaks for itself:

In 2004 the IOTHS decided to terminate the employment of their Support Services Officer Mr. Hill. This dismissal was challenged by the Union and went to hearing in the Australian Industrial Relations Commission with Senior Deputy President (SDP) Lacy presiding⁶⁸.

SDP Lacy decided that employee’s termination was harsh and unjust and unreasonable and ordered his reinstatement. He concluded that the employee was terminated because he complained of the General Manager, Ms Morrison, bullying staff. SDP Lacy also found that the General Manager did bully staff:

“The evidence is persuasive of the view that Ms Morrison’s behaviour was of the nature of persistent, abusive, intimidating and insulting behaviour. Staff who appeared before me to give evidence felt upset, threatened and humiliated by her. Certainly Mr Hill felt upset, threatened, humiliated and stressed as a result of the way Ms Morrison treated him.”

SDP Lacy also commented adversely on how the Assistant Secretary of the Territories Branch dealt with the bullying complaints made by staff. He described Mr Wilson’s actions in the following terms:

“I find that Mr Wilson’s response to Mr Hill on 3 February 2004 about Ms Morrison’s treatment of him was cynical and inadequate in the circumstances. It was particularly inadequate when regard is had to the haste with which the Respondent took action

⁶⁸ 26 April 2004, PR946017



against the Applicant on the word of Ms Morrison about his performance. I am satisfied that Mr Wilson with knowledge of these events ought to have disclosed them to the Executive and considered the allegations against the Applicant in the context of those facts. The fact that he did not do so, in the context of his preparedness to accept Ms Morrison's recommendation about the Applicant's continued employment, was an abrogation of his responsibility to fully investigate the matter".

SDP Lacy also noted that; that there was "a workplace culture of distrust of management and low morale" at the hospital, and inadequate employment and complaint procedures.

Ms Morrison was removed from her position as General Manager following SDP Lacy's decision. She was sent to the Canberra office of DOTARS to continue working on IOTHS matters. Mr. Wilson, who 'inadequately' and 'irresponsibly' handled the matter remains in place and continues to oversee the management of the health service. None of the issues raised by SDP Lacy such as inadequate complaint procedures were addressed and workplace bullying persists.

The examples in this section are evidence of a Government Department who has no compunction in getting reports to suit it, or in wasting considerable public money on reports, or in ignoring commitments made, even those made to the Parliament. It also appears to reward, or do nothing to restrain, poor behaviour despite public scrutiny of its actions. Essentially DOTARS Territories Branch don't understand the term accountability and appear to believe that it is above any mechanism to ensure Government actions are in accord with the principles of efficiency, effectiveness or fairness.

3.4 Ineffective Consultation

The issue of effective consultation in the face of insufficient decision making roles or political representation within the community has been emphasised repeatedly in Government inquiries and reports⁶⁹. While the Shire's submission is that decision making, not consultation, is what is required for this community, it is worth briefly looking at Commonwealth consultation attempts, if only to emphasise that consultation has at best been ineffective, has not improved Government

⁶⁹ This issue is discussed in more detail in Chapter 5 – the Applied Laws system



accountability, and has in fact been used as a means to mask a lack of accountability.

Consultation is an oft applied concept utilised in relation to Government projects and activities. Effective consultation has its place in Government matters, to enable active citizenship. As promoted by the Western Australian Government for example⁷⁰, the benefits of community consultation to Government include “involving, listening and actively responding to concerns and issues raised” such that “decision makers are better placed to make informed judgements” and enabling citizens “to express their views and influence the outcomes of decisions that affect them”. It means that decisions “have a greater legitimacy and credibility” and “builds trust within communities and in our democratic systems of government”.

As noted in examples within this chapter, the Government, when they do consult, only pay passing lip service to consultation. The Government either limit consultation to ‘for comment only’ or narrowly define the subjects of consultation. Further, in many cases information provision takes the place of consultation. This applies at both a political and departmental level. As a result unfortunately, consultation has become a concept of dubious value to the community.

Recent policies and practices at both levels are provided as examples of poor, ineffective or an absence of consultation.

- Departmental Consultation

In 2003 the Department announced that it would withdraw from its involvement in all Island committees as an extension of its 2003 policy decision. This meant withdrawal from attendance at the Shire’s Community Consultative Committee and from other relevant discussion forums such as the Shire’s Land Planning & Heritage Committee. Around this time, as another aspect of the restructuring of its relationships with the community, the on-Island Administration ceased having weekly meetings with the Shire to discuss local developments and activities. While neither the Shire’s committees nor the weekly Administration meetings

⁷⁰ Consulting Citizens: A Resource Guide, Foreword, Department of Premier and Cabinet, April 2002



were formal Departmental consultation, they did provide opportunities for the exchange of information and ideas.

The IOTHS User Group Forum is an example of ill conceived and self-serving community consultation⁷¹, as is the 2003 consultation about closing the health service after hours.

In the latter case, the Department conducted a community consultation via a public meeting at the out door cinema⁷². The Department put forward the proposition that it could only improve community health services by shutting the hospital at night, "to keep within the budget". In response to questions from the crowd about how their acute needs could be addressed without 24 hour access to the hospital, the IOTHS officials couldn't provide any detail. People were also told "It's not a matter of funding". This comment quite legitimately created confusion and did nothing to allay the widespread perception that the IOTHS had some other agenda in proposing to reduce hospital hours.

When members of the community asked whether the proposal to reduce hospital hours would be dropped if the community opposed it, the IOTHS representatives couldn't make any guarantees as "Andrew Wilson is responsible for the health services of Christmas Island and Cocos (Keeling) Islands". However they thought "He would not put the community at risk".

The Department often conduct their consultation via consultants. To a large degree this protects the Department from direct contact with the community, and means that the views expressed to the consultants aren't taken as views expressed to the Department. Even when a consultant directly reports on community views about the Department's poor or absent community consultation these are ignored.

⁷¹ At the only meeting of the User Group that the Shire is aware of, the minutes of 25 August 2004 record that "there were currently no problems with services ... and users generally had good rapport with the IOTHS".

⁷² As reported in *The Islander* 19.12.03



The community health needs study undertaken by Alberton consultants in 2004 is a case in point. In the first stage release of their report the consultants made two comments on point –

- o Perceived lack of community consultation and participation in decision-making with regard to services and facilities

“Most people interviewed were highly critical of and expressed their concern about the lack of community consultation in all areas of public service provision. They criticised the location of the hospital and the new recreation centre. It was generally the view that the recreation centre was poorly located and would become a burden to the community in terms of the resources needed to operate it.”

- o General perception that the community consultation and needs assessment was a disingenuous process

“The majority of interview groups expressed their belief that the needs assessment and consultation were not genuine processes. Rather, most appeared to believe that the needs assessment was a process to support market testing of the health service with a view to privatisation. People expressed their distrust of DOTARS’ motivations and processes with regard to the provision of health and other services on the Island. Many people spoke of DOTARS being the major cause of stress on the Island.”

In essence the Department lacks any commitment to community consultation. Further, the community views any attempts at consultation, either direct or through a consultant with cynicism and distrust, as Government consultation is considered a disingenuous and dishonest process.

The Department has recently recognised that its consultation with the Indian Ocean Territories could improve. Ms Varova, a senior Canberra bureaucrat told the May Senate Estimates Committee hearing that “It is a high priority for us in this next financial year to ensure that we have a robust framework for consultation with the communities on the islands.⁷³” Unfortunately more than a

⁷³ Parliamentary Hansard 26.5.05



'robust framework' is required to address the deep level of community suspicion about Departmental consultation.

- Political-level consultation

Political consultation essentially operates at two levels: Direct with the Minister and through his on Island representative, the Administrator.

During the previous Administrator's tenure an Administrator's Advisory Committee was established. This Committee was established in 1999 as the Administrator's way of getting the community to "pull together".

As was reported in the DOTARS 1999/2000 Annual Report –

"The Administrator for the Indian Ocean Territories [IOTs], Bill Taylor, has placed a high priority on enhancing community consultation. Mr Taylor established an Administrator's Advisory Committee for each Territory in late 1999 to consider the broader public policy issues affecting the social and economic well being of residents of the Christmas and Cocos (Keeling) Islands."

Whatever the rhetoric, the community was dissatisfied with this Committee as a means of consultation. As the Shire told the Risky Business Inquiry 'every now and then there is a meeting of the Administrator's Advisory Committee' but that 'we do not see too many results'⁷⁴.

In the case of the recreation centre, DOTARS used the AAC as the means of consulting about the plans for the centre, including its location. As the Shire submitted to the PWC Inquiry –

"Council have also been compelled to make a submission to challenge the Commonwealth's assertion that they have engaged the community in a full consultation process in developing the project proposal. This is not true, and the project proposal suffers considerably as a result. There is also a need to rectify a number of omissions, distortions and errors in the DOTAR's submission."

⁷⁴ JSCNCET "Risky Business' Report, p 133



The Shire provided an analysis of what “consultation” had occurred at the AAC meetings about the recreation centre, concluding that –

“The process for the development of the current proposal did not use a consultative approach. The AAC is not a consultative or decision-making forum. DOTARS Canberra made key decisions about the project, as did the Administrator, without any reporting or accountability to the community for or about their decisions.”

Essentially, the AAC was a sham form of community consultation that was hailed by the Department as effective but in fact simply obscured the Government’s lack of accountability. In any event, it is now defunct⁷⁵.

With a new Minister and a new Administrator, attempts have been made to improve information flow. The Minister has recently initiated regular newsletters to the Indian Ocean Territories, which in Christmas Island’s case are published in *The Islander*. While not consultation per se, the Minister provides information about his decisions and views and encourages Island residents to contact the Administrator to provide feedback or get more information.

The Shire has proposed to the Minister that a Ministerial Advisory Committee is established. In recent correspondence⁷⁶, the Shire outlined the operation of this proposed committee in the following terms:

“Council sees the Advisory Committee as having the overall objective of ensuring significant Government decisions about the Christmas Island community are made in an informed, appropriate and effective manner. Further, the Advisory Committee would focus on issues concerning the direction and development of the Island. The Committee would be a means of exchanging information and advice on significant issues as identified either by your office or by the community, on an agreed case by case basis. The types of issues this Committee would consider include governance arrangements, legal and administrative systems, service provision, and the economic and social development of the Territory.”

⁷⁵ On the arrival of the new Administrator, a decision was made not to continue with the AAC.

⁷⁶ Letter to the Minister for Territories, 24.6.05. Specific terms of reference were enclosed.



The intention is for the Administrator to attend meetings with Councillors and CCC members on behalf of the Minister. To date there has been no definite agreement to establish the Committee in the terms proposed.

The Committee if formed may provide a regular and more effective forum for information exchange and may make the Department more accountable as a result. Currently the Shire has been forced on a number of occasions to write to the Minister over the heads of the Department because of unsatisfactory responses. While this has been in some cases effective (for instance in stopping the department from market testing the management of the Recreation Centre) it is not an easy means of getting fair decision making.

- Who's responsible for what

An underlying challenge in consultation, or in seeking information, or decisions for that matter, with either the Minister or the Department, is trying to ascertain who is responsible for what. The Department shifts decision making and responsibility around and new budgetary arrangements were introduced last year whereby some Territories branch expenditure shifted from the Department to the Minister (Administered Funds). Transparency is lost in this process and confusion and frustration result.

To illustrate this point:

- In Senator McDonald's time as Minister, he advised the Shire that the Administrator "was the State Government" whereas the Assistant Secretary of the Territories Branch Canberra has more recently advised that he "is the State Government"⁷⁷.
- Who makes decisions about State Government matters is also unclear. State type services provided direct by the Commonwealth are generally managed

⁷⁷ The Utilities & Services Ordinance 1996 (as amended) gives the Administrator the power to provide services and utilities such as water; electricity; gas; drainage and sewerage; refuse removal; public transport; community health care; education; community housing; marine traffic facilities; marine harbour facilities; airport facilities. Despite this power, to a large degree the Department makes decisions about the provision of such services.



- by the local DOTARS office (presumably at the direction of the Administrator), but now Canberra run the Health Service. Arrangements with state government departments are negotiated via the Territories branch in Perth.
- o Land management matters are largely handled by DOTARS-Christmas Island, in conjunction with the state Department of Planning and Infrastructure, which provides service via an SDA arranged through the Perth office. Negotiations for a freehold land transfers are usually negotiated locally. However, in one recent case the land transfer hasn't been completed and the Shire has been told that the decision is "with Canberra".
 - o Administered funding arrangements commenced in the 2003/04 financial year. In a Senate Estimates Hearing in May 2004, the then Minister for Territories Senator Campbell and the Assistant Secretary of the Territories Branch outlined the changes to the way assets and strategic management would shift from Departmental to Ministerial control. Generally this transfer means more direct decision making by the Minister, and more transparency in decision making. As the Assistant Secretary put it –

"It has been felt for a while that there needs to be a higher level of ministerial control in terms of the assets and the services provided to the islands, that a more regular approach to provision of those services and assets would be a better mechanism and that there is a clear, transparent approach to the delivery of those services."

However, it was the Minister's view that the Indian Ocean Territories "wouldn't notice" any difference, as the following exchange demonstrates –

Senator CROSSIN—If there is a problem with the delivery of those services, are people or organisations on the IOTs expected to contact the minister's office directly?

Mr Wilson—I believe what you will find is that from 1 July there will not be a change in terms of the level of contact, either to the minister or to my office.

Senator CROSSIN—So, Mr Wilson, you will still be Canberra's man in the IOTs. Is that right?

Mr Wilson—For the foreseeable future.

Senator Ian Campbell—He is the bad cop and I am the good cop.

Senator CROSSIN—So I have heard. Who was consulted before this decision was made?

Senator Ian Campbell—It was just an administrative decision.



Senator CROSSIN—So no-one in the IOTs was consulted or informed about it prior to it happening.

Senator Ian Campbell—They will not really notice much difference, I would think.

Mr Wilson—In terms of administration of the program, the difference would be that the minister will make decisions in terms of allocation of funding that have to date been made by the department. In terms of the overall direction of the delivery of services to the Indian Ocean territories, there has been no change in government policy.

Senator CROSSIN—As for the impact of the decision and what it means for service delivery, you are telling me that people will not see a discernible difference on a day-to-day basis. Is that correct?

Mr Wilson—As we have tried to improve services over the last number of years, we will continue to try to do so, so that hopefully they will see a continued improvement in services. There will not be a change in terms of the overall direction in the delivery of services.

Senator CROSSIN—So you would put it to me that this would lead to better outcomes for the people in the territories.

Mr Wilson—That the change in itself will lead to better outcomes?

Senator CROSSIN—Yes.

Mr Wilson—The change in itself will enable people in the Indian Ocean territories to clearly identify the level of funding being provided for those services.

Senator CROSSIN—How will they be able to do that?

Mr Wilson—Through this document here.

Despite a year of operation of the Administered program, the community has seen little improvement in transparency. Further confusion persists as to who is responsible for what, although it is becoming increasingly clear that all policy decisions emanate from Canberra, with the satellite offices of Perth and Christmas Island operating under direction and having to wait decisions from Canberra before they can act. It is all top down with little ability for the satellite offices, or for that matter the Administrator, to influence decisions from the bottom up.

Overall the Government does not consult effectively. Sham or cynical consultation mechanisms are used as devices to give a semblance of consultation and interest but these serve to insulate or protect the Department from any real scrutiny of accountability.

3.5 Lack of formal public accountability mechanisms

There are only two key means of formal Parliamentary scrutiny of the Department generally, the Joint Standing Committee on the National Capital and External Territories (JSCNCET) and Senate Estimates Hearings. Other formal means, such as the Public Works Committee, only arise on a capital works case by case basis and



have inherent legislative restrictions on community participation⁷⁸. Non parliamentary mechanisms include the Federal Ombudsman and internal Departmental complaints systems. All these are briefly discussed below.

- JSCNCET reviews of the Department

The work of the JSCNCET is important to the Indian Ocean Territories as it is the only means for the community to formally make submissions about its concerns and issues regarding the Department. With respect, the JSCNCET review mechanism has been largely ineffective.

Over the period 2000/01 – 2002/03 there has only been one actual review of the Department's annual reports, since the JSCNCET was given this responsibility in 2000. The 2000/01 review was cancelled due to the year passing without a review being completed⁷⁹. This was rolled into the 2001/02 review and subsequently both were rolled into the 2002/03 review. A review of the 2003/04 annual report did not eventuate. Acknowledging the perceived inadequacies in the delay, the JSCNCET reported to the Parliament on 31 August 2004.

Specific concerns about this review process include:

- Community submissions were only considered in relation to the 2001/02 annual report. By the time the JSCNCET reported on the review of the department, most of these written submissions were out of date.
- The Annual reports the JSCNCET considers don't provide much to scrutinise. While the JSCNCET is interested in the external territories, the Annual Reports are about the Department of Regional Services and Transport. DOTARS reporting on the external territories is reduced to one strategic objective within one of two performance outcomes. In the 2002/03 Annual Report for example, within this one strategic objective – "Territories which provide for their residents the same opportunities and responsibilities as other

⁷⁸ As the Indian Ocean Territories are treated like another country for the purposes of the PWC Act 1969, Islanders do not have a right an on-Island hearing. This issue is covered in more detail in Chapter 6.

⁷⁹ Under Parliamentary rules, as the Shire understands it, if a new annual report of a Department is tabled before the Committee has reviewed the previous report, the first review is cancelled.



- Australians enjoy in comparable communities” – are reports about the self governing territories (ACT & Norfolk Island) and the non-self governing territories (Jervis Bay and the Indian Ocean Territories). In total five paragraphs are provided on the Indian Ocean Territories.
- In the 2002/03 report for example, more emphasis is given to Commonwealth priorities than to community priorities (there are eight paragraphs immediately under the five paragraphs about the Indian Ocean Territories about the Government’s “unauthorised boat arrivals policy”)
 - The two Indian Ocean Territories are not disaggregated into Christmas Island and Cocos (Keeling) Islands.
 - There is no consideration of the Indian Ocean Territories under any other aspect of DOTARS activities, for example local government.
 - DOTARS presented their submission at a public hearing in Canberra, whereas the community appeared on Christmas Island. In the current case, DOTARS put forward a significant change to policy, without the community being given the opportunity to respond. Again, by keeping their distance, DOTARS don’t have to be accountable to the community.
 - The JSCNCET is reliant on the community raising issues; a community who may not understand the role of the Committee, or understand how an annual report – or terms of reference relating to such a report – relates to their experiences of the Department.
- Senate Estimates

Senate Estimates, as contrasted with the Standing Committee, provides an opportunity to ask questions, if a Senate member is willing to put them forward on the community’s behalf. While the Senates Estimates Committee hearings have been a good source of information for the community⁸⁰, they lack concerted

⁸⁰ The Shire has published excerpts from the Senate Estimates Hansard in *The Islander* over the past year as community information.



follow through as many questions are placed on notice, and political rhetoric can overshadow the import of responses given.

These hearings, as well as utilising the questions on notice process, can be effective in getting matters addressed. The breast screening campaign is an case in point. However, although the Government was forced to back down over their contention that women in the Indian Ocean Territories didn't need any supported access to breast screening services, the resultant arrangements have not been considered in consultation with the women concerned. As a result, the arrangements may be neither efficient nor effective⁸¹. It is also questionable why access to breast screening services – available to women as of right – had to be taken up politically in the first place.

- Federal Ombudsman

Another means of Departmental scrutiny is the Federal Ombudsman. The Federal Ombudsman visited the Island for the first time in May 2005. This was as a result of the Western Australian State Ombudsman visiting the Island in 2004 and identifying that most community concerns were about the actions of Commonwealth departments, not Western Australian State Departments⁸².

A number of community members and community organisations took the opportunity to discuss issues with the Federal Ombudsman but, to date, no follow up information or advice has been received.

⁸¹ For example, purchasing a unit to be permanently based on Christmas Island is very expensive. DOTARS have said that the operational cost – flying 5 specialists to Christmas Island for a two week period - has not been costed but will likely come out of the IOTHS operational budget (which may impact on other health services). If a suspicious lump is detected, women will have to be sent to the mainland under the PATS, there is no clear time frame as to when the unit will be available and hence no answer to the question of what happens in the meantime. Issues such as what happens to women who miss out or need screening outside the 2 week specialist visit have also not been addressed.

⁸² The State Ombudsman's power only relate to the actions of Western Australia State Government Departments. In any event, it could be argued that the Commonwealth is responsible for the actions of Western Australia State Government Departments as these Departments are operating at the direction of the Commonwealth under service delivery agreements, a point considered in more detail in Chapter 5.



- Customer Service Complaints

The 1999 Commonwealth Grants Commission noted in relation to appeal processes that that⁸³ -

“Indian Ocean Territories’ residents have access to independent channels of complaint, such as the Commonwealth Ombudsman, through the operation of the Client Services Charter of the Territory administrations. However, during out discussions and conferences on the Indian Ocean Territories no mention of the Client Services Charters was made by either Administrations or members of Indian Ocean Territories’ communities. Nor were they referred to in any submission we received.”

Perhaps this is because such a charter doesn’t exist. The Shire is not aware of any Client or Customer services charter directly relevant to the Indian Ocean Territories. The Shire is in receipt of a Corporate Plan for DOTARS⁸⁴, which expresses the following values –

- Honest and professional
- Accountable for our actions
- Responsive to the needs of Government, business partners and our people

However, the Shire has never seen “Service Charters”, promised in the Corporate Plan, relevant to the Indian Ocean Territories, and is not aware of any complaints raised with DOTARS under such a charter.

The Commonwealth Grants Commission pointed out that such appeal mechanisms were important as others such as formal appeal mechanisms to the Federal Court or the AAT may not be available. Further, that⁸⁵ -

“Lack of access to normal avenues of redress is exacerbated because of the very limited access to elected representatives. The absence of any State local member and the location of the Indian Ocean Territories in the electorate of the NT for federal

⁸³ CGC 1999 Report, p 31

⁸⁴ Circa 1999

⁸⁵ CGC 1999 Report, p 32



representation means the Indian Ocean Territories have fewer opportunities to promote their issues through the political process.

“The development of more effective and more accessible machinery for appeals should be given a high priority. The application of all relevant Commonwealth legislation would contribute to this, as would fully effective Client Services Charters”

As no priority has been given to these issues, DOTARS Territories Branch continues to keep itself secure from customer complaint.

And there are things to complain about, particularly in relation to the lack of response to issues raised, the lack of timely response to issues raised, the lack of written responses and the inappropriate use of department power to threaten and cajole.

3.6 Summary & Proposals

Improving DOTARS accountability to the community has been identified as a key means of ensuring that community issues and concerns are heard, particularly in the absence of the same level of political representation communities have elsewhere. To a large degree DOTARS have done nothing to improve their accountability as they don't believe they are required to be accountable to the community. Many actions by the Department demonstrate that they are neither interested in the community's views nor responsible to the community for their decisions.

There is a culture within DOTARS of unaccountability, supported implicitly by a Government that does not or cannot call it to account, and is likewise uninterested in being accountable to the community. DOTARS don't effectively engage with the community, ignore criticism and positive suggestion, waste money and time, don't encourage complaints, renege on commitments and self-servingly seek out advice that supports their own position. The community suffer as a result, both in terms of deleterious impacts and in being unable to develop their own self-sufficiency or capacity.

The community are subordinate to a department and a Minister who have a pervasive influence on their everyday lives but refuse to be accountable for their actions. Being a non-self governing territory means that the Department and the



Minister can take a higher degree of control on Christmas Island than they would have anywhere else. While their decision making role remains ascendant, nothing is likely to change. Measures for greater accountability may improve the situation, but it will not change the hegemony that the Government enjoy.

That said, there are a number of immediate and longer term actions that could be taken to generate greater Government accountability to the community:

Immediate

1. Prepare and publish a customer service charter for the Territories Branch of DOTARS.
2. Establish complaint mechanisms that are transparent and readily accessible to the community.
3. Produce and publish an annual report about the Territories Branch of DOTARS activities in the Indian Ocean Territories, disaggregated by Territory.
4. Document lines of decision making within the Department's offices in Canberra, Perth and Christmas Island and by the Minister and publish this information in the community.
5. Agree and establish clear lines of communication and information dissemination about Commonwealth activities in the Indian Ocean Territories.
6. Cease further market testing or out sourcing of government services to the community.
7. Commit to reviewing services already contracted out when the contract expires, with a view to local management of these services wherever possible.
8. Agree to review decision making arrangements within the Department in consultation with the community on the basis of locating decision making as close as possible to the community and identifying all areas and activities the subject of decision making.



9. Agree a timeframe and resources to establish an effective consultation arrangement about the health service, using the Alberton Consultants report as a starting point.

Longer term

10. Submit the 2003 policy and all details of current plans for existing services being delivered by the Department to the community via the Shire for comment and change.
11. Establish the Ministerial Advisory Committee in the terms proposed by the Shire of Christmas Island.
15. Establish an agreed effective mechanism for direct community participation in decisions about expenditure on service delivery programs for the Indian Ocean Territories
16. Agree a framework and timeframe for progressively transferring decision making to the community.
17. Negotiate, agree and establish an effective health advisory arrangement.



Chapter 4 - Economic Sustainability

Term of Reference No. 4

Current and future governance arrangements for the Indian Ocean Territories ... in particular the link between more effective governance and improved economic sustainability of the Indian Ocean Territories

4.1 Broad context for economic development

Economic sustainability is a key component of effective governance. It is particularly at issue for non-self governing Territories: self-determination must be built on economic sustainability. As the United Nations' recognises, member countries are, in the administration of non self-governing territories, "to ensure, with the due respect of the people concerned, their political, economic, social and educational advancement, their just treatment, and their protection against abuses"⁸⁶.

The Human Rights and Equal Opportunity emphasised the link between self determination and economic development in it's submission to the Islands in the Sun Inquiry, saying that whatever the Commonwealth's eventual objective for the Territory of Christmas Island was, "the degree of consultation and control which the local community should enjoy in process, including in determining how economic development is to proceed" must be given attention⁸⁷.

Over the years, the Government has given the question of economic development considerable attention. From 1982 on, the issue of economic development has been considered by numerous inquiries⁸⁸ and from a number of viewpoints⁸⁹ as the Island was expected to be normalised and integrated into Australia. Further, both the 1995 and 1999 Commonwealth Grants Commissions have analysed the question of economic development as part of the broader question of 'mainland comparable standards'.

For all this activity and interest, why is it that economic development is still such an issue of concern? Why is it that the community remains reliant on the

⁸⁶ Chapter XI, Declaration Regarding non-self Governing Territories, Article 73

⁸⁷ Islands in the Sun p 199

⁸⁸ See for example the 1982 Inquiry into the Long term Future of Christmas Island, the 1990 Parliamentary Inquiry into Tourism, Department of Territories Strategic Plans 1990 & 1991, the JSCNCET Risky Business Inquiry, and the 1992, 1994 & 2004 economic development plans

⁸⁹ Job creation has been the emphasis in other reports about matters such as public health policy, education and vocational education and training.



Commonwealth to create economic development opportunities and has managed to achieve so little for itself, despite all the ideas and possibilities recommended?

While there is a raft of factors that beset small, remote or isolated communities everywhere, the problems cannot all be attributed to these factors. Such communities can prosper and Christmas Island has many unique and interesting features to favour prosperity rather than decline.

The question of the link between effective governance and improved economic sustainability is at the heart of this Inquiry, both in its genesis⁹⁰ and as a fundamental aspect of the future of the Island.

In the Shire's submission the fact that the Commonwealth has done effectively very little to involve, engage or facilitate the community in its own economic development is the key. If, as the United Nations says, economic development goes hand in hand with self determination, then the opposite is true: economic development does not work in a context of non-self determination.

In support of this submission, a number of inter-related points are made about problems with the Commonwealth's attitudes and actions around economic development.

4.2 No support for community based economic self-sufficiency

Non-self determination inherently means that someone else is determining what happens. If the Government is not interested in providing opportunities for the community to engage in deciding its future and direction, is the corollary true that the Government doesn't want the community to be able to less dependent on the Government?

There is a strong view amongst community members that the Government wants the community to remain economically dependent on it. The casino decision, which frustrated private investment in the Island, is a case in point. While the community

⁹⁰ The initial proposal for an inquiry arose from two related concerns: the 2004 decision of the Government not to grant a casino licence on Christmas Island and DOTARS administrative and policy direction in their management of the Territories.



welcomed this investment and could see considerable local opportunities flowing from the re-opening of the resort/casino, the Government didn't see it that way and thereby denied that opportunity to the community.

Another example is the newly constructed recreation centre. The centre was designed and located without effective involvement of the community, despite the fact that it is a community facility. As a previous Minister for Territories put it, 'you're going to get this recreation centre whether you like it or not'⁹¹.

The Centre is essentially unaffordable. The community will have to rely on Government support to the tune of around \$750,000 per annum to operate the facility⁹². A mainland centre of a comparable size would have a catchment population of around 50,000 people. And a local government operating such a centre would be working on a subsidy of around 8 cents per visit. By contrast the Christmas Island community is around 1,400 people and the subsidy per visit has been estimated at \$23.

Why provide a facility to the community that it can't afford? Does the Government want the community to be beholden to it for the next 25 years?

4.3 The high level of Government involvement in the economy of the Island

After phosphate mining, the Commonwealth is a key contributor and controller of the Island's economy. It provides Commonwealth, state-type and local government services and is the largest source of capital works expenditure, for both domestic and 'national interest'⁹³ purposes.

The significance of role of the Commonwealth in investment, particularly in capital works projects, is well understood and often emphasised by the Government. As DOTARS noted in their 2002/03 annual report, their contribution to 'supporting the government's unauthorised boat arrivals policy in the external territories' in terms of IRPC infrastructure and common-use infrastructure meant that "Investments into the

⁹¹ Minister Tuckey's comment when he refused the Shire's request that it be involved in the development of the facility, as it had been when DIMIA were working with the Shire on a dual purpose facility.

⁹² This estimate and those that follow are from the YMCA, who conducted research in 2004 to develop an operational model for the Centre.

⁹³ For example the IRPC(s) and related infrastructure



island economy ... will exceed \$80 million and, with on going staffing of the centre [IRPC], represent a significant boost to the economy of the Territory⁹⁴”.

Similarly, in relation to a key strategy of DOTARS to ‘facilitate economic and infrastructure development in non-self governing territories’ , DOTARS reported in 2002/03 that “Work continued on Christmas Island towards the development of space launch facilities and the IRPC which created buoyant conditions for much of the 2002/03 financial year”.

The Commonwealth is also a significant owner of land and property assets⁹⁵. Apart from private ownership of property (predominantly housing and small business) in the dog’s head area, all land is Commonwealth land, either unalienated crown land or crown land with reserved or leasehold interests (primarily mining leases). Temples, churches, club facilities and the like are all owned by the Commonwealth. Most community facilities⁹⁶ are also owned by the Commonwealth with, in some cases, management orders in favour of the Shire.

As the major landowner, the Commonwealth has a dominant role in enabling access to land for development purposes.

Industry assistance is also the exclusive purview of the Commonwealth. While the Commonwealth has not supported local industry development, and has in fact had a policy against such support⁹⁷, it has spent or committed huge sums to ‘national interest’ and large scale industries⁹⁸. These projects do nothing to address issues such as diversifying the local market, the high reliance on imports for essential items such as food, or support for emerging industries such as tourism⁹⁹, and may in fact negatively impact on the community¹⁰⁰.

⁹⁴ DOTARS Annual Report page 109

⁹⁵ Estimated by the Commonwealth Grants Commission at around \$190 million in 1999 (both Territories). In proportional terms, 93% of DOTARS assets “are for providing services to the non-self governing territories” - DOTARS annual report 2002/03, p 112.

⁹⁶The Neighbourhood Centre, Poon Saan Community Hall and Settlement Sports Hall are examples of community facilities owned by the Commonwealth.

⁹⁷ See for example the DOTARS 1990 – 2000 Strategic Plan: Local enterprises will be actively encouraged but the Government will not provide subsidies to commercial enterprises”. Note also the Administrator’s comments that the Government will not financially support the new Economic Development strategy.

⁹⁸ For example, over \$330 million on the new IRPC and \$100 million on infrastructure for APSC

⁹⁹ Christmas Island Tourism Association by contrast receives around \$60,000 assistance per year.

¹⁰⁰ Concern has been expressed for example that the IRPC development negatively impacts on the Island as a tourist destination.



The 1999 Commonwealth Grants Commission identified industry assistance as a key area where the Government was not providing a comparable level of service, and in fact, very little economic development support whatsoever. Specific industry assistance issues were prefaced with the following remarks:

“The Government’s current [1998] policy objectives for the Indian Ocean Territories include ‘enhancing their economic development’. This flows from commitments made to the Cocos Malay community at the time of its vote in favour of integration where the Commonwealth agreed to ‘help the community broaden the Islands’ economic base by developing alternative industries and measures aimed at greater self sufficiency’. This commitment to both Territories was reiterated by the current Commonwealth Government when it promised ‘to continue its policy of securing a greater degree of economic self sufficiency for the Christmas Island and Cocos (Keeling) Islands’. We see very little evidence of the application of this policy on the Indian Ocean Territories” [emphasis added].

Issues identified by this Grants Commission as problematic included:

- The recent BTE Economics reports on both Territories concluded that the Indian Ocean Territories are economically sustainable in the long term only with significant Commonwealth funding. This is not consistent with stated government policy.
- DOTARS provides assistance through its Canberra office to encourage the development of new industries, such as the re-opening of the casino and the establishment of a satellite launching facility on Christmas Island. In general assistance in this area is less than assistance available for business development in their States. Standard levels of industry assistance, on comparable terms, should be available to the Indian Ocean Territories. Incentives for industry should be subject to rigorous assessment, including an evaluation of the benefits of achieving greater economic self-sufficiency on the island, reducing welfare payments and increasing the self esteem of the island communities.
- A range of grants is available to Western Australia industries for start up funding including the Agriculture Development Fund (up to \$50,000), Regional Business Development Corporation, and fisheries research and development. DOTARS has



said that support services for agriculture, commerce or trade are not provided in the Indian Ocean Territories and that it is difficult to fund applications for grants, even if they meet appropriate criteria, because the funds are not automatically available and Ministerial approval is required.

Like all other areas of Island life, the Commonwealth have considerable control of economic development. However, little has been done to foster economic development and overall the Commonwealth has looked to capital expenditure as a quick fix or fillip in the place of sustained investment.

4.4 The lack of a secure base for local economic sustainability

A related key criticism is the Government's failure to provide a secure base for sustainable development. This criticism relates to the Government's policies, its employment and business practices, and its decisions.

- Policy

In relation to the Commonwealth doing very little to support economic self sufficiency the Commonwealth Grants Commission also noted that –

“Changes to Commonwealth's general approach to public sector service provision have contributed to a decline in the locally based workforce on both Territories. Contracting out of services and competitive tendering has led to a decline in direct employment, and a number of contracts have been awarded to off-island contractors, further depleting employment opportunities for locals”.

In a similar vein four years earlier, the 1995 Commonwealth Grants Commission commented that -

“The Government could best facilitate economic development by reducing policy and administrative uncertainty”.

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 organisations¹⁰¹.

In an economic sustainability sense, the practical effect of the policy has been to replace commitments to 'consultation and local decision making' with 'bid for a market tested/outsourced service if you want', and to move away from providing sustained local employment to contracting out services on short term contracts.

In essence, Government policy has seriously undermined, and continues to undermine the Island's chances of economic development, its potential for greater self-sufficiency, and the community's confidence that the Island does have a future that involves them.

- Employment Practices

As already noted, the effects of Government policy are impacting adversely on local employment. Local employees who have held permanent jobs in some cases in excess of twenty years are facing redundancy and the requirement to apply for their jobs on contracts of three – five years duration. There has also been a trend to make short term arrangements for staffing, or not do anything at all, as market testing processes are implemented.

The health service is a case in point. Approximately thirty-five different agency nurses have worked on the island in the last 2 years and fixed term contracts as they conclude are only being extended on a month by month basis. The cost of this destabilisation is high, both in payment of agency wages and in poor service

¹⁰¹ The Government didn't advertise the airport, health service or school and hospital cleaning services market testing Expressions of Interest on Island. The Government advertised these via the State Department of Treasure (as per an SDA), who don't 'normally' advertise on Christmas Island.



to the community. If market testing proceeds to contracting out the management of the health service, employees with over 25 year's service will lose their jobs. The Government is doing nothing to ensure that they are given opportunities to work with the incoming provider. Arrangements to transfer employment are not being offered, nor are employees being offered training or up-skilling to make them competitive job seekers.

The Government's approach to the health service is but one example of how their market testing policy, and the resultant impact on employment and services, has destabilised and undermined community confidence and actively worked against economic sustainability.

- Business Practices

A key ingredient for economic sustainability is a supportive governance structure, which includes "a 'business ready' regulatory environment, low cost business structures, open lines of communication between business and government and ready access to business support, information and advisory services¹⁰²".

Given the Commonwealth's significant role in and control of the Island's economy, and its role as both the Commonwealth and State Government, supportive governance on the Commonwealth's part is vital. But what is the Government doing?

- It is part sponsoring yet another economic development plan for the Island. The Administrator's advice however is that the government will find it hard to endorse aspects of the plan, particularly those relating to proposed governance arrangements recommended in the draft plan¹⁰³. Essentially the Government doesn't want to provide any financial support to establishing effective structures for implementing the plan¹⁰⁴.

¹⁰² SGS Draft discussion paper – Strategic Plan for the economic development of the Indian Ocean Territories, October 2004 p5

¹⁰³ At a meeting with Shire councillors in December 2004, the Administrator commented that some concern had been expressed within Government about the wording of objective 6 in the draft strategy (re governance structures), as the policy has already been set. He also said that the board concept could be difficult to argue because of the funding required

¹⁰⁴ As reported to the Senate Estimates Committee hearing in May 2005, no funds have been budgeted to support the new plan.



- It has sold land to the Shire for an extension to the Light Industrial Area (LIA), but made no commitment to providing support for the development of the area¹⁰⁵. The Government also made an abortive attempt to push small businesses out of their leased premises outside of the LIA, on the basis that they should move to the LIA, despite the fact that land isn't available currently and won't be available for some time.
- It has called for expressions of interest for new fisheries on the Island, despite the fact that no marine management plan is available to provide a proper basis for assessing whether any such proposals would be environmentally sustainable. Without such an assessment, the chances of any new fisheries are low and the process appears to have halted because environmental concerns are too great, in favour of resolving local fishing regulatory arrangements.
- It has sponsored the development of a Local Planning Strategy (LPS) to provide a blue print for future development linked to the Shire's Town Planning Scheme (TPS). The Government's poor track record on observing the requirements of the TPS however¹⁰⁶, creates doubt as to whether or not underlying land tenure will be resolved to support the LPS.
- The Government has ignored a Commonwealth Grants Commission recommendation to establish an Area Consultative Committee (AAC) on the Island. While DOTARS is responsible for the AAC network Australia wide, and reports that these are "uniquely placed to respond to issues in their regions and provide a vital conduit to government on local, social and economic conditions¹⁰⁷", Christmas Island is excluded from this network. The previous Administrator established an Administrator's Advisory Committee instead, but this proved ineffective and was not continued when the current Administrator took office.

¹⁰⁵ In the first stage of the LIA the Government paid for the cost of development.

¹⁰⁶ Town works related to the IRPC such as the 'Thredbo' and other IRPC staff housing and the location of the temporary detention centre are examples of the Commonwealth ignoring both the TPS and the consultation processes required under the Town Planning & Development Act 1928 (WA) (CI).

¹⁰⁷ DOTARS 2003-03 Annual report, p 93



- o The Government has ignored or misunderstood 'comparable mainland' concepts. Communities on the mainland in Western Australia for example, operate within a framework of regional development commissions. By reducing Christmas Island to a remote community without consideration of the broader context denies the community similar opportunities. In 1999, the Commonwealth Grants Commission reported that the Government was "investigating methods of providing an advisory and promotional structure to enhance the Indian Ocean Territories economic development" and the model being examined was the Western Australian Regional Development Commission model. Nothing has eventuated. Further, as noted in the Shire's preliminary remarks, five such proposals have been made, the first in 1982, and none have been actioned.

- o Instead of a Regional Development Commission model, the Government has funded the establishment of an Economic Development Committee. This is a "mickey mouse" committee: it is inadequately resourced, the Government has to approve any expenditure, and the Committee doesn't adequately represent key stakeholders on the Island. The Committee has used its funding to produce a local directory for the Island, support the production of signs for heritage trails, and conduct a feasibility study of a hydroponics industry¹⁰⁸ on the Island. None of these activities have led to any real economic development.

- o Despite the applied laws system, and the allied right of the community to 'mainland standards', the Commonwealth has repealed all legislation relating the ability of a registered company to establish itself on Island. In the absence of any such state-type Company Law, the Phosphate Mine, for example, must maintain a registered office on the mainland as would any other company wanting to do business on the Island.

In essence, while the Government is making some of the right moves to create an environment for economic activity, it is still not providing the resources or support to actualise plans or developments. Further, its own activities at times

¹⁰⁸ The study found that it was feasible to establish a hydroponics industry but significant industry assistance, including access to land was required, something well beyond the means of the EDC.



overtake or work against plans, including statutory instruments. As a result, there is little confidence in the Government to support economic development.

- Decision Making

An allied issue is Government's decision-making. As discussed in Chapter 3, there is little transparency or consistency in decision making, with the overall perception being that the community's interests give way to the Government's interest. Further, decision making in the Government's interest can adversely affect local economic development, as the following examples demonstrate:

- The no casino licence undermined community and business confidence. The resort refurbishment didn't eventuate, possibly now consigning the facility to worthless infrastructure.
- The decision not to proceed with the 1,200 bed IRPC, following exhortations of a previous Minister for Territories to 'gear up', sent local businesses to the wall and lost many businesses and community organisations money.
- The decision to locate the temporary detention centre not only set back waste management plans some 5 years or more, economic development opportunities were also lost. These opportunities included producing compost (to improve soil for market gardening); opening up land for market gardening (to improve the island's self sufficiency); and recycling materials for other uses (for example glass into road base).
- The decision to build a permanent IRPC on the Island has the potential to undermine the development of the Island as a tourist destination. As the Shire explained in its letter to the Minister for Finance –

"The development of the tourism industry will be severely handicapped by the locating of the IRPC on Christmas Island. As observed at trade shows and in discussion with island visitors, a common perception by prospective visitors is that Christmas Island is a lot like Nauru, a flat hot rock with a prison camp and a big hole in the ground where phosphate was mined. The Detention centre does not



provide a positive image of a beautiful island and is perceived as having a strong negative impact on the prospective visitor.”

Overall, Government decisions have undermined the economic development of the Island, particularly the ability of the community to be more economically self sufficient. Further, government activity has detracted from the community's attempts at development.

4.5 Summary & Proposals

Despite policies and commitments by the Government to support the economic development of the Indian Ocean Territories, particularly economic self-sufficiency, in reality the Government has done very little to support this direction and have, instead, undermined the community's capacity or confidence that this is achievable.

The reasons for this stem from the fact that the Island is a non-self governing territory, and the Commonwealth wants to keep it that way. It wants the Island to be dependent on it, provides fillips via capital works instead of long term sustainability measures, places its own strategic interests above that of the community, and provides lip service salves in any effort to create a perception that it is doing something when in fact it is doing very little. As a result the community is suspicious and distrustful of Commonwealth motives and is left to crave reassurances, and fight over the titbits offered like mendicants.

The Shire submits that a range of actions could be taken to provide a base for effective and fair sustained economic development of the island. These actions have been identified repeatedly, but are repeated here along with some additional immediate steps to put Christmas Island on the economic sustainability footing it deserves.

Immediate Term

1. Cease all market testing and contracting out of government services.
2. Agree to enter into negotiations with the Shire and the community about how to best deliver Government services based on the principles of local



- employment enhanced by expert advice and training as required and focused on meeting community need and interest. These principles could be immediately applied to the health service, public housing, court services, school services, and power generation and distribution.
3. Issue a statement of commitment to the community in terms of long term economic sustainability and self-sufficiency in partnership with the community and meeting community objectives for employment and effective service delivery.
 4. Provide information to the community about the Government's long term plans regarding immigration detention and related defence presence and how this will impact on the community. This should encompass the interests and intentions of DOTARS, DIMIA, & the ADF in relation to the new IRPC (including any intended different use of the facility once constructed), the temporary IRPC (including when the centre will close and what will happen to the infrastructure and land thereafter), and the Thredbo and related housing for detention officers.
 5. Set a timeframe for a decision on the APSC development. If the proponent does not meet its commitments as per the APSC ordinance, the industry assistance funding earmarked for the project is either spent on the planned upgrades (such as the extension and improvements to the airport) or applied to other industry assistance for the benefit of the community, utilising an assessment process agreed by the community.
 6. Fund fire services at the airport to allow international flights the level of safety measures they require, as recommended by the PWC in 2002.
 7. Undertake a study of the cost of living on the Island, particularly the impact quarantine and freight costs have on this cost.
 8. Link Christmas Island into the ACC network on the same terms and conditions that apply elsewhere.



9. The Government and the Shire to enter into a memorandum of agreement to establish an Economic Development Board as the primary agency for economic development in the Indian Ocean Territories. The EDB to have the roles and functions outlined in the 2004 Economic Development Strategy. This agreement to commit the parties to the establishment of the Board within the following parameters
 - o The Board has a statutory base
 - o Sufficient resources are provided by the Government to effectively staff the Board for a minimum of five years and to provide significant development funds
 - o The Indian Ocean Territories' Shires decide the majority of Board members

10. The major land stakeholders on the Island (Commonwealth, Shire, Christmas Island Phosphates, and Parks Australia) enter into a memorandum of agreement regarding access to land in accordance with the Land Planning Strategy.

Longer term

11. The Economic Development Board is established and funded.



Chapter 5 – The Applied Laws System

Term of Reference No. 4

Current and future governance arrangements for the Indian Ocean Territories ... in particular the operation of Western Australian applied laws

5.1 Overview

The Islands in the Sun Parliamentary Inquiry recommendations are the basis for the current applied laws regime, as introduced by the *Territories Reform Act 1992*.

The Shire is dissatisfied with the applied laws regime, particularly that -

- Governance framework
 - It has not been implemented within the package of initiatives as envisioned by Parliamentary Inquiry that recommended it (eg administrative and political reform)
 - It is arguable that the Commonwealth has abdicated its Constitutional responsibility in introducing such a system of applied laws
 - 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.
 - Effective consultation about laws has not occurred, as envisaged when the law reform process was introduced.

Specific issues and concerns are detailed in Section 5.2 – Applied Laws and Governance Issues.

- Complexity & lack of full context of applied laws system
 - The system of applied laws is more complex than the system applying in Western Australia or, for that matter, anywhere on the mainland



- Many in the community and those providing services to the Territory are confused about the system of laws, erroneously believing that Western Australian laws and related arrangements are in force
- Many applied laws are irrelevant, and the Commonwealth has done nothing to address this irrelevancy
- The impacts of applied laws may not be fully understood until an issue of application occurs
- The role of the Commonwealth as the State Government within the applied laws system is not well understood by either the Commonwealth or the community, resulting in confusion about the applicability and effect of laws
- Parts of the system of laws are rendered ineffective as the Commonwealth has repealed significant legislation or amended or interpreted laws in ways that limit effective application
- Service delivery arrangements and other arrangements such as statutory boards need to be made in many cases to give proper effect to the applied laws
- The inter-linkages of laws, as supported by policies, programs and resources, in the Western Australia context don't occur in the Territory context

Specific issues and concerns are detailed in Section 5.3 – Interpreting the applied laws system.

Taken together, it is the Shire's submission that the Commonwealth Government has failed to provide a transparent or fair system of state-type laws in the Territory.



- Commonwealth laws

The *Territories Reform Act 1992* is also the basis for the wholesale extension of Commonwealth law to the Territories, unless such law expressly provides otherwise. As noted in Chapter 1 – The Inquiry in Context, the Commonwealth system of laws cannot be ignored as part of the overall legal regime applying to the Indian Ocean Territories. Despite the extension of Commonwealth laws, many of these laws have been amended in ways to exclude or limit application to the Territory. These amendments and exclusions result in unfair or less than adequate circumstances for the Territory when compared to mainland States and Territories.

Some circumstances relate to the fact of the Territory being an external Territory and the related Constitutional status of the Territory. Despite this fact, the Shire submits that the Commonwealth has not done enough to understand or redress resultant problems of application.

Specific concerns are outlined in Section 5.4 – the Commonwealth Law Applying in the Indian Ocean Territories.

5.2 The Applied Laws System & Governance Issues

In this section the Shire details its concerns about the applied laws system as it was intended to apply, including issues relating to the broader governance framework and consultation mechanisms envisaged to occur while governance issues were resolved.

- Islands in the Sun

This Parliamentary inquiry envisioned the introduction of the applied laws system within a broader package of initiatives and actions to ensure that the system had relevance, that the laws were applied in a manner acceptable to the community, and that other political and administrative reform occurred. Recommendations 5, 6 & 7 are particularly on point:



“The law of Western Australia (as amended from time to time) be extended to Christmas Island to replace the currently applied law in so far as that law has not been developed as a response to a unique or particular characteristic of Christmas Island”

“In the absence of the establishment on Christmas Island of a reviewing mechanism, relevant Commonwealth departments monitor the possible application of Western Australia laws to Christmas Island in consultation with the Christmas Island Assembly, to ensure that the particular circumstances of Christmas Island and/or its residents are not adversely affected by the extension of a law”

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

These recommendations were based on consideration of five options¹⁰⁹ to address inadequacies identified in the system of laws applying from the time that Christmas Island became an external territory of Australia. The Committee was convinced that maintenance of the status quo was unsupportable, even if urgent steps were taken to undertake a detailed program of law reform. As was discussed under option 2¹¹⁰ –

“... the laws of Christmas Island are inadequate, ... past efforts at law reform have floundered and .. there are swathes of matters which are simply not the subject of appropriate regulation. While a dedicated law reform process could be expected to address the more obvious deficiencies in the law, it is valid to question whether the integrity, let alone the identity, of the legal base from which the laws would grow or the level of resources required to achieve real reform would justify this approach. It has long been recognised that it is not wise to build on a base of shifting sand”.

The Parliamentary Committee’s preference was for an amalgam of Options 4 and 5. Option 4¹¹¹ was posited in the following terms:

“Apply the laws from time to time applying in Western Australia¹¹² with the proviso that any law of Christmas Island inconsistent with an applied law is repealed to the

¹⁰⁹ A final Option 6 relates to the question of political integration rather than the applied laws system *per se*, so is not included for immediate purposes.

¹¹⁰ Islands in the Sun, p 196

¹¹¹ Islands in the Sun, pp 200 - 202



extent of any inconsistency and that no laws will be applied without prior consultation with the residents.

“The application of the laws of a mainland jurisdiction to Christmas Island is obviously, in terms of resource usage and time, an attractive option.

“Overriding the application of the laws would be the continued existence of the Commonwealth’s plenary powers to make laws for the peace, order and good government of the Territory. As discussed in the context of Option 3¹¹³, the need to ensure however, that those aspects of the extant legal regime which serve a specific purpose are retained and that the residents of Christmas Island are fully consulted and involved in the process of change to a new regime, are issues of paramount concern.

“Mechanisms for ensuring that appropriate laws are retained and that genuine consultation occurs are, however, available. These should be insisted upon ...”.

On the question of the Western Australian system being more relevant than that of the ACT or the NT, one of the key points in favour of this approach was that it would be attractive if “areas of Territory administration can be contracted to the state government, eg education, health and police¹¹⁴”. It was also noted that resources would be required in the short and longer term to amend and monitor State laws as required.

Options 5¹¹⁵ – to establish a Territorial Legislature with Responsibility for Specified Domestic Laws – was considered to be a further step to be achieved over time. The Committee outlined this option in the following terms:

“It is axiomatic in a democracy that, to the greatest degree possible, citizens should be empowered to participate in decision making, particularly that which affects their day to day lives.

“The Christmas Island community has ... had over a number of years experience with a number of consultative mechanisms, including with a deliberative body¹¹⁶.

¹¹² As Western Australia was preferred to the other sub-options, which were applying the laws of the ACT or the NT, the options regarding these are not canvassed here.

¹¹³ This Option was similar to Option 4 except that it proposed the repeal of all existing law

¹¹⁴ It is noteworthy that in only one of the three instances given is there direct contracting of on-Island services to the State, namely education, although this is by an ‘informal’ Service Delivery arrangement.

¹¹⁵ Islands in the Sun pp 202 -203

¹¹⁶ The establishment of the Christmas Island Assembly in 1985 is the example provided.



“The ultimate acceptance by the Committee of an option along the lines of say 4 (a) above would, as an obvious corollary necessitate the continued development of a program for the devolution of an increasing range of powers on the Christmas Island Assembly”.

Despite the Committee’s preference for applying the laws of a mainland State or Territory, the Committee was aware of arguments against this approach, particularly those of the Human Rights & Equal Opportunity Commission¹¹⁷ (HREOC). HREOC argued for a different approach, where the laws of the Territory could be adopted or modified from a mainland legislature and/or updated Singapore law and re-enacted or reproduced as Territory Ordinances.

A key concern on HREOC’s part was that reproduction of an agreed body of law as Territory Ordinances - rather than applied by reference – would address the problems of accessibility and ascertainment experienced with the Singapore laws system. It would also address the concern that the application of a body law from another jurisdiction would leave both the Territories and the Commonwealth without effective control of the legal regime.

HREOC also had concerns with the Department of Territories arguments that the Western Australia legislation was consistent with national legal policy¹¹⁸, that the Commonwealth’s ultimate power to pass overriding legislation would be used effectively¹¹⁹, and that special laws were less necessary on Christmas Island because of the Commonwealth’s policies of normalisation and integration. In regard to government policies, as reported by the Committee¹²⁰, HREOC argued that –

“Reference to the Government’s objectives of eventual integration of Territory conditions with those of mainland Australia does not avoid the need for attention to the terms on which that objective is pursued, and the degree of consultation and control the local population should enjoy in this process ... Nor could such an objective

¹¹⁷ The Centre for Comparative Constitutional Studies, Legal Aid Western Australia and the Commonwealth Director of Public prosecutions all raised similar concerns.

¹¹⁸ The rights of indigenous people and juvenile justice were cited as two examples of a divergence of policy between the State of Western Australia and the Commonwealth.

¹¹⁹ HREOC highlighted the past lack of Commonwealth action to pass overriding legislation to address problems with the Singapore system of laws as evidence of this concern.

¹²⁰ Islands in the Sun p199



ever supersede the necessity for Australia to act consistently with its international obligations.

“The continuing relevance of the right to self-determination requires, at a minimum, that there be a process of effective consultation involving local representative bodies to determine the special legal provisions necessary for these Territories.”

Emphasis on consultation and better legal structures as set out in recommendations 6 & 7, as well as the recommendation¹²¹ that the Commonwealth ensure, that the Territory not assume the characteristics of a non-self governing territory, were the means to overcome HREOC concerns.

As the Committee commented¹²² in making recommendations 6 & 7 –

“The need for the Christmas Island community to be involved in the reviewing process, in respect to the Western Australia laws to be applied on Christmas Island, has been highlighted in several submissions and in evidence, and is endorsed by the Committee. Pending the formal establishment of a reviewing mechanism, the role should be undertaken by the Commonwealth in consultation with the Christmas Island Assembly.

“Territory residents expressed concern to the Committee about the lack of opportunity for consultation in respect of Territory matters generally. As a way of overcoming these concerns, the Committee supports an expansion of the role of the Assembly along the lines of a local government body. It is suggested that the expanded Assembly could also undertake the reviewing process in respect of Western Australian laws to be applied to the Territory.”

To a large degree what the Islands in the Sun report recommended has not happened. While the new local government, introduced by the application of the *Local Government Act 1960 (WA) (CI)*, was supposed to take on the roles of the Christmas Island Assembly it replaced, this ‘expanded role’ has been largely ignored¹²³. Despite some initial efforts, the Shire has not been the conduit for effective monitoring of the affects 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

¹²¹ Recommendation No. 12

¹²² Islands in the Sun, p 57

¹²³ The issue is taken up in detail in Chapter 7 – The Role of the Shires



has now been abandoned. The absence of effective consultation and access arrangements has rendered a marginally fair system unfair.

- Territories Reform Act 1992

The issue of effective consultation was also raised in Parliament during the passage of the *Territories Reform Act 1992*. There were strong objections by various organisations and interest groups in the Indian Ocean Territories and by Senator Tambling (NT- Deputy Leader National Party) on the haste with which the Bill was being pushed through Parliament and the inadequacy of consultation with Islanders and interest groups. Senator Tambling said in the Senate on 19 June 1992 –

“There has been inadequate consultation with the islanders and interest groups. The Government and the Department may well argue that they have been talking, but it has been a one sided conversation. There has been plenty of paperwork - I have certainly read plenty of it - but there is no established mechanism that properly creates a consultative ideal. There is no joint consultative constitutional committee established with the residents of Cocos (Keeling) and Christmas Islands for the legislation's implementation, as was the case for self-government in Northern Territory. There is no working party. In fact, I would call for the establishment of a joint working party on the constitutional development issues that will arise from the legislation.”

The Bill was finally passed with the intervention of Senator Spindler, who argued for amendments to the Bill to address perceived inadequacies in the consultative processes. ‘Safeguards’ were inserted, namely that the -

- Minister must table lists of applied Western Australian Acts (Section 8B),
- House may terminate application of Western Australian Acts (Section 8C)
- Extension of period of giving notice to terminate WA Act (Section 8D)

These safeguards are said to allow “any person or organisation on Christmas Island like the Shire [to] initiate a notice of motion in a House of the Parliament under section 8C to terminate the application of a WA Act on Christmas Island, if such WA Act is considered repugnant or unsuitable for Christmas Island¹²⁴”

¹²⁴ Legal Advice provided to the Shire by Te Heng Ee, a Barrister who was with the Australian Government Solicitors office at the time the law reform process commenced.



Despite these safeguards, Christmas Islanders no longer receive the lists of legislation and are often only aware of such legislation some considerable time after bills becomes law. As such, in practical terms even if the community wanted a law to be disallowed, it may not know of it within the 6 month time frame.

Further, the community would also have to convince a member of parliament to move to disallow a law, something that may not be easy or straightforward even if the time frame permitted.

- Validity of the *Territories Reform Act 1992*

In a similar vein to HREOC's concern that the applied laws system would leave the Commonwealth without effective control of the legal system, it is arguable that the Commonwealth, in implementing applied laws system, has abdicated its responsibility under its Constitutional power.

The High Court has articulated the principle that 'the Commonwealth may delegate its legislative power but might not abdicate it' on a number of occasions. Of particular concern is the fact that under the applied laws arrangements, the Federal Parliament may not have the opportunity to review or consider the application of a particular Western Australian law until up to six months after the legislation has been applied. There are a number of related objections:

- The Western Australian Parliament has no responsibility at all to the Commonwealth Parliament in relation to the laws passed by it which apply to the Island
- The Western Australian Parliament has no regard to the circumstances that would affect the application of those laws to the Island as there is no Island representative in the Western Australian Parliament
- Apart from the disallowance provisions the Commonwealth has substantially delegated its law making power to a State



- The disallowance device would not prevent inappropriate or objectionable Western Australian laws from operating for substantial periods of time

The most recent tabling of laws demonstrates this concern¹²⁵. Tabled on 16 March 2005, it contained legislation that took effect from 14 October 2004, some 5 months before being presented to the Parliament.

A further point is that laws and subsequent amendments to laws can only be tabled once; that is, the list is not accumulative. As such, laws can only be disallowed within the 15 sitting days subsequent to the tabling of the current list. If a law is discovered to be inappropriate at a later date, then section 8C is ineffective. Parliament can do nothing to disallow the law. The only avenue for later amendment is by Ordinance. These are made by the Governor General pursuant to ss 9 & 10 of the *Christmas Island Act 1958* on the advice of the Minister, not by decision of the Parliament, although they are also subject to disallowance.

It is also of note that the disallowance device has never been used. This is evidence of the Parliament not actively considering the laws it applies. Further it is difficult to see on the basis of the information provided in the list, whether a member of Parliament could reasonably know what was in the legislation to make an informed decision as to whether to move to disallow it or not. In effect, it has been left to bureaucrats to decide what applied laws may require appeal or amendment.

Essentially it is arguable that the *Territories Law Reform Act 1992*, which introduced the applied laws system, is invalid based on the High Court principle of abdication. Like most aspects of the applied law system however, this legal principle has not been tested in the courts.

¹²⁵ Copy provided at Appendix Two



- Early efforts at consultation

The Community Consultation Committee (CCC) established by the Christmas Island Assembly and retained by the Shire of Christmas Island was the focal point for consultation about the applied laws system. Consultation occurred between the community, the Australian Government Solicitor (AGS), DOTARS Legal Section and visiting Western Australian state government officials about the application of laws and related service delivery via the CCC. Impact statements were prepared, along with lists of suspended and repealed laws.

In 1993 the Commonwealth funded the establishment of a permanent officer within the Shire to be the law reform officer, charged with the general tasks of facilitating CCC meetings, distributing information to the community, and collating comment back to the Commonwealth.

However, by 1994 concerns were emerging about the inadequacy of this process and the adverse impacts of the new system on the community:

- In 1994 the community became concerned about the imposition of state-type taxes and the fact that these were not being returned to the community for its future development and for the provision of good government¹²⁶.
- In 1994 the Shire sought legal advice about the validity of the *Territories Reform Act 1992*, the process of suspending laws via Ordinances, the issue of the transfer of debts from Christmas Island Services Corporation to the Shire and the question of United Nations recognition of the Island as a non-self governing Territory. Advice was also sought in relation to a number of town planning matters as differences and disagreements with the Commonwealth emerged.
- In 1995 the Shire commissioned a study about a model for the Government of Christmas Island¹²⁷. In relation to the law reform consultative process, the consultant commented that –

¹²⁶ Resolutions of a Public Meeting of Christmas Island convened by the Shire of Christmas Island and on held Thursday 24 March 1994 at the Poon Saan Hall concerning "Our Future"

¹²⁷ Prepared by Malcolm Sargant, a local government advisor, April 1995



“The current mechanism of the Council and the Community Consultative Committee in the review of applied Western Australian law is not effective. The limitations are –

- (b) The timeframe of 3 months permitted by the Commonwealth for reviewing new Western Australian law is totally inadequate with already pressured local resources
 - (c) The breadth and depth of experience and skills to adequately identify and assess all impacts arising from the applied law does not exist on the Island
 - (d) Western Australian law appears to be applied irrespective of the need or justification and the originally stated flexibility of the Commonwealth to modify the law to meet local needs is not reflected in the attitude or actions of the DASET. The Council and the Island residents have no effective voice in determining the justification of any particular legislation. Law is becoming more complex than is required to meet the needs of Island government.”
- o In the Shire’s subsequent discussion paper “Christmas Island: Law Reform or Service Reform or Government Reform”, the concerns about the law reform process were put as follows¹²⁸:

“The current law reform process can be considered from two perspectives. Firstly the basis of the law that is to be applied to the Territories (the legislative perspective), and secondly the provision and delivery of services (the administrative perspective).

“As a general comment, in many ways it seems that the focus should have been on service reform rather than legal reform. The reverse has been the case and although it is recognised and assumed that a coherent modern body of law is required, at the end of the day the law is there to serve more than itself. The value and positive input of the law has been lost in the sheer scale of its application which in turn has created an unnecessarily bureaucratic application and review system and unrealistic expectations of this community to comprehend and contribute to that process credibly. For the citizens the benefit of the law is only in the service or security that may result.

¹²⁸ Christmas Island Shire Council April 1995, pp 2-3



"[The Territories Reform Act] recognises the unique circumstance of the Island where local law and variation to mainland law is required. The opportunity is provided to make amending Ordinances where objections exist and the Commonwealth has exercised its right to amend or repeal Western Australian law that it has objected to. The concerns of the residents of Christmas Island however, have not met the same support.

"Western Australian law appears to be applied irrespective of need or justification... The law structure for the Island .. is more complex than is justified for such a small remote community. More importantly there is concern that recognition is not given to the retention of ethnic, historical and cultural values of the Island.

"The need for law on Christmas Island is to regulate, protect and enhance the economic, social and physical environments of the island. Certain applied law meets this criteria but some legislation has made no beneficial contribution to Island life, rather the impact is considered adverse."

As a result of these submissions, the Commonwealth via the Parliamentary Secretary for Territories agreed a better consultative process¹²⁹:

- ❖ Copies of bills introduced into the Western Australian Parliament are sent direct to the Territories Office Perth and the CCC
- ❖ The Territories Office sends the CCC an index to Western Australian Bills, on a regular basis, for it to check that it has copies of them
- ❖ The Territories Office sends the CCC an impact statement or explanatory paragraph of each bill, which the CCC examines and on which it may request further information
- ❖ The changes to Western Australian law become Commonwealth law on Christmas Island when they receive assent in Western Australia
- ❖ The Parliamentary Secretary can suspend a law at any time but has undertaken that, if the community makes representations to him, he will suspend the law for a specified period to allow further community consultation
- ❖ Every six months, a list of all Western Australia acts that have come into force in the territory is prepared for tabling in the Australian Parliament and sent to the CCC prior to tabling

¹²⁹ As described by the 1995 Commonwealth Grants Commission, pp 116 - 177



- ❖ The list is tabled in the Australian Parliament
- ❖ The CCC and other elements of the community have until 15 days after the tabling of the list to make known their feelings about any of the pieces of legislation so that a notice of motion can be put to terminate any act specified in the list
- ❖ The list of suspended Western Australian laws is reviewed each year, in consultation with the CCC and, where continued suspension is appropriate, suspended for a further period of one year

Despite these improvements, the Shire and the Commonwealth Grants Commission were still concerned about the applied laws system:

- In its submission to the 1995 Grants Commission the Shire advocated for a statutory period of 6 months between the time laws are proclaimed in Western Australia and take effect in the Territory. This time lag was considered essential to give the community through the CCC the opportunity to submit proposals for amendment or repeal. It also argued that the Commonwealth ought to justify the application of a Western Australian law. As the Shire contended¹³⁰ –

“The benefit of hindsight has revealed the full extent of the impacts of the *Territories Reform Act 1992* and the *Applied Laws (Implementation) Ordinance 1992* were not identified or fully understood by all parties. Accordingly, the communication of many of the changes to be implemented under the applied laws by the Commonwealth to the island community failed to address all the issues, or the justification of the applied law. The community could be excused for believing that the principle of amending applied laws to meet any special circumstances of the Island had been abandoned and that the strict imposition of Western Australian law was the sole objective”.

- The 1995 Commonwealth Grants Commission enunciated a number of concerns¹³¹ including the fact that the law applies from the date it receives assent in Perth “even if it is known to be against Commonwealth policy”; the application of laws that “cannot possibly have any impact”; the inadequacy of documentation about applied laws provided to the CCC by DOTARS and the

¹³⁰ Shire of Christmas Island submission, August 1995 p 8

¹³¹ Commonwealth Grants Commission Report on Christmas Island Inquiry 1995, pp 117 - 120



unworkable time limits imposed; and the general confusion about what legislation “individuals, firms and public authorities operate under”.

- o The 1999 Commonwealth Grants Commission identified a number of ways in which the system could be improved including providing information about the how the applied law system operated, streamlining processes for applying new legislation, culling irrelevant legislation and re-invigorating the CCC.

In the Shire’s submission, many of these concerns are the same, if not worse, today. In any event this process was disbanded in 1996¹³². No impact statements are provided. No lists of bills or the list of Acts are provided. An annual review of laws does not occur. There is no Parliamentary Secretary for the Territories. Funding to the Shire for a law reform officer was withdrawn in 1996 and replaced with a contractual arrangement, a change to arrangements, but hardly a reinvigoration of the role of the CCC in the applied law process.

- Current consultative arrangements

The current ‘law reform’ relationship between the Shire on behalf of the Island community and the Commonwealth is managed via a Consultation Deed, which in effect is a funding agreement whereby the Shire provides consultation services to DOTARS and must report quarterly to DOTARS on its activities. In short DOTARS has contracted out its responsibility to consult with the community and demands under the Deed that the Shire perform as its consultation services supplier¹³³.

In the 2001 Deed of Agreement the Shire’s role was to “keep the community informed of significant amendment or enactment of Applied laws or any significant review of existing, or the institution of new, Service Delivery Arrangements and report community views to the Director, Territories Office Perth in relation to new laws applying on Christmas Island, new Service Delivery Arrangements and reviews of Service Delivery Arrangements”.

¹³² Recent inquiries via the then Shadow Minister for Territories Senator O’Brien indicates no process other than the legislative steps required.

¹³³ While the Shire has agreed to this arrangement on the basis that it needed the funds to cover the employment of the officer it appointed in 1993 and believed it should be playing a role in consultation about the law reform process, it has not been happy with it.



In the 2004 the Deed of Agreement required the 'Supplier' to distribute information as provided by DOTARS legal services section (about new laws applying), as provided by DOTARS – Perth (about new or reviewed SDA's), and as provided by Western Australia Government agencies providing services through Service Delivery Arrangements; to translate information; to coordinate consultative and information sessions with Western Australian Agencies; to maintain information displays; to provide a furnished office for visiting Western Australian agencies; to report to the Director of DOTARS Perth on community opinion about laws and SDA's; and to report quarterly on activities to the Director of DOTARS Perth.

On the question of consultation about the applied laws system, by any measure there is no effective consultation:

- Virtually no information is provided by DOTARS about new or amended laws. This now appears to some degree to be left to Western Australian Agencies to explain¹³⁴. Where any information is supplied, no impact statements or other guidance is supplied to aid interpretation and understanding.
- In response to a request for the CCC to participate in the law review process, DOTARS advised that the law reform process was over¹³⁵.
- Where the Shire has raised concerns about laws, no effective action has been taken. Another element of the Shire's contention that the applied laws system falls well short of commitments to effective consultation, concerns the issue of changing laws to suit the community. Virtually no changes have been made as a result of Shire or community representations. The Commonwealth have chosen to amend laws, but have rarely responded to community requests for the same. Examples include:

¹³⁴ As discussed in the following section, the Western Australia Agencies don't always understand how laws apply in the Territory.

¹³⁵ As per a discussion with the Director, Territories Office Perth in 2003 in relation to reviewing the consultation agreement between DOTARS and the Shire.



- ❖ **Building Industry Construction Training Fund legislation**
Originally on the suspended list, this legislation came into force as a Territory law in 1994. This legislation required the Shire to collect a levy from builders and contribute it to a fund for training. The Shire's right to collect this levy was challenged and it was finally ascertained that the Shire couldn't collect the levy as there was no Territory Fund to contribute it to. Rather than look at amending the legislation such that a fund could be established and operated on the Island, the Commonwealth repealed the legislation. The Shire was required to refund the monies it collected.

- ❖ **Western Australian Heritage legislation**
Despite advice from the DOTARS legal section about ways to address an anomaly arising from the fact that Western Australia Heritage law had been repealed, and made aspects of the planning assessment process ineffective, no action was taken to make the necessary amendments.

- ❖ **Local Government Act 1995 (WA) (CI) Administration Regulations 2005**
The Shire has requested that an amendment of these regulations occur to substitute reference to a State industrial award with a reference to a Federal industrial award. To date no response has been received and the Shire isn't confident that any amendment will be forthcoming. While a minor matter in legislative terms, and a simple matter of drafting, it is difficult to see that the Commonwealth would consider the matter worth the resources to follow through.

In effect the CCC role has been reduced to one of distributing information and commenting on SDA's on the basis of advice only¹³⁶; a far cry from the Islands in the Sun recommendation that the Shire to have direct access to the Minister in respect of laws to apply on the Island.

¹³⁶ This issue is taken up in more detail in Chapter 5.



5.3 Interpreting the Western Australian Applied Laws System

It is the Shire's submission that the applied laws system is very complex. The question "what law applies" may seem simple on the face of it, but it takes quite a complex inquiry to answer. It is also very confusing, and can lead to significant errors in understanding and application of law.

Arguably the system of laws on Christmas Island is more complex than anywhere on the mainland. As a DOTARS representative recently described it¹³⁷ -

"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 easy concept. In addition to that, any amendments to the applied legislation et cetera makes it even more complex. It is a complex circumstance."

To consider each aspect of this complexity in turn:

The point that people think they're operating under Western Australian laws is a serious one. It leads to a perception that the Island is part of Western Australia, both in governance and service terms.

Despite DOTARS acknowledgement that the perception is mistaken, the Department appears to reinforce the fact that the Island is "just like Western Australia". 'Applied' similarities, not differences are emphasised. This can have serious consequences. For example –

- People who transfer to the Island don't know that many services and conditions applying in Western Australia don't apply to the Island. For example, the fact that the Flying Doctor 'medivac' service doesn't extend to the Island is not commonly understood. The IOTHS has to search for medivac services on a case by case basis. This can take 24 hours or longer and may seriously impact on whether an emergency case is treated in time. People coming to the Island have a right to know that safety net services such as medivac are not available on the same basis as they would be in Western Australia¹³⁸.

¹³⁷ Hansard, 26.5.05

¹³⁸ The issue is taken up in more detail in Section 6 – Community Service delivery



- The judicial system may operate unfairly or not in accordance with government policy. In one case a Magistrate wrongly took into account offences under Western Australia law in sentencing a resident for offences on Island. This case was overturned on appeal. In other cases magistrates don't give full consideration to the Government's policy that no mandatory minimums will apply under the Sentencing Act. As far as the magistrate's are concerned, they are administering Western Australian law. Commonwealth policy ought to be supported by its legal representatives and highlighted to the judiciary.
- Residents perceive that the Western Australian Government is providing services, rather than the Commonwealth. As result complaints can be misdirected, avenues for advocacy missed, and opportunities for local and relevant resolution of issues lost.

The differences between living in the State of Western Australia and living in the Territory of Christmas Island are marked. These ought to be recognized, not glossed over. However, reinforcing the perception that Christmas Island is just like Western Australia may be disingenuous means of masking the fact that the residents of the Island, unlike in Western Australia, don't get a say in the laws and services applied to them.

The issue of perception aside, the applied laws system is extremely complex just to understand. The following inquiry attempts to demonstrate the steps involved in answering the question, what law applies and how it applies.

To answer the question of what Western Australian law applies, a number of inquiries or steps must be taken. To then identify how Western Australian laws apply requires a further number of steps of inquiry, often without a conclusive or clear answer. Service delivery arrangements, delegations, interaction with Commonwealth legislation, and the geographic scope of the laws in question, are all pertinent aspects of determining how a law applies.

What follows is not a legal or expert view. Rather it represents what an educated layperson would have to do in order to identify the body of applied law applying. The



overall intention is not to provide a categorical answer to the question; rather it is to establish what a difficult process this is to undertake.

To address each aspect in turn:

- What Western Australian laws apply?

The first step is to consider the *Christmas Island Act 1958* (as amended). This Act is the primary legal authority for understanding how laws apply to the Territory of Christmas Island.

Section 8A (1) of this Act provides that:

The laws of Western Australia (whether made before or after this section's commencement) as in force in Western Australia from time to time are in force in the Territory apply.

However, there are a number of exceptions to this overall application of Western Australian laws. Section 8A also provides that:

- Western Australian laws can be incorporated, amended, suspended or repealed by an Ordinance or law made under an Ordinance (subsections 2 & 3)
- Western Australian laws don't apply if they are inconsistent with the Constitution, or an Act or an Ordinance (subsection 4). A law is consistent with the Constitution or an Act or Ordinance if the law is capable of operating concurrently with it (subsection 5)

The second step is to consider the *Applied Laws Ordinance 1992* (as amended). This ordinance was the initial authority for identifying any Western Australia laws that have been suspended, repealed or amended and remains a primary reference.

Currently no laws are suspended by this Ordinance¹³⁹.

Currently 45 laws are repealed by this Ordinance¹⁴⁰:

¹³⁹ Three laws listed in Schedule 3 of the Ordinance as at 1.1.02 and have subsequently been removed from this list.



Building and Construction Industry Training Fund and Levy Collection Act 1990 (W.A.)(C.I.)
Building and Construction Industry Training Levy Act 1990 (W.A.)(C.I.)
Casino Control Act 1984 (W.A.)(C.I.)
Companies (Acquisition of Shares) (Application of Laws) Act 1981 (W.A.)(C.I.)
Companies (Acquisition of Shares) (Western Australia) Code (W.A.)(C.I.)
Companies (Administration) Act 1982 (W.A.)(C.I.)
Companies (Application of Laws) Act 1981 (W.A.)(C.I.)
Companies (Co-operative) Act 1943-1959 (W.A.)(C.I.)
Companies (Western Australia) Code (W.A.)(C.I.)
Companies Act 1961 (W.A.)(C.I.)
Companies and Securities (Interpretation and Miscellaneous Provisions)(Application of Laws) Act 1981 (W.A.)(C.I.)
Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code (W.A.)(C.I.)
Company Takeovers Act 1979 (W.A.)(C.I.)
Crime (Serious and Repeat Offenders) Sentencing Act 1992 (W.A.)(C.I.)
Criminal Law Amendment Act 1992 (W.A.)(C.I.)
Daylight Saving Act 1991 (W.A.)(C.I.)
Death Duty Act 1973 (W.A.)(C.I.)
Death Duty Assessment Act 1973 (W.A.)(C.I.)
Domicile Act 1981 (W.A.)(C.I.)
Election of Senators Act 1903 (W.A.)(C.I.)
Electoral Act 1907 (W.A.)(C.I.)
Electoral Distribution Act 1947 (W.A.)(C.I.)
Employers' Indemnity Supplementation Fund Act 1980 (W.A.)(C.I.)
Fisheries Act 1905 (W.A.)(C.I.)
Futures Industry (Application of Laws) Act 1986 (W.A.)(C.I.)
Gaming Commission Act 1987 (W.A.)(C.I.)
Heritage of Western Australia Act 1990 (W.A.)(C.I.)
Industrial Relations Act 1979 (W.A.)(C.I.)
Land (Titles and Traditional Usage) Act 1993 (W.A.)(C.I.)
Local Government Grants Act 1978 (W.A.)(C.I.)
Local Government Superannuation Act 1980 (W.A.)(C.I.)
Marketable Securities Transfer Act 1970 (W.A.)(C.I.)
Minimum Conditions of Employment Act 1993 (W.A.)(C.I.)
National Companies and Securities Commission (State Provisions) Act 1980 (W.A.)(C.I.)
Referendums Act 1983 (W.A.)(C.I.)
Securities Industry (Application of Laws) Act 1981 (W.A.)(C.I.)
Securities Industry (Release of Sureties) Act 1977 (W.A.)(C.I.)
Securities Industry (Western Australia) Code (W.A.)(C.I.)
Securities Industry Act 1975 (W.A.)(C.I.)
State Government Insurance Commission Act 1986 (W.A.)(C.I.)
State Supply Commission Act 1991 (W.A.)(C.I.)
Trade Unions Act 1902. (W.A.)(C.I.)
Waterfront Workers' (Compensation for Asbestos Related Diseases) Act 1986 (W.A.)(C.I.)
Wildlife Conservation Act 1950 (W.A.)(C.I.)
Workplace Agreements Act 1993 (W.A.)(C.I.)

The third step is to identify whether any Ordinances are still in operation or have been repealed on or after 1 July 1992 which may impact on the operation of Western Australian applied laws.

¹⁴⁰ A law subsequently removed from this list revives the law. As such, the Ordinance needs to be checked regularly to monitor any changes to the laws repealed. It is not clear whether a law when revived is then reported to Parliament in the 6 monthly lists.



Section 7 of the *Christmas Island Act 1958* provides that the laws of the Territory include Ordinances made on or after 1 July 1992 or those retained as listed in the Schedule to the Act:

Administration Ordinance 1968
Casino Control Ordinance 1988
Children's Court Ordinance 1972
Christmas Island Services Corporation Provident Fund Ordinance 1985
Coroners Ordinance 1958
Customs Ordinance (of the Colony of Singapore in its application to the Territory)
Gambling (Clubs) Ordinance 1978
Importation of Dogs and Cats Ordinance 1973
Interpretation Ordinance 1958
Juries Ordinance 1987
Lands Ordinance 1987
Magistrate's Court Ordinance 1958
Migratory Birds Ordinance 1980
Phosphate Mining Company of Christmas Island Limited Provident Fund Ordinance 1982
Phosphate Mining Corporation of Christmas Island Provident Fund Ordinance 1985
Phosphate Mining Corporation of Christmas Island Ordinance 1985
Phosphate Mining Corporation of Christmas Island (Winding up) Ordinance 1987
Postal and Telegraph Ordinance 1968
Quarantine and Prevention of Disease Ordinance (of the Colony of Singapore in its application to the Territory)
Standard Time and Daylight Saving Time Ordinance 1980
Supreme Court Ordinance 1958
Unclaimed Moneys Ordinance 1974

Some of these relate to matters covered by Western Australia applied laws (eg *Lands Ordinance*). Notwithstanding the Schedule in the Act, there may be subsequent Ordinances that repeal these ordinances. Further, savings provisions of Ordinances may give an Ordinance force for Government actions prior to 1 July 1992, but not to actions after 1 July 1992 (eg *Lands Ordinance*)¹⁴¹.

The fourth step is to consider whether there are any Commonwealth laws that may repeal or amend or otherwise impact on Western Australian laws as applied.

This requires consideration of Commonwealth laws on a case by case basis to identify whether these laws specifically amend legislation or otherwise override State law to the extent of any inconsistency. No analysis of the some 800 or so Commonwealth laws has been attempted here.

¹⁴¹The attempt to remove people from land for commercial purposes situated outside the LIA is a case in point. As these leases were agreed prior to 1992 they were protected by the repealed Ordinance through a saving provision.



The fifth step is to consider whether Constitutional arrangements would invalidate a Western Australian law applied to the Territory.

This requires consideration of the Constitutional arrangements which distinguish a Territory from a State (which includes internal Territories). An example would be the Housing Agreement (Commonwealth and State) Act 1990 (WA).

Constitutionally this law can't have any effect.

These 5 steps will provide, with some degree of certainty, an understanding of what of the body of Western Australian law is enacted as Territory law. This may be easier than trying to ascertain laws under the old system of Singapore laws as at 1 October 1958, as at least the applied laws are current and therefore accessible laws, but it is still technically very difficult. What can be identified are the 850 or so Western Australian laws that technically apply to Christmas Island. However, a further inquiry needs to be undertaken to identify whether the Western Australian law applied as Territory law actually has relevance to the Territory, and where they do, how they apply.

- What Western Australian laws apply and how do they apply?

A number of steps must be taken to ascertain what laws actually apply and, more importantly, how these apply to the Territory. Again, the intention is not to describe each applied law and how it applies. Rather it is to indicate the types of inquiry required and the issues and problems that arise in what is a complex exercise.

The first step is to identify which applied laws have the potential to actually be relevant to the Territory of Christmas Island¹⁴². Numerically, the laws with the potential to be relevant are listed in the following table. Irrelevant means that the law has no geographical coverage or concerns an organisation wholly operating within Western Australia. Repealed WA applied laws are also included to identify

¹⁴² This analysis was done using an 'on the face of it' approach by reviewing the names of all Western Australia laws listed in the Western Australia Government's database www.slp.wa.gov.au/statutes/swans.nsf. A more detailed analysis would be required to ascertain relevance with any degree of certainty.



the approximate number of laws capable of having a practical application or effect.

WA Laws starting with	Number of laws in force	Number irrelevant or repealed	Number with <u>potential</u> to have a practical effect
A	66	27	39
B	31	21	10
C	105	38	67
D	27	7	20
E	27	8	19
F	43	19	24
G	30	23	7
H	24	7	17
I	40	29	11
J	9	1	8
K	10	10	0
L	38	2	36
M	54	25	29
N	17	11	6
O	16	4	12
P	86	33	53
Q	1	1	0
R	80	47	33
S	72	26	46
T	38	14	24
U	13	10	3
V	7	0	7
W	59	20	39
X	0	0	0
Y	3	1	2
Z	1	1	0
TOTALS	897	385 (43%)	512 (57%)

As the table indicates, just over half of the body of Western Australia laws has the potential to apply to Christmas Island.

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.



Regulations made pursuant to applied Western Australian laws also need to be identified as to their applicability. Approximately 800 regulations are in force in Western Australia¹⁴³, some of which, as listed above have been amended by Ordinance.

The second step is to identify the applied laws which have been amended. The sources of information about amendments to applied laws have been set out above. Currently 43 laws have been amended by the *Applied Laws Ordinance 1992* (as amended):

Administration Act 1903 (W.A.)(C.I.)
Associations Incorporation Act 1987 (W.A.)(C.I.)
Bread Act 1982 (W.A.)(C.I.)
Business Names Act 1962 (W.A.)(C.I.)
Children's Court of Western Australia Act 1988 (W.A.)(C.I.)
Coroners Act 1996 (W.A.)(C.I.)
Criminal Code Act Compilation Act 1913 (W.A.)(C.I.)
Debits Tax Act 1990 (W.A.)(C.I.)
Debits Tax Assessment Act 1990 (W.A.)(C.I.)
District Court of Western Australia Act 1989 (W.A.)(C.I.)
Explosives and Dangerous Goods Act 1961 (W.A.)(C.I.)
Financial Institutions Duty Act 1983 (W.A.)(C.I.)
Financial Institutions Duty Regulations 1984 (W.A.)(C.I.)
Family Court Act 1975 (W.A.)(C.I.)
Limitation Act 1935 (W.A.)(C.I.)
Medical Act 1894 (W.A.)(C.I.)
Motor Vehicle Dealers Act 1973 (W.A.)(C.I.)
Navigable Waters Regulations (W.A.)(C.I.)
Nurses Act 1968 (W.A.)(C.I.)
Pay-roll Tax Act 1971 (W.A.)(C.I.)
Pharmacy Act 1964 (W.A.)(C.I.)
Physiotherapists Act 1950 (W.A.)(C.I.)
Podiatrists Registration Act 1984 (W.A.)(C.I.)
Police Act 1892 (W.A.)(C.I.)
Psychologists Registration Act 1976 (W.A.)(C.I.)
Public and Bank Holidays Act 1972 (W.A.)(C.I.)
Public Trustee Act 1941 (W.A.)(C.I.)
Registration of Births, Deaths and Marriages Act 1961 (W.A.)(C.I.)
Residential Tenancies Act 1987 (W.A.)(C.I.)
Registration of Deeds Act 1856 (W.A.)(C.I.)
Road Traffic Act 1974 (W.A.)(C.I.)
Road Traffic Code 1975 (W.A.)(C.I.)
Sentencing Act 1995 (W.A.)(C.I.)
Standard Survey Marks Act 1924 (W.A.)(C.I.)
Supreme Court Act 1935 (W.A.)(C.I.)
Tobacco Control Act 1990 (W.A.)(C.I.)
Transfer of Land Act 1893 (W.A.)(C.I.)
Transport Co-ordination Act 1966 (W.A.)(C.I.)
Travel Agents Act 1985 (W.A.)(C.I.)

¹⁴³ Although no attempt has been made to analyse what is potentially relevant to Christmas Island, it is likely that a similar proportion of Regulations have relevance.



Valuation of Land Act 1978 (W.A.)(C.I.)
Weights and Measures Act 1915 (W.A.)(C.I.)
Workers' Compensation and Rehabilitation Act 1981 (W.A.)(C.I.)
Young Offenders Act 1994 (W.A.)(C.I.)

From available information¹⁴⁴ it appears that currently eight other Ordinances amend Western Australian laws and one Ordinance otherwise amends Western Australian law:

- *Interpretation Act 1984* – amended by the Interpretations Act 1984 (WA) (CI) (Amendment) Ordinance 1992
- Applied Laws Ordinance 1992, Land Legislation Amendment Ordinance 1992, *Land Administration Act 1997 (W.A.)(C.I.)*, *Local Government (Miscellaneous Provisions) Act 1960 (W.A.)(C.I.)*, *Town Planning and Development Act 1928 (W.A.)(C.I.)* & *Transfer of Land Act 1893 (W.A.)(C.I.)* – amended by the Land Laws Amendment Ordinance 1992
- *Land Act 1933 (W.A.) (C.I.)*, *Local Government Act 1960 (W.A.) (C.I.)*, *Strata Titles Act 1985 (W.A.) (C.I.)*, *Town Planning and Development Act 1928 (W.A.) (C.I.)* & *Transfer of Land Act 1893 (W.A.) (C.I.)* – amended by the Land Administration Act 1997 (WA) (CI) Amendment Ordinance 2004 (No. 1)
- *Mining Act 1978 (W.A.) (C.I.)*, *Mining Regulations 1981 (W.A.) (C.I.)*, *Mines Safety and Inspection Act 1994 (W.A.) (C.I.)*, Mines Safety and Inspection Regulations 1995 (W.A.) (C.I.) – amended by Mining Legislation (Amendment) Ordinance 1996
- *Land Administration Act 1997* – amended by Land Administration Act 1997 (WA) (CI) Amendment Ordinance 2004 (No. 1)
- *Local Government Act 1993* – amended by the Local Government Amendment Ordinance 1993
- *Prisons Act 1981 (WA) (CI)* – amended by the Prisons Act 1981 (WA) (CI) Ordinance 2000
- *Motor Vehicle (Third Party Insurance) Act 1943 (WA) (CI)*, *Motor Vehicle (Third Party Insurance) Regulations 1962 (WA) (CI)*, Applied Laws (Implementation) Ordinance 1992 – amended by Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001
- *Tobacco Sellers Licensing Act 1975 (WA) (CI)* – adopted by Tobacco Sellers Licensing Ordinance 2000

The third step is to interpret how laws made in Western Australia translate into laws applying in the Territory. The key aid to interpretation is the Interpretations Act 1984 (WA) (CI).

¹⁴⁴ Commonwealth Database: www.scaleplus.law.gov.au



The Interpretations Act 1984 (WA) (CI) as amended by the Interpretations Act 1984 (WA) (CI) (Amendment) Ordinance 1992 is the primary legislative source to explain how State laws are interpreted into a Commonwealth/Territory context.

In a simple interpretative sense this law replaces/explains:

- o The State 'Crown' with the Commonwealth 'Crown'
- o The State of Western Australia with the Territory of Christmas Island
- o The State Gazette with the Commonwealth Gazette
- o 'Resident of Western Australia' with 'resident of the Territory of Christmas Island'
- o How to distinguish between Western Australia law [with (WA) in brackets] and Western Australia law applied as Territory law by the Commonwealth [with (WA) (CI) in brackets]¹⁴⁵

Other aspects of the Ordinance are more complex inasmuch as they vary the way in which the applied laws operate. These interpretations may also render an applied law, or parts of an applied law, inoperative or vary the applied law in a way that makes it less effective. For example:

- o Statutory bodies – an applied law requiring the establishment of a Committee, Board, Registrar or any other statutory body, unless the contrary intention appears, does not require the establishment of such a statutory body in the Territory.
- o Employment by the Crown – an applied law that refers to a person appointed or employed under Part 3 of the *Public Sector Management Act 1994* (W.A.)(C.I.) does not apply to a person who is appointed or employed to exercise a power or perform a function or duty in, or in relation to, the Territory¹⁴⁶.

¹⁴⁵ It is interesting to note that the primary source of electronic information about laws of the Territory of Christmas Island, the Commonwealth database 'ScalePlus', doesn't use this nomenclature. .

¹⁴⁶ It is not clear whether the distinction between staff employed departmentally and employed by the Minister is relevant to determining which employees are excluded from the provisions of applied legislation – refer Hansard 26.5.05



- Review of laws – if an applied law requires that law to be reviewed, or reviewed and other action to be carried out then this requirement has no effect
- Tabling of documents – if an applied law requires the tabling of documents in the Western Australia Parliament then it should be tabled in both houses of the Commonwealth Parliament
- Disallowance – if an applied law permits the disallowance of an instrument laid before Parliament then it will be treated as an Ordinance pursuant to section 10 of the *Christmas Island Act 1958*

The Interpretations Act 1984 (WA) and the Interpretations Act 1984 (WA) (CI) (Amendment) Ordinance 1992 must be read together to understand what the Interpretations Act 1984 (WA) (CI) is. In turn, each applied law must be read in conjunction with the Interpretations Act 1984 (WA) (CI) to interpret its application. The term “unless the contrary intention appears” also needs to be interpreted in this assessment.

The fourth step in interpretation is to identify who has delegated authority when a Western Australian law is applied as Territory law. Delegated authority gives effect to laws, setting out who makes decisions, and who is responsible for reporting and the like. Without a delegation, the applied law may not operate effectively.

Many Western Australian laws delegate powers to the Minister responsible, or the Director General or Chief Executive Officer of a Government Department or authorised officers employed by the Department. While in the Western Australian law the authority is spelt out¹⁴⁷, it is necessary to go to Commonwealth information to identify who is the corresponding delegate. This information, where delegations have been made, is contained in Territory Gazettes.

¹⁴⁷ Leaving the organisation responsible to simply delegate powers to named officers.



Under section 8G (1) of the *Christmas Island Act 1958*, the Minister for Territories has all the powers¹⁴⁸ conferred by applied State laws to a Minister, person or authority, including a power vested in the Governor or Governor-in-Council of Western Australia. The Minister can then delegate powers to others, also in accordance with section 8G.

In recent delegations¹⁴⁹, the general scheme has been:

- o Where the Minister has the authority in the Western Australian law, to delegate authority to the Administrator
- o Where an officer has the authority in the Western Australian law, to delegate authority to that person in Western Australia

There are some exceptions to this scheme:

- o In some cases Ministerial authority has been delegated to an officer of a Western Australian Government Department (eg to the Chief Executive Officer of the Department of Land Information pursuant to the *Transfer of Land Act 1893 (WA) (CI)*)
- o The Administrator has delegated authority which in Western Australia would be exercised by an officer of a Western Australian Government Department, for example the Administrator is the Executive Director of Health pursuant to the *Health Act 1911 (WA) (CI)*
- o Not all the relevant provisions of an applied law which could be delegated are delegated. It is assumed in this case that the powers not delegated remain with the Minister.
- o Conditions or caveats are placed on the delegation, for example delegates under the *Land Administration Act 1997 (WA) (CI)* must receive initiating instructions from, or the approval of, the Administrator in certain circumstances.

A number of issues arise from this scheme that goes to both interpretation and effect:

¹⁴⁸ Other than a Court of Court officer

¹⁴⁹ For example, Territory of Christmas Island Government Gazette number 02/05, 20.1.05



- Difficulty in accessing delegation information
The Shire has been unsuccessful in obtaining a list of all current delegations by the Minister. While these are published in the Territory Gazette from time to time, there does not appear to be a register of delegations that the Shire or a member of the community can refer to in aid of interpreting a particular applied law¹⁵⁰.
- Power under all applied laws rests with one Minister
Unlike the State scheme, where different Ministers are assigned legislative powers as per their portfolios, one Commonwealth Minister assumes all these powers. This can lead to a lack of separation in the scrutiny of actions under legislation.

Public health arrangements are a case in point:

In the Western Australia scheme, if a local government wants to legislate for local Health Laws, these are first referred to the Executive Director of the Department of Health. If approved, these are referred to the Minister for Local Government for approval. In the Territory context both the Minister for Health and the Minister for Local Government is the Minister for Territories.

Another case is where DOTARS constructs works and is also the environmental protection authority (EPA) DOTARS were managing the construction of the “Thredbo” detention officer’s accommodation, significant issues regarding sediment pollution due to insufficient sediment control measures arose¹⁵¹. DOTARS responsibility as the EPA was in direct conflict with its responsibility for the works in question.

- Delegations can lead to unfair outcomes
In the translation of state arrangements into a Territory context, delegations of power have the potential to lead to unfair outcomes.

¹⁵⁰ The Shire has a copy of delegations from 1999. Gazettal of delegations tend to be by subject matter, eg land laws, and hence aren’t comprehensive. Inquiries to DOTARS Christmas Island since 1999 have not led to a register being provided.

¹⁵¹ This is the reason why the works became known as Thredbo.



The delegations under the Town Planning and Development Act 1928 (WA) (CI) are a case in point. The authority for approving the Shire's Town Planning Scheme (TPS) is the Minister for Territories. As the Commonwealth is the largest land owner on the Island, a conflict of interest may arise. While the community might favour a certain use for land in a particular area of the Territory, if it doesn't conform to the Commonwealth's view of land use, the Minister can simply override the Shire and not approve the TPS even when it conforms to sound planning principles¹⁵².

Another example is the Western Australian Planning Commission. This is an independent body charged with overseeing orderly planning arrangements including appeals from planning decisions of local government. The Commonwealth has an arrangement in place for the Planning Commission to provide appeal services to the Indian Ocean Territories. If the Shire refused planning permission to DOTARS, and DOTARS lodged an appeal how would the Planning Commission respond, given that DOTARS is their client? In another case, would the Planning Commission feel bound to approve a Commonwealth subdivision of land as the consent authority, even if it did not consider the sub-division effective?

- o Effectiveness of delegations

The effectiveness of delegations is also relevant to the question of how an applied law operates in the Territory context.

The Administrator being the Executive Director of Health for the purposes of the Health Act 1911 (WA) (CI) is a case in point. With all due respect, the Administrator does not have the qualifications or expertise that the Executive Director of Health has in the Western Australian context. The Administrator in this role is expected to approve Environmental Health Officer qualifications (a position required in local government) and to require and approve a local government Environmental Health Plan. The Administrator has never

¹⁵² The fact that the Commonwealth has on a number of occasions ignored the TPS, and the Interim Development Order which preceded the TPS, indicates a lack of regard for planning instruments even if approved, and potentially the willingness of the Minister to not approve amendments to the TPS in the future should these be at odds with Commonwealth land use plans. This matter also goes to the question of applying a mainland law with one set of circumstances, to a Territory law which has a different set of circumstances.



requested an Environmental Health Plan, although the Shire decided last year to create one, and now has to approve it.

In a serious case in 2003, the lack of effective delegation meant that a child welfare/ protection issue could not be handled appropriately. Roles and powers (eg to remove children at risk) are delegated to child welfare officers in Western Australia within the Department of Community Development. In the Territory this role is delegated to the Administrator. When an immediate need presented, the Administrator did not know what to do, and the child was sent off Island, an inappropriate solution. Recent advice from the Western Australian Department of Community Development¹⁵³ indicates that this issue is yet to be resolved.

In summary, a complex system of delegations is required to understand or give proper effect to the applied laws. However, in a number of cases the arrangements leave a lot to be desired, be it the considerable powers of one Minister and the lack of fair scrutiny or separation of powers that arises, the difficulty in knowing who is delegated with what, or whether they are effective in undertaking their delegated role. Clearly there are considerable difficulties in translating a State law system into a Commonwealth/ Territory law system simply on the question of who has what powers.

The fifth step is to identify whether aspects of applied laws vary by reason of their stipulated geographic operation.

Schedules in laws or instruments made under laws often describe which districts or areas are covered. As no Western Australian law will include a reference to Christmas Island, the question becomes how does the law apply (or should apply) to Christmas Island in a particular case?

Local Government building laws are a case in point:

The Local Government (Miscellaneous Provisions) Act 1960 (WA)(CI) contains provisions in Part XV Division 2 that require persons to obtain a building license

¹⁵³ District planning exercise conducted by Kim Deane of DCD in 2004.



prior carrying out any building works. The Building Regulations 1989 (WA) (CI) adopts the Building Code of Australia (BCA) as the minimum standard to which building design and construction must comply. The BCA is a national code that has been adopted by all mainland States and Territories.

Some of the requirements of the BCA relate to the location of the building works; for example, earthquake hazard (building structure), rainfall intensity (storm water drainage) and humidity (sub floor ventilation). Christmas Island is not included in the data available in the BCA to assess these requirements. Without this information the Shire, as regulatory authority for building control, is unable to adequately assess for compliance with the BCA¹⁵⁴.

In another example, the Builders Registration Act 1939 (WA) (CI) has limited operation on the Island as, pursuant to Section (3) (1), significant aspects of the law only apply to areas designated in the Schedule. The Schedule lists the metropolitan area of Western Australia and a number of regional districts but does not, of course, list Christmas Island. This limitation impacts on, amongst other things, consumer protection for residential building works on Christmas Island¹⁵⁵. Whether Christmas Island should be included in the Schedule was the subject of an inquiry by a representative of the BRB in 2004¹⁵⁶.

A sixth step of interpretation is to identify how applied laws interact with other applied laws. Arguably the Western Australian system of laws is intended to provide an interlinked system with consistency between laws. In the Territory context however, what happens if one or more of the interlinking laws is repealed?

The interaction between heritage laws and building laws is a case in point:

The Local Government (Miscellaneous Provisions) Act 1960 (WA) (CI) contains provisions in Part XV Division 2 that require persons to obtain a building licence

¹⁵⁴ Following advocacy by the Shire of Christmas Island, this is set to change in 2006, some 14 years after the BCA applied.

¹⁵⁵ Following representations by the Shire, the question of whether Christmas Island should be included in the Schedule was the subject of a consultation visit by a representative of the BRB in 2004

¹⁵⁶ The BRB have recommended that Christmas Island not be a place where building registration is required.



prior to carrying out any building works. Section 374(2a) requires the Shire to process and determine any application for a building licence within 35 days unless section 374(6) applies where the period is extended to 60 days. Section 374(6) applies where the land is affected by the Heritage of Western Australia Act 1990 (WA) (CI) and allows greater time to determine an application for a building licence because there may be referrals to the Heritage Council of WA that must be undertaken. Where an application is not determined within these periods the application may be deemed as refused, which may lead to an appeal against the Shire.

The Applied Laws (Implementation) Ordinance 1992 repealed the Heritage of Western Australia Act 1990 (WA) (CI) and thus it has no application on Christmas Island. This means the extended period for determination of 60 days does not exist.

Commonwealth heritage legislation applies instead of the state legislation. As such, no areas or buildings on Christmas Island have any heritage significance in terms of WA law. However, certain areas and buildings are affected by national heritage controls, being listed on the Register of the National Estate (RNE). Those controls are derived from the *Environmental Biodiversity Protection Act 1999*. The Shire is bound by this Act and is prevented from taking any action that may adversely affect an item listed on the RNE and must refer any proposal to the Australian Heritage Committee (AHC) prior to taking any action. The granting of an approval or issuing of a license is regarded as an action. In practice, when the Shire refers an application to the AHC, a reply is not generally forthcoming prior to a month elapsing. There are no time limits within which the AHC must reply apart from "as soon as practicable"¹⁵⁷.

A related concern is the issue of linkages within laws. The Local Government Act 1995 (WA) (CI) provides a pertinent example:

¹⁵⁷ Following representations by the Shire, advice from the Australian Government Solicitors was received in 2003. The advice was that the way to deal with this anomaly was to either insert a new part into schedule 1 of the Applied Laws (Implementation) Ordinance 1992 or amend section 5 of the Interpretation Act 1984 (WA)(CI), neither of which has happened.



Within this applied law, local governments can enter into arrangements with other local governments to establish regional governments. However, there is only one local government in the Territory of Christmas Island, so no scope exists for the establishment of a regional government. The Shire has discussed the establishment of a regional government with the Shire of Cocos (Keeling) Islands. However, this is not legally possible as the Shire of Cocos (Keeling) Islands, likewise can only establish a regional government with another local government in the area covered by, in this case the Local Government Act 1995 (WA) (CKI). As a result, opportunities for working with other local governments for efficient and effective sharing of resources are not available in the Indian Ocean Territories.

As a reverse example, subdivision applications are referred to the State Planning Commission. The role of the WA Planning Commission in determining subdivision applications is to ensure that there is uniformity across the 142 local authorities in the State. This question of uniformity is not relevant to Christmas Island, although the WA Planning Commission performs this role in the Territory. The Shire has received advice that there are strong grounds for it to deal with subdivision applications itself.

A seventh step in interpretation is to identify whether all other arrangements for implementing laws are present.

Two examples are provided of other arrangements:

- o Statutory Boards

As noted above, the Interpretations Act 1984 (WA) (CI) exempts the Commonwealth from establishing such boards. An applied law can be rendered inoperative by the lack of statutory boards.

Applied building legislation provides a case in point:

Consumer protection for residential building works stems from three pieces of legislation – the Builders Registration Act 1939 (WA) (CI), Home Building



Contracts Act 1991 (WA) (CI) and Local Government (Miscellaneous Provisions) Act 1960 (WA) (CI).

The Builders Registration Act 1939 (WA) (CI) creates a Builders Registration Board (BRB) and a Building Disputes Tribunal (BDT). It also sets up a system for the registration of builders and the approval of *owner builders*. As noted above, the Builders Registration Act 1939 (WA) (CI) the law is limited in its application. The only provisions of the law that apply to Christmas Island involve the formation and powers of a BDT.

A BDT for Christmas Island has not been established. This means that although the *Builders Registration Act 1939 (WA) (CI)* applies on Christmas Island it currently has no operational use. What this means in a practical sense is that builders do not have to be registered to operate on Christmas Island, Christmas Island builders who wish to become registered cannot do so, and owner builders do not exist on Christmas Island (due to no approval body existing). Builders registered in Western Australia may work on Christmas Island but their registration has no real effect as the BRB and BDT have no jurisdiction on Christmas Island.

- o Services to support laws
Access to services such as insurance also impact on the applicability of Western Australia applied laws.

To continue the building legislation case:

The Home Building Contracts Act 1991 (WA) (CI) applies on Christmas Island. This law regulates contracts between consumers and builders for the performance of *residential building work* and makes provision for *home indemnity insurance* (HII). HII is an insurance policy taken out by the builder to cover owners and future owners for a period of up to seven years against defective building works or failure to complete the building works. *Residential building works* are works necessary to complete the construction of or alteration, repair or improvement to a dwelling where the value of the works is greater than \$12,000. HII is provided in WA by two insurance companies.



Although the Home Building Contracts Act 1991 (WA) (CI) applies to all builders not just registered builders, research indicates that these insurance companies will only issue a policy for HII to a registered builder. In addition, the Home Building Contracts Act 1991 (WA) (CI) applies to owner builders and they are obliged to take out HII if they sell their property within seven years of performing residential building works. As owner builders do not exist on Christmas Island, an owner who performs residential building work is not bound by the Home Building Contracts Act 1991 (WA) (CI). They may, however, be requested to ensure a HII policy is in place prior to sale by the prospective purchaser. Research indicates that the insurance companies are unlikely to issue a policy to an owner who is not approved as an owner builder by a BRB.

The Local Government (Miscellaneous Provisions) Act 1960 (WA) (CI) contains provisions in Part XV Division 2 that require persons to obtain a building license prior to carrying out any building works. Section 374AAA requires the Shire to ensure a policy for HII is in place or that a policy is not required to be in place prior to issuing a building license.

Following representations by the Shire, legal advice was obtained. This advice is that there is a lacuna in the law. It is acknowledged that this lacuna has similar consequences in areas in Western Australia where the BRB has no jurisdiction. These areas, although limited, do include areas of growth such as Shark Bay and Kununurra but it is likely that they will come under the jurisdiction of the WA BRB in due course. The difference, however, is that there is a greater availability of registered builders in these areas, a BDT exists in these areas, and there is no question as to the status of HII policies issued.

An eight step in interpretation is to identify Commonwealth responsibilities as the 'State' Crown. Or, what responsibility the Commonwealth should take relevant to what would ordinarily be State government responsibility.

The Interpretations Act 1984 (WA) (CI) says that where the Crown in the right of the State is referred to in Western Australian legislation, in the Territory context



it is the Crown in the right of the Commonwealth. What on the face of it may seem to be a clear translation of responsibility has been anything but clear.

The key issue here is what role the Commonwealth takes on (or doesn't take on) when it becomes *de facto* the State Government in its context of applied Western Australia laws. As the Commonwealth has very little experience, and arguably no experience outside the Indian Ocean Territories, of being a state government, the Commonwealth may be unsure or unable to identify its role in this unique context.

Town Planning laws are an important case in point:

An issue that has been contentious for some time is whether or not the Commonwealth will be bound by the Town Planning Scheme (TPS). As the TPS has the same power as the Town Planning and Development Act 1928 (WA) (CI), the issue essentially goes to whether or not the Commonwealth is bound by this legislation.

The Shire has received legal advice on numerous occasions about actions of the Commonwealth in relation to planning approval requirements. This advice has come from the Shire's solicitors as well as from the WA Planning Commission, and can be summarised as follows:

- The system of land laws relevant to Christmas Island is complex
- It is essential to recognise that Christmas Island is not within Western Australia but is a Commonwealth Territory with a different legislative regime applying. This may not be fully understood as in Western Australia the Commonwealth is not bound by state legislation including the Town Planning and Development Act 1928 (WA), on constitutional grounds.
- The Commonwealth is bound by the Town Planning and Development Act 1928 (WA) (CI) and any approved TPS made by the Shire under that Act. The extent and specific circumstances applying may vary depending on the nature of the action the Commonwealth takes, but the principle that this Act binds the Commonwealth remains.



Despite this advice, the Shire has been unable to satisfactorily settle matters with the Commonwealth about how land laws apply to Commonwealth dealings and actions in land. Details of specific areas of disagreement include the Commonwealth's actions on land, particularly the question of public works on land.

In essence the Commonwealth has read down its requirement to comply with the TPS and section 32 of the Town Planning & Development Act 1928 (WA) (CI) which requires that:

Nothing in this Act shall be deemed to interfere with the right of Her Majesty, or the Governor, or the Government of the State or a local government to undertake, construct, or provide any public work, and to take land for the purposes of that work: Provided that -

- (a) so far as, in the interests of the public, it is reasonably possible, every such work shall be undertaken, constructed, or provided, and all land taken for the purpose of such work shall be taken, in such a manner as to be in keeping with the design and intent of every town planning scheme, and so as not to destroy the amenity of any town planning scheme made and approved under this Act and having effect in the district where, and at the time when, such work is undertaken, constructed, or provided, or such land is taken; and
- (b) the responsible authority shall be consulted at the time when a proposal for any public work, or for the taking of land therefor, is being formulated to ensure that the undertaking, construction, or provision of, or the taking of land for, the work will comply with paragraph (a).

The Commonwealth has erroneously decided that section 32 exempts the Commonwealth from the provisions of the Act. Section 32 does not serve this purpose but merely notes that the Act does not interfere with the Commonwealth's right (or the Shire's for that matter) to construct public works. Given the mandatory nature of consultation as set out at paragraph (b), the Shire's view is that the Commonwealth must comply with the Act in so far as is reasonable to undertake works consistent with the town planning scheme.



A related concern is that the Commonwealth appears to think all their building works are public works. “Public works” are not defined in the Act. The WA Planning Commission has provided advice that the generally accepted legal position is that “the term public work conveys the sense of community benefit or community utility, something done for the common good; and done by the body charged with furthering the common good in one or more particular aspects”¹⁵⁸.

The Act does, however, define “public authority”. It means “a Minister of the Crown acting in his official capacity, a State Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, a social service or public utility”.

The common law definition of public work accords with the Act definition of public authority: the works are for the common good, a social service or public utility. The inference to be drawn from these definitions is that “public works” by “public utilities” is related to the provision of utilities and services for the common good.

The Commonwealth appears to assume that all work it does on land owned by it is “public work”, and therefore exempts the Commonwealth from planning consideration or approval. However, it is not always the case that the work is “public work”. In the Shire’s view some of the recent infrastructure developments are not public works. For example the construction camp and housing infrastructure for the permanent detention centre are not public works. Public housing is arguably a public work, though it may depend on whether or not the public housing is to be sold following completion.

It is interesting to note on the issue of public housing that in Western Australia, Homeswest apply to the WA Planning Commission for sub-division approval and to the local government for planning approval¹⁵⁹.

¹⁵⁸ *Invercargill Licensing Tribunal v Invercargill City Council* (1985) 10 NZ TPA 426 at 431

¹⁵⁹ Advice for the WA Planning Commission 26 August 1999



The Commonwealth has likewise made planning applications to the Shire for approval of public housing, and for the temporary detention centre, although this has been done after the building work has been completed. By its actions the Commonwealth appear to be making 'voluntary' planning applications as this have been made against claims that the approval was not required and planning approval was made at a time when the works were a *fait accompli*.

The Public Interest Disclosure Act 2003 (WA) (CI) is another case in point. This 'whistle blower' legislation applies to all levels of Government in Western Australia; that is to public officers including a Minister of the Crown, a Member of Parliament, a judicial officer, a police officer, a public servant, an employee or member of a public authority (eg local government councillors and employees). The law also extends to an officer of the Commonwealth who exercises or discharges duties on behalf of the State of Western Australia under a written law.

Under this law, public interest information can be disclosed about the activities of public officers relating to improper conduct, an act or omission that constitutes an offence under written law, mismanagement of public resources and so on.

As such, in the Western Australia context both local and state government can be subject to scrutiny via whistleblowers making disclosures to a relevant body. As applied by the Commonwealth in the Territory it covers the local government but it is unlikely to cover the Commonwealth providing the services that would be provided by the State in Western Australia (eg health and education), despite the fact that the Crown means the Crown in the right of the Commonwealth as per the Interpretation Act 1984 (WA) (CI)¹⁶⁰. The exclusion of employees of the Crown in the Interpretation Act 1984 (WA) (CI) renders the law largely ineffective with regards to the Crown.

In essence the legislation does not apply in the Territory as it would be in force in Western Australia. Whatever opportunity or protection available in Western Australia to 'whistleblow' about State Government activities has no relevance in

¹⁶⁰ DOTARS say that the Department's 'legal area' has advised that the law applies but any disclosures "would be limited to the proper authorities that the Commonwealth only has an arrangement with, including SDA's" Letter from DOTARS Perth Office dated 7 April 2004



the Territory. The fairness of this situation, particularly where the Commonwealth has chosen to require the Shire to be subject to this law is questioned.

The establishment of a Cemeteries Board is another example. The Shire has been unable to establish a Cemeteries Board on the Island because steps have not been finalised by the Governor (the Minister for Territories) to establish a Board pursuant to the Cemeteries Board Act 1986 ((WA) (CI). While the Government transferred the land on which the cemeteries are located to the Shire under a management order pursuant to the Land Administration Act 1997 (WA) (CI) , this other step was not taken, possibly because of the Interpretations Act 1984 (WA) (CI), which doesn't require the establishment of Boards under the applied laws system.

A ninth step in interpretation is to get advice. The question is who is best able to provide this advice? And how reliable will it be given that there is virtually no case law and it requires the types of considerations set out above.

Often Western Australia State Government Departments provide advice to the Shire from the point of view as to how it would apply were the Shire in Western Australia. This can lead to uncertainty or a lack of confidence in the advice.

The Public Interest Disclosure Act 2003 (WA) (CI) again provides an example of this problem. The Shire received information from the Public Sector Standards Commission explaining the roles and responsibilities of local government under this law. However, as DOTARS have explained¹⁶¹ –

“Advice you may have received from the Office of Public Sector Standards Commissioner is not tailored to the applied laws. This information outlines responsibilities under the Act as if you are a Western Australian (WA) authority”.

DOTARS go on to explain that aspects of the law, such as the requirement to report annually to the Commissioner for Public Sector Standards, are not required. However, as the powers under the applied law vest with the

¹⁶¹ Letter from DOTARS Perth Office dated 7 April 2004



Commonwealth Minister, the Shire may be asked to provide information to the Minister.

As well as generating uncertainty as to whether a report is required, this advice also seems to go against the Interpretation Act 1984 (WA) (CI) that says that where, in an applied law, there is a requirement to report to Parliament (which there is in the Public Interest Disclosure Act 2003 (WA) (CI)), then a report should be tabled in both houses of the Commonwealth Parliament. However, in the absence of any effective arrangement, the chances of a report being required or tabled in the Federal Parliament is remote.

In another case, the Shire sought information from the then Anti-Corruption Commission (ACC) about the application of the ACC law on Christmas Island. The Shire had been advised by the Western Australia Department of Local Government that it had to amend its Code of Conduct (required under the Local Government Act 1995 (WA) (CI)) to include reference to the ACC. The ACC advice was that the Shire was not covered by the ACC Act as Shire officers were not Western Australia public service officers. In this case (as contrasted with the whistleblower case) the Shire was probably considered to be a Commonwealth agency, although this is not clear from the advice received¹⁶². This interpretation, along with the fact that the ACC had no service delivery arrangement with the Commonwealth, led the Registrar to the view that the law did not apply.

Whether there is an SDA in place or not is also relevant to the question of how to interpret the application of an applied law.

In the Corruption Commission and Public Interest Disclosure cases, the Commonwealth doesn't have service delivery arrangements with the offices charged with the responsibility of monitoring and reporting on activities pursuant to these laws. This means the reporting requirements under the applied law are rendered inoperative.

¹⁶² As the local government is created by the Commonwealth there are circumstances in which it is considered a Commonwealth agency and hence may not be held a public authority for the purposes of this and other related types of legislation. As the 1995 Commonwealth Grants Commission commented, "the Council has little option to take legal advice to clarify where it fits into the legal framework" (p 120). This confirms legal advice obtained by the Shire that the question of whether the Shire is a Commonwealth agency must be considered on a case by case basis.



In another example, the office which administers the State Records Act 2000 (WA) (CI), which requires public authorities to present plans and reports and to lodge records with the Western Australia state archive, again does not have an SDA with the Commonwealth¹⁶³.

The Disability Services Commission and Office of Health Review have only recently entered a SDA with the Commonwealth. Before this occurred, disability services and health services complaints legislation were rendered ineffective.

If all nine steps are taken, it may be possible to identify with some degree of certainty how Western Australian applied laws operate as Territory laws. Taken together with the steps involved in what laws apply it must be understood that this is a complex inquiry which finally can be inconclusive and sometimes unfair.

5.4 Commonwealth Laws

While a review of the application of Commonwealth laws is strictly beyond the terms of reference of the Governance Inquiry, it is the Shire's submission that the operation of Commonwealth laws must be given consideration on the basis that, like the applied laws system, Commonwealth laws do not operate in the same way as they would do in a mainland State or Territory. Further, as the extension of Commonwealth laws to the Island arose from the Islands in the Sun inquiry, these must be considered within the question of governance arrangements generally and the unique circumstances of the Indian Ocean Territories.

Again, an assessment of the body of law applying is not being attempted. Rather, some key examples are provided to demonstrate the differences that arise on the basis that the Indian Ocean Territories are external territories of Australia.

Commonwealth laws do not always apply to an external territory in the same way laws apply to States and internal territories despite the general policy from 1992 to apply Commonwealth legislation to the Indian Ocean Territories.

¹⁶³ Whether the Shire should lodge its records with a State archive is also contentious.



Prior to 1992, external territories were generally excluded from the operation of Commonwealth Acts, unless the Government expressly chose to extend an Act (eg the *Migration Act* in 1981). The *Territories Reform Act 1992* amended both the *Christmas Island Act 1958* and a number of other Acts to extend (or limit) Commonwealth legislation in the Territory of Christmas Island.

Section 8 (e) of the *Territories Reform Act 1992* amended the *Christmas Island Act 1958* as follows:

8E. (1) An Act (whether passed before or after this section's commencement) extends to the Territory of its own force except so far as the Act or another Act expressly provides otherwise.

This Act also amended the *Acts Interpretation Act 1901* to include the Territories of Christmas Island and Cocos (Keeling) Island in the definition of 'Australia'. This definition now reads as follows:

"the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external territory."

A raft of other legislation was amended by the *Territories Reform Act 1992* to either expressly include the Indian Ocean Territories (eg the Commonwealth Grants Commission Act 1973) or to expressly exclude it (eg Customs Act 1901).

In essence, despite the *Territories Reform Act 1992*, there are many instances under Commonwealth law, some of them significant, where the Indian Ocean Territories are treated differently on the basis of being an external Territory. This makes the Indian Ocean Territories different or non-comparable to the mainland. The differences relate to four key characterisations:

- Externality/Overseas Country

By this is meant the fact that the Indian Ocean Territories are outside of Australia's territorial waters. Examples include –



- o *The New Tax System (Goods and Services Tax) Act 1999* - Only States and internal self governing territories are bound by the GST law. As such, for GST purposes Christmas Island is an export country when goods are purchased from the mainland. While the Indian Ocean Territories receive the benefit of not paying the tax, it creates considerable confusion when dealing with mainland suppliers and has also been used as the reason for not providing subsidised freight arrangements, as is the case in remote areas on the mainland. With the high and escalating cost of freight, it is questionable whether this offset is sufficient. Of course, when residents access services on the mainland, such as training, the GST is payable.

- o *Public Works Committee Act 1969* - This Act extends to the Indian Ocean Territories and every other Territory "not forming part of Australia" [section 6]. However, s 18B stipulates that "Where a public work that is to be carried out outside Australia and the external Territories is referred to the Committee:
 - (a) the Committee shall consider the work on the basis of plans, models and statements placed before it and of the evidence (if any) taken by it;
 - (b) the Committee is not entitled to require or request the attendance before it of any person who is outside Australia; and
 - (c) the Committee may receive statements, in writing, relevant to its consideration of the work, from any person who is in or outside Australia, and may take evidence from any person who is in Australia."

By extension this also means that the committee aren't required to visit Christmas Island as part of its consideration of proposed public works, thereby denying residents the opportunity to make a verbal submission to the PWC, to hear the evidence of others, or to be able to respond to questions raised by the Committee.

The Shire believes this lack of a requirement can disadvantage the community. In the case of the recreation centre inquiry by the PWC, the Shire was only able to make a written submission. As the Shire submitted to the Committee -



“The Shire is disappointed that the Parliamentary Standing Committee on Public Works (PWC) has chosen in this instance not to hold a public hearing on Christmas Island. The PWC has previously held on-Island public hearings (most recently the Inquiry into the proposed extension of the Christmas Island airport), and given the importance of the proposed project to the Christmas Island community, the Shire believes it would have been appropriate to hold a public hearing here. As emphasised in other Joint Standing Committee proceedings¹⁶⁴, it is important to directly hear from Islanders via a verbal submission process.”

Given the outcomes of the PWC Inquiry (as outlined in Chapter 3), the Shire submits this disadvantage was real.

- o Therapeutic Goods Act 1989 - This Act has not been extended to the Indian Ocean Territories. In effect, the Indian Ocean Territories are treated as receiving therapeutic goods on export from Australia. This means that drugs on the poisons list have to be obtained on an import/export basis and the United Nations sets the quota for the amount Australia can export to the Islands. This can lead to problems such as delays in accessing the required drugs and is another little known or understood example of how the Indian Ocean Territories are treated as another country¹⁶⁵.
- o Corporations Act 2001 – The Indian Ocean Territories are partly covered by this Act on the basis of being “outside Australia” [refer section 3]. This Act concerns the registration of companies and related requirements. In accordance with Section 9 of this Act, provisions for external territories must be explicitly made, and can only be made for a purpose specified in Chapter 7 – Financial services and markets. The Shire is not aware of any provisions applying to the Indian Ocean Territories.

These examples demonstrate instances in which the Indian Ocean Territories are another country for the purposes of Commonwealth legislation, due to being outside Australia. Further, that this can have both beneficial and detrimental outcomes.

¹⁶⁴ For example, Joint Standing Committee on the National Capital and External Territories proceedings; Official Committee Hansard 28 March 2003.

¹⁶⁵ The JSCNCET commented on some of the problems experienced in its 31 August 2004 report.



- State/Commonwealth Arrangements

State/Commonwealth arrangements by definition exclude external Territories. As a result, important arrangements don't extend to the Indian Ocean Territories. Examples include the *Aged Care Act 1997* (to provide funding for aged care – see section 2-1 – Objects of the Act) and the *Home & Community Care Act 1995* (to develop a comprehensive range of integrated home and community care services for frail or at risk aged persons and younger disabled persons in order to facilitate the maintenance of those persons in their own homes – see Schedule).

The 1999 Commonwealth Grants Commission did not think exclusion of the Indian Ocean Territories to programs of assistance provided by this legislation was justified. As they recommended¹⁶⁶ –

“DOTRS attempts to compensate the IOT communities for this lack of access by other means. While DOTRS should continue to fill the gaps in the short term, this is not an appropriate long term arrangement. Priority should be given to a review of relevant legislation, and the necessary amendments prepared to ensure the territory communities have full and equal access to these services. Administrative arrangements should also be put in place by Commonwealth agencies to facilitate access by those resident on the Indian Ocean Territories to all Commonwealth programs”.

The Shire agrees. The limited HACC type services available on Christmas Island are provided by the IOTHS. Elsewhere funds are available for local government and the community to provide services. While the IOTHS is the sole source of HACC type services and there is no community health focus and no community participation in the health service, services will be limited and not necessarily directed beneficially to the community. On the issue of aged care, the Shire has been dealing with senior's type issues and services for some time. As the seniors group in the community grows, access to aged services will become more pressing. There is no justification for the continued exclusion of the Indian Ocean Territories from these programs.

¹⁶⁶ Commonwealth Grants Commission Report 1999, p 31



- Commonwealth land & Commonwealth Environmental law

The *Environment Protection & Biodiversity Conservation Act 1999* (the EPBC Act) has a far greater impact on Christmas Island than anywhere on the mainland.

This is for two inter-related reasons: the Act applies to Commonwealth land, and the whole of the land of Christmas Island is considered Commonwealth land, and the Act applies to Commonwealth heritage places¹⁶⁷. On Christmas Island significant parts of the town are listed on the Commonwealth heritage list.

While the Shire is making no complaint about environmental protection, it is concerned that the legislation's scope is much broader than you would find anywhere on the mainland. This has the potential to significantly impact on planning and building matters managed by the Shire. For example, planning and building applications proposed in heritage listed areas must be referred to the Minister for Environment for comment. Heritage areas are extensive:

- Administrators House (Tai Jin House) Precinct
- Settlement Christmas Island (the whole area)¹⁶⁸
- Drumsite Industrial Area, Drumsite (whole area including the incline between Drumsite and Poon Saan)
- Poon Saan Group, Poon Saan (the whole area)¹⁶⁹
- Industrial and Administrative Group (Settlement administrative area)¹⁷⁰
- Malay Kampong Group, Jalan Pantai & the whole Kampong precinct¹⁷¹

¹⁶⁷ Information provided by the Department of Environment & Heritage for the Indian Ocean Territories.

¹⁶⁸ As described on the Heritage list www.deh.gov.au/heritage/commonwealth/external.html#christmas : "The residential area dates from 1949 when the island was controlled by the British Phosphate Commission. This was the most important phase of mining to Australia, as the application of predominantly Christmas Island phosphate to the phosphate deficient soils of Australia, allowed agricultural expansion and supported the food production boom of the 1950s and 1960s. It includes two main precincts, the European residential area and early Chinese settlement and the Services precinct. The latter was the Island's meeting place with retail, health, recreational and other services provided for both Asian workers and European staff."

¹⁶⁹ As described on the Heritage list: "This area is of significance to the Chinese population and symbolises the Chinese presence on the Island and the conditions in which they lived. The whole area exhibits architectural styles imported from Singapore and rarely found in other parts of Australia"

¹⁷⁰ As described on the Heritage list: The second phase of mining and settlement on the island is represented by the Christmas Island Club, the main recreational and social focus for the Europeans on the Island; the former Manager's; the Christian cemetery, with graves dating from 1907; the carpentry shop which includes original sections of the island gaol built c.1903; the Padang which was used for sporting activities since the first days of mining and as a parade ground during the Second World War.

¹⁷¹ As described on the Heritage list: Chinese labourers provided most of the manual labour during the early phase of mining on Christmas Island, although later Singapore and Malaya became increasingly important sources of indentured labourers. Malays, from both Cocos-Keeling and Malaya, currently comprise approximately one fifth of the Island's population. The buildings in the Malay Kampong area collectively represent the cultural diversity of this group and their endeavours to keep their religious laws and traditions living in a remote, alien setting. Buildings include: The Malay Club, Mosque, Malay Quarters, Malay School, Sheep pens & Malay Cemetery



The Shire has been concerned about the Heritage listings for some time, and has had to seek legal advice regarding its role (particularly in regarding to planning and building approvals, which the Commonwealth have insisted should be that of 'planning controller' when it comes to proposed actions on listed properties by owners), the interaction between the heritage listings and the Town Planning Scheme, the timeliness of Australian Heritage Committee advice, the state of disrepair of Commonwealth owned heritage listed buildings, and the question of heritage value of some of the properties so listed.

The key point here is that the high incidence of heritage listing and the fact that all of the land of the Island is considered Commonwealth land for the purposes of the EPBC Act 1999 places a higher onus on the Shire than would be expected of any Shire on the mainland. Further, that the interaction between the state applied planning laws and the Commonwealth heritage laws creates complexities not experienced elsewhere and, as a result, is not well understood.

- Special arrangements under Commonwealth laws

Finally, there is the case of special arrangements made under Commonwealth laws. For example, the special arrangements made under the Workplace relations Act 1996 (as per its predecessor the Industrial relations Act 1988) to allow jurisdiction of the legislation to extend to the Island which otherwise applies only where there are interstate disputes. The Act was amended pursuant to the *Christmas Island Act 1958* as follows:

8F Application of the Workplace Relations Act 1996

- (1) The *Workplace Relations Act 1996* applies in relation to industrial disputes in the Territory as if paragraph (a) of the definition of *industrial dispute* in subsection 4(1) of that Act were omitted and the following paragraph were substituted:
 - “(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or”.
- (2) For the purpose of subsection (1), an industrial dispute about the employment of persons employed for the performance of work wholly or mainly in the Territory is taken to be an industrial dispute in the Territory.



- (3) Nothing in this section affects the operation of subsection 7(2) of the *Workplace Relations Act 1996*.

While this was a necessary amendment to extend the Act to the Island, there is a problem of transparency: this is the only case where a Commonwealth law is amended by the *Christmas Island Act 1958*. Usually the Act in question is amended. Errors of interpretation can arise as a result.

There are a number of concerns about the operation of Commonwealth laws in an external Territory context. Like the applied laws system, interpreting Commonwealth laws can be difficult when translated from mainland circumstances to the territory context. It cannot be assumed that all Commonwealth law applies, despite the general force of section 8E of the *Christmas Island Act 1958* and even when extended the effect of the law can be watered down by caveats or limitations on the extent or manner of application. Further, in some cases no effort has been made to consider the effect of not extending Commonwealth laws.

5.5 Summary & Recommendations

The Shire submits that there are serious deficiencies in the system of laws applying to the Territory. The system is complex, uncertain, incomplete, and unfair as compared to the system applying of laws applying in mainland States and Territories. As the Shire flagged in 1995, the value and positive input of the law reform process has been lost.

The HREOC warned against enacting law by reference, concerned that such a system would have the same problems of ascertainment as the old Singapore law system, and against allowing a new system of law to develop that had the same problems of a lack of interest on the part of the Commonwealth. The Islands in the Sun report recommended that the applied laws system would only work fairly if it was implemented within a broader framework of administrative and political change and with an effective system of consultation with the community. What HREOC warned against, and the Islands in the Sun report tried to avert, has occurred.

The system may be better than the one it replaced, though the level of bureaucracy and complexity arising makes it only marginally better. Without an effective system



of service and policy delivery to give proper effect to laws, the system empties of its promise.

At the heart of the problem is a Commonwealth uninterested in creating a system of fair laws for the community, uninterested in understanding their role in the system, and uninterested in engaging the community in the process. The Commonwealth hasn't provided sufficient resources, information or advice to either manage the system of laws or facilitate community understanding of these laws.

As a result, the system of laws does not serve the community. If the benefit of the law is in the service or security it provides, then against this measure the system fails the community on a number of counts. In many respects the Commonwealth has abdicated its responsibility to provide for the good government on the Territory and has failed its citizens in the process.

If change can occur, the Shire proposes the following program to address the deficiencies described in both the short and longer term. This program of course is only part of the program required to bring more representative governance to the community of Christmas Island.

Immediate

1. The Commonwealth allocate additional resources to addressing issues relating to the system of laws applying in the Territory. These resources should include access to legal information and advice both within DOTARS and direct to the community.
2. The *Christmas Island Act 1958* is amended to allow a sixth-month gap between the proclamation of laws in Western Australia and their application to the Territory. This could be readily achieved by an Ordinance pursuant to sections 9 & 10 of the *Christmas Island Act 1958*.
3. Alternatively or additionally the *Christmas Island Act 1958* is amended to require the Commonwealth to resource effective information provision and



- consultation arrangements to ensure the community are given the opportunity to consider the impact of a law prior to it coming into effect.
4. An agreed mechanism is established to enable applied laws to be suspended or repealed on the request of the community where consideration has not been concluded within the available time. This mechanism should be straightforward, automatic and accessible.
 5. DOTARS implement a program of culling all irrelevant Western Australian laws in consultation with the community via the Shire of Christmas Island.
 6. DOTARS establish and maintain a register of delegations arising from the applied laws system that is readily accessible to the Christmas Island community.
 7. The Commonwealth and the Western Australia Government clarify and improve their understanding of the operation of the applied laws system, particularly the role of the Commonwealth as the crown within state applied laws
 8. The Commonwealth work with the Shire and the community to clarify Commonwealth legal responsibilities as the "State Government". Specific attention to be given to matters pertaining to land & planning laws, welfare laws, building laws, and public interest/ anti-corruption laws.
 9. The Commonwealth agree a framework for reviewing all relevant applied laws with the aim to create a body of direct territory law as opposed to a body of Territory law by reference to Western Australian State laws.

Longer Term

10. The Commonwealth work with the Shire/on-Island Government and the community to establish a direct body of relevant Territory law to apply to Christmas Island. At the minimum, formal endorsement by the Shire/on-Island Government should be required.



11. The Commonwealth develop the legislative framework to enable the enactment of Territory laws via the Shire/on-Island Government.

12. The Commonwealth commit to a full review of the application of Commonwealth laws to the Territory of Christmas Island. Where issues of non-application arise due to the Territory's constitutional status, the Commonwealth work with the Shire/on-Island Government to find practical solutions to overcome any deficiencies or unfairness arising.



Chapter 6 – Community Service Delivery

Term of Reference No. 6

Current and future governance arrangements for the Indian Ocean Territories ... in particular community service delivery including the effectiveness of service delivery arrangements with the Western Australian Government

6.1 Overview

The relationship between the applied laws system and service delivery agreements between the Commonwealth and the Western Australian Government is also integral to the package of changes introduced by the *Territories Reform Act 1992*. Section 8H of the *Christmas Island Act 1958* was introduced to provide for 'arrangements with the Government of Western Australia' in the following terms:

- (1) The Commonwealth may enter into arrangements with Western Australia for the effective application and administration of the laws in force in the Territory.
- (2) Without limiting the generality of subsection (1), such an arrangement may provide for the exercise of powers or the performance of functions or duties by an officer or authority of Western Australia in or in relation to the Territory.

The Western Australian Government also legislated to allow it to take on the exercise of powers or performance of functions on behalf of the Commonwealth. *The Indian Ocean Territories (Administration of Laws) Act 1992* essentially allows the Commonwealth and the State to make arrangements "as the parties see fit" about the exercise or performance of duties including the Commonwealth funding such arrangements and indemnifying the State against any liability.

As noted in the previous chapter, the applied laws system can be ineffective without SDA's. The key questions in relation to community service delivery are (1) whether these arrangements are effective and (2) whether the community is receiving the service delivery it needs through these arrangements.

In the Shire's submission the SDA system is in many cases ineffective and community service delivery needs, including the manner in which they are being delivered, are not being met.



For some time the Shire has been dissatisfied with the Commonwealth – State arrangements, including the lack of effective engagement of the community in decisions about these arrangements.

One concern is that the SDA system is piecemeal. Not all services that can be delivered by SDA's are being delivered. This applies within existing SDA's as well as to "missing" SDA's. A further element in this piecemeal arrangement is that the Commonwealth also provides state type services direct. The Shire is not necessarily advocating more SDA's. Rather, it points to the concern that the Commonwealth decides on how and what services are being delivered, and what is given priority and attention, without any overall plan.

The Shire is also concerned that decisions about service delivery are not being made in the community interest. The Shire's view is that service delivery should be about delivering meaningful community services in an effective manner. Developing community capacity, not relying on sometimes expensive and ineffective arrangements with a third party, should be the focus.

Like the applied laws system, "applied" service delivery does not effectively serve this community. Rather, it contributes to unnecessary bureaucracy and confusion about who is providing the services. While some arrangements are necessary to give effect to the applied system of laws, and some are helpful to linking the community with the broader Australian community, overall the community isn't provided with effective and efficient services. Also, like the applied laws system, the applied service delivery system suffers from problems of irrelevance, a lack of community engagement and thereby community understanding, unnecessary complexity, incompleteness, and uncertainty.

Specific concerns and issues about the applied service delivery system are detailed in Section 6.2. The issue of community needs and how these could be met are detailed in Sections 6.3 & 6.4

6.2 Service Delivery Arrangements (SDA's)

Issues and concerns about SDA's as they arise from the *Territories Reform Act 1992* and their subsequent operation in the Territory of Christmas Island include:



- Exclusivity with Western Australia

Section 8H of the *Christmas Island Act 1958* gives exclusivity to Western Australia for the purposes of arrangements with the Commonwealth to deliver services to the Territory. This provision has been used against the Shire when it was attempting to enter into an arrangement with the Commonwealth to provide water and sewerage services in 1994. The advice of the Australian Government Solicitor at that time was that the service could be contracted to the Shire but not arranged pursuant to the *Christmas Island Act 1958* (as amended) because the Shire didn't fit the definition of "the State".

Subsequently the Commonwealth tendered for the provision of water and sewerage services and the Shire didn't win the contract¹⁷².

In essence, the exclusivity of section 8H was used as the reason for not entering into an arrangement direct with the Shire. This was ultimately to the disbenefit of the Shire, although the competitive tender process arguably provided some assessment of efficiency and effectiveness of service delivery to the community.

On the other hand, the monopoly with Western Australia means there is no assessment of efficiency and effectiveness. On an agreed cost neutral basis, Western Australian Government departments and agencies can, in effect, name their price. Possibilities for over servicing and over costing arise.

It is the Shire's submission that this exclusivity with Western Australian Government Departments should be reviewed. In the face of complaints from the community about the SDA system, the 1995 Commonwealth Grants Commission recommended that SDA's be developed on the basis of community agreed specifications and that the choice of service provider not automatically be restricted to Western Australian government agencies¹⁷³.

¹⁷² It is arguable that the Commonwealth had no right to tender out the services without the Shire's agreement, pursuant to the Local Government (Transition) Ordinance 1992. This is discussed in more detail in Chapter 7 – Role of the Shires

¹⁷³ Commonwealth Grants Commission 1995 Report, pp 102 - 103



The 1999 Commonwealth Grants Commission did not question the exclusive arrangement with the Western Australian Government but did recommend ways to improve efficiency, effectiveness and accountability by better engagement with the community about service delivery issues¹⁷⁴.

The concern remains however, that the exclusive arrangement with the Western Australia Government may not be effective or fair. Current Commonwealth policy to outsource services is also at issue, a matter which is discussed in more detail below.

Despite the Commonwealth Grants Commissions' considerations, there have been few improvements to the way in which SDA's are arranged.

- Arrangements negotiated between DOTARS & the Western Australian Government

A further concern of the Shire's is the fact that the SDA's are negotiated between the DOTARS and the Western Australian Government. There is no community engagement in setting the requirements or specifications for an SDA and the community is not party to the agreements. At best the community via the CCC is asked to comment on SDA's as part of the review process and is told what SDA's the Government is working on.

An allied concern is that the same parties who negotiate the agreements also review the agreements. It is a circular process with self serving outcomes. As the Commonwealth explains, the review process is between representatives of DOTARS and the Department of Premier and Cabinet. They conduct a 'pre-expiry' review of SDA's and set priorities for future SDA's. In the most recent review, the parties' main finding was to extend the terms of SDA's from three to four years. The review also concluded that "the services provided by .. state agencies had met their objectives to a satisfactory degree"¹⁷⁵.

In essence in the Indian Ocean Territories, Commonwealth and State Government bureaucrats determine and review services under SDA's. In Western

¹⁷⁴ Commonwealth Grants Commission 1999 Report, pp 34 - 38

¹⁷⁵ Service Delivery Arrangements Performance Reports 2003/04



Australia however, this process would not be the sole province of the bureaucracy, political scrutiny would also be involved.

- The Commonwealth-State client/provider relationship

As with the Commonwealth – State exclusivity, the direct client/provider relationship is of considerable concern. Departments on the mainland operate in a public service domain. In the Indian Ocean Territories they operate as service providers on a contract. This is not a mainland system.

Can public servants operate without fear or favour when they are contracted service providers? Or is it a case of he who pays the piper calls the tune? Can the service providers provide frank and independent advice or will they tell DOTARS what they want to hear? Transparency is lost and confidence in the service delivery undermined.

With this relationship come all the problems the Shire has highlighted in relation to the accountability of the Commonwealth. This is exacerbated by the absence of any independent oversight. As a result the client/provider relationship is too close; objectivity is lost, and community need or interest under-represented.

- Ineffective consultation

The SDA review process, according to DOTARS, “draws on consultation with representatives of the Indian Ocean Territories’ communities”. The involvement of the community in the review process is essentially by way of comment on State Government Department actions. However, this comment may be ineffective in that the community may not be clear on what a State Government Departments’ actions may be, or have issues that aren’t able to be addressed via SDA’s. For example –

- The Department of Education and Training (DET) SDA to provide services to the Indian Ocean Group Training Association. The community see the services IOGTA are providing, but have no clear idea as to how the DET SDA contributes to IOGTA’s activities. Further, DET are only part of the picture,



- with IOGTA negotiating direct with DOTARS for funding. There is no forum for review of DOTARS effectiveness in supporting IOGTA, even though this “service delivery” may be far more important than that provided by DET.
- o The Equal Opportunity Commission (EOC) SDA to provide complaint services and training. The community can see that training services are provided, but don’t understand the extent to which the EOC can assist in complaint matters, particularly employment and service delivery provided by the Commonwealth.
 - o The Valuer-General SDA to provide property valuations. While the service is important to the Shire for providing valuation information relevant to calculating rates, the property valuations don’t take into account the boom and bust cycles on the Island and how these impact on property values. As the Valuer General can only value properties on a ‘mainland’ basis, this issue can’t addressed by reference to the SDA.
 - o The Small Business Development Corporation (SBDC) SDA to provide information and advice to small business. The business planning component valued by the community had been lost because the SBDC in Western Australia had decided to discontinue the service. No amount of advocacy would return this service to the community.

Other problems associated with “reviewing” SDA’s include the lack of detail in the formal SDA documents, the lack of detailed reports from the Government agencies at the time of review (these are provided in the SDA annual report, not at the time of review), and the lack of information about what a government department does on the mainland. This latter point goes to the question of what these departments could do as opposed to what they are contracted to do in the Indian Ocean Territories, which can fall short of their mainland role. Such information would assist the community is specifying what they would like to see included in SDA’s. The SDA annual report provides comment on future issues. These ought to be discussed in detail with the community as they propose new directions which are readily within the comprehension of the community.



A related concern is that the review process is not transparent. In 2004 for example, DOTARS and the Department of Premier & Cabinet undertook a consultation of their own about SDA's, in addition to consulting with the community via the CCC. They presented a report to the CCC titled "Summary of issues raised during consultation", a report that had no attribution and no analysis¹⁷⁶. The CCC was left unclear as to which set of views were being given consideration in the review process, if any.

Another concern relates to the fact that key SDA's are either "informal" or not renewed. The SDA with the Department of Education and Training for school services is an informal SDA, so never gets put to the community for comment. The SDA with the Department of Health hasn't been renewed since 2000.

Another difficulty in assessing SDA's is that they apply to both Indian Ocean Territories. The Commonwealth Grants Commission has noted that there may not be a fair distribution of services across the two Territories in areas such as health¹⁷⁷. Reporting information is often not disaggregated, making analysis difficult and the two communities are not made aware of the differences in service delivery or community concerns about service delivery.

In essence, comment on SDA's is a relatively ineffectual and ad hoc process. Not enough information is provided, CCC comment doesn't have any weight, the community can't decide what's in an SDA, and their comment is often about service issues beyond the scope of the SDA's. It is a lip service review process.

The 1995 Commonwealth Grants Commission highlighted the need for the community to be involved in the SDA process at a much earlier stage. As they reported –

"...we think that consultation occurs too late in the process, and that it should start at the service specification stage.

¹⁷⁶ For example, the CCC took exception to the un-attributed comment in the Consultation report that CIP "was not doing enough rehabilitation". In response the representative from the Department of Premier and Cabinet said that the community should present the view that CIP was doing a good job of rehabilitation. But who should this comment be addressed to?

¹⁷⁷ Commonwealth Grants Commission Report 1999, p 157



“The participation of local representatives in the specification process would help to ensure that the specifications take account of local circumstances and needs. It could also provide a means of outlining any other requirements for the service, such as maximising the employment of local residents, where appropriate. The involvement of people with knowledge of the service would ensure that the specifications are practical and comparable with mainland services and standards”¹⁷⁸.

The 1999 Commonwealth Grants Commission noted that despite the fact that DOTARS recognised the importance of consultation, and that there were established frameworks for consultation, widespread dissatisfaction remained. They suggested that this pointed to consultation mechanisms that were not “sufficiently effective”. They recommended that –

“A comprehensive approach to consultation is needed, and it must provide for both formal and informal processes. High level formal consultation, for example between the Administration, the Shires, and other broadly representative community groups, is needed to address major policy, service delivery or infrastructure issues. More informal consultation among those involved at the coal face of service delivery or infrastructure provision.

“As well as establishing a framework for consultation, thought needs to be given to the style and timing of consultation. Existing efforts at consultation may be failing to generate appropriate outcomes because there is inadequate real communication. Appropriate outcomes are frustrated by a lack of dialogue sufficiently early in the process.”¹⁷⁹

Effective consultation would improve the community’s opportunity to meaningfully contribute to the SDA review and development process. However, while community consultation remains merely ‘part of the review process’ - which the Commonwealth and the State can ignore if they wish - community dissatisfaction will remain.

Community dissatisfaction is not just premised on dissatisfaction with the consultation process. It is also about the efficiency and effectiveness of the arrangements to meaningfully deliver services to the community.

¹⁷⁸ Commonwealth Grants Commission 1995 Report on Christmas Island Inquiry, p103

¹⁷⁹ 1999 report pp 37-38



- Efficiency & effectiveness of SDA's

DOTARS reports annually about the performance of SDA's. The most recent report available is for the financial year 2003/04. This report tells us that at 30 June 2004 there were SDA's in place with 27 Western Australia Government departments or agencies providing services to both Indian Ocean Territories at a "satisfactory level", at a cost of \$11,095,595. But are these SDA's efficient and effective and by what measure can an assessment be made?

The Shire provides the following comment on the efficiency and effectiveness of the SDA's:

- Full cost of SDA's

The SDA Annual reports do not fully identify the costs of the applied service delivery system. Other costs include:

- ❖ Costs of staff in the Department of Premier and Cabinet, paid for by DOTARS
- ❖ Costs of staff in the DOTARS office Perth
- ❖ A portion of the costs of the Deed between DOTARS and the Shire for Consultation Services
- ❖ Costs incurred through local agencies in delivering services such as the Motor Vehicle Registry
- ❖ Fee for service arrangements¹⁸⁰
- ❖ Community costs of service provision¹⁸¹

If these costs were available, the full cost of providing the SDA system would likely be considerably higher.

- Per capita expenditure

Excluding schools, expenditure on SDA's was \$2,595,595 in the 2003/04 financial year. Based on a two Territory population of 2,000¹⁸², the cost per

¹⁸⁰ For example, in the 2003/04 report the Department of Treasury and Finance and Lotteries West provided contract services for undisclosed amounts.

¹⁸¹ For example, the Western Australian Library Service freights books to the Island. The Shire pays the return freight costs.

¹⁸² Figures based on a Christmas Island population of 1,350 and a Cocos (Keeling) Islands population of 650.



capita was almost \$1,300. As there is no direct point of comparison is it unknown whether this is cost effective or not.

In only some cases have state agencies been able to compare the cost of services to the Indian Ocean Territories with mainland communities. On Christmas Island the cost of library services under the SDA was \$127.27 per library member compared to \$34.70 (Meekatharra) or \$631.92 (Leonora)¹⁸³. The Office of State revenue report that a determination of taxes costed \$75.98 each in the Indian Ocean Territories compared to \$36.04 in Western Australia¹⁸⁴. The Small Business Development Corporation reported that the cost of each client contact was \$152 compared to \$332 for Derby¹⁸⁵. The Department of Justice reported that the average time per Petty Sessions trial was 2.1 days compared to 0.16 days on the mainland¹⁸⁶. The Department of Racing, Gaming & Liquor report that the cost of managing each licence is \$3,049 compared to \$696 in Western Australia¹⁸⁷.

As Departments reporting comparably warn, there are problems in making a direct comparison. As such it is difficult to assess whether or not the comparisons are accurate or relevant. In some cases however, the cost is clearly much higher than on the mainland, no doubt to because of small economies of scale, the amount of time spent in the Islands, and the high cost of travel and related on-costs.

In essence comparing SDA expenditure on a per capita expenditure is not a particularly useful measure of effectiveness or efficiency. It would help if some benchmarks were established, but then the issue would become what the relevant place of comparison would be.

The 1999 Commonwealth Grants Commission said that the community was receiving comparable services (to the extent a viable comparative measure could be identified) in many cases. However, it did not evaluate whether the services were being delivered in a cost effective manner.

¹⁸³ 2003/04 SDA report, p 73

¹⁸⁴ 2003/04 SDA report, p 77

¹⁸⁵ 2003/04 SDA report, pp 70-71

¹⁸⁶ 2003/04 SDA report, p 40

¹⁸⁷ 2003/04 SDA Report, p 68



- o Other performance measures

Most of the SDA's have performance measures but very few of these either stand up to any scrutiny or relate to meeting community need. For example -

- ❖ Under the social work service provided by the Department of Community Development, the Department reports on the number of professional development opportunities for the social worker, but not on the social worker's effectiveness in the community.
- ❖ The Department of Consumer Affairs reports in most cases that it cannot disaggregate data for the Indian Ocean Territories, making evaluation against performance measures ineffective.
- ❖ Worksafe Australia report that the cost of per investigation cannot be measured meaningfully because the cost includes travel and accommodation for the officer(s) undertaking investigations and they don't keep statistics for the Indian Ocean Territories.
- ❖ Museum services report that a targeted 90% client satisfaction is "not applicable", without any explanation.
- ❖ The Department of Housing and Works report that DOTARS – Christmas Island reports on its functions to a satisfactory level, but give no information about what they are being measured against.

In any event, in a number of cases the SDA's are structured to provide services to DOTARS, not the community (for example the Department of Land Information, the Department of Housing and Works, the Department of Environment, the Office of State Revenue, and the Department of Treasury). As such, the community are unlikely to be able to comment or to see any benefits to the community. Performance reporting in these cases is a matter between the State and the Commonwealth.

- o Need for services and mode of service delivery

Another way to look at the SDA's is to consider whether the service is needed and whether it could be delivered differently or more effectively. For example -



- ❖ Is an SDA with FESA necessary for coordination of emergency services when the Commonwealth retains responsibility for this work via Emergency Management Australia?
- ❖ Does the Island need books from the State Library service when it can purchase books by other cheaper means? And why is it aiming to coordinate school and public library services when the Department of Education provides school library services and the Shire has managed its own library for many years?
- ❖ Why can't local organisations provide liquor licensing monitoring with the relevant training instead of the Department of Racing, Gaming and Liquor? The Shire is involved in liquor licensing from a planning and building perspective, so why couldn't staff be trained in this role, as has been achieved with the child care license monitoring?
- ❖ Why does almost every SDA involve visits to the Islands when more effective modes of service delivery could be developed? Travel costs are often the most expensive component of SDA's and sometimes represent the main performance outcomes. The SBDC treat the IOGTA as their agent and pay IOGTA for that service. Why can't other agencies make local arrangements for the provision of advice and assistance?
- ❖ What about the range of services that the Commonwealth Grants Commission identified in 1999 that should be provided such as industry assistance and welfare services including aged and home and community care? Why hasn't the Commonwealth addressed these issues?

On the basis of need, many essential community services are missing. Further, the focus on available state government services appears to be to the exclusion of a focus on community need. This is wrong. On this measure the SDA system is incomplete and ineffective.

In 1995 the Shire described the service delivery process as unduly complex, bureaucratic, excessively costly and not always effective¹⁸⁸. In 2005, this is equally true and to a large degree the problems are similar to that of the applied laws system. Without the direct involvement of the community, and without any

¹⁸⁸ "Christmas Island: Law Reform? Or Service Reform? Or Government Reform?", Christmas Island Shire Council April 1995, p 6



right of decision making or self determination by the community, the situation will not improve. Current Government policy means it is unlikely to improve.

- Interaction with Commonwealth policy & governance arrangements

The SDA system needs also be considered in the light of current government policy to market test and outsource. A number of interrelated issues arise:

- Different levels of scrutiny/accountability

Why is it that the SDA system does not have the same level of scrutiny or market testing as other government services earmarked for outsourcing? Further, why does the Government choose to outsource state-type services such as health and not look to SDA's to provide these services? Different levels of accountability arise, without clear reasoning.

- Support for the Commonwealth's agenda

The SDA system has progressively become a means for the Commonwealth to outsource its services. For example, the Office of Energy SDA is aimed primarily to assist the Commonwealth outsource its power generation and distribution; the Department of Health is apparently helping the Commonwealth outsource the Health service; and the Department of Treasury and Finance, Government procurement division provides outsourcing advertising services. This is not about providing equivalent mainland services. The Western Australian State Government is not contracting out these services and it is questionable why they are allowing themselves to be used in this manner.

- Multiple systems of service delivery

In effect four service delivery systems for state-type services have emerged:

- ❖ SDA's with Western Australia State Government departments
- ❖ Direct delivery of services by the Commonwealth
- ❖ Outsourced service delivery by the private sector
- ❖ Contracted service delivery by the Shires



This adds to the confusion about who is providing what. Further, transparency and accountability are missing as there is no clear reason as to why a particular mode is chosen in each case. In accordance with the Commonwealth's policy, the shift is away from direct delivery by the Commonwealth to outsourced delivery by the private sector. Western Australian Government Departments under the guise of SDA's are being used to support this process while the Shire as a means of service delivery is ignored.

- o Economic sustainability ignored

From an economic sustainability point of view, the problems of market testing *et al* have already been highlighted. In an SDA context, again no effort has been made to develop the community's involvement in service delivery, even though this could provide well needed economic sustainability on an effective economy of scale, as well as build community capacity to provide for its own needs¹⁸⁹.

Current government policy ignores the community in all material respects, including the opportunities available for the community to develop. SDA's with Western Australia serve this policy, not the community. Until the Government gives the community 'a seat at the table' to look at service delivery in all its forms, these opportunities are lost and with it the chance of effective and efficient community service provision.

In summary, the SDA system is problematic for a range of reasons including the exclusive arrangement the Commonwealth has with the State, the lack of accountability and transparency arising, including the lack of accountability to or community engagement in the process, the apparent inconsistency with current Government policy, and the fundamental lack of the community's involvement in decisions about effective service provision. Community needs are ignored as a result and service delivery becomes bogged down in costly, overly bureaucratic and unfair service arrangements.

¹⁸⁹ The 2004 draft economic development action plan prepared by SKG emphasises the role service delivery can play in supporting economic sustainability and self-sufficiency, through employment and the development of community capacity.



6.3 Community service needs & community development

As noted above, there are considerable unmet community needs. Service delivery to meet these needs is essential. However, a number of policy and practical barriers stand in the way these needs being met. As already highlighted, these barriers include Commonwealth disinterest in effective engagement with the community, the Commonwealth's market testing and outsourcing policy approaches, undesired community dependence on the Commonwealth, and a lack of access to advice and resources to develop community capacity. In short, the Commonwealth does not appear interested in meeting community need and is not, despite its policy rhetoric, interested in community initiative to meet these needs.

Rather than catalogue the specific areas of unmet need, it is the intention here to demonstrate how issues of community service delivery will never be addressed while the underlying issues of ineffective and unrepresentative governance remain. Using a consultation project undertaken by the Shire in 2004, a community development approach to community service delivery is proposed. This approach throws Commonwealth actions into sharp relief: direct community – Commonwealth partnerships and the development of community capacity are required to meet community needs, as opposed to remote, indirect and superficial means. A community development perspective also suggests the application of principles and practices that could lead to more effective governance arrangements.

- Identifying community need

In 2004 the Shire undertook a community needs analysis¹⁹⁰ ahead of a proposed district planning exercise by the Western Australian Department of Community Development (DCD). Despite the Shire's request¹⁹¹ that this planning exercise not take place and that the revised DCD SDA not be finalised until this analysis was complete, the Commonwealth went ahead with both.

¹⁹⁰ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004

¹⁹¹ Letter to *Director, Territories Office Perth*, Director DOTARS – Perth, 16 June 2004.



The Shire's study identified a range of community services being provided by the community¹⁹², often without any financial assistance, as well as areas where service provision was lacking¹⁹³.

The consultant drew the following conclusions from contrasting identified needs with current service provision¹⁹⁴:

- There is a considerable level of unmet need, both in terms of community development (strengthening community capacity to develop programs, services and ways of addressing needs) and service provision (providing a specific service)
- Practical service delivery is required, building on the capacity of local groups already involved in service development and delivery
- There is a strong desire to have local service delivery in the hands of community organisations.
- Elsewhere partnerships have been developed between State government, local government and non-government organisations to develop and deliver community services
- The applied laws system operating on Christmas Island requires professional support and advice because delegated authorities rest with the Administrator (eg child protection, childcare licensing) rather than a departmental head (Director General of Community Services). However, other arrangements

¹⁹² For example, Christmas Island Women's Association emergency housing/refuge, Christmas Island Women's Association advice and counselling service, Christmas Island Neighbourhood Centre – Community Volunteer Service and grant writing assistance – supported by state-type grants, Christmas Island Childcare Centre, Baha'i community volunteer assistance, Islamic Council Public Relations Officer – volunteer community worker, St. John's Ambulance Service – volunteers, Airport Charity Stall, Volunteer Fire Brigade & volunteer SES – with support via SDA with FESA, Shire volunteer Senior's transport service. See appendix two of the Shire's Report.

¹⁹³ For example youth services following school education in the areas of training, recreation, leadership, language and culture; women's services in the areas of emergency support, recreation, education training; senior's services in the areas of recreation, aged support in the home and facility access; disability services including independent living, employment and access; community assets in terms of physical infrastructure and coordination; health services including community based health services, access to specialists and advocacy services.

¹⁹⁴ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004, p 10



- applying elsewhere don't apply here; for example, a Child Care Services Board.
- o Models for service provision to the community vary. In the DCD context it is a mixture of professional advice to a Commonwealth employee (the Social Worker), authorising of an on-Island licensing officer (for the child care centre), or visits from DCD officers to support local activities (eg the volunteer centre). The community want a greater say in service provision, particularly as it supports community development.
 - o SDA arrangements are between the Commonwealth and the State of WA, not the community within the Territory. In the community development context, this may limit the extent to which the community can identify, direct, or be involved in community service development and provision as needed.

While the community participated in this study, the consultant encountered considerable anxiety about their needs and their future. As the consultant reported¹⁹⁵:

“The Christmas Island community has become increasingly concerned about policy decisions of Government, particularly those concerning contracting out, privatisation, and the withdrawal of Government functions from the Island. Along with the decision not to allow the re-issue of a casino licence on the Island, the uncertainty surrounding the APSC proposal, changes to the scope and timing of the construction of an IRPC, job losses and perceived lost job creation opportunities, community confidence has been undermined, including its belief in its capacity to influence its own future.

“As was stated during the consultancy with community groups –

“There is no point in discussing options for services until the Commonwealth has decided on the legal and economic future of Christmas Island. People are feeling very insecure about their future on CI.”

¹⁹⁵ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004, p 6



- Community Development Principles

Against this backdrop, the Consultant recommended that a community development approach was essential to address community services needs and foster community initiative taking¹⁹⁶ -

“The challenge is to create real community development through partnerships between the Commonwealth and the community via the local government and community organisations.

“Community service provision is an ideal field in which to develop community initiative. This is particularly the case in small, remote and isolated communities where community services can only be delivered in a sustained and efficient way when the community has the skills, expertise and knowledge to locally provide services to those in need in the community.”

The Consultant explained community development principles by reference to the Western Australian Department of Community Development, as follows¹⁹⁷:

“This Department has core community development principles of: “Inclusiveness”, “Engagement”, “Capacity Building” & “Coordination”. This is achieved by the Department¹⁹⁸ working with community based or non-government organisations (NGO’s) to:

- Strengthen communities so individuals and families are able to meet their needs, achieve self reliance and contribute to their own solutions
- Promote a just and equitable community enriched by diversity and increased social participation
- Support families and communities to provide for the care and safety of their members

“By entering into an SDA with this Department, it is assumed that the Commonwealth Government shares or endorses these principles. If this is the case, the challenge is to make these principles explicit through supporting a community development model of community service delivery, in partnership with the community of Christmas Island.”

¹⁹⁶ Community Services & Community Development, pp 6-7

¹⁹⁷ Community Services & Community Development, p 7

¹⁹⁸ From DCD website, www.fcs.wa.gov.au – about the department 14.9.04



- The DCD SDA

The current SDA¹⁹⁹ provides for -

- Professional supervision, support, consultancy and ongoing professional development of the DOTARS social worker
- Childcare licensing advice
- Advice on funding programs which would in WA generally be assessed and administered by the state agency. The establishment of and provision of support for a Volunteers Resource Centre on CI resulted from this arrangement
- Providing information, support and assistance to relevant stakeholders and providers including information dissemination and support and assistance to plan and provide access to services delivered by the state agency

The Consultant went on to analyse how the SDA could support community development, focusing on what “support and assistance to plan and provide access to services delivered by the state agency” could mean. The DCD district planning exercise was considered which, by this time, was in a draft report stage²⁰⁰, as an example of possible support and assistance. The Consultant commented²⁰¹ –

“The district planning exercise undertaken by DCD may be an example of this assistance with planning and accessing services. However, the draft report does little more than endorse the continuation of existing SDA provisions, albeit on a stronger footing, and notes that many community services sought by the community are not part of DCD’s scope (eg aged care and disability services).

¹⁹⁹ As amended by the Commonwealth in late 2004

²⁰⁰ The report has now been finalised and the Christmas Island community through the CCC has had an opportunity to consider it. The CCC expressed concern that consultation was ineffective in that many in the community did not get asked about their services (eg the Christmas Island Women’s Association). that the Social Worker’s comments appeared to carry more weight than the community, and the focus was on one organisation – the Neighbourhood Centre – to the exclusion of others.

²⁰¹ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004, pp 8-9



“The report does comment that the Shire’s consultancy work may contribute to a further review of potential services. However, it does not present any case as to how services can be developed or delivered. This raises the question as to whether DCD, through its SDA with DOTARS, works primarily as a reactive agency, responding to issues as these arise but unable to actively foster community development on its own initiative.

“This is not a criticism per se, rather a statement of how the Department operates in WA to meet its core mandate of “working with funded non government [NGO] agencies to support children, young people, men, women, seniors, families and communities” [emphasis added]. In the Indian Ocean Territories context DCD are contracted to the Commonwealth Government to deliver services to DOTARS (social work service) and community organisations (child care centre, Volunteer Centre) identified within the SDA. It is difficult to see how DCD can assist community development – including development of the NGO sector - when its mandate assumes the existence of community agencies and well identified needs.

“On Christmas Island there are many community organisations, but few that have developed programs and services akin to those operating on the mainland. The reasons for this are complex, based on historical, cultural, legal and economic factors. Relative isolation and insulation from ‘mainland’ practices is also a factor, as is the relative recency with which the community has come into contact with the mainland. As a result, community service and community development concepts are not well understood²⁰² and needs have been addressed within family and through traditional social and cultural arrangements, rather than via external organisations.

“The central challenge for effective service delivery beyond existing arrangements under the DOTARS – DCD SDA is to engage the community directly via “on the ground” activities and projects which build understanding of community service needs and how government services can assist in meeting these needs.”

Two key community characteristics were considered regarding the importance of a community development approach²⁰³:

²⁰² For example, the community consultancy work identified cultural context and language as contributing factors to the low level of understanding of the “Australian Welfare system” and vocabulary. Key concepts that required explanation to enable responses to the survey included ‘welfare’, ‘services’, ‘benefits’, ‘programs’, ‘community services’ and ‘needs’.

²⁰³ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004, p 11



- o The isolation/insulation of Christmas Island from the mainland

“Isolation can mean that the community has no or little understanding of what is available on the mainland. Cultural and language differences accentuate this insularity.

“Without this knowledge community members don’t know ‘what they’re missing out on’, limiting both access to services and effectiveness of comment/ feedback/ consultation about existing service provision. Without access to people with such knowledge and capacity to apply this to the Island context, it is extremely difficult for community organisations to ‘find a way in’. Examples of how this could be achieved include providing on-Island coordination & support services, developing networks including visits to the Island by relevant mainland NGO organisations and to obtain advice from government departments about funding programs.”
- o The relatively small population of the Island leading to “diseconomies” of scale

“A key ‘efficiency’ concern is the high cost of service provision relative to a small population base. Full time service provision is not always necessary and importing service providers from the mainland is costly. Economies of scale can be addressed by developing local capacity to provide services through training and development, co-ordinating service provision across community and government sectors, and possibly across the Island communities of Christmas and Cocos (Keeling), developing multi-functional service provision and utilising existing organisational structures to provide across service administrative and management services.”

In essence, the consultant concluded that direct engagement between the Commonwealth and the community was vital, and that the SDA with DCD did little to support community development -

“A key factor in the development of a community development approach is action by the Commonwealth to more directly engage with the community to assist it in meeting its needs in an appropriate manner. As Commonwealth government capacity and understanding grows, as community confidence and capacity likewise develops, reliance on SDA arrangements should diminish. As one community member put it -

“A successful model of community development on Christmas Island might require the developing of trust more than the translation of a document”.



The report proposed a community development agency model²⁰⁴ as the way to promote community engagement and coordination, effective service delivery and ultimately greater community capacity.

A community development agency would work in partnership with community organisations to –

- Undertake community development through community education, coordination, advocacy and funding submissions
- Develop and conduct training and development programs
- Develop community service programs in partnership with the community

Resources and support for the agency would include:

- DOTARS direct funding for a community development coordinator and programs
- Other Commonwealth Government departments for program funds
- IOTHS and the Commonwealth for HACCC type services funding
- Western Australia Departments for advice via SDA's
- Shire administrative and infrastructure support

The scope of service of the Agency could include seniors, youth, women, people with disabilities, juvenile justice, community health, and community facilities.

The consultant envisaged a range of efficiencies arising from this approach²⁰⁵ –

- SDA costs will reduce as community capacity increases. The need for visits from DCD officers should decrease as their role is reduced to advice about funding programs and the like.
- Significant economies of scale would also develop as cross community coordination improves. Duplication of effort would reduce and resources shared more effectively.

²⁰⁴ Community Services & Community Development, Thompson & Associates, Shire of Christmas Island, October 2004, pp 14 - 17

²⁰⁵ Op cit, p 18



- o Support organisations, such as the Social Work service and IOGTA, could more effectively target their activities. For example, the Social Work service can be more referral based, where there are organisations and individuals skilled to provide services (eg social trainers and foster carers). IOGTA could provide community development and related training across the community.

- o The ability to attract funding from a number of sources would increase, reducing the direct load on DOTARS for funds (eg FACS programs and aged care). While funding remains within the Commonwealth sphere, a diversity of funding sources enables greater sustainability and exposure to 'mainland' practices.

- o With an emphasis on training and development for local residents, sustained work opportunities are created at a lesser cost than 'imported' expertise and with the capacity for greater flexibility to meet needs as these arise.

In summary, a community development approach could deliver real benefits to the community over time. It would require Commonwealth commitment to the community and to the community development principles of partnership, inclusiveness and self sufficiency to achieve these benefits on a long term basis. While the Commonwealth view their responsibilities as ones of merely funding a narrow range of activities or maintaining SDA arrangements, and have a policy of moving away from the community, these things will not be achieved.

Developing the community's capacity to strengthen self reliance and have "can do" confidence is vital to any shift in decision making to the community. Community involvement in developing and providing services to meet its own needs is a good place to start. Community development principles can extend into all aspects of community life, can build economic self-sufficiency, and can contribute to a vital, forward looking community in control of its own future.

6.4 Government Services to the Community

As noted above, the Government is a direct community service provider. While the previous sections have looked at the State as a service provider through SDA



arrangements and at the scope for more direct community involvement in service delivery and its effectiveness as a community development tool, something must be said about government provision of services.

Again, it is the Shire's submission that direct engagement with the community will achieve benefits whereas withdrawal from the community will see services undermined. Further, efficiencies can be achieved through direct service provision and through integrating services to achieve economies of scale. Effective service provision will also result, creating greater community confidence in services and enhancing community safety. Two health related examples are provided to illustrate this point:

- Indian Ocean Territories Health Service

The community are particularly anxious about the market testing of the Health Service management. This is an example of an essential community service that the Commonwealth appear intent on distancing themselves from.

Five reports in ten years have all promoted the development of a community based health service. Elements of a community based service include an emphasis on preventative health strategies, community involvement in decision making, provision of health services in the community via HACC programs, and local employment to provide stability and to deliver services in a culturally appropriate way. Unfortunately, DOTARS has done virtually nothing to shift the focus of health services to the community.

While the question of a private versus public management of the service has been batted around, mainly for the reason that DOTARS don't have any skill in managing the service, the lasting solution has been ignored: knowing how to run a Health Service lies not in contracting services out but in bringing the community in.

With access to good management and access to good advice, a community based health service managed by the community is achievable. The current inefficiencies created by poor management would easily be overcome and the



community would regain much needed confidence in the health service. Instability and inconsistency would give way to stability and consistency, the health service would become a long term career path for local residents committed to the island, and community health would improve. All the Commonwealth needs to do is make a commitment to this community that a health service should and can serve the needs of the community.

- Medivac and rescue services

The problem of not having access to reliable Medivac services has already been made. While the Commonwealth guarantee a service, it is unable to guarantee a reliable or timely service. This is due to the fact that no arrangement has been made with a service provider, forcing the health service to seek out a service on a case by case basis. This process can be fraught, with serious and possibly fatal consequences for the person concerned.

The issue of sea search and rescue services is also of concern. As the Commonwealth does not have any responsibility for search and rescue services around Christmas Island it can take up to 24 hours to mount a sea rescue operation²⁰⁶. Sea search must be done by air as Christmas Island is unable to provide anchorage for the sizeable vessels required to undertake a sea search and rescue.

In 2002 the then Administrator advised that a helicopter was to be permanently based on Christmas Island that could undertake search operations both on land and sea. A hangar was built at the airport to house the helicopter. This was put to good use for finding a small party missing in a remote part of the Island but soon after the helicopter was redeployed elsewhere and has never returned.

A possible solution to medivac and search/ rescue needs is the location of a suitable plane permanently on the Island. This could be deployed as needed for urgent medivac as well as be available for sea searches and possibly other uses such as customs surveillance. While the start up costs would be relatively high, and operational costs such as retaining pilot services on Island would not be

²⁰⁶ Indonesia is responsible for waters around Christmas Island and has to be the first point of call.



cheap, these costs could be shared across agencies and would be recouped in short order once utilised for medivac purposes. Volunteer and professional services are available and could be trained to facilitate medivac and search activities and community safety would improve considerably. The helicopter hangar could possibly be used to house a plane.

While the Shire is not formally proposing such a move at this time, it is presented here as another example of a local solution to a problem and in this case, a very fundamental one. By bringing the community in, by involving the community in problem solving, effective arrangements can be arrived at. These can also be cost effective and develop community capacity to provide community services.

These two cases demonstrate that there is another way to achieve effective service delivery without resort to contracting services out, even essential services currently provided direct by the Commonwealth.

6.5 Summary & Proposals

The current complex and piecemeal system of service delivery is problematic. It is in many instances inefficient, lacks transparency and fair separation of roles, doesn't engage the community, works against community development and self sufficiency and doesn't provide essential services.

The Commonwealth struggles to delivery efficient and effective community services, makes costly and ineffective arrangements with the State of Western Australia, has no clear planning about service provision and excludes the community from decision making. As a result, the Commonwealth has failed to acknowledge its greatest asset: the community. If the Commonwealth was committed to effective community service provision, and to developing community capacity to take initiative and be involved in decision making, tangible benefits would flow.

Community service delivery and community development are at the heart of the issue of better governance arrangements. Decision making about community service provision is a key place to start. Decisions in community hands about the best way to solve issues of community need in culturally appropriate and locally effective ways



will create the best outcomes while developing community capacity in other ways. It would also engender much needed confidence that the community's future is in its own hands.

Steps to achieve this transformation could include:

Immediate

1. The Commonwealth agree to review all SDA's irrespective of current end date.
2. The community through the Shire/on-Island Government become a party to SDA's that involve direct service provision to the community.
3. The Commonwealth agree to the community participating in the specification of all SDA's. This specification setting to be a properly resourced and informed process.
4. The Commonwealth put all community service provision, including that provided direct by the Commonwealth, on the table for community engagement in planning effective delivery arrangements.
5. The Commonwealth support the establishment of a community development agency to advocate for and develop the community as an effective resource in decision making about community service provision.

Longer Term

6. Community service provision arrangements are progressively handed over to the Shire/On-Island government within an agreed timeframe and with an agreed level of resources.



Chapter 7 - Role of the Shire of Christmas Island

Term of Reference 2

Current and future governance arrangements for the Indian Ocean Territories ... in particular the role of the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands

7.1 Overview

Much has already been said and proposed about the role the Shire could take in address the interrelated elements of improved governance arrangements. While specific proposals are addressed in detail in the following chapter, here the current role of the Shire is considered.

It is the Shire's submission that the role of the Shire of Christmas Island must be viewed in its historical and legal context. This includes the legal transfer of responsibilities from the Christmas Island Assembly and Christmas Island Services Corporation in 1992, when the Western Australian Local Government Act was applied, and the greater and developing role envisaged for the Shire in the absence of a State Government.

It is also the Shire's submission that the Commonwealth has overlooked or ignored the role of the Shire from both a legal and historical perspective. This is wrong and unfair. In essence the Commonwealth views the Shire as only having the role of a remote mainland local government whereas the Shire believes this was never the intention, as the Islands in the Sun recommendations and the subsequent legislative instruments which gave rise to the Shire, attest. There is an unbroken link between the Christmas Island Assembly and the Shire Council that must be understood. A broader role, including decision making power, beyond that of a local government was envisaged. As time has gone on, the Commonwealth have conveniently forgotten this link

In a related contextual sense, the difference of the role of local government in a two tiered system of Government, as opposed to its role in a three tiered system of government, must be understood. In essence the role of a local government in a non-self governing external territory is significantly different from the role of a local government in a mainland state or territory. These differences make the two



fundamentally incomparable. In this context as well, the Commonwealth's insistence that the role of the Shire of Christmas Island must be the same as remote mainland local government is wrong and unfair.

There are legislative and organisational barriers to the Shire being a local government "just like on the mainland". The Shire has attempted to clarify its legislated local government role, to establish a fair asset base, to utilise "mainland" systems of local government advocacy and advice, and to access systems and arrangements available to mainland local government. Despite these efforts the Shire remains different from mainland local government.

The lack of a comparable electoral franchise is also a key distinguishing feature. While a vote in Federal Government via the Northern Territory is in itself problematic, the very fact of a lack of state type representation means the Territory has less political representation than is the norm.

In turn, the relationship with the Commonwealth government is problematic. While the Commonwealth attempts to provide two levels of government in one, the relationship will never be easy. In essence, the absence of the middle tier of Government, of effective and fair electoral franchise/ political representation, means that responsibility for "state-type" issues is contested ground. The Shire has fought for a greater say in state-type responsibilities and the Commonwealth has fought against any relinquishment or sharing of its "state-type" powers.

The nub of the issue is this: the community want a similar level of involvement in decisions that are normally the province of State Government, and look to the Shire as the means of having this say, whereas the Commonwealth wants to keep State Government type decisions as its exclusive province. While the Government keeps articulating its policy of incorporation of the Territory into the State of Western Australia as the solution to the community's desire for involvement in decision making – but never does anything about it – the community are held captive to an empty promise. The Commonwealth has its cake and eats it too, and the community is left with bread and circuses²⁰⁷.

²⁰⁷ Encarta Dictionary: Something done or given to keep people happy, especially something provided or encouraged by governments to win popular appeal or avert public unrest.



It is the Shire's submission that there is another approach. That is, to do something now: to work with the community via the Shire to achieve substantive and practical changes that enable the community to have a fair level of involvement in decisions that affect their everyday lives. While longer term solutions to effective and fair governance are resolved, the Shire can be an immediate means to transfer or share decision making. The Commonwealth can facilitate this, if the will is there. It requires a fundamental shift in the relationship between the Commonwealth and the community, based on the principles of equality, respect, honesty, working in partnership, resource and power sharing, and sustainability.

Commonwealth actions to date do not engender community confidence that the Government want the relationship to change. However, the Shire believes that the relationship can change, and that it has the capacity and commitment to work with the Commonwealth to achieve this change. Working with the Shire as the only democratically elected representative body is another key step towards improving governance arrangements.

7.2 The Shire in Context

The Shire context includes its legal formation and its operation within a two-tiered system of government. Each aspect is discussed in turn.

- Legal Formation

The Shire came into being on 1 July 1992 when the law reform process commenced. Pursuant to the Local Government Act 1960 (WA) (CI), subsequently the Local Government Act 1995 (WA) (CI), the Christmas Island Shire was created.

The Shire replaced the Christmas Island Assembly and the Christmas Island Services Corporation. The Christmas Island Assembly was created by the Commonwealth by the enactment of the Christmas Island Assembly Ordinance 1985. This was the first form of legislated representative government for Christmas Island.



The Christmas Island Services Corporation was created by the Commonwealth by enactment of the Christmas Island Services Corporation Ordinance 1984. The Corporation was a Commonwealth entity created to normalise mining arrangements by separating non-mining functions from PMCI.

The Christmas Island Assembly had a broad role including directing the operations of the Services Corporation, as described in section 4 of the Ordinance:

- Direction to the CISC in the performance of its functions
- Advice to the Minister on legislation requirements for the CISC
- Co-ordination of community views and provision of these to the Commonwealth on
 -
 - ❖ Matters that relate to the administration of the Territory that cannot be dealt with by the Administrator; and
 - ❖ The social, political and economic development of the Territory
- Advice to the Commonwealth on land use in the Territory
- Carry out functions conferred on it by a law of the Territory

The functions of the Services Corporation, in accordance with section 4 of the Ordinance were:

- Parks, gardens and other areas of land for community use
- Museums, libraries, theatres and places of public entertainment
- Cemeteries and burial grounds
- Public health & sanitation
- Sewerage and drainage works and public sanitary conveniences
- The collection and disposal of waste
- The supply of water
- The lighting of public roads and paths and other public places
- A public transport service
- Community services
- Commercial activities
- The hiring of vehicles, plant and equipment
- Housing and property management
- The construction, maintenance and demolition of buildings, roads, fences, signs and other structures



- o A plan for the development and use of land whether by the Corporation or otherwise

As at 1 July 1992 these organisations came to an end, to be replaced by the Shire. The Assembly and Corporation ordinances were repealed.

The legal transfer of powers and responsibilities from the Assembly and Services Corporation was legislated via the Local Government (Transition) Ordinance 1992, made pursuant to the *Christmas Island Act 1958*. This Ordinance covered a range of matters pertaining to transferring assets, employees and the like, to create a seamless and clear transition.

In essence, notwithstanding the introduction of Western Australian local government legislation, Assembly members become Councillors and Corporation employees became Shire employees and the Shire was to take on all of the Assembly and Corporation functions and roles.

Section 6 of the Ordinance set out this transfer in the following terms:

Assets, liabilities, rights and obligations of the former Assembly

- (1) On the commencement of the *Territories Law Reform Act 1992*:
 - (a) all property and rights vested in the former Assembly or CISC immediately before the commencement day vest in the Shire council; and
 - (b) all liabilities to which the former Assembly or CISC was subject immediately before the commencement day become liabilities of the Shire council.
- (2) The Shire council may enforce any rights and deal with any liabilities as if:
 - (a) the *Services Corporation Ordinance 1984* had not been repealed; and
 - (b) the *Christmas Island Assembly Ordinance 1985* had not been repealed.
- (3) The Commonwealth may assume any of the Shire council's property, rights or liabilities with the agreement in writing of the Shire council.



The Shire contends that this Ordinance created a local government with additional roles as held by the Assembly and additional functions as held by the Corporation. Further, that the Commonwealth was and is obliged to negotiate any change to these rights and functions by agreement with the Shire. As such, the Shire as created in 1992 was different from mainland local government, and retains these differences to the present day.

The Commonwealth has chosen to ignore the legal history of the Shire and the rights that flow from this history:

- o While the Shire may coordinate community views, and seek to present such views to the Commonwealth, the Commonwealth does not recognise this role, particularly in relation to social, political and economic development.
- o The Shire is not recognised as having any role in regard to the administration of the Territory
- o The Shire is not considered a source of advice on land use. Rather, the Commonwealth decides land use, often without regard to the Shire, including without regard to the Town Planning Scheme²⁰⁸.
- o The Commonwealth decided to tender out water and sewerage services without the Shire's agreement.
- o The Commonwealth has sought to narrow the question of asset provision/transfer to that which relates to core local government roles only.

This refusal on the Commonwealth's part to acknowledge the broader role of the Shire, as contemplated in the transfer of Assembly and Corporation roles and functions to it, continues as a critical point of contention.

The Shire also looks to the considerations within the Islands in the Sun report as support for this position. The Parliamentary Committee recommended that²⁰⁹ –

“the Commonwealth accelerate the development of administrative and political reform on Christmas Island to ensure the progressive development towards the establishment of a local government body with an expanded role, including direct access to the

²⁰⁸ The positioning of the temporary and permanent IRPC are cases in point, as are decisions regarding the construction of IRPC housing and workers camp.

²⁰⁹ Islands in the Sun, 1991, Recommendation 7



Commonwealth Minister in respect of the laws to apply on the Island, for reviewing their appropriateness to the Territory.”

The report saw the Christmas Island Assembly expanding its role rather than the creation of local government with an additional role²¹⁰. The Committee also reported on the situation of the Assembly, particularly that it had been dissolved in 1987 with the Administrator appointed in its place until late 1990²¹¹, and concerns expressed by the Centre for Comparative Constitutional Studies that Islanders were potentially subject to political subordination as a result. As they commented²¹² –

“.. the fact that the functions of the Christmas Island Assembly have been performed for long periods not by a representative body but by a person appointed as the Acting Assembly, would seem to tip the balance back towards political subordination”.

The fact that the Administrator had acted as the Assembly for a considerable period concerned the Parliamentary committee to the extent that they recommended the position be reviewed, as a special case in their consideration of “the extent to which the legal regime of the Territory, is generally appropriate to the circumstances of the Territory”. They reported that doubt had surfaced as to the continued validity of the Administrator’s role.

The fact that the Administrator, who under the Administration Ordinance 1968 “administers the Territory on behalf of the Commonwealth” also administered the Assembly for around half of the time it existed, provides some insight into why the Commonwealth has not recognised the broader role of the Shire as envisaged by 1992 transition ordinance:

- The community had very little experience of democracy and decision making over the period 1985 – 1992
- The Commonwealth retained control through its powers to dismiss the Assembly, and did not hesitate to use it. The message to the community,

²¹⁰ Islands in the Sun, 1991, paragraph 3.10.16, p 57

²¹¹ Islands in the Sun, 1991 p 60-61

²¹² Islands in the Sun Report, 1991 p 44



despite promises of a greater say, was that the Commonwealth could take democracy away as soon as grant it²¹³.

- o The Commonwealth did nothing to encourage the Assembly to take a strong role in the community. At best, it was lip service democracy. The relationship between the Assembly and the Corporation was also flawed: trying to representing the community but having to direct a Commonwealth organisation did not work.
- o The creation of the Shire in 1992 entailed a lot of work and learning for newly elected representatives and employees alike. Learning the ropes of local government left little time or opportunity for advocacy in regard to broader social and political rights.

Whatever the reasons, the Shire's submission is that legal rights exist for the Shire to have a broader role than that of mainland government, which the Commonwealth refuses to acknowledge. Further, this view is in accord with the conclusion reached by the Islands in the Sun report, which gave rise to the law reform system that created the Shire, that²¹⁴ –

“The continued development of a program for increasing the level of self regulation by the Christmas Island community, and the devolution of powers to its elected body, is essential”.

In summary, the legal formation of the Council via the transition from the Christmas Island Assembly and Christmas Island Services Corporation is relevant to the question of the role of the Shire as created in 1992 when Western Australia local government legislation was applied to the Island. The broader role

²¹³ The Commonwealth actions in 1999-2000 to establish a monitoring committee and hold an inquiry into the appointment of a staff member demonstrates the Commonwealth's continued desire for control over the affairs of the democratically elected local body. In late 1999, under the guise of a Western Australia Local Government Department "Progress Report" to the Commonwealth assessing the Shire, the Shire was attacked for strong factional elements, trying to make "political points with the Commonwealth Government" and for appointing a staff member, which the Minister was concerned about. The establishment of wards was proposed, and a monitoring panel and a staff inquiry implemented. A subsequent review by the Department of Local Government found no evidence of factions having a negative impact on the Council; reported on the Chief Executive Officer's view that "an independent study undertaken to assess the costs and benefits of implementing a ward system would be perceived by most residents as an independent study to assess the costs and benefits of implementing a racially discriminating ward system"; and noted that all Councils in Western Australia have a political role. In an inquiry into staffing conducted by the Department pursuant to s8.3(2) of the Local Government Act 1995 (WA) (CI), no contravention of the Act was identified in relation to the employee the Minister had complained about.

²¹⁴ Islands in the Sun Report, 1991 p 203.



so created has been to a large degree ignored. Despite this, the Shire's legal constitution should be considered in relation to the current question of the appropriate role of the Shire Council within the system of governance.

- Two tiers of Government

As noted above, the governance system operating in the Territory of Christmas Island consists of two tiers, rather than the "normal" three tiers of government found in mainland states and territories.

It is the Shire's submission that not only does this different governance system set the Island and the Shire apart from mainland arrangements, it is also fundamentally unfair. This is particularly the case because there is no Territory government: the Commonwealth takes all the Commonwealth and State-type responsibilities and styles the local government as if it were one operating within a three tiered mainland system.

The Shire outlined its concerns on this point in a motion to the National Congress of Local Government in 2003 as follows:

- The IOT's are non-self governing external Territories of Australia.
- The Commonwealth has exclusive jurisdiction over the IOT's.
- There is no Territory government. The Commonwealth has responsibility for all Commonwealth, State and Local Government services.
- Most Commonwealth responsibility for the IOT's rests with one Federal Minister, the Minister for Territories.
- The Commonwealth is the largest landowner in the IOT's.
- "State" government responsibilities of the Commonwealth are delegated to public servants of the Department of Transport and Regional Services (DOTARS).
- The Commonwealth has applied the laws of WA to the IOT's to provide comparable treatment to mainland communities. This contrived and indiscriminate legal system is seriously flawed: the laws often lack any practical effect; give rise to conflicts of interest and the potential for abuse of power by the Commonwealth, and is insensitive to local needs.
- IOT residents vote in Federal elections in the Northern Territory. They don't have any state voting rights.



- The only democratic level of government in each IOT is local government. The Shires are expected to operate “like a local government in WA” without any of the WA systems, policies or programs available to WA local governments. WALGA is limited in what it can do to support IOT issues.

“The situation in the IOT’s is undemocratic and unfair. Nowhere else in Australia suffers this level of Commonwealth political and bureaucratic control over local matters. There is no Commonwealth policy to support Territory government for the IOT’s.”

The National Congress unanimously endorsed the following motion:

“National Congress recognises the special situation of the Indian Ocean Territories local governments in operating in a two - rather than three - tiered system of government. Without State/Territory type Government, the Indian Ocean Territories are denied political and electoral rights enjoyed by all other Australians. The local governments of these external Territories are the only level of democratic decision making available to their communities. They don’t have direct links with any State or Territory and hence don’t enjoy the political advocacy or transparency available to local government in the three-tiered system. The denial of political and electoral rights is undemocratic, unfair and unacceptable.

“National Congress supports the IOT local government’s in pursuing the democratic right of Islanders to make decisions about Territory issues.”

The above example also illustrates that the Shire has attempted to utilise existing local government advocacy mechanisms to pursue its aims. However, as outlined to the National Congress, it is difficult to effectively utilise such mechanisms because the Shire of Christmas Island, situated in a non-self governing external territory, doesn’t “fit”.

Examples of not “fitting in” include:

- Western Australian Local Government Association (WALGA)

Both the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands are members of WALGA. The WALGA provides advocacy services on behalf of Western Australia local government to the Western Australia State



Government, offers bulk purchasing and tender approval arrangements, industrial advice and collective advocacy on award conditions, legislative advice and training.

To a significant degree the services provided by of WALGA are irrelevant to the Indian Ocean Territories²¹⁵. The Western Australia Government has nothing to do with the Indian Ocean Territories, industrial conditions do not extend to the Indian Ocean Territories and legislative advice is not necessarily correct in an Indian Ocean Territories context. WALGA cannot advocate direct to the Commonwealth on the Shires' behalf, only offer advice to assist the Shires making their own approach.

The WALGA is structured into Western Australian zones for advocacy purposes. Christmas Island has been placed in the Kimberley Zone and Cocos (Keeling) Islands in the Pilbara Zone. As the issues dealt with by the zones are specific to the region (eg regional resource sharing), to large degree their work is irrelevant to the Indian Ocean Territories.

- o Indian Ocean Territories Policy Forum

In 2003, the WALGA created the Indian Ocean Territories Policy Forum (IOTPF) as a means of enabling the Indian Ocean Territories' Shire's to meaningfully discuss local government issues of mutual concern.

The IOTPF wrote to the then Minister for Territories Tuckey in early 2003 setting out a number of decisions it had made regarding the establishment of a regional council²¹⁶ with responsibilities for a range of state type services and movement towards self governing status for the Indian Ocean Territories. Minister Tuckey's response skirted the issue of the establishment of a regional council but commented instead on service delivery and self government as follows:

²¹⁵ This is not a criticism of WALGA; their mandate is in Western Australia and they do what they can to assist Indian Ocean Territories

²¹⁶ As mentioned in the Chapter 5 – The Applied Laws System however, the Indian Ocean Territories' Shires can't enter into formal arrangements such as a regional government, because each has a separate legal regime applying. The IOTPF were unaware of this legislative barrier at that time.



“The extent to which your local authorities become local service providers will depend heavily upon the performance of current responsibilities and most importantly the creation of political structures that guarantee representation of the various business and social interests within your communities.

“I have raised this issue previously and await some formal suggestions²¹⁷.

“Service delivery is in my mind a logical responsibility for local government. However, I do not consider this process should be translated to the concept of “self-government” as understood in Australian Constitutional law.

“Were the Norfolk model to apply it must be recognised there would be a substantial reduction in Australian Government funding and benefits which must be replaced from revenue raising capacity within your community”.

In essence, the response likened the Indian Ocean Territories Shires to local government elsewhere and argued against any move towards self government, using a threat of reduced financial resources to deter pursuit of such an objective.

While the IOTPF continue to meet regularly, without a structured base to proceed from, there is little the Shires can collectively achieve through this Forum.

- o Partnership Arrangements

The problem of obtaining advice and advocacy services from an organisation dealing with State Government and the fact that it is the Commonwealth Government that the Indian Ocean Territories have to deal with is best illustrated by the case of state-local government agreements.

In late 2002 a partnership agreement between WALGA and the Western Australian Government²¹⁸ to improve “cooperation between State and Local Government to enhance sustainable social, environmental, and economic

²¹⁷ The Minister had alleged that the Shire Council wasn't representative of the community, an echo of concerns of factionalism raised in 1999.

²¹⁸ State/Local Government Partnerships December 2002



development of Western Australia through consultation, communication, participation, cooperation and collaboration at both strategic and project levels”, was formalised. The Partnership agreement was signed by the Premier of Western Australia, the Minister for Local Government in Western Australia and the representative local government organisations.

The Indian Ocean Territories Policy Forum developed and proposed a similar partnership agreement to the Commonwealth. The Indian Ocean Territories Shire Councils believed that such an agreement was important both in terms of the specific context and “mainland comparability”: if local governments in Western Australia could have partnership with the Western Australia Government, the Indian Ocean Territories were entitled to seek a comparable agreement with their “State” Government, the Commonwealth.

The Assistant Secretary of the DOTARS Territories Branch responded in the following terms:

“I understand that it is not uncommon for State governments to have arrangements in place with local government entities on a range of matters. However your suggested model seeks an arrangement with the Commonwealth which would be inconsistent with the relationship of the Commonwealth with individual local governments. You should also be aware that it is not possible for the Minister with responsibility for territories to make commitments on behalf of other Ministers and Commonwealth agencies.

“However, I believe that the development of closer working arrangements and robust networks between this office, in its “State government” equivalent role, and the Shire Councils in the Indian Ocean Territories is desirable.

“Therefore I suggest we develop an alternative model reflecting the spirit of your proposal but which has the overarching objective of improving communication flow at the State/Local level.

“I would see such an arrangement, as suggested in your documents, as not being legally binding but rather an expression of intent on behalf of both parties. The arrangements need not be overly formal and I believe it could be achieved through an exchange of letters”.



In essence, a State/Local Government Partnership agreement in a State context doesn't translate into a Commonwealth – Local Government context: instead of a formal political agreement, the Shires were offered an exchange of letters with a Canberra bureaucrat limited to consultation and communication only.

- o Area Consultative Committees

As noted previously, despite recommendations and requests the Government has refused to establish an Area Consultative Committee on the Island as are in place in every state on the mainland. Instead the Administrator's Advisory Committee was established, which proved to be ineffective and is now defunct.

These examples illustrate that the Shire, in effect, has the worst of both worlds: an ineffective local government framework and a denial of a state-government type role despite the absence of a state government.

The 1995 Commonwealth Grants Commission within its mandate to look at "the most efficient, effective and appropriate means for delivery of government services on Christmas Island", considered the question of greater autonomy for the Island²¹⁹. This was in the context of a range of concerns including²²⁰ –

- o Lack of a state level of government – "... residents .. can exercise political influence only through their Commonwealth and local government representatives"
- o Lack of effective Commonwealth electoral arrangements – "We noted in our 1993 report of the Cocos (Keeling) Islands that the association of the two Indian Ocean Territories with representatives located in the Northern Territory made it difficult for both the residents and their representatives. We are still of that opinion".

As well as looking at ways to improve community involvement in the applied laws system and SDA's, the Commission also recommended that steps be taken to

²¹⁹ Commonwealth Grants Commission report on Christmas Island Inquiry 1995, Chapter 10, pp 111 - 120

²²⁰ CGC 1995, p 111, paragraphs 10.1 and 10.2.



enhance the political representation and autonomy of the community. The Commission favoured greater autonomy, proposing that “ a single unit of government (the Christmas Island Assembly) having all the roles & responsibilities of a Shire Council and many of the functions of a State Government” be created.

On the basis of considerations around the issues of responsibility and resources/ accountability, the Commission explained their reasoning as follows²²¹:

“The Shire already operates as a fully authorised local government unit and the transfer of its roles to the Assembly would not change the degree of autonomy on the Island. At the state-type level however, a phased move to full autonomy could be achieved by gradually reducing the functions in which the Assembly operated in an advisory role as its sphere of decision making was expanded. The rate at which this happened, and the timing of the transfer of each function (including taxes) could be decided through consultation between the Commonwealth and the Assembly.”

“We believe that the Christmas Island community is, or very soon could be, capable of providing a group of sufficiently competent people to take responsibility for state-type government, if they were given the appropriate resources and support. .. In any case it would be possible for the local body to buy in services from mainland governments (through something like the SDA's) and, if it were to limit its activities to describing the services required, negotiating the arrangements and managing the contracts, we see no reason why it could not provide adequate services at a reasonable cost”.

The Shire generally supports the Commission's recommendations, particularly that the Shire's role is expanded to progressively include state-type functions. With proper planning and adequate resources, the contested ground would be resolved.

In summary, the different context in which the Shire of Christmas Island operates compared to mainland local government must be understood and acknowledged. Further, it is unfair because the local government on Christmas Island doesn't have a Territory Government role. Whether by legislation or by negotiated settlement, the role of the Shire must be broadened to allow a similar level of decision making as is available to citizens of Australia elsewhere. There

²²¹ CGC 1995, p 111, paragraphs 10.11 and 10.15 respectively.



must be an acceleration of administrative and political reform to enable the Christmas Island community to achieve a truly similar level of democracy.

The question of a form of government to achieve this transfer of roles is taken up in more detail in the following Chapter. The balance of this Chapter looks at the current role of the Shire of Christmas Island and what it sees its role could expand to include.

7.3 Local Government Role

Despite only 13 years of operation, the Shire of Christmas Island meets all its statutory and regulatory roles in accordance with the Local Government Act 1995 (WA) (CI). It has an effective and representative Council and approximately 50 employees providing a range of services and functions, some beyond the “normal” role of local government.

Issues and concerns still arise, not least of which is its low asset base and unfair treatment in relation to asset control, its arguably unfair treatment under Financial Assistance Grant arrangements, problems in understanding the translation of applied laws into a Territory context, a low level of understanding of local government roles by many residents due to their low level of exposure to “mainland” governance arrangements, a low level of experience and acceptance of paying for services such as rates and service charges, and difficulties arising from isolation such as the low level capacity to share resources.

Despite these difficulties, the Shire is performing very well²²². Detailed information about the Shire, what it does and what issues it faces are set out in this section.

- The Council

²²² See for example the Western Australian Department of Local Government SDA report 2003/04: “The Shire continues to deliver a high level of service to its community. It has achieved an accountability standard and a financial and statutory compliance standard equivalent to local governments in rural and remote Western Australia,” at page 49.



The Shire Council comprises nine members who are broadly representative of the community. Current Council has four members of Chinese ethnicity, three of European ethnicity and two of Malay ethnicity.

Councillors elect their President and Deputy President and elections take place in the same manner as occurs in Western Australia. Representation is not divided into wards.

The Shire Council has established a number of committees comprising Members, officers and external representatives. Current committees are:

- o Audit Committee
- o Community Consultative Committee
- o Land Planning Committee
- o Culture & Heritage Committee
- o Community Welfare Committee
- o Policy Committee
- o *The Islander* Editorial Committee

Councillors participate in WALGA and ALGA and Indian Ocean Territories Policy Forum meetings, attend professional development in conjunction with the Western Australian Local Government Week, adhere to a code of conduct, operate within an expanding policy base, bring community issues forward at Council meetings, and otherwise operate within the requirements of the Local Government Act 1995 (WA) (CI) and related regulations. Councillors also represent the Shire on external committees such as Christmas Island National Park Advisory Committee, the Community Consultative committee for the Detention Centre and the Health Advisory Committee. Council also coordinates community campaigns such as the campaign against the Australian Government in response to the 'no casino' licence decision and the privatisation/ partial closure of the health service.

The Community Consultative committee is the primary means by which the Council consults with community groups. In addition Council has a community consultation policy which guides consultation across all its spheres of operation.



Council also has a strategic plan, which was developed through concerted community consultation in 2002.

- The Shire

Managed by the Chief Executive Officer, the Shire provides regulatory, works and community services generally in line with mainland local government. The Shire is divided into six sections with services as follows:

- Administration – Services to Councillors, and corporate services such as records management, HR and personnel and policy development. This section is also responsible for community assistance including financial support to the tourism association, and coordination of community participation in events such as Australia day and Anzac day.
- Finance & Information Technology – This section is responsible for managing the finances of the Shire, payroll, and the levying and collection of Shire rates. It provides budget management services to all sections of the Shire, manages the Shire's computer network and asset register and provides oversight of purchases and payments.
- Works & Services – This area covers the development and maintenance of public roads on island and the development and maintenance of parks & gardens. This section also has responsibility for things like road signs and line marking, pedestrian crossings, public shelters and seating, public playground equipment, cemeteries, stormwater maintenance, erosion and sediment control and Shire vehicle fleet management. A mechanic has been employed to do vehicle inspections as well as maintain and service Shire road plant, vehicles and equipment. This section also manages the Motor Vehicle Registry, a function recently transferred from the Police to the Shire. Work of the section is either performed by Shire employees or tendered out to contractors. Community members can also get private work performed through this section and hire equipment. The development of the second stage Light Industrial Area is also managed by this section.
- Planning Building & Health – The section has the responsibility for town planning (sub divisions, zoning of land for particular types of activity such as residential or industrial) and approving particular building plans and



- construction. The Shire also has a responsibility for public and environmental health issues. This includes everything from dog control, food handling in restaurants, smoking in enclosed public places, noise control, litter control, the keeping of poultry, and the burning of rubbish. A ranger is employed to patrol in the community to deal with nuisances and problems facing community members. This section also manages the collection of residential and commercial waste and the operation of the tip site and building maintenance and upgrade of Shire buildings including its main office, Shire houses, the Poon Saan Community Hall and the Settlement Sports Hall.
- o Community Services – This section is responsible for a range of social services to the community. This section of the Shire manages the Law Reform community consultation process, provides Centrelink services through an agency agreement, assists community members with immigration matters, provides the public library, oversees the community welfare fund and works with the community to develop and deliver a range of community services. Current priorities include providing social programs to seniors, developing and implementing school holiday activities. This section is also responsible for the fortnightly publication of *The Islander* - the only on-Island newspaper, the maintenance of an up to date library of laws applying on the Island, and electoral matters
 - o Recreation Centre - In 2005 the Shire commenced management of the new purpose built Recreation Centre. Located near the cricket ground, the Centre provides a 25m 8 lane swimming pool, large sports hall, gym, crèche, function facilities, and a range of sports and recreation programs and competitions.

Overall, the Shire of Christmas Island is an active and effective local government with a strong community service and political focus.

- Issues

The Shire Council faces a number of issues in undertaking its roles and functions:

- o Financial support
Like all local governments, the Shire's primary funding comes from two sources: rates and a financial assistance grant. Although starting from a low



base, the Council is incrementally increasing the percentage in the dollar rates contribution up to the level assessed by the Western Australia Local Government Grants Commission (WALGGC). The WALGGC, via a service delivery arrangement with the Western Australia Department of Local Government, provides an assessment of the Financial Assistance Grant (FAG) as advice to the Commonwealth on the level of funding the Shire requires.

Each year the Shire makes a submission to WALGGC, seeking special consideration on the basis that Christmas Island is not the same as local government in Western Australia. The Shire specifically advocates that the Grants Commission:

- Apply all relevant local government assessment methods and disabilities
- Recognise the unique historical, cultural and political and legislative circumstances of Christmas Island and the place of local government in this context by applying range of special disability factors
- Provide full equalisation on the basis that the lack of ‘normalisation’ makes Factor Back unfair and untenable. Factor back is what WA local governments are treated to, because of the shortage of Federal grants to meet local government needs. In essence, local governments get around 92% of their assessed need because of this shortfall.

Each year the Grants Commission recommends full equalisation, and each year the Commonwealth decides to apply the factor back calculation. As the Grants Commission advised DOTARS – Perth in August 2004²²³ –

“At the 12th August 2004 meeting of the Western Australia Local Government Grants Commission, the Commission resolved the following:

1. That the Commission advise the Commonwealth Territories Office of continuance of its belief that the full equalisation requirement should be paid, ie;

	Preliminary	Local Road	Total Grant
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²²³ Letter to the Director Territories Office Perth 16 August 2004



	Equalisation Requirement	Funding	2004-05
Christmas	2,210,640	237,046	2,447,686
Cocos	1,434,606	71,588	1,506,194

2. That the Commission advise the Commonwealth Territories Office that the financial assistance grants to the territories would be, in accordance with their request for advice for a factored back assessment based on the mainland method:

	(Factored Back) Average Equalisation Requirement	Local Road Funding	Total Grant 2004-05
Christmas	1,730,667	237,046	1,967,713
Cocos	1,079,622	71,588	1,151,210

In dollar terms the difference is substantial (approximately \$0.5million in the Christmas Island case).

The Shire has sought reconsideration of this decision of the Commonwealth to apply the mainland factor back method of calculation, most recently in correspondence to the Minister for Territories in August 2004²²⁴. As well as arguing against the factor back method being applied, the Shire also highlighted that on a per capita basis Christmas Island was well behind many remote local governments on the mainland²²⁵.

In response, the Minister advised that the factor back would continue as a normalisation process and that the Shire should seek other sources of funds, including raising more money from rates. As he said²²⁶ -

“As you are aware, the Australian Government believes that the Indian Ocean Territories will be best served through incorporation into an existing State or territory are pursuing a policy of normalisation of legislative, administrative and institutional arrangements. Consequently, the funding being provided to

²²⁴ Letter to the Minister for Territories 27 August 2004 re the Assessment of the Shire’s Financial Assistance Grant for 2004/05

²²⁵ For example, Murchison - \$9,435 per capita at the top end and Mount Magnet - \$1,304 at the bottom end compared to Christmas Island \$980 per capita.

²²⁶ Letter from the Minister for Territories dated 15 November 2004.



the Shire of Christmas Island has been calculated by the WALGGC according to the same methodology and factor back ratio used to calculate FAG funding for Western Australian local councils, which I understand represents 92.2% of full equalisation.

“As the Shire should be aware, there are various avenues by which the Shire could possibly obtain additional funding. . . The Shire also has the ability to increase rates and charges to raise additional revenue. I would therefore not propose to increase the level of funding provided to the Shire through the Financial Assistance Grants”.

As the Shire has outlined in previous chapters, treating the Shire like the mainland is unfair, as it disregards a range of factors that differentiate the Shire and the island from the mainland. Further, that applying policies and practices just like on the mainland, without pursuing improvements to governance, is also unfair.

The Shire also points to a number of other factors which make this treatment unfair. These issues are routinely raised with the WALGGC as follows:

- ❖ The Shire is only 13 years old, whereas mainland local government has been in existence for over 100 years. Developing structures, systems and practices in accordance with the Local Government Act 1995 (WA) (CI) over this short period has put greater demands on the Shire, particularly in terms of training and development, a fact recognised through development programs delivered via the Western Australia Local Government Department.
- ❖ Historical factors such as the previous Commonwealth practice of providing many free services have increased expectations on the Shire to provide services while decreasing the Shire's ability to obtain income from service provision and raise revenue via rates
- ❖ Sea freight costs have increased from \$80m³ in 1999 to \$240m³ in 2005



- ❖ The Shire produces the one and only island newspaper and is required to translate many documents/bulletins into Mandarin and Bahasa Malayu
- ❖ Council has a position within the community which is unique and different to that of a mainland Shire. It fulfils a number of what are effectively State Government functions and plays a political and civic role beyond what would be expected of local government elsewhere. This includes dealing with enquiries and providing advice on matters that would normally be dealt with by State government departments, hosting visiting State & Commonwealth dignitaries and bureaucrats and providing a 'shop front' for State & Commonwealth departments. This can vary from a civic reception for Minister Hardgrave, to touring the island with visiting dignitaries, arranging meetings and venues for them, organising dinners with Councillors, Island Cultural organisations and senior staff, and providing interpretation.
- ❖ Location and historical factors continue to contribute to high human resource costs. Increases to annual leave airfare costs have occurred (with airfares to Perth now costing \$1,750.00 return). As the Shire aligns its allowances with the Commonwealth, and in effect has inherited APS conditions from the Commonwealth due to the CISC – SOCI transfer, and as a matter of equity continues to observe this nexus.
- ❖ The applied WA laws regime has operational complexities that are not an issue for Local Governments in WA. This is due to the lack of support agencies, boards, tribunals, etc (e.g.: Building Disputes Tribunal, Fines Enforcement Agency) that would otherwise allow the smooth operation of law as well as the higher uncertainty associated with transferring state laws to a commonwealth context. The absence of advice and assistance, and whilst uncertainty continues, a special factor would recognise that the Shire has additional expenditure requirements
- ❖ The Shire is providing considerable senior's services which would elsewhere be provided by State Government or NGO's via state funding. The Shire is investing considerable resources and time in developing a community development model for negotiation with the



Commonwealth. Welfare issues are only covered in a limited way by current SDA's and Commonwealth direct provision of services such as community health, are not up to mainland standard and are, in any event, under review in accordance with current policy.

- ❖ The location factor should also take account of the need to duplicate specialist plant required for essential services (e.g. garbage truck) so that during breakdown or maintenance the essential service is still able to occur. There is no opportunity to hire in a replacement for a short period as would be the case elsewhere. In addition the cost of purchasing and disposing of plant is far greater than a 'comparable' LG in WA as purchasers of plant must buy sight unseen and the plant must be freighted by sea to any purchaser. This also applies to the purchase of plant by the Shire. The opportunities to buy 2nd hand plant is somewhat restricted as it is financially unviable to travel to view prior to purchasing.
- ❖ The Shire maintains a considerable number of buildings and facilities that are affected by heritage protection under the Register of the National Estate and the heritage system overall requires considerably more resources than would be required on the mainland.
- ❖ The Shire assists community groups to provide community and welfare services where they don't get financial support (eg women's refuge and CIWA music school)

While the WALGGC does recognise some of these factors, it is difficult for it to fully translate "disability" considerations from the Western Australia context into the Indian Ocean Territories context. The way in which the WALGGC has attempted to do this is through their recommendation not to factor back the FAG grant, something which the Commonwealth does not accept on the basis of their "normalisation" of the Indian Ocean Territories, a policy premised on incorporation into Western Australia. This is another example of the Shire getting the worst of both worlds.

- o Asset base

Another key issue for the Shire is the lack of any effective asset base. The 1995 Commonwealth Grants Commission noted that in the transfer of



from the Christmas Island Assembly and the Christmas Island Services Corporation to the Shire in 1992, the Shire was “assigned all the responsibilities of the Services Corporation and given use, but not ownership of all the assets that the Corporation and Assembly had used²²⁷”. In the period since 1992 the Shire has pursued the establishment of an effective asset base, with only limited success.

The 1995 Commonwealth Grants commission reported on problems in Shire infrastructure, noting that concern had been expressed “about the delays in upgrading infrastructure used by the Shire in providing its services²²⁸”. They explained the problem as follows –

“While the Shire has the use of certain land and buildings required to provide its services, it does not have any formal title to them. It is standard practice in the States for local government to own the assets it uses. The ACT and Northern Territory experience was that when they were given the responsibilities, local government type assets previously held by the Commonwealth were handed over with title. We see no reason to treat Christmas Island differently. At the moment the lack of title prevents the Shire from using the assets as security for borrowing. This inhibits its ability to plan efficiently and finance its operations. Action to provide the Shire with title to land and buildings required for its functions should be accorded a high priority.”

The Commonwealth Grants Commission recommended that²²⁹ -

- ❖ an agreed plan be established quickly for providing the Shire with the infrastructure needed for it to discharge its responsibilities efficiently;
- ❖ the Commonwealth ensure that the land and the buildings used by the Shire are in a proper state of repair and comply with mainland health and safety standards; and
- ❖ consistent with mainland precedents, the Commonwealth meets the full capital cost of the Shire’s infrastructure

²²⁷ Commonwealth Grants Commission Report on the Christmas Island Inquiry, 1995 p 12

²²⁸ CGC Report 1995, p 63

²²⁹ CGC Report 1995, p64



The 1999 Commonwealth Grants Commission also considered the issue of assets, noting that²³⁰ –

- ❖ Too much of the activity related to infrastructure is towards contraction and enhancement of assets and too little thought given to whole of life issues such as regular maintenance and the protection of assets from the environment
- ❖ There is confusion as to who is responsible for asset maintenance
- ❖ There is a great deal of Commonwealth infrastructure that is not being used for Commonwealth purposes and confusion arises about who is responsible for asset maintenance as a result
- ❖ The Shire is using some Commonwealth infrastructure to provide local government services. Responsibility for these assets can easily be settled by transferring ownership of them to the Shire [emphasis added]
- ❖ Such confusion is resulting in insufficient planning and maintenance of the Commonwealth's assets.

The Commission concluded that -

“In overall terms, we consider that a great deal of further thought should be given to the most appropriate way to develop infrastructure proposals and manage assets on a whole of life basis on the Indian Ocean Territories. We are convinced that there are substantial long-term efficiencies to be achieved if the focus can be moved from construction to service provision.”

As noted in Chapter 4 – Economic Sustainability, the Commonwealth focus is still largely on construction projects, not service provision.

The Shire has been seeking to resolve asset issues for some time, based on the service provision. In a letter to the Minister for Territories in 2002²³¹, the Shire sought a settlement of property acquisition and management issues. The Shire was concerned that property acquisition negotiations had stalled –

“From the time the Shire was formed in 1992 there has been an ad hoc process of vesting and transferring properties in freehold from the Commonwealth to the Shire. In 1999, at the time of making submissions to

²³⁰ Commonwealth Grants Commission Report 1999, p 241

²³¹ Letter to Minister Tuckey, 20 June 2002



the Commonwealth Grants Commission thirteen properties had been vested in the Shire with a further six awaiting finalisation. Also, at that time seven properties had been transferred in freehold to the Shire.

“The process now seems to have stalled, although there were two freehold transfers to the Shire in 2001. There are a number of properties, which have, in the past, been recommended as properties to be either vested or transferred in freehold to the Shire.

The Shire proposed that a focus on service provision, as proposed by the 1999 Commonwealth Grant Commissions, was a good place to start –

“The shift in focus from construction to service provision will be beneficial in managing and maintaining assets in the long term because,

1. after the needs of the community are identified, more focus and time will be spent on projects which are needed in the community;
2. the opportunity will be there for the Shire and CI Administration to work together as partners, in the interests of the whole community, by assessing what property is best owned by the Shire to facilitate the efficient delivery of services;
3. less time will be spent by officers at the Shire and CI Administration on tasks associated with the current confusion over asset ownership and management; and
4. more time will be available for both organisations to concentrate on service delivery which is pivotal in addressing the social needs, the economic sustainability, and the environmental preservation and enhancement of CI.

“It is crucial therefore for the Shire and the Commonwealth to resolve outstanding property matters and develop infrastructure proposals that set in place a procedure for issues arising in the future”.

This letter then described in detail what the Shire was seeking in terms of property acquisition, relying to a significant degree on the Commonwealth position put by the Department in 1998²³², but also raising concerns about

²³² Transfer of Property to the Shire of Christmas Island: Vesting, Leasing and Freehold Transfer; prepared by Ms Sema Varova, First Assistant Secretary, Territories & Local Government Division, in March 1998.



the vesting of property, five year lease arrangements proposed by the Department²³³, and property that the Shire believed the Commonwealth had sold unfairly, or without proper compensation²³⁴ to the Shire.

Issues raised in this letter were discussed at a meeting between the Shire and the Minister in June 2002²³⁵ and followed up by a letter from the Department in July 2002 where it was indicated that the Commonwealth would discuss asset transfers on the basis of agreed Shire service provision. The Shire was advised that in considering such transfer on the basis of agreed service provision, “the Commonwealth would need to be comfortable that the range of services is representative of the responsibilities of mainland local government²³⁶”.

In September 2002 the Shire made a preliminary response to the Commonwealth’s proposal to link asset transfer to service provision²³⁷, and also put claims to the Commonwealth in relation to properties²³⁸ as previously outlined to the Minister. In December 2002 the Shire provided a detailed proposal about assets and services.

The Shire received a response to these three letters in late December 2002. This was essentially a preliminary response with commitment to discuss issues in early 2003²³⁹. The Department did comment on the Shire’s claim that services and asset transfers should be considered from a historical perspective, saying in essence that the Shire should forget the past –

²³³ These were proposed in the Varova document as means to “enable the Shire to demonstrate its financial responsibility in successfully managing them. Six months prior to the expiry of the leases, the Shire would be asked to demonstrate to the Minister’s satisfaction its successful management of those locations. A decision could then be made as to further action proposed with those properties”.

²³⁴ The Christmas Island Laundry and Christmas Island Supermarket are the properties in question. The Shire has presented a case to the Commonwealth that the Laundry was a Shire asset when the Commonwealth sold it and the Shire should be compensated accordingly. In the case of the supermarket, the Shire has proposed that at the very least the Commonwealth should have funded the redundancies which the Shire paid when the Commonwealth sold the supermarket. A response has never been received.

²³⁵ Minister Tuckey advised at this meeting that he favoured a “Hong Kong” model of governance for Christmas Island

²³⁶ Letter from the First Assistant Secretary, DOTARS, 20 July 2002.

²³⁷ Letter to Assistant Secretary, Non self governing territories, DOTARS dated 16.9.02

²³⁸ Letter to Assistant Secretary, Non self governing territories, DOTARS – Shire of Christmas Island Property Issues dated 16.9.02

²³⁹ Letter from Assistant Secretary, Non self governing territories, DOTARS dated 20.12.02



"I also note your discussion of the historical property relationship between the Commonwealth and the Shire and claims of unmet commitments. While we would be happy to discuss the issues you raise, I am concerned that they are historic documents that represented the position at the time. With Government policy changes, there is a danger that too much focus on these documents creates the potential for disagreement rather than constructive dialogue. For example, our view would be that the Local Government (Transition) Ordinance 1992 represented transitional arrangements to ensure continuity of service provision and never was intended to indicate longer term responsibilities. Similarly the 'Varova document' represents the views of the Department at the time and makes it clear that arrangements require the approval of the Government, through reference to the Ministers for Territories and Finance."

Despite a commitment to discuss issues, the question of service provision and asset transfers has not progressed at all. Even the Government's 2003 policy, which says that "we are currently working with both the Christmas Island and Cocos (Keeling) Islands Shire Councils to better define the roles of Shires and ourselves as the State Government" has not led to any substantive movement on the question of service provision or asset transfers. Instead, the Commonwealth has made decisions to market test and outsource services that the Shire clearly indicated it had an interest in negotiating with the Commonwealth about.

In summary, the issue of financial support and asset transfers linked to service provision remain as bones of contention between the Shire and the Commonwealth and limit the Shire's ability to provide needed services to the community. Even in its 'core' local governmental role, the Shire has been frustrated by the Commonwealth's lack of attention to negotiating matters with the Shire. Further, 'normalisation', built on the Government's intention to incorporate the Territory into the State of Western Australia and on the erroneous assumption that the Shire must be treated the same as a remote mainland local government, has meant that no progress has occurred. Promises and commitments made have not been honoured and the Shire's concerns disregarded.

7.4 Desired role



As mentioned above, the Shire has provided the Commonwealth with information about what role it sees it could take in relation to service provision. This role has been developed on the premise that the Shire should be able to take on a role that would elsewhere be provided by State Government or mainland local government. The Shire Council has also taken a political role in pursuing greater self government for the Territory, a role also disputed by the Commonwealth. These roles go hand in hand as the Shire seeks to resolve the 'contested ground'.

Comment on these two aspects of the role of the Shire is explained in more detail in this section.

- Service Role

The desired service role of the Shire, as expressed to the Commonwealth in late 2002²⁴⁰, includes:

- Managing the health service, the airport, the power authority, public transport, education, water & sewerage, public housing & community policing.
- Managing available land to assist with local economic development e.g. horticultural, light industry
- Taking on roles currently provided through Service Delivery Agreements with WA State Departments. For example, the Shire could deliver Community Legal Services, with a support contract from relevant State or Federal departments.
- Managing grant funding which is currently with the Territories Office in Perth. The Shire has previously managed the Community Benefit Fund through a committee that included representatives from the Christmas Island Administration and Council. This proved to be a very beneficial process that identified and approved funding that was beneficial to the wider community. The Shire does not see a need for grant applications to go to TOP, forwarded

²⁴⁰ Letter to Assistant Secretary, Non self governing territories, DOTARS dated 16.12.02



to the relevant State department for processing, and returned to TOP for the final decision. A simpler, more effective mechanism, utilising agreed criteria could be managed on island.

- o Managing assets on behalf of the community including:
 - ❖ The swimming pool is managed and operated by the Shire but remains a Commonwealth asset;
 - ❖ Location 299 (old Shire office and timber yard), which is currently operated as the Shire timber yard/swimming pool storage area and Wahoo for Kids which is leased by the Commonwealth to a commercial operator;
 - ❖ The Visitor's Centre (location 445), which is currently a Commonwealth asset, operated by the Tourism Association. Tourist Centres are normally operated by local government, especially in regional or remote areas;
 - ❖ The Neighbourhood Centre which provides a youth centre, child care centre, arts and culture centre/workshop, a community training provider, the social worker, a music teacher and a computer games venue would normally be operated by local government;
 - ❖ The sports hall is managed and operated by the Shire, as is the Poon Saan Community Hall;
 - ❖ Tai Jin House has become a multifunctional community facility, shire chambers, proposed historical governance display area, and a small botanical garden. These services would normally be provided by local government; and
 - ❖ The current stormwater assets are owned by the Commonwealth but managed by the Shire; these assets should be transferred to the Shire

While some changes to asset use has occurred in the meantime (eg the swimming pool is now closed following the opening of the new recreation centre and Tai Jin House, provided on a commercial lease arrangement to the Shire, has been returned to the Commonwealth because the Shire could not afford to maintain it) the list of desired roles remains current.

The Shire has been concerned that the Commonwealth has pressed on with market testing despite commitments to negotiate service provision with the Shire and in full knowledge of the fact that the Shire had indicated its interest in



managing services. Despite this concern, the Shire did tender for the airport but was unsuccessful. In the case of the health service, the Shire decided not to express its interest as it could not meet the preliminary requirements set.

As has been emphasised in many aspects of this submission, the Shire believes that there should be a transfer of responsibilities to it in order to create better and fairer governance arrangements in the Territory. The Shire has the capacity through its strong organisational structure to take on a broader role. The list set out above should be the starting point for broadening the Shire's role.

- Political Role

The Shire Council, as the only level of democratic representation available to the community on Island, has been a strong advocate for a change in governance arrangements. Through its years of operation the Shire has taken a number of actions and made a number of decisions around the question of improved political rights for Christmas Island:

- 1994 – Participated in the “Fair Go Alliance” (a group comprising the Shire, the Union of Christmas Island Workers and the Christmas Island Chamber of Commerce). Decisions from a public meeting about “Our Future” included calling for a referendum on the question of future governance arrangements²⁴¹
- 1994 – Conducted a governance referendum in conjunction with the May 1994 Council elections
- 1995 – Advocated the establishment of inter-island boards to manage state type services²⁴²
- 1999 – Visited Tasmania and Norfolk Island to look at different governance and service delivery models
- 1999 – Conducted a governance referendum in conjunction with the Australian republic referendum in October 1999
- Engaged a political lobbyist in Canberra and participated in external territory forums arranged by the lobbyist

²⁴¹ Meeting held at Poon Saan Hall 24 March 1994

²⁴² Christmas Island Law reform or Service reform or Government Reform, Christmas Island Shire Council April 1995



- o Endorsed a Strategic Plan in 2000 which aimed, in part, to “work toward the attainment of equality in political rights and representation; and equality in social and economic opportunity”
- o Endorsed a Strategic Plan in 2002 which envisaged “Progression towards Christmas and Cocos Islands becoming self governing territories”.
- o Made numerous decisions over the period 1992 - 2004 to “seek self governing status”
- o Sought engagement with various Ministers for Territories over the question of greater autonomy or self determination for the Island

As noted above, the Commonwealth has challenged this role, advocating that the Shire, as a local government, should not have a political role and discounting claims for a greater say on the basis that the community ‘couldn’t afford’ greater decision making:

- o In 1999 the Commonwealth sought an Inquiry into the operations of the Shire and the establishment of a monitoring panel to oversee the operations of the Shire, partly on the basis that its Council was engaged in a political role that was beyond its local government mandate. A report leading to a formal Inquiry and monitoring arrangement said²⁴³ –

“..the elected government is trying to provide good government for the people of its district but it is not achieving that purpose because it has its role confused... We appreciate that the Council may perceive that it has a larger role than local government because of the Island’s territory status. At the present time the elected body of the Shire of Christmas Island has the task of providing traditional local government to the community. It needs to do that well and prove its bona fides”

A subsequent report by the Western Australian Department of Local Government²⁴⁴ contested this view, saying that –

“Christmas Island does not have a State or territory government with which it can take up such issues as it falls directly under the government of the

²⁴³ Local Government on Christmas Island: The Council Development Program Progress Report, Western Australian Department of Local Government November 1999, p 13

²⁴⁴ Shire of Christmas Island Operational Status report, Western Australia Department of Local Government February 2000, p 8



Commonwealth. Rightly therefore, Council takes these issues up with the Commonwealth. In doing so the author believes that Council is fulfilling a similar role undertaken by WA local governments in trying to protect and/or improve the living standards of the persons in its district.

“An issue being taken up by Council is greater self-determination for Christmas Island. Although self-determination will have an effect on the community of Christmas Island, it may be an issue that is perceived as the responsibility of the Commonwealth and therefore an issue outside the scope of the general function power. An argument could be mounted for Council advocating self-determination, but the expenditure of Shire funds in visiting another locality could be argued as not within the function of local government and therefore prohibited by the Act.

“Whether an action is within the general function power of a local government is a decision that is taken by Council. That decision is of course subject to challenge. It is therefore imperative that Council thoroughly considers whether that action is for the good government of the persons of its district before deciding to go ahead. The decision needs to be defensible.”

- o If the question of greater self-determination is the responsibility of the Commonwealth, the views of a number of Ministers for Territories is indicative of the Commonwealth having no interest in this responsibility, or in heeding the concerns of the community. In each case they have argued against any greater local autonomy on the basis that the Indian Ocean Territories’ communities would not receive sufficient funds or effective services, in favour of incorporation into Western Australia. They have also emphasised that the Shire should focus on local government roles only. For example, -
 - ❖ Senator McDonald said²⁴⁵ that the Norfolk self government model was not supported as it would be “devastating to Christmas Island” in terms of lost government financial support and “directly contrary to the Commonwealth obligations to residents of Christmas Island”. He suggested that the Shire should “focus on the core business of Council” and ensure that local government services are provided to a similar standard to that provided on the mainland.

²⁴⁵ Letter to Shire President 18 August 1999



- ❖ In further correspondence on the issue of self government, Senator McDonald said²⁴⁶ that he did not see any “struggle” between the Commonwealth Government; that the Shire and that the community were being consulted about the future administration of the Territories²⁴⁷; that the role local government in non self governing territories is “equivalent to that filled by local government bodies elsewhere”.
- ❖ Minister Tuckey, as noted above, told the Indian Ocean Territories Policies Forum that he did not support self government and that the Norfolk model would involve a substantial reduction in Commonwealth funding
- ❖ Senator Campbell²⁴⁸ similarly rejected a proposal by the Indian Ocean Territories Policy Forum for a legislative Assembly as this approach “would potentially limit the delivery of state level services and other arrangements in the IOTs, as the population base and remoteness of the islands are significant factors for the viability and sustainability of the territories”.
- ❖ Minister Lloyd²⁴⁹ similarly rejected the concept of any greater level of Island decision making, arguing that such an approach would not deliver the same quality of service or governance that incorporation into Western Australia would achieve.

What is most problematic about the Commonwealth’s position is that it has done nothing to pursue incorporation into Western Australia, as the Premier of Western Australia²⁵⁰ recently confirmed to the Shire. Further, in the absence of any progress in that direction, the Commonwealth refuses to discuss these matters in any real sense with the Shire. This refusal essentially denies the Shire any political acknowledgement or respect and retains an uneasy status quo.

Overall, the Shire has articulated a role for itself in the absence of State or Territory government as both a political leader and service provider. To a large

²⁴⁶ Letter to Shire President 19 September 1999

²⁴⁷ He was referring to the Indian Ocean Territories Review, which has never released. This much vaunted report was highlighted in Senator McDonald’s Budget 1999-2000 media release “Focus on the Future for Australia’s External Territories” 30.6.1999.

²⁴⁸ Letter to the Presidents of the Christmas Island and Cocos (Keeling) Islands Shire Councils, 24 February 2004.

²⁴⁹ Open letter to the community, 12 August 2004.

²⁵⁰ Letter to Shire President 25 August 2004. The Premier also indicated support for the community to have a say via referenda about this issue.



degree these desired roles have been ignored by both successive Ministers for Territories and the Department of Territories. Based on actions over the past decade, the Shire is confident that it has a general mandate from the community to pursue issues of greater self determination and decision making for this community. Getting the Commonwealth to listen and act is of course another thing.

7.5 Summary & Proposals

The Shire's role should be understood in relation to its genesis in both legal and historical terms, and in relation to the law reform system, which gave rise to the Shire, and the perceived need to transfer decision making to the community in the absence of a State or territory government.

The Shire in the 13 years it has been operating has made significant progress towards undertaking its local government roles in a highly competent manner, notwithstanding difficulties regarding financing, its limited asset base, and the interpretation of the system of laws applying on the Island. The Shire has an effective community consultation system and to the best of its ability engaged with the Commonwealth on issues of concern to the community arising from the applied laws system, economic development and community service provision. The Shire has also attempted to utilise all available forums to advance its local government role and to exercise its political role to advocate for change in the interest of the community.

The success of this work has been undermined by an unreceptive and uninterested Commonwealth. The Shire has been repeatedly told to act like a traditional local government only; that the community's and the Shire's desire for a greater role in decision making is "not negotiable"; and that at some undefined time in the future better and fairer political representation and effective service delivery will occur by incorporation into the State of Western Australia. This stance begs the question, what happens in the mean time?

The Shire believes that a lot can happen to advance community interests now. Using the current legal and administrative structure of the Shire, many steps could be



taken to improve community service provision, create efficiencies in service delivery and provide a better base for expanding local government activity in the longer term.

Immediate

1. The Commonwealth and the Shire agree and implement a service delivery framework for local government and community service provision. This framework to be based on community need and effective service provision as distinct from “core” local government concepts, take into account all state and local government services currently provided, and new or unmet needs.
2. The Commonwealth and the Shire agree and implement an asset transfer plan based on freehold transfer of all community facilities necessary to support the service delivery framework.
3. The Commonwealth and the Shire negotiate funding arrangements for the Shire based on the agreed service delivery framework. The funding to be calculated based on actual identified need rather a factor back methodology.
4. The Commonwealth and the Shire settle disputed property matters concerning the Christmas Island Laundry and the Christmas Island Supermarket.
5. Legislative arrangements are established to enable the Shires of Christmas Island and Cocos (Keeling) Islands effective means to enter into regional local government type cooperation agreements.



Chapter 8 – More Representative Government

Term of Reference No. 3 & No. 7

Current and future governance arrangements for the Indian Ocean Territories ... in particular aspirations of residents of Christmas Island for more representative governance arrangements & proposals for reform of governance arrangements

8.1 Overview

Through the Shire's work with the community over the past thirteen years, it is clear that the community is dissatisfied with current governance arrangements. Through a number of forums and actions, the community has demonstrated its aspirations for a greater say in its own affairs. For many longer term residents, this dissatisfaction has increased as perceived promises for a greater level of consultation and decision making have not come to fruition. The recognition accorded the community through the Sweetland inquiries, the Islands in the Sun inquiry, law reform, and the Commonwealth Grants Commissions and other parliamentary inquiries thereafter, have not led to community expectations being met.

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

Also, despite the desire expressed to the Islands in the Sun inquiry for full integration into Australia, the Commonwealth's proposal to incorporate the Island into Western Australia is not viewed favourably. This is in part due to the benefit of hindsight: what was considered a forward step in 1991 to address wide scale inequities in the system of laws applying now appears a remote and unsatisfactory outcome. The continued high level of control of the Island's affairs by the Commonwealth over the intervening years, the lack of real change despite the commitments to the contrary, the denial of the unique and special circumstances of



the Island, the distancing of Commonwealth decision making from the real concerns and issues of the community, and the perceived unfavourable outcomes of this decision making, have all taken their toll.

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

It is the Shire's submission that a more effective governance system has to be developed with and for the community. While the community know in general terms what they want, the means to achieving this is less clear. There are a number of models that could be considered as a starting point. For example, the Australian internal territory self government model (ie the ACT or the Northern Territory), the New Zealand non self governing territory model (eg Tokelau), or models from further a field such as the Isle of Mann. The Shire is not advocating any of these models; rather it is proposing that given the resources, information and time, an appropriate model could be developed. A key aspect however must be a move away from a colonial form of non self government to progressively a move towards greater self determination whereby residents are equipped with the knowledge and skill to effectively decide their future.

However, a better system of governance can be developed only if there is a will on the part of the Commonwealth to work with the community to decide appropriate arrangements. If this will is absent, how can the community engage meaningfully in a process of developing an effective governance arrangement? And why would they bother?



The Shire does have ideas about the way to approach the development of more effective governance. As set out in preceding chapters, there are a considerable number of steps that can be taken to shift decision making towards the community. The Shire has also identified the areas in which it believes the community should have a greater say – those that are the province of state and territory governments on the mainland – and has presented the case for establishing a system of laws and related arrangements that are relevant to the Territory of Christmas Island. All these are indicative of the establishment of a better form of on-Island government akin to a Territory-type government.

The Shire points to the United Nations decolonisation process as the way to approach developing a better form of on-Island government. This process essentially utilises the United Nations Committee of 24 as an “honest broker” to facilitate resolution of an effective form of government for non self governing territories between the peoples of the territory and the administering power. This can be transposed into the island’s case as introducing an independent means to broker a new governance arrangement between the community and the Commonwealth.

The underlying position of the Shire is that the Island would continue to be integrated with Australia, but on better and fairer terms. The Shire is not advocating free association or independence, the other choices available to the peoples of non self governing territories under the United Nations decolonisation scheme. However, integration should be based on comparable levels of political rights, a modern governance system without any vestige of colonial institutions/ administrative systems, fair and effective decision making, and adequate resources to provide relevant and comparable standards and services.

This final chapter provides further detail about the aspirations of residents for more effective governance as well as the development of an approach to achieve better governance for the Territory. This approach starts from the premise that the community want to have the future in their hands. In the Shire’s view, if there is a will on the part of the Commonwealth, there is a way to achieve this.



8.2 Aspirations of Residents

The Shire has noted in the previous chapter some of the political actions it has taken with and on behalf of the community to advocate for a greater say in decision making. More specific detail about some of these actions is provided here as examples of the expression of this desire.

- 1994 fair go campaign

The fair go campaign run by the Fair Go Alliance comprising the Shire, Union of Christmas Island Workers and Chamber of Commerce convened a public meeting of residents in March 1994.

This meeting decided that it would “demand the Commonwealth act to give effect to the will of the people” as expressed at this meeting, particularly that the community of Christmas Island -

- rejects the imposition of all Western Australian state taxes
- demands the lifting of freight cabotage requirements that contribute to the exorbitant cost of living
- demands that all revenue and taxes raised on Island be returned to the Island for its future development and for the provision of good government services
- rejects the role of the Administrator in its current form and further requests that the Administrator’s residence be transferred to the community forthwith
- there be only one public service that is responsible and accountable to the people of Christmas Island for the provision of integrated and responsive government services
- supports the holding of a referendum to be held with the Christmas Island Shire Council elections on 7 May 1994 to decide on the future form of governmental and administrative affairs for the Island
- a Commission of Inquiry be established by the Alliance group and the Parliament of Australia to –
 - a) convene a summit of Australia’s external territories



- b) investigate and evaluate the existing relationship between the Commonwealth of Australia and Christmas Island
- c) develop a form of government structure for Christmas Island having regard to the outcome of the 7 May 1994 referendum
- d) make recommendations to the community for the implementation of the proposed form of government structure for Christmas Island
- e) report back no later than 1 October 1994

The subsequent referendum supported a self government type model of government.

- 1999 referendum

The Council held a referendum in conjunction with the Australian republic referendum question in November 1999. Voters were asked in general terms if they supported greater self government or the retention of the status quo. Sixty three percent of voters were in favour of "greater self government".

- 2004 Casino petition

As part of the "campaign against the government" established by the Shire Council in the wake of the 'no casino licence' decision in July 2004, over 500 signatures were collected on a petition that called on the Commonwealth to ensure that:

1. A casino licence is issued to the Korean Friendship League
2. All decisions to be made by the relevant Minister and the Territories department about changes affecting job privatisation, the economy and services on Christmas Island are made by agreement with the Shire of Christmas Island and the Community Consultative Council
3. The airport management contract is cancelled
4. The subsidy to maintain the northern air link is reinstated

A delegation of young Islanders presented this petition to the Administrator on 30 July 2004.



- Open letter to the Minister for Territories

Over 140 individuals and the Shire of Christmas Island, Christmas Island Women's Association, Chinese Literary Association, Malay Association, Union of Christmas Island Workers and Christmas Island Chamber of Commerce signed an open letter to Minister Lloyd. On the question of democratic rights, the community said²⁵¹ –

“The community is pleased that you acknowledge that there needs to be improved democratic rights for Christmas Islanders. However, we reject your proposal that our democratic rights will be addressed by incorporation into WA.

“We also reject the position that you and your Government will decide what is best for us. We must have a right to decide our own future. We want you to enter into a dialogue with us about a fair system of governance for Christmas Island, on agreed and just terms.”

These examples demonstrate the aspirations of residents for a fairer system of governance on Christmas Island. Further, that over more than a 10 year period the community has consistently sought, through the means open to it, to engage the Commonwealth in dialogue on how concerns about a lack of democratic rights could be resolved.

In the absence of a satisfactory response, the Shire has considered on at least three occasions since 1994 how it could attract United Nations interest as a non-self governing territory. While a formal approach has not been made, the Shire believes the United Nations approach could be adopted as the means of satisfactorily brokering a dialogue about the means of resolving the question of democratic rights.

8.3 United Nations Approach

As noted in the first Chapter, the Islands in the Sun inquiry recommended that the Commonwealth take steps to ensure that Christmas Island not attract United Nations interest as a non-self governing territory.

²⁵¹ Open letter to Minister Lloyd 20 August 2004



While the Commonwealth has argued against this designation, ultimately whether the United Nations accepted Christmas Island on its list is not up to the Commonwealth to decide. As the Centre for Comparative Constitutional studies submitted to the Islands in the Sun inquiry²⁵² –

“Neither Christmas Island nor Norfolk Island have ever been considered by Australia as non-self governing territories within the term of Chapter XI of the United Nations Charter, and consequently Australia has never reported on the Territories to the United Nations under article 73 (e). It is clear, however, that consideration of a non-self governing territory by the relevant United Nations’ administering body, the Committee of 24, is not dependent on either the initiative or the consent of the administering power. If a particular Territory falls within the definition of a non-self governing territories developed at international law, and if the question of that territory is brought before the United Nations General Assembly by any member state, then the General Assembly may refer it to the Committee of 24, and the administering State would then be expected to comply with the undertakings set out in Article 73 of the United Nations Charter.”

The undertakings required include development of the people’s concerned, progress towards self government, economic development, and regular reporting to the United Nations on progress.

Self government, in the United Nations’ terms²⁵³ means emergence as a sovereign state (independence), free association with an independent State, or integration with an independent State “on the basis of complete equality”. The people of the non self governing territory are entitled to choose which form of government via an act of self determination. As the General Assembly has resolved²⁵⁴ –

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter, all peoples have the right freely to determine ... their political status and to pursue their economic, social and cultural development; and every State has the duty to respect this right ...

“The territory of a colony or other non-self governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such

²⁵² Submission to the Legal Regimes of Australia’s Territories by the University of Melbourne’s Law School Centre for Comparative Constitutional Studies, p 22

²⁵³ United Nations General Assembly resolution 1541

²⁵⁴ United Nations General Assembly resolution 2625



separate and distinct status under the Charter shall exist until the people of the colony or non-self governing territory have exercised their right of self-determination in accordance with the Charter.”

The Committee of 24, now also known as the Special Committee on decolonisation, monitors and supports the process of self determination or decolonisation by a number of processes²⁵⁵:

- It follows particular political and economic developments in a territory
- Holds annual seminars to hear about issues of concern
- Hears petitioners from the territories
- Sends visiting missions to a particular territory “to better understand what can be done to move the decolonisation process forward”
- Provides information about assistance available from United Nations agencies
- Makes recommendations to the General Assembly
- Recommends the removal of a territory from the list of Territories under its supervision

The committee describes itself as “an honest broker” who can “work out a program of work for the decolonization” of the administered Territory “based on the special characteristics” of that Territory. The committee emphasises the importance of the peoples of a Territory “understanding the possibilities”. Their program of ensuring understanding includes discussion with people about “what the people would want to do”; conducting studies on options for self determination “in which the implications of each option will be explained for the clear understanding of the people of a territory”; working closely with the representatives of the territory and the administering State; developing a public information programme; and helping the territory implement their act of self determination.

The Shire submits that the use of an independent honest broker managing a program of determining and implementing a desired governance arrangement for the people of the Territory of Christmas Island would be the appropriate way to proceed. An independent broker is an essential element: without an independent third party the potential for the process to derail would be high. As the process could take some

²⁵⁵ United Nations Decolonisation information www.un.org/Depts/dpi/decolonization



time, given the high requirement to study possibilities and assess the ramifications of each, consistency and persistence would be necessary. While United Nations supervision would be ideal, it is possible to replicate this process through other means.

8.4 Decolonisation

Based on the definition of a non-self governing territory, that is a territory that hasn't achieved a full measure of self determination as evidenced by its people being in "a position of sub-ordination due to historical, administrative, political and/or economic elements", the issue of sub-ordination through particularly administrative, political and economic arrangements must be addressed in the development of better governance arrangements.

This requires consideration of current arrangements and how these can be improved upon. While not intending to be an exhaustive analysis of these arrangements, some consideration is given to the current character of these arrangements and suggested ways that they could be changed in the move to a new governance arrangement.

- Administrative Arrangements

A key element here is the role and functions of the Administrator. In 1980 Commissioner Sweetland recommended²⁵⁶ that "administrative anomalies that distinguish Christmas Island from the mainland" should be progressively removed such that the Island's social and political institutions were less like "those of a colonial possession". In this vein Commissioner Sweetland recommended that once an acceptable form of political representation was established the office of the Administrator should be abolished²⁵⁷.

The Government of the day decided not to follow Commissioner Sweetland's recommendation to abolish the Office of Administrator, as given the Island's geographical isolation and the absence of a local government the Office retained

²⁵⁶ Commission of Inquiry into the Viability of Christmas Island Phosphate Industry, 1980, recommendation 15b.

²⁵⁷ Commission of Inquiry, 1980, recommendation 15d.



its importance. Also that, "if the office was abolished a person performing similar functions would be needed for the time being"²⁵⁸.

As noted in Chapter 7 – the Role of the Shire, the 1991 Islands in the Sun Inquiry recommended that the Administrator's position be reviewed on the basis that there were questions of the validity of this role. Recommendation 13 was –

"The Commonwealth review the Administration Ordinance 1968 with particular reference to the title, functions and powers of the administrator".

Section 6 of the 1968 Ordinance sets out the function of the Administrator in the following terms:

- (1) There shall be an Administrator of the Territory, who shall be appointed by the Governor-General by commission, to administer the Territory on behalf of the Commonwealth.
- (2) The Administrator holds office during the Governor-General's pleasure.
- (3) The Administrator shall exercise his powers and perform his functions in accordance with any instructions given to him by the Minister.

As outlined in Chapter 5 – Applied Laws, many functions of the Minister pursuant to the *Christmas Island Act 1958* have been delegated to the Administrator. The 1996 Utilities and Services Ordinance empowers the Administrator to make provision for utilities and services. As such, many state-type functions rest with the Administrator, though the extent to which bureaucrats have taken on practical responsibility and possibly decision making is questioned²⁵⁹.

While the office of the Administrator is "administrative" in function, the Administrator is also a political functionary in that he is said to be the Minister for Territories' local representative²⁶⁰, although this has been confused sometimes with a role to represent the community²⁶¹.

²⁵⁸ Territory of Christmas Island Bulletin 1980/27 – Transcript of a Radio Broadcast on Christmas Island from the Minister for Home Affairs, the Hon. R J Ellcott

²⁵⁹ As noted in Chapter 3, "who is the State Government" appears to have shifted from the Administrator to the Department and the Shire has criticised ineffective consultation by the Administrator through the now defunct Administrator's Advisory Committee.

²⁶⁰ This is the role envisioned for the Administrator in the proposed Ministerial Advisory Committee

²⁶¹ See for example Administrator Bill Taylor's submissions to the 2002 PWC Inquiry regarding the Airport where he was reported as "speaking from a community point of view".



Given the establishment of local government in 1992, it is difficult to see an ongoing justification for many of the administrative functions of Administrator. Clearly in consideration of better governance arrangements these functions could be reduced or removed altogether. As the 1995 Commonwealth Grants Commission noted in relation to a move to greater autonomy²⁶² –

“Our preference would be for the establishment of an effective elected body on the Island, but to have an appropriately staffed and resourced administration there is better than to have people on the mainland making more decisions. If more autonomy were given to the territory, it would be possible to much reduce Administration staffing..”

The political role of the Administrator could also be reviewed, subject to resolution of effective political arrangements.

- Political Arrangements

The issue of political representation has long vexed the Commonwealth as well as the community. Placement of the Indian Ocean Territories in the Northern Territory in 1984 for “electoral purposes only” was seen the best arrangement available, though not ideal.

In the lead up to the question of Statehood for the Northern Territory, the Commonwealth became concerned that if Statehood was achieved this arrangement would have to change. The ACT was considered to be the only other electoral avenue for the Indian Ocean Territories, unless incorporation with the State of Western Australia could be achieved.

This is a key issue to consider in any change to governance arrangements. The Constitution is of course, the basis for any changed arrangements. Options include:

²⁶² Commonwealth Grants Commission Report of Christmas Island Inquiry 1995, p 115



- Retention of electoral representation via an internal Territory
The deficiencies in this arrangement have already been outlined, although the arrangement does give the Indian Ocean Territories representation in both houses of Parliament.
- Self government
In the external territory context, such as the Norfolk Island situation, there is no Commonwealth electoral franchise. There is however the internal Territory model such as the ACT. A mixture of these two forms could be considered. For example, the 1995 Commonwealth Grants Commission²⁶³ saw the potential for Christmas Island to have a government arrangement similar to Norfolk “except that it would have no role in relation to Commonwealth-type revenues and expenditures. In that sense, it would be more like the ACT Government which has both State-type and local government powers and responsibilities”. Further, that “it would not have to follow the Norfolk model as regards legislative procedures. The current practice of basing Christmas Island law on Western Australian legislation could continue, with the Assembly simply examining each piece of Western Australian law and deciding which of them it wished to become law on the Island.”
- Incorporation into a State
As mentioned above, the community don't support this approach. Specific objections include:
 - ❖ As already emphasised, the Government has done nothing to progress the issue in 13 years and the chances of anything being done to progress the issue in the next 13 years are low
 - ❖ The people of Western Australia would get a say in such incorporation, but the people of Christmas Island wouldn't. The Commonwealth could, of course, give Christmas Island residents the right to have a say, though the question of the power of such a say (as contrasted to a constitutional right) would need to be established in similarly unequivocal terms.
 - ❖ The chances of a positive referendum in Western Australia on the question (as required by the Australian Constitution) are low. Overall Australia doesn't have a strong record of saying yes to referendums

²⁶³ 1995 Commonwealth Grants Commission Report, p 114



- ❖ An informal referendum on the Island in 1999 saw 63% of voters supporting greater self-government
- ❖ The Western Australia Government would need to accept the proposition. The Western Australia Government is currently getting paid by the Commonwealth to provide services to the Island under SDA's. Why would the Western Australia Government want to change a cost neutral (and possible cost benefit) arrangement? In any event, the current Western Australia government has promised that it would seek the views of the community before agreeing to discuss the issue with the Commonwealth
- ❖ Despite strong links between the Island and Western Australia, the unique and special characteristics of the Island and its community should be enhanced not 'normalised' or 'mainstreamed'

Despite these concerns, clearly this option is potentially available and may warrant further study. A key issue would be the level of political representation the Island would have in the Western Australian State Parliament.

- Direct political representation in the Federal Parliament
This option is conceivable under the Australian Constitution. Section 122 empowers the Commonwealth to "allow the representation of [an external] territory in either House of the Parliament to the extent and on the terms which it thinks fit." While direct representation may be unlikely or considered unviable because of the relatively small population, a combined Indian Ocean Territories representation could be considered.

There are a number of ways in which effective political representation could be achieved at the same time as addressing better governance arrangements at the local level. All these, and possibly other models of political representation, could be examined in developing new governance arrangements based on the principle of decolonisation or self determination.



- Economic Arrangements

It has been the Shire's submission as set out in Chapter 4 – Economic Sustainability, that Commonwealth have done very little to encourage economic self determination for the Island. Further, as outlined in Chapter 7 – The Role of the Shire, the Commonwealth has also argued against self determination for the Island, on the basis the Island could ill afford the removal of Government support that such a move would invariably entail.

While proposals about mechanisms to enhance economic development have already been made, there is an underlying need to understand the Island's economy. That is, what revenues are generated from the Island and what expenditure is necessary to provide and sustain Australian level services and benefits?

In 1995 the Commonwealth Grants Commission attempted to identify an 'Island fiscus'. The reason for this attempt was²⁶⁴ –

“.. a demand from a number of parties of the compilation of a fiscus for Christmas Island. A fiscus is a set of accounts that shows, in one document, all the revenues and expenditures of a government. Usually such an account will relate to only one level of government but it can be for more than one, or even all government activities.”

The Shire of Christmas Island for example had submitted²⁶⁵ that an Island fiscus “is an essential element in developing long term financial strategies for the Island and determining priorities of competing needs. A fiscus will also enhance a sense of accountability with all parties to the development of Christmas Island”.

As the Commission described it²⁶⁶ –

“the Commission attempted to include revenues and expenditures relating to the provision of all government services in and for the Territory. The range of transactions covers all State-type recurrent revenues and expenditures considered in the

²⁶⁴ 1995 Commonwealth Grants Commission, p 27

²⁶⁵ Christmas Island Shire Council submission to the Commonwealth Grants Commission, August 1995, p 19

²⁶⁶ 1995 Commonwealth Grants Commission, p 129



Commission's inquiries into State finances, State-type capital expenditures, all local government financial transactions and Commonwealth revenues and expenditures to the extent that they could be identified in accounts relating to Christmas Island. It does not include Commonwealth revenues from such sources as company taxation, or social security and other payments to Christmas Island residents"

The Commission concluded²⁶⁷ that –

"The fiscus for Christmas Island provides good information on actual revenues and expenditures of the State and local government sectors and enables comparisons to be made with the mainland. It allows the calculation of financial dependency ratios, though these say little about relative financial needs. Because of data deficiencies for the Commonwealth sector, it is not possible to draw any conclusion relating to the provision of Commonwealth functions²⁶⁸.

"While direct comparison with other remote communities are not always possible, the fiscus suggests that per capita recurrent revenues and expenditures are high for state-type and local government-type functions on Christmas Island compared with mainland standards and that a high level of capital expenditure is incurred on the Island, particularly on state-type functions.

"The fiscus also suggests that for State-type recurrent services, the Island is less dependent on Commonwealth funding than most States; and that for local government services, the level of dependence is about what might be expected for a remote Shire .."

"We urge the relevant authorities to continue the compilation of a fiscus for Christmas Island annually and to improve the data on which it is based, thus allowing a more accurate assessment of the relative position of Christmas Island to be made"

In many respects the Shire believes that the position described by the Commission in 1995 would have improved considerably: the Shire has improved its rate base significantly and at the same time improved its efficiency; essential infrastructure upgrades have been completed and the Commonwealth has

²⁶⁷ 1995 Commonwealth Grants Commission, pp 37-38

²⁶⁸ The Commission noted that local government accounts were readily accessible but that it was difficult to identify Commonwealth expenditure and revenue collection. Revenue collection for instance went into Consolidated Revenue without attribution to Christmas Island. See Chapter 3 of their report for more detail.



progressively increased the level at which residents contribute to state type services such as water and electricity.

The Shire believes that the data on expenditure and revenue should be developed such that it is clear what the Commonwealth spends on the Island and what the residents contribute in the way of taxes and charges. The Shire suspects that the Commonwealth exaggerates the level of dependency on Commonwealth funds and underplays the community's contribution. As the Commonwealth have used a threat of withdrawal of resources to discourage any move towards greater autonomy, the Commonwealth must demonstrate their case in factual terms. Only then can the Commonwealth demonstrate true accountability to this community.

Transparent information about expenditures and revenues is also essential in any development of a better governance arrangement. Not only does the community have a right to know the score, it also needs to know the score in terms of considering options in an informed manner.

This community does not want economic dependency on the Commonwealth except to the extent that the Commonwealth is obliged across Australia to support State, Territory and Local government activities and services. The community pays its fair share of taxes and is entitled to a commensurate return, mindful of its location, isolation and other, including in some cases historically based, disabilities. The community also doesn't want to enter into new governance arrangements with out fully understanding the financial implications.

In summary, a consideration of thee underlying administrative, political and economic aspects of non-self governance is a good place to start in drawing the framework or context in which better governance can be developed. Further, these elements must be fully drawn such that the effects of subordination to these elements are realised and decolonisation achieved. The process of engaging the community in meaningful consideration of options can then commence.



8.5 Towards More Representative Government

The Shire believes that more representative government for Christmas Island is both desirable and achievable. Much is unsatisfactory with current governance arrangements and improvements can eventuate if the community is fully engaged in the process of considering and deciding effective and appropriate arrangements.

First and foremost this is a process. As the Shire has attempted to outline in this submission, the process has many aspects:

- It is a reconciliation process whereby past discrimination and exploitative treatment is acknowledged and let go
- It is a trust and confidence building process whereby suspicion, doubt, poor communication and low accountability gives way to partnerships, honesty and mutual respect
- It is a future building process whereby solid and certain foundations are established to foster economic sustainability, community self sufficiency, and community capacity
- It is a learning and clarifying process to build knowledge, create effective and relevant laws and services, and gain understanding of both the limits and opportunities for the Territory
- It is a relationship building process whereby the Commonwealth and the community can work together, share responsibility, make good decisions and celebrate achievements

Building governance from the ground up is the way to realise what the process itself can achieve. In the Shire's submission the steps in this process are –



- Agreement to work towards a better governance

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

- Establishing principles & commitments

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

- Engaging an honest broker

A formal process with an independent broker would keep the process on a firm footing. A person or organisation acceptable to both parties is essential.

- Taking immediate steps to make change

The Shire has identified in previous chapters a range of immediate steps to improve accountability, economic development, the system of laws, community service delivery and Shire local government service provision. These should be actioned. Not only are immediate improvements necessary, their implementation



would give considerable confidence to the longer term process and resultant arrangements.

- Agreeing a framework and timeframe for longer term change

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

- Gathering and disseminating information

Gathering information is an important means of informing the process. Information required includes economic data to identify an Island fiscus, information about constitutional issues and potential means of advice would all be extremely useful to the process.

- Investigating possible governance models

As outlined above, investigation of possible governance models is a crucial part of the process of identifying options. In the Shire's view this investigation should be wide ranging and consider integration types of governance arising from a decolonisation processes elsewhere, places where the decolonisation process is in train as well as governance models that have developed from other imperatives. The extent to which it is desirable or possible to include the Territory of Cocos (Keeling) Islands in a new governance arrangement should be explored.

- Developing options

Once the investigation has concluded, and information collated, these should be brought together as the basis for developing options that could be realised.



- Agreeing a mechanism for democratic consideration of a preferred option or options

As a parallel process, consideration needs to be given to the manner of enabling the community to democratically decide on a preferred option. Such consideration should include who is entitled to vote, a timeframe for community information, education and discussion of options, the manner of voting and the timeframe for implementation thereafter.

- Implementing the agreed option

Once a decision has been made, the focus would shift to an effective implementation process. This in itself could take considerable time and would need careful management through its early stages.

- Supporting implementation

Once implementation has occurred, mechanisms need to be introduced and maintained to support the new governance arrangements, troubleshoot any problems and settle new issues not envisaged in the development of the options. As with any new 'baby' support is critical in the early stages of its life.

While this model needs considerably more fleshing out, it has the potential, through concerted and consistent work, to enable the community to achieve their future, in their hands.



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
<p>Commission of inquiry into the viability of Christmas Island Phosphate Industry</p> <p>Conducted by Commissioner W.W. Sweetland</p> <p><i>Non- mining related recommendations only listed</i></p>	<p>1980</p>	<p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ Upgrade domestic accommodation [rec 12] ▪ Repeal the Christmas Island Industrial Relations Ordinance and introduce the Conciliation & Arbitration Act [rec 13] ▪ Repeal the citizenship provisions of the Christmas Island Act and extend the Migration Act to the island [rec 14] ▪ Island Administration costs should be met by the Australian Government [rec 15a] ▪ The objective of the Island Administration should be redefined to ensure the earliest possible removal of the administrative anomalies that distinguish Christmas Island from the mainland. Christmas Island’s social and political institutions should become progressively closer in form to those that characterise isolated mining communities on the mainland, and progressively less like those of a colonial possession. To this end, Article 8 (1) of the Christmas Island Act should be amended to provide that Commonwealth Acts shall include Christmas Island in their coverage unless specific provision to the contrary is made [rec 15b] ▪ The Advisory Council should be set up as quickly as possible, and the Administrator should invite it to sound community opinion and advise him on what form of political and community representation consistent with those that exist on the mainland would best accord with the wishes of the Island’s inhabitants. Parliamentary representation should be included among the possibilities to be considered [rec 15c] ▪ As soon as an acceptable form of political representation has been established, the office of Administrator should be abolished and responsibility for liaison with the Department of Home Affairs should be assumed by a Department of Home Affairs Liaison Officer’. The residence of the Administrator should be made available to residents of the Island for a purpose of their choosing [rec 15d] ▪ Early consideration should be given to the appointment of a small number of Justices of the Peace [rec 15e] ▪ The newly constituted Christmas Island Phosphate Company should expand its program of reforestation on the island, making greater use of back-filling in mined areas. Bird populations should be monitored as accurately as possible [rec 16] 	<p>Community service delivery Commonwealth laws</p> <p>Commonwealth laws</p> <p>Island history</p> <p>Future governance arrangements</p> <p>Future governance arrangements</p> <p>Future governance arrangements</p> <p>--</p> <p>--</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
<p>Inquiry into the Long Term Future of Christmas Island</p> <p>Conducted by W.W. Sweetland on behalf of the Department of Home Affairs & Environment</p>	<p>1982</p>	<p><u>Summary of Recommendations:</u></p> <p>Development Authority</p> <ul style="list-style-type: none"> ▪ Establish a Christmas Island Development Authority ▪ Establish a market gardening industry as a matter of urgency and other local food industries (eg orchards, pig farming, poultry farming) ▪ Boat ramp at Ethel Beach to allow year-round access to sea. This has major safety implications ▪ Assess fishing resources <p>Tourist Development</p> <ul style="list-style-type: none"> ▪ Island beautification ▪ Upgrade airport & commercialise air services ▪ Investigate casino development ▪ Establish a museum <p>Mariculture & Agriculture</p> <ul style="list-style-type: none"> ▪ Tropical fish & pearl industries ▪ Mine to surrender land no longer required ▪ Meteorological instruments ▪ Agricultural survey <p>Municipal matters</p> <ul style="list-style-type: none"> ▪ Give Advisory Council legislative authority ▪ PMCI surrender municipal services to the Council ▪ Hospital management to be entrusted to a Christmas Island Hospital Board ▪ Christmas Island Companies Ordinance be drawn up and put into effect <p>Administration & fiscal matters</p> <ul style="list-style-type: none"> ▪ Take responsibility for airport, radio communications and television from PMCI ▪ Increase revenue from sources to eventually eliminate reliance upon the mining industry to meet shortfalls in government revenue ▪ Christmas Island to retain its virtual duty free status ▪ Commonwealth to meet all educational expenses for primary, secondary & technical schools ▪ Christmas Island retain exemption from income tax <p>Land Rezoning</p> <ul style="list-style-type: none"> ▪ No additions to National Park until land use surveys have taken place and agreement between interested parties on future zoning has been conveyed to the Minister 	<p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Future governance arrangements Government and economic sustainability links</p> <p>Future governance arrangements Government and economic sustainability links</p> <p>Government and economic sustainability links</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<p>Federal Representation</p> <ul style="list-style-type: none"> ▪ Attach Christmas Island to one of the ACT electorates <p>Social matters</p> <ul style="list-style-type: none"> ▪ Resolve question of date for termination of present resettlement scheme ▪ Establish a cultural centre in Perth to serve as trade mission, tourist information centre and focus for ex-islanders arriving or living in Perth ▪ Former Christmas Island residents eligible for old age pensions be encouraged to join their families on Christmas Island 	<p>Future governance arrangements</p> <p>Community service delivery</p>
<p>Tourism in the Indian Ocean Territories</p> <p>A Report of the House of Representatives Standing Committee on the Environment, Recreation & the Arts</p>	<p>1990</p>	<p><u>Recommendations</u></p> <ul style="list-style-type: none"> ▪ The Commonwealth Government provide sufficient resources to the ANPWS to ensure the rehabilitation of rainforest on Christmas Island [rec 1] ▪ With the exception of the Christmas Island casino project, the Commonwealth Government waive requirements that developers contribute to the upgrading of public infrastructure to support tourism proposals and undertake to upgrade infrastructure where it is necessary to do so to attract and facilitate tourism enterprises [rec 2] ▪ The Commonwealth Government urgently review those policies and regulations which might act as an impediment to the introduction of regular passenger transport air services [rec 3] ▪ The DASSET convene a conference of all parties interested in the air service to the Indian Ocean Territories, including potential tourism operators, airlines and aviation authorities to resolve problems with the existing service [rec 4] ▪ The DASSET and Christmas Island Administration immediately make available leases for tourist developments and accommodation either by auction or direct purchase and develop a program to identify other surplus properties suitable for lease and progressively bring these onto the market [rec 5] ▪ The Commonwealth Government undertake a public works program on Christmas Island to upgrade general facilities [rec 7] ▪ The Commonwealth Government seek formal agreements with developers of major tourism projects concerning the provision of traineeships and other training opportunities for members of the local communities who could be employed in the tourism industry [rec 8] ▪ Where possible, the ANPWS give preference to the employment of residents of the Indian Ocean Territories for positions on the Islands & that it provide training courses for local people to be employed as ANPWS staff [rec 9] 	<p>--</p> <p>Government and economic sustainability links</p> <p>--</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ The duty free status of the Indian Ocean Territories be maintained indefinitely [rec 14] ▪ The Commonwealth Government in consultation with the local communities, develop comprehensive environment and planning legislation to ensure the assessment and monitoring of environmental and social impacts of tourism and other developments in the Indian Ocean Territories [rec 15] ▪ The Commonwealth Government in consultation with the island communities, develop a plan of environmental management for each of the Indian Ocean Territories [rec 17] ▪ The Commonwealth Government adopt a series of performance objectives for the Christmas Island casino project in terms of environmental, social and economic impact [rec 23] ▪ The DASETT give urgent priority to the development of general tourism on Christmas Island in the form of small scale special interest group tours [rec 24] 	<p>Government and economic sustainability links Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p>
<p>Islands in the Sun The legal Regimes of Australia's External territories & the Jervis Bay Territory Report of the House of representatives Standing Committee on Legal and Constitutional Affairs</p> <p><i>Christmas Island recommendations only</i></p>	<p>1991</p>	<p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ The law of Western Australia (as amended from time to time) be extended to Christmas Island to replace the currently applied law in so far as that law has not been developed as a response to a unique or particular characteristic of Christmas Island [rec 5] ▪ In the absence of the establishment on Christmas Island of a reviewing mechanism, relevant Commonwealth departments monitor the possible application of Western Australia laws to Christmas Island in consultation with the Christmas Island Assembly, to ensure that the particular circumstances of Christmas Island and/or its residents are not adversely affected by the extension of a law [rec 6] ▪ The Commonwealth accelerate the development of administrative and political reform on Christmas Island to ensure the progressive development towards the establishment of a local government body on Christmas Island with an expanded role, including direct access to the Minister in respect of laws to apply on the Island, for reviewing Western Australia laws for their appropriateness to the Territory [rec 7] ▪ The Commonwealth initiate discussion with the Government of Western Australia in respect of the long term future of Christmas Island including its possible incorporation within the State of Western Australia [rec 8] ▪ The Commonwealth initiate action designed to overcome the breaches of human rights identified by the HREOC [rec 9] 	<p>The operation of Western Australia applied laws</p> <p>The operation of Western Australia applied laws</p> <p>Future governance arrangements & the operation of Western Australia applied laws</p> <p>Accountability and transparency of decision making</p> <p>Accountability and transparency of decision making</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ The Commonwealth arrange for the provision of a formal legal aid service for the residents of Christmas Island [rec 10] ▪ The Commonwealth ensure that, consistent with the particular circumstances of Christmas Island, as many as possible of the ILO Conventions ratified by Australia are applied to Christmas Island [rec 11] ▪ The Commonwealth ensure, in its administration of Christmas Island, that the Territory not assume the characteristics of a non-self governing territory within the terms of Chapter XI of the United Nations treaty [rec 12] ▪ The Commonwealth review the Administration Ordinance 1968 with particular reference to the title, functions and powers of the administrator [rec 13] ▪ In applying the laws of Western Australia, priority be given to the application of appropriate laws and the development of education programs in respect to domestic violence [rec 14] ▪ The Family Law Act 1975 be applied to Christmas Island [rec 15] ▪ The ANPWS ensure, through the promulgation of regulations under the NPWC Act if necessary, that a regime of nature conservation legislation exists for the proper protection of Christmas Island wildlife and environmental values [rec 16] 	<p>Community service delivery</p> <p>Future governance arrangements</p> <p>Aspirations of residents/ future governance arrangements</p> <p>Aspirations of residents/ future governance arrangements</p> <p>The operation of Western Australia applied laws</p> <p>Commonwealth laws Commonwealth laws</p>
<p>Christmas Island Strategic Plan 1990 – 2000</p> <p>Christmas Island Administration Plan</p>	<p>1990</p>	<p><u>Purpose of Plan:</u></p> <ul style="list-style-type: none"> ▪ Identify the Administration's management objectives of the Territory of Christmas Island ▪ Indicate the broad direction of the Territory's future development ▪ Identify objectives for infrastructure development ▪ Develop policy guidelines for the administration of the Territory ▪ Provide a strategy and realistic timeframe for the achievement of the Administration's objectives ▪ Provide a base for consultation and cooperation with the community <p><u>Plan Objectives:</u></p> <ul style="list-style-type: none"> ▪ To administer the Territory ▪ To preserve the Territory's unique environmental and cultural heritage ▪ To ensure that residents enjoy over time the social, economic and political benefits similar to comparable communities ▪ To provide a range of Commonwealth, territorial and state services <p><u>Planning Assumptions:</u></p> <ul style="list-style-type: none"> ▪ Sovereignty can be maintained by a National park with supporting staff ▪ A modern legal regime will apply from 1991 based on the application of 	<p>Accountability and transparency of decision making</p> <p>Government and economic sustainability links</p> <p>Accountability and transparency of decision making</p> <p>Aspirations of residents</p> <p>Accountability and transparency of decision making (all)</p> <p>Australian constitution</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<p>Commonwealth and Western Australian legislation</p> <ul style="list-style-type: none"> ▪ Standard of community support infrastructure equivalent to a similar remote locality elsewhere ▪ The will be an Assembly with responsibility for local government functions ▪ Local enterprises will be actively encouraged but the Government will not provide subsidies to commercial enterprises ▪ Unique parts of the natural environment will be protected to the maximum extent possible ▪ The cultural and ethnic diversity of the Island will be recognised and the Government's multicultural principles will apply ▪ The Commonwealth will over the ten year period consider the feasibility of the incorporation of the Island into Western Australia ▪ The Island will remain part of the electorate of the NT over the period of this plan 	<p>Accountability and transparency of decision making Future Governance arrangements Government and economic sustainability links -- Aspirations of residents Future governance arrangements Future governance arrangements</p>
<p>Christmas Island Strategic Plan 1991 – 1996</p> <p>DASETT Plan</p>	<p>1991</p>	<p><u>Strategic Objectives:</u></p> <ul style="list-style-type: none"> ▪ To align conditions and standards on Christmas Island with those of comparable communities in the rest of Australia ▪ To provide residents of the Territory, over time, with rights, opportunities & obligations equal to those of their fellow Australians ▪ To enhance economic development & protect the natural and cultural heritage ▪ To deliver government services efficiently & effectively 	<p>Accountability and transparency of decision making Future governance arrangements Government and economic sustainability links Accountability and transparency of decision making</p>
<p>Christmas Island Indian Ocean – A Tourism Overview</p> <p>A report on a DASET sponsored visit by the Western Australia Tourism Commission</p>	<p>1992</p>	<p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ Develop a Tourism Plan ▪ Implement the Council's Tourism Policy ▪ Establish a Visitor's Centre & appoint a tourism officer ▪ Collect information about visitors to the Island ▪ Establish a Tourism development board ▪ Investigate alternative freight shipping to reduce costs ▪ Conduct a socio-economic impact study ▪ Provide middle management training in Tourism ▪ Landscaping beautification projects ▪ Airport to be upgraded to international standard ▪ Establish a bus or taxi service ▪ Develop National Park accessibility to visitors 	<p>Government and economic sustainability links (all)</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
Public Works Inquiry – Christmas Island Rebuilding Program	1992	<p><u>Conclusions & recommendations:</u></p> <ul style="list-style-type: none"> ▪ Much of the essential infrastructure on Christmas Island for the delivery of government services is run down and does not meet mainland Australian health and safety standards. The Committee agrees there is a need to bring Commonwealth owned and managed infrastructure on Christmas Island for the delivery of Government services up to mainland standards as soon as possible [rec 1] ▪ The Committee recommends that prior to the final commitment to the total ten year rebuilding program there should be an assessment of the success of the initial funding program which may lead to changes in priorities and/or funding levels [rec 2] ▪ The Committee agrees that the master plan provides a suitable framework for the rebuilding program and has been developed in conjunction with the draft town plan [rec 3] ▪ The Committee believes that heritage aspects of Christmas Island have been given due regard and protection in the development of the master plan and the rebuilding program [rec 4] ▪ The rebuilding program will have a number of beneficial environmental effects including the provision of an effective sewerage system, the development of satisfactory methods for the disposal of toxic and other wastes, proper pollution controls and adequate sewerage systems to prevent soil erosion. ▪ The DASET should include the sealing of the roads from the airports turnoff to Waterfall and from the golf course to Waterfall in the rebuilding program [rec 7] ▪ The Committee believes that Christmas Island is an ideal location for a demonstration project to test the feasibility of alternative energy system to augment existing conventional power generation systems in isolated communities [rec 8 – rec 9 & 10 provide detail of how this should be done] ▪ The Committee recommends that deficiencies in the Christmas Island telecommunications system should be included as a priority item in the remaining works of stage 1 of the rebuilding program [rec 11] ▪ The Committee recommends that DASET should discuss both the location and size of the proposed swimming pool with the Christmas Island community [rec 12] 	<p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Community service delivery</p> <p>--</p> <p>Community service delivery</p> <p>Community service delivery</p> <p>Government and economic sustainability links</p> <p>Community service delivery</p> <p>Community service delivery</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ The Committee recommends that DASET and the Christmas Island Administration should as a matter of urgency develop a comprehensive strategy to address the critical housing situation of Christmas Island [rec 13] ▪ The Committee believes the rebuilding program will provide an opportunity to implement training programs for local workers on Christmas Island particularly in trade areas such as plumbing, electrical and carpentry [rec 15] ▪ The Committee recommends that the DASET in conjunction with DEET and the Union of Christmas Island Workers implement as a matter of urgency, a scheme to maximise training and apprenticeships for Christmas Island workers during the rebuilding program [rec 16] ▪ The Committee recommends that the DASET ensure the maximum possible use of local labour and materials in the implementation of the rebuilding program [rec 17] 	<p>Community service delivery</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p>
Christmas Island Administration Commercialisation Scoping Project (The Deloitte Ross Tohmatsu Report)	1992	<p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ Transfer ownership or management of Commonwealth assets ▪ Prepare an economic development plan ▪ Establish an Economic Development Authority ▪ Privatised Administration trades and maintenance services ▪ Establish a Christmas Island Utilities Corporation 	<p>Role of Shires</p> <p>Government and economic sustainability links</p> <p>Role of Shires</p> <p>Accountability and transparency of decision making</p>
"Windows of Change" - Australian Government Christmas Island Administration	1993	<p>A report about the Government's performance against its Strategic Plan. The report provided details on its activities over the period June 2002 – 2003 including:</p> <ul style="list-style-type: none"> ▪ The responsibility of the Administrator ▪ Government priorities (as per the Strategic Plan) ▪ Christmas Island Administration staffing ▪ Commercial development ▪ Property & technical Services ▪ Commonwealth/State transfer Unit ▪ Finance & personnel ▪ Rebuilding program ▪ Where the money was spent ▪ Statistics on revenue, expenditure, medical referrals, admissions, deaths etc, unemployment 	<p>Accountability and transparency of decision making (all)</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
Commonwealth Grants Commission	1995	<p><u>Findings:</u></p> <ul style="list-style-type: none"> ▪ Continue to develop a fiscus for Christmas Island annually and to improve the data on which it is based, thus allowing a more accurate assessment of the relative position of Christmas Island is to be made ▪ Address deficiencies in standard of infrastructure through the Christmas Island Rebuilding program (housing, land management, sewerage to LIA) ▪ An agreed plan be established quickly for providing the Shire with the infrastructure it needs; that the Commonwealth ensure the land and buildings used by the Shire are in a proper state of repair and comply with mainland health and safety standards; and the Commonwealth meets the full capital costs of the Shire's initial infrastructure ▪ The Australian Heritage Commission be asked to review urgently the heritage listings for Christmas Island ▪ Years 11 & 12 of secondary education be provided on the Island and the appropriate recurrent expenditure be added to the Territories Office budget ▪ ESL teaching be strengthened and take account of the special needs of the Island's Chinese and Malay communities ▪ The territories office, with the participation of the community, considers the most efficient means of providing TAFE services to meet the reasonable needs of the community. ▪ The Government could best facilitate economic development by reducing policy and administrative uncertainty. ▪ The housing situation is so different from the mainland that the government may have to play an unusually large role for a long time to come. As a first step, it should undertake sufficient new construction to fully meet the needs of government employees and welfare recipients ▪ A group of representatives of the Administration, the Shire and the three existing transport providers should jointly consider the feasibility of providing a public transport service on the island at an acceptable cost to the Government. ▪ The opportunities to reduce the operating costs of the power supply should be taken so that funds can be redirected to other services. ▪ Once responsibility for the roads is decided, commensurate funding needs to be made available. There is a good case for the Shire with additional financial assistance to allow it to obtain a minimum level of road maintenance equipment. 	<p>Government and economic sustainability links</p> <p>Community Service delivery</p> <p>Role of the Shires</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>--</p> <p>Government and economic sustainability links</p> <p>Government and economic sustainability links</p> <p>Community service delivery</p> <p>Community service delivery/ effectiveness of SDA's</p> <p>Government and economic sustainability links</p> <p>Role of the Shires</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ It is reasonable for the Commonwealth to continue to exempt Christmas Island from excise, customs duty and wholesale sales taxes. If it wishes greater transparency in the level of subsidy, these exemptions could be removed, but specific freight and travel subsidies provided. ▪ Against the background of the present standard of State-type services and facilities, the Christmas Island community is contributing at a reasonable level in the payment of State-type taxes. ▪ In its collection of municipal rates and garbage charges, the Shire is making a greater effort than remote Councils on the mainland. ▪ We support the initiatives to ensure that all Commonwealth services are extended to the Island, and we see merit in the continuation of the Administrator's advisory, and where necessary liaison, role for the community in relation to Commonwealth agencies. ▪ We support the thrust of the existing service delivery arrangement (SDA) process as it simplifies the Commonwealth task in managing the provision of state type services. However, it needs some refinement to take full account of the particular circumstances of the Island, and to involve the community earlier in the process. ▪ The Territories office, together with the community, prepare revised procedures which would allow community participation in preparing service specifications for SDA's and in evaluating the performance of service providers, and would not constrain the choice of service provider to Western Australian government agencies. ▪ The Territories office, the treasury and the Department of Finance work towards the creation of a Christmas Island Trust Account and a recurrent funding process for Christmas Island which is more flexible and better meets to requirements of providing service on the Island, while having regard to the Commonwealth-State financial arrangements ▪ The issue of Commonwealth political representation for all the minor Australian Territories needs consideration after further consultation with the communities. ▪ In the longer term, we are in favour of autonomy for Christmas Island, with a single unit of government having all the roles and responsibilities of a Shire Council and many of the functions of a State Government. ▪ There be a review to determine how best to enhance the political representation and autonomy of the community, and how the revised arrangements should be resourced. 	<p>Government and economic sustainability links</p> <p>--</p> <p>Role of Shires</p> <p>Government and economic sustainability links & Accountability and transparency of decision making</p> <p>Community service delivery/ effectiveness of SDA's</p> <p>Community service delivery/ effectiveness of SDA's</p> <p>Accountability and transparency of decision making</p> <p>Aspirations of residents/ future governance arrangements</p> <p>Aspirations of residents/ future governance arrangements & Role of the Shires</p> <p>Aspirations of residents/ future governance arrangements</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ The policy to reduce staff in the Administration Office needs to be reassessed as a matter of priority and future decisions should be linked to the review of representation, responsibilities and resources. ▪ We are strongly supportive of the Government's policy of establishing a body of law for Christmas Island that is easier to use in the Australian legal system. The practice of having nearly all Commonwealth laws and as much of the Western Australia law as is appropriate apply on Island seems the best way to proceed. We however, have some concerns about the process used to maintain the legal framework. 	<p>Aspirations of residents/ future governance arrangements</p> <p>The operation of Western Australia applied laws</p>
<p>The Resort Casino of Christmas Island – An exploratory Study of the Social & Economic Impact</p> <p>A report prepared by the Commonwealth Social Worker</p>	<p>1996</p>	<p><u>Abstract:</u> The study utilised questionnaire interviews and investigative strategies to gain insights into the history & current operations of the Christmas Island Resort and its impact on the social, cultural and economic life of the Island's people. The study reveals a unique and complex set of circumstances. The Island is a blend of diverse cultures, with Europeans forming a privileged minority, in a history of gambling as part of the lifestyle, a legacy of strong union activity and a remote benevolent Australian government presence. Inequities, inappropriate funding arrangements, inadequate housing and a sense of dislocation and isolation magnify the problems of this remote community. The study concludes that measures should be taken to promote cooperation, inclusiveness and cohesion in the community and its disparate institutions and peoples. It is suggested that this can be accomplished through short term funding for citizens and off Island workers at risk, and longer term restructuring of finance, legislative changes, improved infrastructure, extended educational opportunities for all islanders and generally a greater Australian government commitment to the island.</p>	<p>Government and economic sustainability links/ Community Service delivery</p>
<p>Development Strategy Options Paper – Report of the Ministerial Privatisation, Commercialisation & Land Management Taskforce</p>	<p>1997</p>	<p><u>Taskforce principles:</u></p> <ul style="list-style-type: none"> ▪ Devise an agreed strategy for sustainable economic development for the Indian Ocean Territories within the framework of good governance, good economic management and fairness ▪ Increase the size and diversity of the economy ▪ Increase local autonomy and responsibility ▪ Generate a larger and more diverse private sector ▪ Stimulate competition ▪ Increase the transparency of funding and decision making ▪ Reduce Commonwealth involvement where appropriate ▪ Divest Commonwealth utilities where appropriate 	<p>Government and economic sustainability links (all)</p>



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		<ul style="list-style-type: none"> ▪ Maximise long term Commonwealth outcomes ▪ Taking into account the need to meet comparable mainland community standards, Australia's international obligations & strategic defence requirements <p>NB The Minister made a commitment to ensure direct negotiations with Indian Ocean Territories' communities. This paper was used as the basis of consultations with the Indian Ocean Territories' communities.</p>	
<p>Public Housing Review for the Territory of Christmas Island</p> <p>A report commissioned by Christmas Island Administration & undertaken by Homeswest</p>	<p>1997</p>	<p><u>Terms of Reference:</u></p> <p>Address Current Issues</p> <ul style="list-style-type: none"> ▪ Physical condition of public housing ▪ Appropriateness of current public housing in terms of the physical and socio-cultural environment of Christmas Island, including family structures ▪ Profiles of current demand ▪ Compliance of tenants with public housing policies ▪ Reasonable levels of rent and formula for future rent movements <p>Address Strategic Issues</p> <ul style="list-style-type: none"> ▪ Criteria/conditions for entitlement to public housing ▪ Likely demand for public housing and a means for estimating demand ▪ Public housing versus rental subsidy for private occupancy ▪ Type(s) of public housing required ▪ Integration or segregation of public housing ▪ Alternative management models <p>"Each of the issues has been dealt with individually after extensive consultation with the key stakeholders including Administration staff, residents, community groups, Shire representatives and other interested persons."</p> <p><u>Review Summary:</u></p> <ul style="list-style-type: none"> ▪ It is generally accepted that public housing on Island has been somewhat neglected ▪ A key element of the provision of public housing was to align the available stock with a comparable location on mainland Australia. Due to the fact that Christmas Island has adopted Western Australia law it is appropriate that public housing meets the same quality of housing provided by Homeswest. ▪ The public housing that is provided for single men in the quarters at Poon Saan and Kampong can be compared with the transitional housing for Aborigines inherited from the native Welfare Department in 1972. There is little option than to accept that this housing is inappropriate and must be replaced as a matter of priority. 	<p>Accountability and transparency of decision making & community service delivery (all)</p>



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		<ul style="list-style-type: none"> ▪ Another area of concern to the reviewer is the seemingly lack of importance attached to public housing and residents and the continued referral to 'welfare housing'. ▪ Christmas Island could learn from the Homeswest experience in areas such as – <ul style="list-style-type: none"> ○ Valuing the customer ○ Involving the community ○ Responding to the needs of minority groups ○ Provision of housing specifically for Senior Citizens ○ Disability housing ○ Community housing such as refuges for women and children ▪ The day to day management of public housing could be enhanced with expertise provided by Homeswest (three options were proposed including direct management by Homeswest and Shire management of public housing with Homeswest assistance) ▪ Rental arrears must be addressed and natural justice exercised (last resort eviction) ▪ Maintenance is another area that appears to have been neglected, however, given the poor condition of existing stock it would be a difficult exercise to know where to start and finish ▪ All Administration staff have been very cooperative in this exercise and all community groups and individuals have provided much meaningful input. ▪ This review has created a lot of expectation among residents on Christmas Island and it will be important that some positive action is undertaken as a result of the review. 	
<p>Indian Ocean Territories Review</p> <p>Instigated by Alex Somlyay in May 1998, the then Minister for Territories</p> <p>Review conducted by DOTARS & DOFA</p>	<p>1998</p>	<p><u>Terms of Reference:</u></p> <ul style="list-style-type: none"> ▪ Undertake an assessment of the long term economic sustainability of the Indian Ocean Territories and, based on this assessment and consistent with the Commonwealth objectives for the Indian Ocean Territories, identify options and recommend future funding arrangements for the Indian Ocean Territories ▪ To the extent appropriate, the review may also consider and report on the most appropriate form of governance and service delivery arrangements for the Indian Ocean Territories <p><u>Recommendations:</u></p> <p>Not known as the report was never released. However, the Bureau of Economics conducted and published a regional analysis of each territory.</p>	<p>Government and economic sustainability links</p> <p>Aspirations of residents/ future governance arrangements / service delivery arrangements</p>



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		<ul style="list-style-type: none"> ▪ The adequacy of annual grants to the Indian Ocean Territories' Shires was addressed by examining the methods used by the Western Australia agencies recommending those grants. Their comparisons are with Western Australia shires that have similarities with those on the Indian Ocean Territories, including in terms of size and remoteness. Levels of Service ▪ The level of Commonwealth type services on the Indian Ocean Territories is at the standard found in comparable mainland communities. ▪ There are a few areas on both Territories where State-type services are below the standards provided in comparable communities on the mainland. On Christmas Island additional expenditure is needed for vocational education and training, health, welfare services, and grants for cultural and recreation services, and non-government welfare activities; more specifically: <ul style="list-style-type: none"> ○ Education – deficiencies in infrastructure ○ Vocational Education & training – below standard – more funding required ○ Health - Services generally below that of comparable communities. An SDA with a major health provider would be preferable and increased expenditure required for family members to accompany PATS patients & additional visits of specialist medical officers ○ Welfare Services – Full time Social Worker required; Youth recreation funding required; airfares for seniors required; HACC & Aged Care Act should apply & in the interim \$60,000 pa allocated; access to equivalent State grants required ○ Small Business – Area Consultative Committees should be extended to the Indian Ocean Territories ▪ Funding for the Indian Ocean Territories Shires does not need to be adjusted. ▪ Capital works projects are required as a matter of priority. On Christmas Island the projects are welfare housing at Homeswest standards, separation of the sewerage and storm water systems, projects aimed at improving safety on the wharf, and the replacement and reconditioning of the water supply infrastructure – costed at \$62.25 million. ▪ Commonwealth taxes are raised at the same level as those that apply on the mainland (other than wholesale tax, excise duties and customs duties which aren't applied as a matter of policy) 	<p>Community service delivery/ effectiveness of SDA's (all)</p>



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		<ul style="list-style-type: none"> ▪ Compared with remote communities in Western Australia, Indian Ocean Territories residents are paying appropriate levels of tax ▪ Water consumption charges should be introduced on Christmas Island ▪ Other user charges (welfare housing, airport charges and health services) are at levels that would be expected in small remote communities on the mainland. <p>Governance:</p> <ul style="list-style-type: none"> ▪ Commonwealth legislation: Some Commonwealth legislation excludes the Indian Ocean Territories from its operation. In some cases this is to provide for Commonwealth policy exempting the Indian Ocean Territories from particular taxes, in other cases it is because of the absence of a specific reference to the Indian Ocean Territories or of a State level delivery mechanism. Examples: Aged Care Act 1997. Home & Community Care Act 1995, Schools Grants Acts and legislation providing assistance to industry. We do not think this can be justified. Priority should be given to a review of relevant legislation, and the necessary amendments prepared to ensure the territory communities have full and equal access to these services. Administrative arrangements should also be put in place by Commonwealth agencies to facilitate access by those resident on the Indian Ocean Territories to all Commonwealth programs [paras 2 -5] ▪ Western Australia Applied Laws: Concerns about the system of applied law could be addressed by ensuring that the Indian Ocean Territories communities have better access to the laws that apply and to adequate information on how the legal system operates. The re-invigorating of the CCC on both territories would be a useful first step. DOTRS should also consider whether a more streamlined process for applying new legislation to the Indian Ocean Territories and for culling irrelevant legislation could be developed [paras 6 -8] ▪ Appeal processes & political representation: Indian Ocean Territories' residents have access to independent channels of complaint, such as the Commonwealth Ombudsman, through the operation of the Client Services Charter of the Territory administrations. However, during out discussions and conferences on the Indian Ocean Territories no mention of the Client Services Charters was made by either Administrations or members of Indian Ocean Territories' communities. Nor were they referred to in any submission we received. 	<p>Aspirations of residents/ future governance arrangements</p> <p>The operation of Western Australia applied laws</p> <p>Accountability and transparency of decision making</p>



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		<ul style="list-style-type: none"> ▪ Industry assistance: Current policy objective is to “continue its policy of securing a greater degree of economic self sufficiency for Christmas Island and Cocos (Keeling) Islands”. We can see very little evidence of the application of this policy in the Indian Ocean Territories: <ul style="list-style-type: none"> ○ Changes to Commonwealth’s general approach to public sector service provision have contributed to a decline in the locally based workforce on both Territories. Contracting out of services and competitive tendering has led to a decline in direct employment, and a number of contracts have been awarded to off-island contractors further depleting employment opportunities for locals ○ The recent BTE Economics reports on both Territories concluded that the Indian Ocean Territories are economically sustainable in the long term only with significant Commonwealth funding. This is not consistent with stated government policy. ○ DOTRS provides assistance through its Canberra office to encourage the development of new industries, such as the re-opening of the casino and the establishment of a satellite launching facility on Christmas Island. In general assistance in this area is less than assistance available for business development in their States. Standard levels of industry assistance, on comparable terms, should be available to the Indian Ocean Territories. Incentives for industry should be subject to rigorous assessment, including an evaluation of the benefits of achieving greater economic self-sufficiency on the island, reducing welfare payments and increasing the self esteem of the island communities. ○ DOTRS is presently investigating methods of providing an advisory and promotional structure to enhance the Indian Ocean Territories economic development. The Western Australian Regional development commission model is being examined. ○ A range of grants is available to Western Australia industries for start up funding including the Agriculture Development Fund (up to \$50,000), Regional Business Development Corporation, and fisheries research and development. ○ DOTRS has said that support services for agriculture, commerce or trade are not provided in the Indian Ocean Territories and that it is difficult to fund applications for grants, even if they meet appropriate criteria, because the funds are not automatically available and Ministerial approval is required. 	<p>Government and economic sustainability links (all)</p>



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<p>Symond's Report</p> <p>A report commissioned by DOTARS about the Indian Ocean Territories Health Service</p>	<p>1999</p>	<p><u>The terms of reference:</u></p> <ul style="list-style-type: none"> ▪ Identify and document the scope of services currently provided by the IOTHS and make recommendations for improvement in delivering the service ▪ Cost the services provided by the IOTHS, identify the major components of those services, and make recommendations for efficiency improvement, considering both the continuation of the service if it is outsourced as well as under the existing management ▪ Review the existing management structure and staffing models for service delivery and make recommendations to improve the effectiveness and efficiency with which the services are delivered. ▪ Review existing staffing roles, levels of responsibility and reporting channels within the IOTHS and identify changes that will need to be made if the operation of the IOTHS is outsourced. ▪ Undertake a cost benefit analysis for making changes to the existing services, bearing in mind the investment in the new Christmas Island Hospital buildings ▪ Review the condition of all buildings and equipment for their adequacy and appropriateness for delivering future services in 3 years, 5 years and 10 years time. ▪ Review existing arrangements with external health service providers and make recommendations for standardisation and improved cost effectiveness ▪ Identify and document best practice areas in the IOTHS ▪ Development of service indicator – a socio-economic, socio-geographic and demographic analysis. <p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ Undertake of a health needs assessment of the communities on both Islands to establish the baseline health status of the community ▪ The IOTHS develop a five-year operational plan, which details economic and financial objectives, set operational targets and describe how the targets will be achieved. Plans need to be formulated around populations, locations, interventions and health conditions. ▪ The IOTHS report to a health agency. The most suitable agency given its location would be the Health Department of Western Australia. Reporting to such an agency would provide the IOTHS with access to professional, financial and management support and materials, a network of providers, 	<p>Community service delivery/ effectiveness of SDA's & Accountability and transparency of decision making (all)</p>



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		<p>access to resources and benchmark measures.</p> <ul style="list-style-type: none"> ▪ Develop a funding mechanism that supports the direction identified in the operational plan. Health-funding mechanisms that are committed to the maintenance and improvement of the communities' health status should be the focus. ▪ The DON component of the Health Service Managers role be dis-established. The level 3 RN role is capable and should be managing any DON like duties. The RN's to undertake this role in both Christmas Island and Cocos (Keeling) Islands. The critical issues for the RNs would be the need to communicate with each other to manage potential gaps in service coverage. ▪ A decentralised management structure with delegated authority should be in place for the Medical Director. The primary responsibility of this role will be to facilitate clinical development and population health outcomes within the identified budget environment. It would be appropriate for this role to be subject to peer review through a recommended reporting body. ▪ The IOTHS develop a health delivery system that respects and responds to the legitimate cultural expectations, rights and views of the Islands communities. This requires the IOTHS to work with the community and its own staff in the development of an environment that enables people to be involved in making decisions and choices about care and health services to the community. ▪ Given the perceptions held by the community and the acknowledged health status of the community we recommend that the IOTHS develop a community-based focus with health promotion, prevention, and independence being its key aims. For the Christmas Island this is likely to require the service to become a community based health centre that on occasion, will need to admit for inpatient care. ▪ The development of an action plan that outlines the strategies and actions required by the IOTHS to address the perceptions held by the community ▪ The social worker and other future ancillary health workers (such as dieticians, physiotherapists, etc.) be under the umbrella of the IOTHS to facilitate co-ordination and integration of services. 	
Northern Australia Forum – Christmas Island consultation	2000	<p>The Report on Christmas Island consultations considered:</p> <ul style="list-style-type: none"> ▪ Key Current industries ▪ Future economic development Opportunities ▪ Barriers to economic development 	Government and economic sustainability links



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<p>DOH Report</p> <p>A report commissioned by DOTARS about the Indian Ocean Territories Health Service</p>	<p>2000</p>	<p><u>Terms of reference:</u> The WA Department of Health to –</p> <ul style="list-style-type: none"> ▪ Examine the option of providing and managing the health services to the IOT's. This would enable the IOTHS to maintain pace with changing standards and benchmark against other rural health services. Under the existing SDA, the DOH provides limited advice and assistance on request. ▪ Identify health programs and models of health service delivery that will best meet the current and future needs of the communities. <p><u>Recommendations:</u> Quality care and systems</p> <ul style="list-style-type: none"> ▪ IOTHS introduce a Quality Care and Systems approach to the delivery of health services. ▪ Sufficient resources are allocated to adopt of Quality approach. This would include appointing a Quality consultant ▪ To better identify the health needs of the community, systems are put in place to collect and analyse data relating to all health services ▪ Roles and responsibilities of key IOTHS positions are clarified delegating responsibilities to business/program managers ▪ A management committee is established to provide leadership and direction for the IOTHS and to continually review performance. Terms of reference to be established. ▪ The HSM/DON is responsible for providing regular performance reports to the CI Official Secretary. The CI Administration is responsible for supporting the HSM/DON by providing direction and managerial support. ▪ Regular exchange of health staff between CI & CKI ▪ The CI & CKI Health Advisory committee be further developed to represent the communities' interests to the management committee in the delivery of appropriate services ▪ A structured orientation program including cultural issues is developed. ▪ Employment arrangements and conditions to be standardised ▪ Systems are put in place to constantly address confidentiality issues ▪ Medical records systems require improvement to reflect Australian Standard AS 2828-1985 ▪ The community is advised of health services and programs available by pamphlets, local radio and newsletters. 	<p>Community service delivery/ effectiveness of SDA's & Accountability and transparency of decision making (all)</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<p>Programs to promote health</p> <ul style="list-style-type: none"> ▪ All health programs are structured, identify intended outcomes and evaluated according to performance indicators ▪ Promotion and prevention programs, including Environmental Health programs, are recognised as essential services and introduced. Specialised support, community input, and partnerships with other agencies will be required. ▪ A review of dental services is required ▪ The need for visiting Mental Health specialists is investigated and specialist services and programs introduced as evidence indicates ▪ Registered general nurses with mental health qualifications and experience in community-based programs are recruited ▪ School, child health and immunisation programs are clearly documented. ▪ The school “sick clinic” service be reviewed and replaced with health promotion and education programs ▪ A Practise Nurse role is developed from current nursing positions. This role will support Medical officers and provide a greater range of Promotion and Prevention services to the community ▪ A visiting Home Nursing service is introduced as an alternative option to inpatient care ▪ Visiting specialist visits are planned in advance and provide community-based health promotion activities and staff education ▪ Equipment and information (including translations) are required to support Promotion and Prevention programs <p>Efficiency & Accountability</p> <ul style="list-style-type: none"> ▪ Responsibility for budget to be distributed across program/business areas and managed/reported on monthly. ▪ Reporting mechanisms be put in place to monitor IOTHS use of pharmaceuticals ▪ Equipment to be maintained and staff trained in competent use ▪ Preventative maintenance program to be developed, implemented and monitored ▪ Accommodation for relief and visiting staff to be used as opposed to commercial accommodation ▪ A number of recommendations about models of service delivery progressively implementing a “multi-purpose model” were also made 	



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<p>The Vocational Education & Training and Adult Community Education Needs of the Indian Ocean Territories</p> <p>A report commissioned by DOTARS</p>	<p>2001</p>	<p><u>Principles:</u></p> <ul style="list-style-type: none"> ▪ Aligning service provision with provision in mainland Western Australia ▪ Obtaining best value for public funds ▪ Incorporating appropriate quality assurance and accountability mechanisms ▪ Ensuring VET and ACE contributes to building the capacity of the community ▪ Strengthening the relationship between employment opportunities, policies and practices and VET and ACE ▪ Promoting community involvement in decision making processes <p><u>Summary of Priorities:</u></p> <ul style="list-style-type: none"> ▪ Emerging industries of tourism (including ecotourism and environmental management), information technology, community arts and cultural management have been identified as priority sectors for the allocation of VET resources ▪ Urgent need to build and strengthen the Islands' capacity for both economic and community development through the provision of foundation or entry level VET skills, and language and literacy skills ▪ Adult community education that encourage the maintenance and expansion of culturally specific crafts (with small scale tourist and cross cultural awareness raising potential) ▪ Ensuring that local people have their skills recognised, or develop the skills necessary to take up or create employment opportunities or comply with legislative requirements are the key priorities for short courses 	<p>Government and economic sustainability links (all)</p>
<p>Risky Business</p> <p>JSCNCET Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort</p>	<p>2001</p>	<p><u>Recommendations</u></p> <ul style="list-style-type: none"> ▪ The Committee recommends that the Commonwealth, where appropriate, take a more active approach in the provision of timely and efficient support, by clarifying and streamlining processes for the deliverance of administrative and policy assistance to the Christmas Island community [rec 1] ▪ The Committee recommends that the Commonwealth formulate a proposal to underwrite the payment of entitlements owed to former employees of the Christmas Island Casino and Resort. The Committee also recommends that the Commonwealth underwrite the payment of salaries and entitlements owed to former employees of Christmas Island Laundry Pty Ltd, not exceeding the total sum of \$20,000 [rec 2] ▪ The Committee recommends that the Commonwealth seek to finalise and implement an operational agreement with Soft Star Pty Ltd to replace the original agreement previously in place with CIR. The Committee further 	<p>Government and economic sustainability links</p> <p>--</p> <p>Government and economic sustainability links</p>



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		<p>recommends that items specified within the new agreement include:</p> <ul style="list-style-type: none"> ○ details of any proposed companies that may be contracted for the management and operation of the casino and resort; ○ a timetable for the refurbishment and re-opening of the casino and resort, if that is the direction of Soft Star; and ○ an administrative framework for the operation of the casino, including a gaming tax rate, Community Benefit Fee and jurisdiction for any applicable casino control legislation. [Rec 3] <ul style="list-style-type: none"> ▪ The Committee recommends that conversion of the Crown leases of the resort from leasehold to freehold title be pursued, provided that the Commonwealth undertake the following: <ul style="list-style-type: none"> ○ a formal consultation process with the Shire of Christmas Island; and ○ incorporation of community concerns, where practicable, into the application of certain covenants and conditions on the freehold title, as is commercially appropriate, in order to ensure that the property may be used as a casino and resort and ancillary thereto. [Rec 4] ▪ The Committee recommends that, in the conduct of all future tender processes on the Island, the Commonwealth take active steps to ensure that all necessary financial and probity checks are comprehensively conducted before agreeing to the assignment of Crown leases [Rec 5] ▪ The Committee recommends that the Commonwealth negotiate terms and conditions for the provision of vehicular access to Waterfall Bay for members of the Christmas Island community [Rec 6] 	<p>Accountability and transparency of decision making & community service provision</p> <p>Accountability and transparency of decision making</p> <p>--</p>
<p>Kwek Report A report commissioned by DOTARS-Christmas Island about the IOTHS</p>	<p>2001</p>	<p>Terms of Reference: Identify and list advantages and disadvantages to the Islands' communities on possible options in health care delivery ranging from present situation through to full privatisation. Budgetary implications and management structures to be explored in health service models which include: Public & Community health, General Practitioner Outpatient services and in-patient care, Accident & Medical Emergency care, Medical Specialists Services and Ancillary Health Services, Health care of non-Australian residents and Pathology & Dental Services.</p> <p>Findings:</p> <ul style="list-style-type: none"> ▪ It is questionable whether a Commonwealth department should continue to operate a state-like health service 	<p>Community service delivery & Accountability and transparency of decision making (all)</p>



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ DOTARS does not have the capabilities of a government health department to support a public health service. It spends a substantial amount of money to finance a service that is complicated by remoteness, ethnic composition, economic uncertainty and communication problems ▪ Without a clear policy direction and appropriate management the quality of health service is determined predominantly by workers who can survive in this system. ▪ Health service management is not stable or efficient ▪ Locally engaged employees have very little input into the decision making process. Disparity in wages and employment benefits cause discontent and frustration ▪ Many mainland workers, who are on short term employment contracts, tend to regard their assignment as a holiday, rather than a long term vocational commitment <p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ DOTARS seek tenders for the private management of IOTHS through national and international advertisements. ▪ The DON/Manager position be de-established as per the Symond's report. Once de-established, the position to be advertised as Health Services Manager when the current contract of the DON/Manager position expires in early 2003. 	
PWC Inquiry – Common use Infrastructure – Proposed Airport Upgrade	2002	<p><u>Issues & Conclusions</u></p> <p>Safety Measures</p> <ul style="list-style-type: none"> ▪ The DOTARS submission advised that provision of emergency services at the airport, including fire tenders and associated vehicle storage facilities were included in their original referral to the Committee in August 2001. Emergency services facilities are not included in the current airport upgrade proposal after advice from CASA that these services would not be required because of low airport utilisation. ▪ At the public hearing, the Administrator of Christmas Island, Mr William Taylor, speaking from a community point of view, noted community concern in relation to the exclusion of fire fighting services at the airport. Mr E Turner, Manager, Christmas Island Aviation Services also expressed serious concerns about CASA's decision. Mr Turner's advice to CASA and the Minister indicated that airlines such as Merpati and Silk Air, a Singaporean company, had expressed a wish to discontinue their weekly flight unless the fire tender were replaced. 	Government and economic sustainability links & Accountability and transparency of decision making (all)



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<ul style="list-style-type: none"> ▪ In a reply to Mr Turner, the Minister observed that the low level of activity at the airport did not justify the considerable capital required for Airservices Australia to establish and maintain Rescue and Fire-fighting Services to appropriate International Civil Aviation Organization (ICAO) standards. This estimate also included the recruitment of appropriately trained personnel. The Minister noted that the Island Administration, as the airport operator, could make local arrangements for a basic level of fire fighting services if required by foreign airlines ▪ Mr Turner explained to the Committee at the public hearing that CASA's exemption of Christmas Island airport from rescue and fire fighting services was given the year after the closure of the Christmas Island Resort. ▪ DOTARS confirmed that in the submission provided to the Committee in August 2001, fire fighting services were included because the airport upgrade was associated with the APSC facility at South Point. However, CASA assessed that the nature of the work at the airport did not warrant the current exemption to be lifted. ▪ The Christmas Island airport manger, Mr Don Bridges summed up by suggesting to the Committee that "There would not be an airport manager around who does not want a fire service". ▪ The Committee does not understand nor accept CASA's exemption of the fire fighting services, particularly as the upgrade to the airport is associated with the ASPC facility. <p>Consultations</p> <ul style="list-style-type: none"> ▪ The DOTARS' submission advised that a range of relevant organisations and stakeholders were consulted during the planning and development stages of the proposed airport upgrade. The organisations consulted included the Christmas Island Administration; Shire of Christmas Island; Christmas Island Power Authority; Christmas Island Airport Manager, Christmas Island District High School and Christmas Island Phosphates. ▪ In submissions and at the public hearing, the Shire of Christmas Island, and Christmas Island Phosphates indicated that consultations with them had not been sufficient and were concerned that their views had not been adequately addressed. ▪ Amongst the concerns raised by the Shire of Christmas Island were: the Draft Christmas Island International Airport Master Plan does not consider the compatibility of the airport with the existing and likely future residential land use; the potential social economic and environment impacts, 	



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		<p>particularly in relation to vibration associated with noise, but not only with noise; lack of emergency services to the upgraded airport; and an upgrade to the fuel infrastructure.</p> <ul style="list-style-type: none"> ▪ At the public hearing the Shire representative, Mr Edward Love, Manager, Planning, Building and Health, made two further points. One, that the Council be provided with excavated material that resulted from the road works for the realignment and lowering of the roads to the north of the airport as a resource. The second point related to the use of accumulated waste on the island as fill. Mr Love observed that because of its isolation, waste disposal is a problem on Christmas Island. At the present time there are large amounts of accumulated waste mainly steel products close to the waste tip. Mr Love suggested that in order to alleviate this problem, the waste could be appropriately used as fill in non-controlled fill-in areas. That is not on the proposed runway extensions, but around the edges and landscaped areas. ▪ The Committee is concerned that the Shire of Christmas Island has been left with the perception that insufficient consultations have taken place between them and DOTARS. There is no doubt that the airport upgrade will introduce significant changes to the Christmas Island Community, particularly of an environmental and social nature. The Shire must feel satisfied that what is being envisaged by the Commonwealth will add to, not detract from, the quality of life of the island community. <p>Impact on mining</p> <ul style="list-style-type: none"> ▪ Christmas Island Phosphates' (CIP) initial submission advised the Committee that the proposed airport extensions to the North and to the South would hinder their mining operations. They also advised that any restrictions or inconvenience experienced by CIP to explore and exploit resources, which results in loss of the resources, hence revenue, would force CIP to seek compensation from the Commonwealth. <p>General Issues</p> <ul style="list-style-type: none"> ▪ The Committee was made aware by members of the community that the public works proposed on the island would significantly impact on the community and the island infrastructure. The point was stressed that a large in-flow of people to the island to work on the various public works projects could impose a serious burden on services. ▪ The Committee strongly believes that the following issues need to be considered by the Commonwealth in order to ensure that the local 	



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
		<p>community is not disadvantaged and infrastructure is able to cope with the added stress imposed by the proposed public works projects: a need for the Commonwealth to consider a social impact study on the island as a result of a possible rapidly rising population; a need for additional public transport, such as additional 20-seater buses, because of the lack of taxi or hire cars on Christmas Island, to cater for the increasing population; education of visitors for awareness of cultural sensitivities; development of training programs for local people during the course of the projects in order to increase the skills base on the island; provision of suitable recreational facilities; monitoring the requirements of the education and health systems; and an increase in housing to address the acute housing shortage on the island.</p> <ul style="list-style-type: none"> ▪ The Committee is of the view that, irrespective of APSC proceeding, an upgraded airport for Christmas Island would help to decrease the isolation of the Christmas Island community by improving its air services. ▪ The Committee expects that there would be some employment opportunities for members of the local community as well as opportunities for the development of the local skills base. <p><u>Recommendations</u></p> <ul style="list-style-type: none"> ▪ In order to encourage international aircraft to use Christmas Island, the Committee recommends, as a matter of urgency, that the Department of Transport and Regional Services approach the Civil Aviation Safety Authority to remove its exemption on the provision of emergency services at the airport [rec 1] ▪ The Committee recommends that the Department of Transport and Regional Services seek further consultations with the Shire of Christmas Island in order to address any concerns raised by the Shire to the mutual satisfaction of the Shire and the Commonwealth [rec 2] ▪ The Committee recommends that the Department of Transport and Regional Services enter into discussions with Christmas Island Phosphates in order to reach a compromise with regard to the removal of phosphate deposits from areas affected by the airport upgrades without the company's activities impacting on the cost or time frame of the project [rec 3] ▪ The Committee strongly recommends that the Minister for Regional Services, Territories and Local Government consider a social impact study and, if necessary, institute action to upgrade Christmas Island infrastructure and services to ensure that the local community is not disadvantaged by the 	



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		<p>anticipated increase of workers assigned to the proposed public works projects [rec 4]</p> <ul style="list-style-type: none"> ▪ The Committee recommends the proposed common use infrastructure project on Christmas Island proceed pending approval of the draft Environmental Impact Statement and the fulfilment of the recommendations made in this report [rec 5] 	
<p>PWC Inquiry – Respecified (800-bed) Immigration Reception Processing Centre</p> <p><i>Local issues only listed</i></p>	<p>2003</p>	<p><u>Issues & Conclusions</u></p> <p>Opportunities for Local Businesses</p> <ul style="list-style-type: none"> ▪ DoFA’s main submission states that the construction of the IRPC on Christmas Island will contribute positively to the local economy through business and training opportunities. ▪ The CIP submission notes, however, that the delays occasioned by the re-specification of the project have had a deleterious impact upon local tradespeople. ▪ In view of this, the Committee requested that DoFA outline the opportunities that would be available to local business people under the new contractual arrangements. ▪ DoFA responded that a preliminary works package was envisaged to commence early in 2004 and that this package would be of a size suitable for execution by local contractors. ▪ DoFA added that involvement of local businesses and training for local people would form part of the assessment criteria for the major works contract. <p>Training</p> <ul style="list-style-type: none"> ▪ DoFA’s main submission asserts that: “... the construction tender will include the local training and local business content.” ▪ The Committee wished to know who would manage this aspect of the contract to ensure the provision of quality training. ▪ DoFA explained that its selected project manager would engage a full-time superintendent to manage all works carried out on the island. This individual would also have responsibility for reviewing contractual obligations relating to local training. <p>Impact upon Local Services</p> <ul style="list-style-type: none"> ▪ In its submission, CIP expresses concern that the island’s emergency fire and ambulance services may be degraded by the additional burden placed upon them by the construction of the IRPC. Likewise, CIP points out the limited availability of power and water on Christmas Island and seeks 	<p>Government and economic sustainability links (all)</p>



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		<p>assurance that supply to local businesses and residents will not be diminished by the construction of the centre.</p> <ul style="list-style-type: none"> ▪ When questioned on this matter at the public hearing, DoFA responded that the design philosophy adopted for the centre ensures that there will be no adverse impact upon local services. <p><u>Recommendations</u> The Committee recommends that the Department of Finance and Administration continue to liaise with the Christmas Island Chamber of Commerce and other relevant organisations in relation to the issues raised in the Christmas Island Chamber of Commerce submission [rec 1] The Committee recommends that the proposed respecified Christmas Island Immigration Reception and Processing Centre proceed at an estimated cost of \$197.7 million [rec 2]</p>	
PWC Inquiry – Recreation Centre	2003	<p><u>Issues & Conclusions</u> Lack of Detailed Plans and Costs</p> <ul style="list-style-type: none"> ▪ The Public Works Committee <i>Manual of Procedures for Departments and Agencies</i> specifies that submissions should include planning and design concepts. However, DOTARS' main submission did not include any plans for the design and/ or construction of the proposed recreation centre. ▪ The Committee expressed its concern about the lack of detailed plans provided to it: "The Committee has got no working drawings, no plans and no site plans as to the siting of the building. We have the plan of the island, but it does not show us the footprint of the building on the island...all of that information must come forward for the Committee to appropriately deliberate on the matter." ▪ DOTARS subsequently provided the Committee with details of the preferred tenderers' designs and construction costs. <p>Detailed Costs The Committee also requested that DOTARS supply it with more comprehensive material regarding costs for the project as a whole. DOTARS complied with this request soon after the public hearing.</p> <p>Location and Access</p> <ul style="list-style-type: none"> ▪ The DOTARS main submission offers little information on any alternative sites considered for the proposed new recreation facility ▪ DOTARS explained that two sites in the Phosphate Hill area were identified 	Accountability and transparency of decision making / Role of the Shires / Community service provision (all)



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		<p>as potentially suitable because of their proximity to power and services, appropriate size and ability to accommodate future growth on the island.</p> <ul style="list-style-type: none"> ▪ The Committee noted that locating the new facility near the existing cricket ground and consolidating sporting facilities made sense in a small community such as Christmas Island. However, it was concerned that there remained a number of other sporting facilities spread across the Island. ▪ DOTARS explained that the town plan for Christmas Island had developed the way it had for historical and cultural reasons. DOTARS said that distances on the island are not substantial and that: "... generally the distance factor on the island is comparable to anywhere in any local area, to get to those facilities." ▪ In its submission, the Shire raised concerns regarding the distance of the proposed site from the settled areas and the lack of public transport to and from the site. The Committee was interested to learn more about the nature of public transport on Christmas Island and possible solutions. DOTARS acknowledged that the oval and new facility will be located some distance from the main areas of the settlement, that not everyone has access to transport, and that this is an issue that needs to be worked through with the Shire. The department posited that the cost of providing of a small bus on the island would not be great and that if it increased the utilisation of the facility, it might be worthy of consideration. ▪ The Committee asked DOTARS whether it had considered co-locating the facility with the school, with a view to improving the sporting and recreational facilities at the school and enhancing access for residents in general. ▪ DOTARS explained that a site in Drumsite, close to the school, had been the preferred location over the last decade for a new swimming pool. However, once the decision was made to incorporate the new swimming pool into a multi-purpose recreation facility, the Drumsite site was no longer suitable because it was too small to accommodate the complex. DOTARS informed the Committee that it intended to co-locate facilities around the cricket ground because this facility is the most used by the community. ▪ DOTARS acknowledged that the school would be a major user of the new recreation centre and added that the school's current bus arrangements would cater for their transport requirements to and from the new facility. <p>Consultation</p>	



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		<ul style="list-style-type: none"> ▪ DOTARS' main submission stated that the consultation process for the works was facilitated through the Administrator's Advisory Council (AAC) which is comprised of representatives from the Shire and a broad range of community organisations on Christmas Island. ▪ Written evidence supplied by both the Christmas Island Cricket and Sporting Club Inc. and the Shire indicated that the community had concerns with the consultation process for this project. The Cricket Club expressed its surprise that it was not invited to comment on the proposal, given that it is the main sports club on the island. The Shire maintained that DOTARS had not engaged in comprehensive community consultation. ▪ The Committee noted that the school was not consulted either and asked DOTARS to comment on why neither the cricket club nor the school were approached directly for their views on the proposed recreation centre. ▪ DOTARS expressed its surprise that the cricket club was not represented on the AAC and said that input from the school had been sought informally, rather than through the AAC. <p>Surveys</p> <ul style="list-style-type: none"> ▪ The Committee inquired whether surveys had been undertaken to gauge the expected patronage of the new recreational facilities. ▪ DOTARS replied that while no quantitative surveys had been undertaken, qualitative responses were elicited from community representatives such as the Shire, the AAC and the Administrator. <p>Ongoing Management</p> <ul style="list-style-type: none"> ▪ In written evidence, the Shire expressed concern that the department had not provided it with sufficient details for either the ongoing management arrangements or the anticipated operational costs of the proposed facility. The Shire maintained that, despite repeated requests for information, the Commonwealth had failed to outline who will be responsible for the day-to-day management of the facilities ▪ The Committee commented on the need to clarify responsibility for the management of the new facilities and the form these arrangements would take. ▪ Given the high running costs of recreational facilities, the Committee believes that the issue of ongoing management of the proposed recreation centre is pivotal and it would like to see a forward management plan developed for the new facility. This information was subsequently provided to the Committee. 	



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		<p>Revenue and Financial Viability</p> <ul style="list-style-type: none"> ▪ The main submission outlined DOTARS' intention to derive revenue from leasing out parts of the new facility such as the gymnasium, kiosk and crèche. ▪ The Committee commented on the difficulties of recouping significant funds via leasing arrangements and expressed serious doubt that such a proposal could be made financially viable in a community as small as Christmas Island. ▪ The DOTARS main submission indicated that the existing community swimming pool is likely to continue to be used once the new facility becomes operational. ▪ The Committee questioned how a community the size of Christmas Island could sustain the operation of two public swimming pools and reiterated the importance of clarifying the ongoing management arrangements for the new facilities <p>Need for the Centre</p> <ul style="list-style-type: none"> ▪ DOTARS main submission described long-term population growth on Christmas Island as a major factor in the need for a new recreation facility. DOTARS stated that the population is expected to reach 5, 000, partly due to the IRPC project. ▪ The Committee was therefore interested to learn more about the basis of that prediction. DOTARS outlined that its projections were based on the proposed IRPC and Asia Pacific Space Centre (APSC) projects, and the number of employees associated with the mines. ▪ DOTARS noted that the capacity of the IRPC to accommodate 1200 detainees had been reduced to 800, but stressed that this did not impact upon the general requirement on Christmas Island for a "reasonably sized gymnasium and a reasonably sized sports facility." ▪ The DOTARS main submission stated that information on recreation centres in Derby and Broome, Western Australia, was used as a point of comparison for the proposed recreation centre on Christmas Island. The Committee wanted to know why these particular communities had been selected. ▪ While acknowledging the uniqueness of Christmas Island, DOTARS stated that it uses whatever comparators may be available, and added that the Shire had asked it to look at comparisons with Broome. Furthermore, DOTARS was looking at recently constructed recreation facilities to gauge the facilities that were available in similarly remote areas. 	



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		<ul style="list-style-type: none"> ▪ While the Committee was concerned at the lack of design and cost detail originally supplied by DOTARS and believes there could have been greater consultation with the Christmas Island community, the Committee acknowledges the need to improve sporting and recreational facilities on Christmas Island. <p><u>Recommendations</u></p> <ul style="list-style-type: none"> ▪ The Committee recommends that the Department of Transport and Regional Services continue to consult with the Christmas Island Cricket and Sporting Club, the school and the Administrator’s Advisory Council [rec 1] ▪ The Committee recommends that the Department of Transport and Regional Services negotiate a settlement with the Christmas Island Shire Council to clarify ongoing maintenance of the recreation centre prior to the construction of the facility [rec 2] ▪ The Committee recommends that the proposed community recreation centre on Christmas Island proceed at the estimated cost of \$8 million [rec 3] 	
<p>Indian Ocean Territories Health & Community Services Needs Assessment</p> <p>A report prepared by Alberton Consultants about the Indian Ocean Territories Health Service on behalf of DOTARS – Canberra</p>	2004	<p><u>Recommendations:</u></p> <ul style="list-style-type: none"> ▪ That the IOTHS be developed as an integrated health service, consistent with leading practice Multi Purpose Services in Australia. ▪ That the Cocos (Keeling) Islands been given an enhanced level of local determination in health services by way of a quarantined budget, for the delivery of services on the Cocos (Keeling) Islands, and that community participation strategies be formalised to enhance accountability to the community. ▪ That community participation strategies be formalised on Christmas Island to enhance accountability to the community. ▪ That robust accountability and reporting mechanisms be applied to IOTHS with an additional level of accountability based on reporting against the implementation of detailed service plans and agreed performance indicators, similar to the Regional Health Service Program reporting framework. ▪ That the development of an integrated health service focuses strongly on a health promotion and illness prevention approach, and in particular the development of a capacity to reduce risk factors and increase protective factors within the community. ▪ That the key stakeholders such as the UCIW, local government and local interest groups, be involved very early in the development of a flexible, integrated health service. ▪ That the IOTHS play a key role in the development of a transition program 	<p>Community service provision / Accountability and transparency of decision making / Aspirations of residents</p>



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		<p>to encourage school students and other local people to undertake the training to fill health service provider and other professional and semi-professional roles on the Islands.</p> <ul style="list-style-type: none"> ▪ That the procedures for the Patient Assisted Transport Scheme (PATS) funding be clearly explained to the community. ▪ That DOTARS and the IOTHS policies acknowledge and where possible mitigate the social impact of Islanders having to access health services on the mainland and in particular the significant social consequences of childbirth not taking place on the Islands. ▪ That detailed service plans should be developed for all the services detailed and all relevant recommendations of the case studies be expressed directly in the relevant service plans. ▪ That IOTHS introduce a planned approach to the delivery of specialist medical and visiting health services and regularly review the program against identified needs. ▪ That a generalist nurse practitioner role should be established on both Christmas Island and the Cocos (Keeling) Islands. Consideration should be given to training locally employed nursing staff into these roles or alternatively offering longer-term contracts than those currently available on the Islands. ▪ DOTARS and the IOTHS adopt the staff profiles as set out in Tables 2 and 3. 	
<p>Strategic Plan for the economic development of the Indian Ocean Territories – Christmas Island</p> <p>Draft Action Plan</p>	<p>2004</p>	<p><u>Objectives & Strategies:</u></p> <p>1: Create a Positive and Supportive Investment Environment for Christmas Island</p> <ul style="list-style-type: none"> ▪ Identify & minimise impediments to investment and business growth on Christmas Island' ▪ Develop coordinated and responsive investment and business support services ▪ Increase local business confidence and develop an entrepreneurial culture ▪ Ensure infrastructure is adequate to support future community and economic growth <p>2: Develop a skilled workforce with meaningful and viable education, training and employment pathways</p> <ul style="list-style-type: none"> ▪ Maximise opportunities for local residents to gain employment ▪ Continue to develop and strengthen secondary and tertiary education opportunities for residents on Christmas Island ▪ Develop alliances to promote effective school to work transitions for 	<p>.</p>



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		<p>Christmas Island students</p> <p>3: Develop the Christmas Island tourism industry as a significant and sustainable contributor to the local economy.</p> <ul style="list-style-type: none"> ▪ Maximise visitor's experiences on Christmas Island by consolidating and further developing the local tourism product and infrastructure offering ▪ Facilitate a coordinated and well resourced approach to tourism development and marketing on Christmas Island ▪ Effectively market Christmas Island to existing and new markets <p>4: Diversify the Christmas Island economy through the development of viable and sustainable new enterprises</p> <ul style="list-style-type: none"> ▪ Establish Christmas Island as a centre for excellence in research based in the Indian Ocean ▪ Establish an export education industry on Christmas Island ▪ Develop local enterprises in fisheries, aquaculture/mariculture and horticulture ▪ Identify Opportunities for import substitution on Christmas and Cocos Islands ▪ Develop and implement an exit/succession strategy for Christmas Island Phosphates <p>5: Protect and enhance Christmas Island as a liveable, vibrant community for residents and visitors</p> <ul style="list-style-type: none"> ▪ Ensure community facilities and services are adequate for current and future needs ▪ Support the viability and effectiveness of the community sector ▪ Continue to enhance the amenity and utility of public spaces on Christmas Island ▪ Grow the residential population base of Christmas Island in a planned and targeted manner <p>6: Develop viable, effective governance structures for Christmas Island</p> <ul style="list-style-type: none"> ▪ Progress the Christmas Island community towards an agreed policy for governance ▪ Harness local leadership, ownership and partnerships in the implementation of the Economic Development Strategy for the Indian Ocean Territories <p><u>Actions for Objective 6</u></p> <p>CI 20.1 Initiate a discussion between the Australian Government and the communities of the Indian Ocean Territories on a policy for the future</p>	



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		<p>governance structures of the two Territories with a view to arriving at a shared vision.</p> <p>CI 20.2, Increase the role and capacities of the Cocos and Christmas Island Shire Councils as lead agents for economic development in the Indian Ocean Territories. Explore models for continued shared governance of economic development of the Indian Ocean Territories.</p> <p>CI 21.1 Establish an Indian Ocean Territories Economic Development Board to oversee the implementation of the Economic Development Strategy for the Indian Ocean Territories in accordance with the recommendations of this report. The board should operate as an independent a-political entity with representation from both Christmas and Cocos Island communities, Shire Councils and the Commonwealth. Functions of the board could include:</p> <ul style="list-style-type: none"> • Investment attraction for the IOTs • Coordination of specific investment enquiries • Strategic market development, especially in Asia • Business assistance, including startups and established businesses • Lobbying and attracting resources/grants to the IOTs • Tourism Marketing for the IOTs <p>The board should be funded for a minimum of 3 years and properly resourced, including funding for:</p> <ul style="list-style-type: none"> • a CEO/Business Development Role • Economic Development Officer • Tourism Marketing Officer • Marketing and promotions • Resource development • Project funding • Board member expenses • Office space and administrative support • Travel expenses <p>CI 21.2 Develop and sign a memorandum of understanding between the Shire Councils, EDC, EDA, Officer of the Administrator and DOTARS to commit funding and in-principle support to the establishment and operation of the Economic Development Board.</p> <p>CI 21.3 Amalgamate and transition existing EDC/EDA committees and resources to the new IOT Economic Development Board.</p>	
JSCNCET – Review of	2004	<u>Recommendations:</u>	



Name of Report/ Inquiry	Date	Details/ Recommendations/ Objectives	Relevance to Governance Inquiry Terms of Reference
DOTARS Annual Reports 2000-2001 & 2001-2002 <i>Recommendations relevant to Christmas Island only included</i>		<ul style="list-style-type: none"> ▪ That the Federal Minister with responsibility for the external territories (to) refer for inquiry and report the governance arrangements of the Indian Ocean Territories to the Joint Standing Committee on the National Capital and External Territories [rec 1] ▪ That the Federal Government continue to provide financial support for Christmas Island residents wishing to complete years 11 and 12 on the mainland [Rec. 3] ▪ That the <i>Education Services for Overseas Students Act 2000</i> (Cth) be amended to include the Indian Ocean Territories [Rec. 4] ▪ That the relevant Federal Government agencies – in collaboration with other relevant stakeholders on Christmas Island – undertake an assessment of the threat posed to the Island’s ecology from introduced species and support the ongoing campaign to control the yellow crazy ant problem [Rec. 5]. ▪ That the Commonwealth continue to consider ways of attracting suitable medical professionals to the Indian Ocean Territories, including special funding for Island residents undertaking relevant studies in health related professions, so they are encouraged to return to the Territories. [Rec. 7] ▪ That an additional community nursing position responsible for aged care, child care and aspects of women’s health be established in the Indian Ocean Territories. [Rec. 8] ▪ That a formal process be established whereby representatives from the Christmas Island and Cocos (Keeling) Islands’ Shires meet regularly with representatives from the Indian Ocean Territories Health Service (IOTHS) and other relevant bodies to discuss public health issues and delineate responsibilities for dealing with them. [Rec. 9] ▪ That the Federal Government exempt non-profit community groups from paying rent for Commonwealth facilities in the Indian Ocean Territories. [Rec. 15] 	

The reports & reviews listed here are not purported to be all of the reports prepared during this period 1980 – 2004. A list of reports not included is set out below, but again this may not be comprehensive. These reports aren’t included in the summary as either their subject matter has been overtaken by later Inquiries/ Reports or the information on which they were based is now outdated.

The details provided are not intended to exhaustively cover the matters under inquiry. In a number of cases the findings are provided in more detail in the body of the Shire’s submissions.



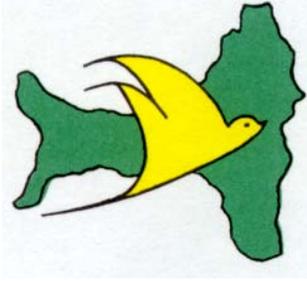
REPORTS NOT INCLUDED IN THIS SUMMARY

Name of Inquiry / Report	Date	Organisation conducting Inquiry/ review	Relevance to the Governance Inquiry
Inquiry into the Need for a locally based Social Worker on Christmas Island	1981	Department of Social Security	Social needs /community services
Christmas Island Future Strategy	1987	Thredbo Workshop – Department of Territories, Christmas Island Assembly, Christmas Island Services Corporation, Christmas Island Administration	Effective government/ economic development/ community services/ Commonwealth commitments
Development of appropriate staffing structures and accounting systems for the Christmas Island Assembly & Christmas Island Services Corporation	1987	Department of Local Government & Administrative services on behalf of Christmas Island Assembly &	Community service delivery
Christmas Island Health Surveillance Report	1988	O Ashby	Social needs / community services
Review of Christmas Island Health Services	1989	P Power	Social needs / community services
Christmas Island Health Services Report	1989	Nott & Harris Consultants	Social needs / community services
Christmas Island Housing programme & Policy Study	1989	Australian Construction Services in conjunction with Homeswest	Housing needs / community services / economic development
Christmas Island New Housing Development Options	1992	Commissioned by Australian Construction Services & Prepared by Homeswest	Housing needs / community services / economic development
Delivering the Goods - Inquiry into Freight & Passenger Transport to Australia's External Territories of Christmas, Cocos (Keeling), Norfolk	1995	Joint Standing Committee of the National Capital & External Territories	Economic development including cost of freight, the quarantine and customs regime
Feasibility Study for an ESL College on Christmas Island	1994	Prepared by Corporate Economics of Australia for the Department of Employment Education & Training	Government and economic sustainability links
Air Passenger & Air Traffic scenarios for Christmas Island Airport	1995	Prepared by Economic Research Associates for the Federal Airports Corporation	Some scenarios are still relevant to the question of Government and economic sustainability links
Review of Education Policy in the Indian Ocean Territories	1995	Prepared by Victoria University of Technology on behalf of the Commonwealth	Relevant to the informal SDA between the Commonwealth and EDWA – Community service delivery/ effectiveness of SDA's



Appendix - Reports & Inquiries about Christmas Island 1980 – 2004

Name of Inquiry / Report	Date	Organisation conducting Inquiry/ review	Relevance to the Governance Inquiry
Spending & income Christmas Island & Cocos (Keeling) Islands	September 1995	Australian Bureau of Statistics	This was the first and last study of spending and income, undertaken as a result of the 1995 Commonwealth Grants Commission recommendation
Island to Islands: Communications with the Australia's External Territories	March 1999	Joint Standing Committee of the National Capital & External Territories	Communication issues impeding effective communication in the areas of mobile telephones, video conferencing for education etc largely resolved.
Commonwealth Owned Christmas Island Housing – Our Shame	April 1999	Shire of Christmas Island	Community service delivery Housing problems identified in 1997 still an issue but now resolved



SHIRE OF CHRISTMAS ISLAND

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Our ref: 2.8.2

8 August 2005

The Committee Secretary
National Capital and External Territories Joint Standing Committee
Parliament House
CANBERRA
ACT 2600

By email: jscncet@aph.gov.au

Dear Mr. Baker

Re: Governance Inquiry

Please find enclosed the Shire's submission to the Governance Inquiry. I apologise for the delay in providing this submission.

The Shire's submission consists of two documents:

1. SOCI Submission to the Governance Inquiry titled "Our Future in Our Hands"
2. An appendix titled "Reports & Inquiries 1980 – 2004"

In relation to the submission, please note that it hasn't been formally considered or adopted by Council. It will be presented to the Council's next meeting at the end of this month.

Please also note that the Shire intends to hold community consultations about the broad direction outlined in the submission and may be in a position to present further detail to the Inquiry once this consultation process has been implemented.

The Shire will of course be seeking to make verbal submissions to the Inquiry when it convenes on Christmas Island. These submissions may include providing

further documentary materials in support of the written submission and providing supplementary information or additional proposals for improving governance arrangements.

We look forward to the Committee's visit and the opportunity to contribute to the Committee's deliberations on more representative governance arrangements for the Territory of Christmas Island.

Yours faithfully,

Gary Dunt
Chief Executive Officer

Encl.