

**AUSTRALIAN GOVERNMENT RESPONSE
TO THE REPORT ON
CURRENT AND FUTURE GOVERNANCE ARRANGEMENTS IN THE
INDIAN OCEAN TERRITORIES
BY THE
JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND
EXTERNAL TERRITORIES**

MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS

JUNE 2007

Recommendation 1

The Committee recommends that the Australian Government review the decision to block the licensing of a casino on Christmas Island, in consultation with the Christmas Island community, with a view to reissuing a casino licence, at the earliest opportunity.

Do not support. On 16 July 2004, the Government announced it would prohibit casino operations on Christmas Island. Problem gambling is a major social concern in today's society. The Government's decision takes into account not only the financial aspects of a casino on Christmas Island, but also the social impacts as a consequence of problem gambling.

The Government's decision was implemented through the *Casino Legislation Ordinance 2005*. The effect of the ordinance was to repeal the *Casino Control Ordinance 1988* and apply the *Gaming Commission Act 1987 (WA)* to Christmas Island. The WA Act prohibits casino operations except where explicitly authorised by legislation. A similar ordinance was also passed for the Cocos (Keeling) Islands.

The Government strongly supports the development of Christmas Island and the re-opening of the Christmas Island Resort. To this end the Government supports initiatives to facilitate economic development.

The viability of a casino is not assured. During the eight years of its operation the previous Christmas Island Casino and Resort had only one year in which it made a profit, 1994.

Recommendation 2

The Committee recommends that the Australian Government adopt the policy that, in future, all Commonwealth land released for development on Christmas Island, is sold at full market value.

Noted. It is Australian Government policy when disposing of land to sell it at market value.

Recommendation 3

The Committee recommends that the Australian Government compensate Northern Bay Pty Ltd through the purchase of Location 448 Phosphate Hill Road at full market value, or by some other means.

Do not support. The Department of Transport and Regional Services (the Department) did not offer free land to developers.

In March 2002, the Department released an invitation to tender for the construction of housing for the Christmas Island Immigration Reception and Processing Centre (IRPC). The tender documents invited developers to submit proposals for developing Commonwealth land. The land was not given to developers free of charge. The land was, and continues to be, owned by the Commonwealth.

Developers were also invited to submit an additional proposal for the development of privately held land as an alternative to developing Commonwealth owned land. The tender documents stated:

A1.29: The Tenderer may submit alternatives for the performance of works specified. All alternatives shall be considered on their merits and the Tenderer shall include a fully detailed description of the proposal. However, a fully conforming tender must be submitted in all cases.

A1.36: The objective of the tender process is to achieve the best possible mix on Commonwealth sites but also to provide the opportunity for options utilising privately owned land, and with alternative mixes. Tenderers are encouraged to consider sites owned by the private sector and to contact local Christmas Island developers who own land and would be willing to provide alternatives to the Commonwealth sites.

The Department agreed to use Commonwealth land as it provided the best value for money of all the proposals received.

Recommendation 4

The Committee recommends that the Australian Government conduct an investigation into the cost of sea freight to the Indian Ocean Territories with a view to reducing costs and streamlining operations.

Do not support. The Government facilitates transport links between the IOT and the mainland by providing port and airport services in the IOT. Charges for port and airport services are maintained at comparable levels to communities on the mainland. An open market exists for sea freight between the IOT and mainland Australia. Freight costs are subject to competition and reflect the costs associated with shipping relatively low volumes to a remote destination.

The Government supports air freight between the mainland and the IOT through a contract with National Jet Systems (NJS). The contract is similar to the Australian Government's support to remote communities on the mainland. NJS operates two flights per week between the mainland and the IOT. Flights are made using a British Aerospace BAE Avro RJ70, which is fitted to carry both passengers and air freight. The Government provides funding to NJS if its revenue falls below an agreed amount.

Recommendation 5

The Committee recommends that the Australian Government rescind customs and quarantine charges, where they exist, on freight travelling between the Indian Ocean Territories and the Australian mainland.

Do not support. Customs and quarantine charges are imposed equitably on goods travelling between the IOT and mainland Australia.

The IOT have a less favourable animal and plant health status than mainland Australia. To safeguard mainland Australia's favourable animal and plant health status, the Australian Quarantine and Inspection Service (AQIS) undertakes inspections of good travelling from the IOT to mainland Australia.

The cost of maintaining Australia's animal and plant health status is shared by the Government and the community. Under the *Quarantine Act 1908*, the costs incurred in the provision of quarantine services are recovered from users of those services. AQIS charges are developed in consultation with industry, endorsed by the relevant industry consultative bodies and applied consistently to all clients. The AQIS fee structures are reviewed on a regular basis by AQIS and the import industry to make sure they continue to reflect the cost of the services provided.

Due to the IOT status as GST and excise free, goods imported into mainland Australia from the IOT are subject to Customs processing. Any goods imported with a total value below \$1000 are exempt from lodging a formal Import Declaration and incurring Customs processing charges. The \$1000 threshold was established in the Customs Regulations in 2005 as part of the new revenue regime. A Self Assessed Clearance Declaration is required to be lodged with Customs, however this does not incur a processing charge. Goods falling within this range are also duty and tax free. These arrangements allow low value goods to be brought to the mainland without the imposition of Customs fees and charges.

For goods with a total value above \$1000, a formal Import Declaration is required and Customs processing charges may be applied. As with quarantine, Customs processing charges are set on a cost recovery basis.

Importers must bear their fair share of the cost of customs and quarantine processing. If some importers were relieved of their share of the cost of providing customs and quarantine service, that cost might fall on other importers.

Recommendation 6

The Committee recommends that the Australian Government increase the number of flights between Australia and the Indian Ocean Territories under the existing contract, and invite international carriers to open services to the IOTs.

Do not support. The Australian Government currently assists the operation of two flights per week between Perth, Christmas Island and the Cocos (Keeling) Islands by National Jet Systems (NJS). The flights are currently made using a British Aerospace BAE Avro RJ70, which is fitted to carry both passengers and air freight. The Department of Transport and Regional Services (the Department) administers a contract with NJS under which the Government provides funding to NJS if its revenue from these flights does not reach an agreed level. NJS is able to apply to the Department to include additional flights in the scheme if there is sufficient demand. Over the six months to December 2006, the Department approved 13 additional flights, subject to demand for those flights.

Austasia Airlines currently charters a Silk Air aircraft to operate a weekly air service between Christmas Island and Singapore.

International carriers from almost all of the countries with which Australia has bilateral air services agreements and arrangements have the right to operate to Christmas Island but choose not to do so, primarily for commercial reasons. Several airlines operate international charter services to and from the IOT from time to time.

With regard to the carriage of domestic traffic between the IOT and the Australian mainland, the Australian Government does not allow foreign international airlines to carry domestic passengers or freight. This is consistent with the Australian Government's policy that only Australian based airlines carry domestic passengers and freight and is consistent with the aviation policies of most other countries. The exception to this is New Zealand. Under the Single Aviation Market arrangements with Australia, New Zealand is able to compete on the domestic market under certain circumstances, as part of the Closer Economic Relations between the two countries.

The practice of granting foreign international airlines dispensation to operate cabotage services occurs on an ad hoc basis and only in exceptional circumstances when there is a benefit to Australia and Australian airlines cannot provide the necessary domestic service.

Recommendation 7

The Committee recommends that the Australian Government take action to ensure that:

- *corporations law be amended to include the IOTs;*
- *the Education Services for Overseas Student Act 2000 be amended to include the IOTs as a possible destination for overseas students;*
- *a review of all Commonwealth legislation is conducted to identify and rectify similar instances where the Indian Ocean Territories are excluded from legislation; and*
- *in future, the IOTs be included under the provisions of new legislation except in instances where exclusion can be demonstrated as justified.*

Noted. The Government is considering extending the *Corporations Act 2001* to the IOT.

Noted. The *Education Services for Overseas Student Act 2000* (ESOS Act) has been amended to apply in the IOT. The ESOS Act was previously excluded from operation in the IOT as the administrative support necessary for the operation of the Act was not available.

Do not support. It is the responsibility of individual Ministers to determine whether their portfolio legislation should be excluded from operation in the IOT.

Do not support. Since 1992, Commonwealth laws have extended to the IOT unless the IOT are expressly excluded and it is Australian Government policy to apply new Commonwealth laws to the IOT, unless it would be inappropriate to do so.

Recommendation 8

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

Do not support. It has been the policy of successive Australian Governments to align the laws of the Indian Ocean Territories with those of Western Australia (WA). This policy is achieved through section 8A of the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955*, which apply all WA laws to the IOT upon enactment in WA. A list of applied WA laws is required to be tabled in the Commonwealth Parliament at six-monthly intervals. The applied WA laws are subject to review and disallowance by the Commonwealth Parliament.

Many jurisdictions, including WA, contain laws that are not relevant or practically applicable to some areas. Applied WA laws are only amended or repealed by Commonwealth ordinance where their application in the IOT is inappropriate.

The Department of Transport and Regional Services (the Department) reviews applied WA laws on an exception basis; that is, when an anomaly or conflict in the law becomes apparent.

Where an applied WA law vests a power in a person or authority, that power is vested in the Minister for Territories through the operation of section 8G of the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955*. The Minister for Territories delegates many of these powers to officials from the Australian and Western Australian Governments.

In other circumstances, where administrative structures are required for the operation of applied WA laws, the Government endeavours to replicate these structures, either through arrangements with WA Government agencies or directly.

Recommendation 9

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

Refer to the Government's response to Recommendation 8.

Recommendation 10

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

Do not support. It is Australian Government policy to market test the provision of state level services in the IOT. State level services are those which would normally be provided by a state-type government, such as health care and provision of port and airport services. In the IOT, the provision of these services is the responsibility of the Australian Government.

Successive Australian Governments have determined that the direct delivery of state and local government services in the IOT is not core Commonwealth business and that the most efficient and effective delivery arrangements are via Western Australian government agencies or private providers under contract to the Commonwealth.

Market testing is used to determine whether a third party can provide a particular service more effectively and efficiently than the Australian Government. The aim of the market testing process is to achieve better service levels for the IOT communities and ensure value for money for the Australian Government.

Market testing has been undertaken for the management of airport, port and health services in the IOT. For airport and port services, private operators were able to provide the services efficiently and effectively and were an attractive alternative to direct service provision by the Australian Government. On the basis of market testing of health services in the IOT the Government decided that the current arrangements provide the best value for money.

When deciding whether to use a private provider, the Department of Transport and Regional Services (the Department) considers the opportunities for local employment and training. The Department encourages local IOT organisations, including the Shire Councils, to submit proposals for service delivery.

Recommendation 11

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

Do not support. The Department of Transport and Regional Services (the Department) regularly consults directly with the IOT communities. The Department also engages in consultation through the IOT Shire Councils. The Shire of Christmas Island maintains a Community Consultative Committee (CCC), which provides a forum for consultation.

In addition, WA Government agencies often consult with the IOT communities and relevant stakeholders in relation to services they provide on behalf of the Australian Government.

The Minister for Territories consults with key IOT stakeholders and visits the IOT at least once each year. The Australian Government is represented in the IOT by the Administrator and the Minister communicates regularly with the Administrator. The Administrator plays a prominent role in the IOT community and is chairman of a number of committees, such as the Health Consultative Group.

The Government does not support the incorporation of a consultation process into the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955*. Such a provision would necessarily be broad. The Australian Government considers it is preferable to improve the administrative arrangements as this approach is more flexible and more easily amended.

Recommendation 12

The Committee recommends that the Australian Government alter the governance arrangements of the Indian Ocean Territories to provide the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands with an expanded role. The shires should have:

- *direct representation of the communities with the Minister for Territories; and*
- *a formal advisory capacity with regard to applied laws and service delivery arrangements.*

Moreover, the shires should be:

- *fully funded on the basis of an agreed service delivery framework;*
- *given adequate title to all assets required to carry out their functions; and*
- *able to jointly enter into a regional local government type cooperation agreement.*

Do not support. The Shire of Christmas Island and the Shire of Cocos (Keeling) Islands (the Shires) have direct access to the Administrator, who is the Australian Government's representative in the IOT. The Administrator is responsible for facilitating communication between the Minister and the IOT communities. The current Administrator has regular contact with the Shires.

Do not support. The provision of state-type laws and services is the responsibility of the Australian Government. The Government considers that existing consultation arrangements are adequate (see response to Recommendation 11).

Do not support. The Shires are funded on the same basis as local governments in Western Australia. That is, the Shires' Financial Assistance Grant (FAG) funding will be 'factored back' at the same rate as applies to WA local governments. The rate for the 2005/06 financial year was 90.98%. The Shires receive additional Australian Government support through the annual funding for the ongoing maintenance of specific assets, such as the Christmas Island Recreation Centre. They are also eligible to apply for Australian Government grants including Regional Partnerships funding, Roads to Recovery and for state type grants.

Support. The Government has agreed to transfer selected Commonwealth assets to the Shires. However, the transfer of any asset is subject to the relevant Shire taking full responsibility for the provision of services associated with the asset and having the financial capacity to maintain the asset.

Support. The Shires are currently able to enter into agreements with other local governments within the limitations imposed by their isolation. The Australian Government supports developing the capacity of the Shires to discharge their responsibilities.

Recommendation 13

The Committee recommends that the Australian Government undertake to develop options for future governance for the Indian Ocean Territories in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands, with a view to, where practical, submitting options to a referendum of those communities by the end of June 2009. Possible options could include but should not be limited to:

- *maintaining current governance arrangements with some refinement;*
- *incorporation into the State of Western Australia; and*
- *a form of limited self government.*

Do not support. It is Australian Government policy that residents in the IOT have the same rights and responsibilities as other Australians. To achieve this, the Government has aligned the legislative, administrative and institutional frameworks of the IOT with those of Western Australia.

Australian Government services are provided in the IOT by the same agencies that provide them in the rest of Australia. State government type services are provided by the Department of Transport and Regional Services (the Department). The Department provides these services directly, through sub-contractors and through service delivery arrangements with the Western Australian Government. Standards of service delivery are maintained at equivalent levels to those in remote mainland communities.