ISLANDS IN THE SUN:

THE LEGAL REGIMES OF AUSTRALIA'S EXTERNAL TERRITORIES AND THE JERVIS BAY TERRITORY

GOVERNMENT RESPONSE

TO
THE REPORT BY

THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE
ON LEGAL AND CONSTITUTIONAL AFFAIRS

Report tabled: 7 March 1991

Government Response tabled: 10 September 1991

GOVERNMENT RESPONSE TO REPORT OF THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

TITLED

"ISLANDS IN THE SUN - THE LEGAL REGIMES OF AUSTRALIA'S EXTERNAL TERRITORIES AND THE JERVIS BAY TERRITORY"

DATED MARCH 1991

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PREAMBLE

The House of Representatives Standing Committee on Legal and Constitutional Affairs is conducting its Inquiry into the Legal Regimes of Australia's External Territories and the Jervis Bay Territory in two phases.

The first phase of the Inquiry covered the Territories of Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay and Norfolk Island. "Islands in the Sun" is the Report of the first phase of the Inquiry. The Committee's Recommendations were grouped according to Territory, with the relevant Territories addressed in alphabetical order: this response reflects that ordering.

The second phase of the Inquiry, covering the Australian Antarctic Territory and the Territory of Heard Island and McDonald Islands, has not yet been concluded.

None of the comments in this Response should be taken to indicate the Government's position with regard to the Territories covered by the second phase of the Inquiry.

TERRITORY OF ASHMORE AND CARTIER ISLANDS

Recommendation

1. The Committee recommends that, the Ashmore and Cartier Islands Acceptance (Amendment) Act 1985 having been proclaimed, the Commonwealth initiate negotiations with the Northern Territory Government with a view to assuring the existence of mutually acceptable arrangements for the administration of the Ashmore and Cartier Territory in accordance with the current legal regime. (para 2.5.24)

Comment

Because the Territory is uninhabited, it has been the custom to negotiate administrative arrangements with the Northern Territory on a needs basis, which rarely arises.

Arrangements for the administration by the Northern Territory of workers' compensation legislation have been negotiated.

Response

As the Territory is uninhabited, administrative arrangements are negotiated with the NT Government on a needs basis only; it is proposed that this continue.

Recommendation

2. The Committee recommends that the ANPWS, having regard to the individual circumstances of each of the external territories, work towards the standardisation, to the greatest degree possible, of legislation relating to nature conservation in the territories by way of regulations under the NPWC Act. (para 2.6.7)

Comment

The National Parks and Wildlife Conservation Act 1975 presently extends to all the Territories. The National Parks and Wildlife Regulations are divided into six parts. The two parts relevant to the external Territories are:

- Part II (Activities in Parks and Reserves); and

- Part III (Wildlife Conservation).

Part II of the Regulations applies in parks and reserves declared under the Act; Part III applies in Commonwealth waters beyond the territorial sea. This is the current means by which Commonwealth environmental policy is reflected, for areas of the greatest environmental sensitivity, in conservation legislation.

Particularly in the inhabited Territories, conservation legislation applicable to residential areas and private land, like all legislation, should be easily accessible and well understood, by citizens and administrators alike. Because the laws of an adjacent State will be applied in all other fields, it is preferable to minimise deviations from the conservation law of that State: overlapping Commonwealth and State conservation (or land planning) laws could result in administrative difficulties, and confusion for residents.

The balance between Commonwealth and State responsibilities, outside National Parks and Reserves, should be examined on a case by case basis, following consultation with ANPWS and State conservation officials.

Response

Note that the adoption of the Committee's recommendations relating to the application of the laws of the adjacent State/Territory to the external Territories, including the extension of all Commonwealth legislation, will provide the various Territories with comprehensive bodies of nature conservation law.

Note that the application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with ANPWS and State conservation officials.

Recommendation

3. The Committee recommends that the ANPWS ensure, through the promulgation of wildlife regulations under the NPWC Act if necessary, that regimes of wildlife legislation exist for the proper protection of wildlife in the Ashmore and Cartier Territory. (para 2.6.8).

Comment

In October 1989, the Ashmore and Cartier Islands Acceptance (Amendment) Act 1985 was proclaimed, extending to the Territory the laws of the Northern Territory as in force from time to time.

Ashmore Reef has been declared a reserve under the National Parks and Wildlife Conservation Act 1975: the National Parks and Wildlife Regulations apply there. Cartier Island, on the other hand, is a gazetted bombing range.

If further protection of Ashmore Reef and surrounding Commonwealth waters is required, this can be pursued by ANPWS through its normal operations.

Also, see comments on recommendation 2 above.

Response

Note that a regime of wildlife protection legislation already exists through the application of Commonwealth and Northern Territory legislation.

Note that the application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with ANPWS and Northern Territory conservation officials.

Recommendation

4. The Committee, noting Commonwealth interests, recommends the incorporation of Ashmore and Cartier Islands into the Northern Territory. (para 2.8.9)

Comment

An extension of the adoption of NT laws for the Territory of Ashmore and Cartier Islands could be to incorporate the islands into the NT.

The Northern Territory Government has sought the incorporation of the Territory into the Northern Territory in its submissions to the Commonwealth on statehood for the Northern Territory.

Response

Note that incorporation of the Territory of Ashmore and Cartier Islands into the Northern Territory is being considered in the context of Statehood proposals for the Northern Territory.

TERRITORY OF CHRISTMAS ISLAND

Recommendation

5. The Committee recommends that 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. (para 3.10.13)

Comment

The current Territory law comprises UK and Colony of Singapore laws, continued in force by section 8 of the Christmas Island Act 1958, and Ordinances made by the Governor-General under section 9 of the Act. Commonwealth Acts have no application unless expressed to extend to the Territory. In the absence of express provision, application or extension may be ascertained from the tenor or implied effect of an Act. Over 200 Commonwealth Acts currently apply.

The application of WA law should strengthen existing linkages with that State, where many former Christmas Islanders have resettled. Under the process of normalisation adopted by the Government in 1984, there is a move towards WA for State type services. State agencies already provide education services and negotiations are proceeding in relation to health services. Shipping and air services also originate from Perth. State standards are adopted administratively where there is no clear Commonwealth standard.

A legal regime based on WA law would complete this process and could be achieved by applying the laws of Western Australia to the Islands as a body of living law, incorporating amendments as they are made from time to time by the Western Australian Parliament. Modifications should be made only where absolutely necessary to meet unique local circumstances or where the State law is considered incompatible with Commonwealth legal principles. There will be provision for local input to this process.

At present Christmas Island has a number of Ordinances tailored to local circumstances, including the Christmas Island Assembly Ordinance 1985, the Casino Control Ordinance 1988, the Lands Ordinance 1987 and the Services Corporation Ordinance 1984, which may need to be retained or retained in a modified form at least for an interim period after WA law is applied.

Para 3.10.11 of the Committee's Report quotes the view of the Melbourne University Centre for Comparative Constitutional Studies that "the former option [to make the laws of the Territory substantially the same as the laws applying in other parts of Australia] would ... involve extending all Commonwealth Acts to the Territory as well as the application of all the laws of a mainland state or territory".

The extension of remaining Commonwealth Acts to the Territories of Christmas and Cocos (Keeling) Islands has received continuing attention within Government.

There is no continuing justification for treating these Indian Ocean Territories differently from isolated mainland communities. As the Committee's report has shown, the present legal situation in the Territory creates some inconsistencies for Australia's international human rights obligations. A large number of Commonwealth laws will have to be extended to the Territory to provide a legal framework which, together with an examination of local custom and practice, will form the basis for an assessment of the appropriateness of extending the application of ILO Conventions ratified by Australia to Christmas Island.

Commonwealth legislation will be required to apply the laws of Western Australia to the Territory as laws of the Territory.

There will be costs in administering the applied laws but there will be revenues from WA State taxes and charges which will accrue to the Commonwealth. It would be more efficient for applied laws to be administered, and services provided, by Western Australia on behalf of the Commonwealth. Costs will depend on whether such agency arrangements, with suitable terms, can be negotiated. No formal approach has yet been made to WA at a governmental level.

Response

Agree in principle to the application of a Western Australia based legal regime, to include the body of State law and all Commonwealth law, recognising that a limited number of Ordinances may be retained or introduced to meet particular local circumstances and to meet Commonwealth objectives where there are demonstrated shortcomings in the applied law.

Declare the Commonwealth's intention of applying a Western Australia based legal regime by 1 July 1992.

Recommendations (6 & 7)

6. The Committee recommends that, in the absence of the establishment on Christmas Island of a reviewing mechanism, relevant Commonwealth Departments monitor the possible application of Western Australian 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. (para 3.10.15)

7. The Committee recommends that 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 Commonwealth Minister in respect of laws to apply on the Island, for reviewing Western Australian laws for their appropriateness to the Territory. (para 3.10.17)

Comment

The WA based legal regime will be applied to the Territory under Commonwealth legislation. Therefore, the Commonwealth will retain power over the legislative process. Where there is sufficient justification to alter or repeal the application of particular WA law, the Commonwealth will be able to intervene through its Ordinance making power.

The community will be able to influence these Commonwealth processes through its Members of Parliament and Senators (the Territory is included in the Northern Territory Federal Electorate) and through the Commonwealth Minister responsible for the Territory.

In terms of appropriate consultation processes with the Territory community, these fall into three categories:

(a) consultation about the broad question of replacement of the outdated Colony of Singapore regime with Western Australian laws;

(b) education programs in respect of those changes which affect residents on a day-to-day basis (eg. road rules);

(c) mechanisms for the Island community to influence the application to the Territory of new and amending laws as they are enacted by the WA Parliament.

The issue of category (a) consultation was extensively canvassed during the Committee's hearings. However, further consultation on the details of application of WA law is necessary and the Christmas Island Assembly is the appropriate channel for this, given its broad powers to advise the Commonwealth on matters relating to the administration of the Territory and its social, political and economic development.

Under a 1990 amendment to the Christmas Island Assembly Ordinance 1985, the Assembly is responsible for:

- supervising the Christmas Island Services Corporation in the performance of the Corporation's functions; and

- advising the Commonwealth on matters relating to the administration of the Territory and its social, political and economic development.

The Assembly's role is not confined to local government functions. As well as the operational role of a local government authority it has the additional role of advising the Minister on State-type issues.

It would seem appropriate to develop education programs (category (b) consultation) in concert with the relevant WA regulatory agencies. Community input on content and format would be desirable.

In relation to category (c), mechanisms will need to be developed to ensure that the Island community:

- is aware of the passage of legislation through the WA Parliament;

- has access to more detailed explanation of the effects of legislation of concern to residents; and

- has open channels of communication to elected Federal Representatives and the Commonwealth Minister, to influence application of particular statutes to the Territory.

However, it would be unrealistic to undertake to consult specifically on each law, having regard not only to resource constraints but also to the limited capacity of the Assembly, with its part-time members, to consider in detail the entire output of the WA Parliament.

DASETT would appear to be the most appropriate agency to co-ordinate requests for and assembly of such information from specialist Commonwealth and/or State agencies. However, there will be resource constraints on those specialist agencies as well as on DASETT, and the Island community may on occasion need to obtain external advice and assistance, eg. legal advice.

Response

Undertake that:

- The Island community will be consulted through the Assembly on the details of the application of Western Australian laws;

- an education program will be provided to inform residents about their statutory rights and obligations on day-to-day issues (eg. road rules) under the applied Western Australian law;

- mechanisms will be developed to facilitate the Island community's awareness of the passage of legislation through the Western Australia Parliament, access to more detailed explanation of the effects of legislation of concern to residents, and open channels of communication to elected Federal Representatives and the Commonwealth Minister.

Note that DASETT, in co-operation with Commonwealth and Western Australian agencies, will co-ordinate provision of such information and detailed explanations.

Recommendation

8. **The Committee recommends that the Commonwealth initiate discussion with the Government of Western Australia in respect to the long term future of Christmas Island including its possible incorporation within the State of Western Australia. (para 3.10.19)**

Comment

The Government has actively pursued the broadening of the Island's economic base, and adopted Western Australian standards to meet legislative gaps in the existing Singapore based legal regime. The adoption of the full range of State law follows logically. A possible extension of this process would be to incorporate the island within the State, after a settling-in period under State laws. This would require further consideration; there is no need for a Government decision at this stage.

The views of residents would need to be taken into account before any decision was made to approach the Western Australian Government in relation to incorporation.

Any Commonwealth Government decision on incorporation would be subject to the agreement of the WA electorate in a referendum, required by the Commonwealth Constitution for any alteration of the boundaries of a State.

Section 122 of the Constitution enables Federal representation of Territory electors - sections 7, 24 and 29 of the Constitution have the effect of preventing the election of a Senator to represent both State and Territory electors, or the election of a member of the House of Representatives to represent an electoral division comprising both State and Territory electors. The Commonwealth Electoral Act 1918 presently provides for Christmas Island to form part of the Northern Territory for Federal electoral purposes: this would need to be changed if the Territory of Christmas Island was to be incorporated within WA.

Response

Note that at this stage there are no Government plans to incorporate the Indian Ocean Territories within Western Australia.

Recommendation

9. **The Committee recommends that the Commonwealth initiate action designed to overcome the breaches of human rights identified by the Human Rights and Equal Opportunity Commission. (para 3.10.21)**

Comment

Matters raised in the Submission to the Committee's Inquiry by the Human Rights and Equal Opportunity Commission included:

- unreformed Singapore laws being inconsistent in a number of significant respects with human rights instruments binding on Australia: law is outdated and discriminatory;

- absence of adequate mechanisms for involvement of, or consultation with, local representative institutions in determining what laws ought to apply;

- applicable law not readily accessible or ascertainable;

- unacceptable punishments remain on the statutes;

- lack of access to legal services denies residents effective and equal protection of the law;

- non-application of ILO Conventions.

Extension of all Commonwealth and WA based legislation to Christmas Island will overcome such perceived shortcomings in the present laws and place Island residents on the same footing as their mainland counterparts.

Response

Agree. The adoption of the response to recommendation 5 above, for the application of Western Australian law and the extension of all Commonwealth Acts, will overcome any perceived breaches of human rights in the current legal regime.

Recommendation

10. The Committee recommends that the Commonwealth arrange for the provision of a formal legal aid service for the residents of Christmas Island. (para 3.10.23)

Comment

Legal aid is currently provided on an ad hoc basis through the Western Australian Legal Aid Commission, funded by the Christmas Island Administration.

Island residents should receive assistance on the same conditions and at the same levels as their mainland counterparts.

Response

Note that legal aid is already provided on an informal basis, as required.

Agree that Islands residents should receive assistance comparable to their mainland counterparts under a formal legal aid program.

Recommendation

11. The Committee recommends that 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. (para 3.10.25)

Comment

Article 35 of the International Labour Organisation (ILO) Constitution obliges member states to make declarations as soon as possible after a Convention is ratified concerning its application to external ("non-metropolitan") territories.

No declarations have been made in respect of the application to Christmas Island of forty-seven ILO conventions currently ratified by Australia. In considering the appropriateness of such action, the possible application of eight of the Conventions appended to one of the ratified Conventions, No. 83, Labour Standards (Non-Metropolitan Territories) 1947, will also need to be examined.

To enable decisions to be taken on whether those Conventions ratified by Australia can and should be extended to Christmas Island, a large number of Commonwealth and WA laws will need to be examined, along with local custom and practice in the Territory.

Response

Agree, noting that the extension of the Western Australian legal regime and Commonwealth legislation will enable declarations to be made applying these Conventions to the Territory.

Recommendation

12. **The Committee recommends 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.** (para 3.10.27)

Comment

Chapter XI deals with the administration of territories whose peoples have not yet attained a full measure of self-government. It requires administering States to ensure such peoples' political, economic and social advancement, together with the development of self-government and free political institutions, according to the particular circumstances of the territory and its peoples.

The fact that the Cocos (Keeling) Islands were classified as a non-self-governing territory could be seen as a precedent, but the circumstances of Christmas Island are different and there has never been any move to classify it as a non-self-governing territory.

Both Christmas and Cocos were populated late last century. While the copra workers on Cocos became a permanently settled population, with a distinct ethnic and cultural identity, the phosphate mine workers on Christmas did not form as settled a population (many workers were there only for the duration of their contracts, maintaining families elsewhere), and Christmas has never been as ethnically homogenous as Cocos.

Factors mitigating against any perception of a separate and subordinated people include:

- the Christmas Island Assembly provides a local political institution;
- citizens vote as part of the NT in Federal elections;
- increased movement of people to and from the mainland (with private land ownership on Christmas Island).

Response

Agree, noting that reforms to the legal regime of the Territory will help dispel any doubts as to whether it might be a non-self-governing territory.

Recommendation

13. The Committee recommends that the Commonwealth review the Administration Ordinance 1968 with particular reference to the title, functions and powers of the Administrator. (para 3.12.5)

Comment

With implementation of the Government's response to the Committee's major recommendations, the Territory's legal regime and administration will come to resemble that of an isolated mainland community, with municipal powers exercised locally and State-type powers oversighted by the Commonwealth Minister. The Assembly would advise the Commonwealth on State-type functions.

Response

Agree, noting that replacement of the current laws with mainland laws will facilitate the implementation of new administrative machinery.

Recommendation

14. The Committee recommends that, in applying the law of Western Australia, priority attention be given to the application of appropriate laws and the development of education programs in respect to domestic violence. (para 3.15.8)

Comment

The shortcomings of the current legal regime in respect of domestic violence will be overcome with the extension of WA laws generally.

While there is no specific domestic violence legislation in WA (only the ACT and Victoria have specific legislation, other jurisdictions having amended their general criminal law in respect of domestic violence), there are a range of remedies available under WA's general criminal law and family law Acts. The WA Government, in its response to the 1986 Report of the Task Force on Domestic Violence, "Break the Silence", concluded that the available legislation was adequate if used properly.

DASETT is considering options for delivery of education programs in respect of domestic violence, in the course of general consultation on the application of WA laws and as part of the continuing administration of the Territory.

Response

Note the Government undertaking to have the overall Western Australian legal regime, including laws relating to domestic violence, in place by 1 July 1992.

Note that specific attention will be given to the delivery of education programs in respect of domestic violence.

Recommendation

15. The Committee recommends that the Family Law Act 1975 be applied to Christmas Island. (para 3.15.9)

Comment

The Family Law Act 1975 will be extended to Christmas Island, together with other Commonwealth laws, as an element of the implementation of the new legal regime by 1 July 1992.

Response

Agree.

Recommendation

16. The Committee recommends that 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's wildlife and environmental values. (para 3.16.5)

Comment

The National Parks and Wildlife Conservation Act 1975 presently applies to Christmas Island and some 62% of the Island is incorporated into a National Park managed by ANPWS.

Section 11 of the National Parks and Wildlife Conservation Act 1975 requires the Director of National Parks and Wildlife to prepare a plan of management in respect of each national park or reserve. When a plan of management for the Christmas Island National Park has been prepared by ANPWS, a parallel plan will be developed by the Commonwealth to enable land outside the National Park to be managed in sympathy with Park management objectives.

Outside the Park, particularly in residential areas and on leasehold land, the applicable legislation needs to be easily accessible and understood by residents and administrators alike. Commonwealth Regulations overlapping State conservation/land laws could result in administrative problems and confusion for residents.

The application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with ANPWS and State conservation officials.

Together with the anticipated Commonwealth plans of management, WA laws covering conservation, planning and development should provide an adequate regime for the proper protection of wildlife and environmental values while allowing for normal land use.

Should the applied State law prove inadequate for meeting Commonwealth wildlife conservation objectives, regulations under the National Parks and Wildlife Conservation Act 1975 would be extended, and these would be paramount over State legislation.

It is proposed that ANPWS staff will administer the applied Western Australian conservation laws in the Indian Ocean Territories.

Response

Note that 62% of Christmas Island is already declared National Park under the National Parks and Wildlife Conservation Act 1975 and that the remaining land will be managed in sympathy with Park objectives.

Note that the application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with ANPWS and State conservation officials.

TERRITORY OF COCOS (KEELING) ISLANDS

Recommendation

17. **The Committee recommends that the laws of Western Australia (as amended from time to time) be applied in Cocos to replace the currently applied law, in so far as the currently applied law has not been developed to a unique or particular characteristic of the Cocos (Keeling) Islands Territory. (para 4.11.17)**

Comment

In 1990 the Government decided in principle that the current Singapore based legal regime of the Cocos (Keeling) Islands should be replaced by a Western Australia based legal regime and that all Commonwealth laws should be applied to the Territory.

These principles have been agreed with the Cocos Malay Community in a Memorandum of Understanding signed by the Prime Minister and Community leaders on 7 March 1991.

The essence of the MOU is that, consistent with "integration" requirements, the people of Cocos should be placed on the same footing as their Australian counterparts, particularly Western Australians.

Ideally this could be achieved by applying the laws of Western Australia to the Islands as a body of living law, incorporating amendments as they are made from time to time by the Western Australian Parliament. Commonwealth legislation will be required to apply the laws of Western Australia to the Territory as laws of the Territory. The Commonwealth will be able to modify existing or new laws if circumstances demanded.

The application of WA law should strengthen existing linkages with that State, where many former Cocos Islanders have resettled. Under the process of integration commenced in 1984 there is a move towards WA for State type services. State agencies already provide education services and are negotiating for health services while shipping and air services originate from Perth. State standards are adopted administratively where there is no clear Commonwealth standard.

The extension of remaining Commonwealth Acts to the Territories of Christmas and Cocos (Keeling) Islands has received continuing attention within Government.

There will be costs in administering the applied laws but there will be revenues from WA State taxes and charges which will accrue to the Commonwealth. It would be more efficient for applied laws to be administered, and services provided, by Western Australia on behalf of the Commonwealth. Costs will depend on whether such agency arrangements, with suitable terms, can be negotiated. No formal approach has yet been made to WA at a governmental level.

Response

Note that the Government and the Cocos community have already agreed that the laws from time to time applying in Western Australia, including Commonwealth Acts, be applied to Cocos to replace the existing laws.

Agree that the Western Australia based legal regime should include the body of State law and all Commonwealth law, noting that power to modify the applied law would remain with the Commonwealth should this prove necessary.

Note the Commonwealth's undertaking to apply a Western Australia based legal regime by 1 July 1992.

Recommendation

18. **The Committee recommends that the Commonwealth, ensuring, consistent with human rights considerations and Australia's international obligations, that the local culture and traditions of the Cocos Malay community continue to be taken into account, foster the development of further self-government in the Territory, including enfranchisement of <u>all</u> residents of the Cocos (Keeling) Islands in respect of matters affecting the Territory generally. (para 4.11.19)**

Comment

Australia as a multicultural society already accommodates the cultural and traditional differences of groups such as the Cocos Malay community, and in a much more acceptable way than prevails under the existing Singapore based legal regime currently applying on Cocos.

In its 1990 decision, the Government adopted the principle that only municipal powers equivalent to Western Australian local government will be extended to the Cocos Council until the question of the Islands' future constitutional status is addressed.

Under the Memorandum of Understanding with the community the Commonwealth has undertaken, in applying a WA based legal regime, to consult the community regarding religious and cultural aspects as necessary. It also undertook to give the Council the full range of powers, functions and responsibilities applicable to local government on the mainland, using Western Australia as a model.

Response

Note that under the Memorandum of Understanding, the municipal area of the Cocos (Keeling) Islands Council is to be extended and its local government powers equated with Western Australian local government. Note that all residents of the expanded municipal area will have the same qualifications for voting in Council elections as Western Australian residents have for local government elections.

Recommendations (19 & 20)

19. **The Committee recommends that the Commonwealth, in consultation with Territory residents, develop a mechanism such as a local government body with an expanded role, including direct access to the Commonwealth Minister in respect of laws to apply on Cocos (Keeling) Islands, for reviewing Western Australian laws for their appropriateness to the Territory. (para 4.11.21)**

20. **The Committee recommends that, in the absence of the establishment on Cocos of a reviewing mechanism, relevant Commonwealth Departments monitor and report on the possible application of Western Australian laws to the Territory, in consultation with Territory residents, to ensure that the particular circumstances of the Cocos (Keeling) Islands Territory and/or its residents are not adversely affected by the extension of a law. (para 4.11.23)**

Comment

The WA based legal regime will be applied to the Territory under Commonwealth legislation. Therefore, the Commonwealth will retain power over the legislative process. Where there is sufficient justification to alter or repeal the application of particular WA law, the Commonwealth will be able to intervene through its Ordinance making power.

The community will be able to influence these Commonwealth processes through its Members of Parliament and Senators (the Territory is included in the Northern Territory Federal Electorate) and through the Commonwealth Minister responsible for the Territory.

In terms of appropriate consultation processes with the Territory community, these fall into three categories:

(a) consultation about the broad question of replacement of the outdated Colony of Singapore regime with Western Australian laws

(b) education programs in respect of those changes which affect residents on a day-to-day basis (eg. road rules)

(c) mechanisms for the Islands community to influence the application to the Territory of new and amending laws as they are enacted by the WA Parliament.

The issue of category (a) consultation was extensively canvassed during the Committee's hearings. The matter was also addressed in detail in the extensive consultation process leading to the signing of the Memorandum of Understanding by the Prime Minister and community leaders in March 1991.

That Memorandum provides for the achievement of mainland standards and conditions, including the application of all Commonwealth laws and a WA legal regime, by July 1992. The contents of the Committee's report will be the subject of further discussion with the Cocos Council within the terms of the Memorandum of Understanding.

It would seem appropriate to develop the education programs (category (b) consultation) in concert with the relevant WA regulatory agencies. Community input on content and format would be desirable.

In relation to category (c), mechanisms will need to be developed to ensure that the Islands community:

- is aware of the passage of legislation through the WA Parliament;

- has access to more detailed explanation of the effects of legislation of concern to residents; and

- has open channels of communication to elected Federal Representatives and the Commonwealth Minister, to influence application of particular statutes to the Territory.

However, it would be unrealistic to undertake to consult specifically on each law, having regard not only to resource constraints but also to the limited capacity of the Islands community to consider in detail the entire output of the WA Parliament.

DASETT would appear to be the most appropriate agency to co-ordinate requests for and assembly of such information from specialist Commonwealth and/or State agencies. However, there will be resource constraints on those specialist agencies as well as on DASETT, and the Islands community may on occasion need to obtain external advice and assistance, eg. legal advice.

Response

Note that the principle of the application of Western Australian laws has already been agreed in a Memorandum of Understanding with the Islands community.

Undertake that:

- further discussions will be held on the details of the application of Western Australian laws, within the terms of the Memorandum of Understanding;

- an education program will be provided to inform residents about their statutory rights and obligations on day-to-day issues (eg. road rules) under the applied Western Australian law; and

- mechanisms will be developed to facilitate the Islands community's awareness of the passage of legislation through the WA Parliament, access to more detailed explanation of the effects of legislation of concern to residents, and open channels of communication to elected Federal Representatives and the Commonwealth Minister.

Note that DASETT, in co-operation with Commonwealth and Western Australian agencies, will co-ordinate provision of such information and detailed explanations.

Recommendation

21. The Committee recommends that the Commonwealth institute discussion with the Western Australian Government in respect of the long-term future of Cocos (Keeling) Islands including their possible incorporation within the State of Western Australia. (para 4.11.25)

Comment

The Cocos Malay community (some 450 people) voted overwhelmingly for integration with Australia in 1984. An extension of the law-reform process could be to incorporate the island into the State, after a settling-in period under State laws.

The issue of integration with WA received general support from community witnesses during the Committee's hearings in the Territory and is reflected in the acceptance of WA standards as one of the principles underlying the MOU. However, there is no need for a Government decision at this stage.

The views of residents would need to be taken into account before any decision was made to approach the Western Australian Government in relation to incorporation.

Any Commonwealth Government decision on incorporation of the Territory into WA would be subject to the agreement of the WA electorate in a referendum, required by the Commonwealth Constitution for any alteration of the boundaries of a State.

Section 122 of the Constitution enables Federal representation of Territory electors - sections 7, 24 and 29 of the Constitution have the effect of preventing the election of a Senator to represent both State and Territory electors, or the election of a member of the House of Representatives to represent an electoral division comprising both State and Territory electors. The Commonwealth Electoral Act 1918 presently provides for Christmas Island to form part of the Northern Territory for Federal electoral purposes: this would need to be changed if the Territory of Christmas Island was to be incorporated within WA.

Response

Note that at this stage there are no Government plans to incorporate the Indian Ocean Territories within Western Australia.

Recommendation

22. **The Committee recommends that the Commonwealth initiate action designed to overcome the breaches of human rights identified by the Human Rights and Equal Opportunity Commission. (para 4.11.27)**

Comment

Matters raised in the Submission to the Committee's Inquiry by the Human Rights and Equal Opportunity Commission included:

- unreformed Singapore laws being inconsistent in a number of significant respects with human rights instruments binding on Australia: law is outdated and discriminatory;
- absence of adequate mechanisms for involvement of or consultation with local representative institutions in determining what laws ought to apply;
- applicable law not being readily accessible or ascertainable;
- unacceptable punishments in applicable statutes;
- lack of access to legal services denying residents effective and equal protection of the law;
- lack of adequate workers compensation legislation and non-application of ILO Conventions.

The Government decided in 1990 to extend all Commonwealth legislation to Cocos and, in principle, to replace current Cocos laws with the full WA based legal regime. This will overcome such perceived shortcomings in the present laws and place the Islands' residents on the same footing as their mainland counterparts.

Response

Agree. The adoption of the response to recommendation 17 above, for the application of Western Australian law and the extension of all Commonwealth Acts, will overcome any perceived breaches of human rights in the current legal regime.

Recommendation

23. The Committee recommends that the Commonwealth arrange for the provision of a formal legal aid service for the residents of the Cocos (Keeling) Islands Territory. (para 4.11.29)

Comment

Legal aid is currently provided on an ad hoc basis through the Western Australian Legal Aid Commission, funded by the Cocos Administration. The Commonwealth has undertaken to provide a formal legal aid service under Clause 43 of the MOU.

Islands residents should receive assistance on the same conditions and at the same levels as their mainland counterparts.

Response

Note that legal aid is already provided on an informal basis, as required, and that the Commonwealth has undertaken that Islands residents will receive assistance comparable to their mainland counterparts under a formal legal aid program.

Recommendation

24. The Committee recommends that the Commonwealth ensure that, consistent with the particular circumstances of Cocos, as many as possible of the ILO Conventions ratified by Australia are applied to the Cocos (Keeling) Islands Territory. (para 4.11.31)

Comment

Article 35 of the International Labour Organisation (ILO) Constitution obliges member states to make declarations as soon as possible after a Convention is ratified concerning its application to external ("non-metropolitan") territories.

No declarations have been made in respect of the application to the Cocos Islands of forty-seven ILO conventions currently ratified by Australia. In considering the appropriateness of such action, the possible application of eight of the Conventions appended to one of the ratified Conventions, No. 83, Labour Standards (Non-Metropolitan Territories) 1947, will also need to be examined.

To enable decisions to be taken on whether those Conventions ratified by Australia can and should be extended to the Cocos Islands, a large number of Commonwealth and WA laws will need to be examined, along with local custom and practice in the Territory.

Response

Agree, noting that extension of the Western Australian legal regime and Commonwealth legislation will enable declarations to be made applying these Conventions to the Territory.

Recommendation

25. The Committee recommends that the Commonwealth review the Administration Ordinance 1975 with particular reference to the title, functions and powers of the Administrator. (para 4.13.2)

Comment

With implementation of the Government's response to the Committee's major recommendations, the Territory's legal regime and administration will come to resemble that of an isolated mainland community with municipal powers exercised locally and State-type powers oversighted by the Commonwealth Minister, who will be accessible to the community.

Response

Agree, noting that replacement of the current laws with mainland laws will facilitate the implementation of new administrative machinery.

Recommendation

26. The Committee recommends that, in applying the law of Western Australia to Cocos, priority should be given to the application of the criminal law of Western Australia to the Territory. (para 4.14.5)

Comment

The Government has given an undertaking to the Cocos Malay community that mainland based laws will be in place by 1 July 1992.

Response

Note that the Government has undertaken to have the overall Western Australian legal regime, including criminal laws, in place by 1 July 1992.

Recommendation

27. The Committee recommends that, in applying the law of Western Australia to Cocos, priority attention be given to the application of appropriate workers' compensation laws in the Territory. (para 4.15.9)

Comment

Rates of compensation under the present Singapore based Ordinance are substantially lower than equivalent mainland rates.

The Cocos Council and Co-operative Society, as major employers, currently take out private accident insurance at mainland rates to cover their employees.

The Government has given an undertaking to the Cocos Malay community that mainland based laws will be in place by 1 July 1992.

Response

Note that the Government has undertaken to have the overall Western Australian legal regime, including workers' compensation legislation, in place by 1 July 1992.

Recommendation

28. The Committee recommends that North Keeling be declared a park or reserve under the NPWC Act. (para 4.17.6)

Comment

North Keeling can be declared a park or reserve only if the Commonwealth owns the land, which is currently vested in the Cocos Council.

The Commonwealth is negotiating with the Cocos Malay community to acquire North Keeling so that it can be declared a park or reserve under the National Parks and Wildlife Conservation Act 1975.

Response

Agree in principle and note that the Government is presently negotiating with the Cocos Malay community to achieve this result.

Recommendation

29. The Committee recommends that ANPWS ensure, through the promulgation of regulations under NPWC Act if necessary, that a regime of nature conservation legislation exists for the proper protection of the environment, including the waters of the Cocos (Keeling) Islands Territory. (para 4.17.7)

Comment

The Cocos (Keeling) Islands Council holds title to two-thirds of the land in the Territory. The waters of the Territory are vested in the Commonwealth.

As there are currently no parks or reserves in Cocos, Part II of the National Parks and Wildlife Regulations (Activities in Parks and Reserves) has no present application on Cocos (although see response to recommendation 28 above). Part III of the Regulations (Wildlife Conservation) applies to Commonwealth waters beyond the territorial sea.

The legislation applicable to residential areas and private land needs to be easily accessible and understood by residents and administrators alike. A mixture of overlapping National Parks and Wildlife Regulations and State conservation/land laws could result in administrative difficulties and confusion for residents.

The application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with administering agencies.

WA laws covering conservation, planning and development should provide an adequate regime for the proper protection of wildlife and environmental values while allowing for normal land use.

Should the applied State law prove inadequate for meeting Commonwealth wildlife conservation objectives, regulations under the National Parks and Wildlife Conservation Act 1975 would be extended, and these would be paramount over State legislation.

It is proposed that ANPWS staff will administer the applied Western Australian conservation laws in the Indian Ocean Territories.

Response

Note that a full range of environmental protection measures will be provided by adoption of the response to recommendation 17, that is, the extension of the Western Australian legal regime and all Commonwealth legislation.

Note that the application of subordinate legislation in areas outside parks and reserves will be examined on a case by case basis, following consultation with ANPWS and State conservation officials.

CORAL SEA ISLANDS TERRITORY

Recommendation

30. The Committee recommends that the Commonwealth identify the laws currently applying in the Coral Sea Islands Territory, in particular those applying pursuant to section 4 of the Coral Sea Islands Act 1969. (para 5.2.8)

Comments

Section 4 of the Coral Sea Islands Act 1969 provides:

> Subject to this Act, the laws in force in the Coral Sea Islands at the commencement of this Act continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act.

Section 5 of the Act provides for the making of Ordinances for the government of the Territory. The principal of these is the Application of Laws Ordinance 1973 (CSIT), by which the laws of the ACT, as in force from time to time, apply in the Territory, so far as they are applicable. The laws of the ACT, being a complete system of law, would have overridden virtually all of the laws previously in force in the Territory.

To identify the laws in force in the Territory before the commencement of the 1969 Act would be extremely difficult: as noted by the Committee, no formal claim of sovereignty over the Islands had ever been made by Britain, and no formal claim of sovereignty was made by Australia until 1969.

The endeavour would also be of little (if any) benefit, given that the ACT law currently provides a comprehensive body of law. The exercise could be relevant to a hypothetical cause of action arising exclusively in the Territory, between 1969 and 1973, but until such a cause is asserted, further consideration would be an inappropriate diversion of resources.

Response

Disagree. Note that allocation of resources to the identification of laws applying under section 4 of the Act prior to 1969 would be inappropriate, given that virtually all such laws would have been overridden in 1973 by the application of the ACT legal regime to the Territory.

Recommendation

31. The Committee recommends that the Commonwealth institute formal discussions with the Queensland Government in relation to the future status of the Territory, the possible application of Queensland law and its possible incorporation in Queensland. (para 5.7.7)

Comment

The options for the future of the Territory have not been considered in depth.

Response

Note that the incorporation of the Territory into Queensland is an option in any Commonwealth Government consideration of the future constitutional status of the Territory, and that possible extension of Queensland laws would be relevant within this framework.

Recommendations (32 and 33)

32. The Committee recommends that wildlife regulations under the NPWC Act, currently applying in Commonwealth waters, be extended to the Territory. (para 5.8.11)

33. The Committee recommends that a full-scale assessment be undertaken to determine the feasibility of declaring the whole of the Coral Sea Islands Territory and surrounding Territorial waters a park or reserve under the provisions of the NPWC Act. (para 5.8.12)

Comment

The Coral Sea Islands Territory comprises the islands, and the territorial sea they generate, in an area of some 780,000 square kilometres of ocean. There has not been a detailed assessment of what the Territory comprises.

At present Part II of the National Parks and Wildlife Regulations (Activities in Parks and Reserves) applies to those areas of the Territory declared as Reserves under the Act, that is the Lihou Reef and Coringa-Herald National Nature Reserves, and Part III of the Regulations (Wildlife Conservation) applies to the waters of the continental shelf beyond the territorial sea.

Response

Agree that an assessment to determine the feasibility of declaring the Coral Sea Islands Territory and surrounding Territorial waters as a park or reserve under the National Parks and Wildlife Conservation Act 1975 would be desirable.

Note that extension of Part III of the National Parks and Wildlife Regulations (Wildlife Conservation) is being considered as an option within this context.

Recommendation

34. The Committee recommends that the status of Elizabeth and Middleton Reefs be reviewed with the object of assessing the feasibility of incorporating them within the State of New South Wales. (para 5.9.11)

Comment

Only land, that is islands not submerged rocks, can be claimed as territory under international law. Whether Elizabeth and Middleton Reefs or any part of them are islands under international law is not entirely clear, although Australia has good grounds to claim internationally that they are. Extensive research would be needed before a decision to incorporate into a State or Territory, eg. New South Wales, on the basis that they are islands, could be made.

As the Reefs are clearly within the boundary of Australia's continental shelf, all essential Commonwealth interests can be protected on the basis that they are not islands but submerged rocks. For example, the environment is fully protected by their current status as a Marine National Nature Reserve. At this stage possible advantages of incorporating the Reefs into a State or Territory as islands, eg. that Australia could unequivocally claim a twelve-mile territorial sea around them, appear to be outweighed by the expense of both researching the question and the incorporation process itself. Incorporation into New South Wales would require a referendum in that State under section 123 of the Commonwealth Constitution.

Response

Before a decision could be made as to whether Elizabeth and Middleton Reefs should be incorporated within the State of New South Wales or the Coral Sea Islands Territory, it would be appropriate to carry out further research as to the status of the reefs. At this stage, however, the expense of such a full review appears to outweigh any possible advantages, given that the environment of the reefs is fully protected by their current status as a marine nature reserve.

JERVIS BAY TERRITORY

Recommendation

35. The Committee recommends that the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 be amended to secure for the Aboriginal residents the right to control their land and access to it. (para 6.11.5)

Comment

The Aboriginal Land Grant (Jervis Bay) Act 1986 already contains provisions to enable the Wreck Bay Aboriginal Community Council to control its land and access to it. Section 49 of the Act provides for the Minister, by notice in the Gazette, to declare that specified places to which the public had access prior to the land becoming Aboriginal land are to be accessible to the public. No such declarations have yet been made.

Public roads were excluded from the land grant area at the time of grant. This is the usual practice in relation to grants of Aboriginal land. For instance subs.12(3) of the Aboriginal Land Rights (Northern Territory) Act 1976 specifically excludes public roads from land grants.

Response

Note that the Aboriginal Land Grant (Jervis Bay) Act 1986 already contains provisions to enable the Wreck Bay Aboriginal Community Council to control its land and access to it.

Note that public roads were excluded from the land grant area at the time of grant, in accordance with the usual practice in relation to grants of Aboriginal land.

Recommendation

36. The Committee recommends that discussions be held between the Commonwealth and the NSW Governments in relation to the future status of the Jervis Bay Territory, the application of NSW law, and the Territory's possible incorporation within the State of NSW. Further, that these discussions be subject to assurances from the NSW Government that:

1. **existing parks and other environmentally sensitive areas are protected;**

2. **the Village area not be substantially extended;**

3. **the policing of the Territory be continued by officers sensitive to the needs of the community, especially the Wreck Bay community, and that consideration be given to policing the Wreck Bay community by the Australian Federal Police on a contract basis. (para 6.14.7)**

Comment

The transfer of the Jervis Bay Territory to New South Wales was raised as an option in the Draft Management Strategy Plan for the Territory released for public comment by the Minister for the Arts, Tourism and Territories on 7 February 1991.

Following consideration of public comment on the Draft Management Strategy Plan, the Minister has decided that there are no Government plans to incorporate the Territory into New South Wales at this stage.

An important factor in any consideration of changes to administration arrangements for the Jervis Bay Territory is the rights of the Wreck Bay Aboriginal people under the Aboriginal Land Grant (Jervis Bay) Act 1986. In any such consideration, the Government consults with the Wreck Bay Aboriginal Community Council.

If incorporation of the Territory within NSW were to be considered at any future time, there would be other issues requiring attention, such as the Jervis Bay Marine Park proposal.

(It would also need to be noted, as a possible consequential issue relating to the Australian Antarctic Territory (AAT) and the Territory of Heard Island and McDonald Islands (HIMI), that the Australian Antarctic Territory Act 1954 and Heard Island and McDonald Islands Act 1933, as amended by the Crimes Legislation Amendment Act 1991, provide that the criminal laws in force from time to time in the Jervis Bay Territory, so far as they are applicable and not inconsistent with Ordinances of the relevant Territory, are in force in the AAT or HIMI respectively as if that Territory formed part of the Jervis Bay Territory.)

Response

Note that there are no Government plans to incorporate the Territory within New South Wales at this stage.

Note that an important factor in any consideration of changes to administration arrangements for the Jervis Bay Territory is the rights of the Wreck Bay Aboriginal people under the Aboriginal Land Grant (Jervis Bay) Act 1986, and that in any such consideration, the Government consults with the Wreck Bay Aboriginal Community Council.

Recommendation

37. The Committee recommends that, as an interim measure, and to facilitate the local administration of the Territory, discussions be held between the Commonwealth and NSW Governments in relation to the possible administration of Jervis Bay Territory by the Shoalhaven City Council. (para 6.14.8)

Comment

The Government does not see any benefits from an interim measure such as that suggested by the Committee.

Concern has been expressed by a range of groups, including the Wreck Bay Aboriginal Community Council, at the environmental record of the Shoalhaven City Council. The Committee itself stated that "evidence before the Committee suggests that the Council will have to put particular emphasis on the implementation of environmentally sound management practices" (para 6.14.9).

Response

Disagree. The involvement of the Shoalhaven City Council would not facilitate Commonwealth objectives in the Territory.

Note that an important factor in any consideration of changes to administration arrangements for the Jervis Bay Territory is the rights of the Wreck Bay Aboriginal people under the Aboriginal Land Grant (Jervis Bay) Act 1986, and that in any such consideration, the Government consults with the Wreck Bay Aboriginal Community Council.

TERRITORY OF NORFOLK ISLAND

Recommendation

38. The Committee recommends that lists or tables showing exactly which Commonwealth Acts extend to Norfolk Island and which Imperial statutes have been received, be compiled and published and made generally available. (para 7.5.10)

Comment

Although Commonwealth Acts expressly extending to the Territory could be identified relatively easily, it would be difficult to identify all statutes extending by implication, and impossible to do so with certainty.

Identification of applicable Imperial statutes would similarly be a highly technical and complex task, with necessarily somewhat uncertain outcomes.

Response

Disagree; the complexity of the task and the major resource implications would not warrant the unnecessary diversion of scarce resources.

Recommendation

39. The Committee recommends that the Commonwealth Parliament amend the Commonwealth Electoral Act 1918 to give optional enrolment rights to the people of Norfolk Island; the electorate to which the voters would be attached to be determined on the advice of the Australian Electoral Commission. (para 7.10.7)

Comment

The Norfolk Island Government (NIG) has described Federal Parliamentary representation as "an anathema to the overwhelming majority of the community".

However, it is arguable that the fact that Australian citizens residing in Norfolk Island do not have the right and the opportunity to vote in Federal elections places Australia in breach of the International Covenant on Civil and Political Rights. The absence of a right or opportunity to vote may be inconsistent with the concept of universal and equal suffrage.

The proposal for optional enrolment would recognise the unique circumstances of Norfolk Island, but should also provide those Australian citizens who wish to do so, the opportunity to exercise their basic democratic right to vote in elections for the Federal Parliament.

Response

Agree, noting that consultations with the Norfolk Island Government will be necessary in view of its opposition to this course of action.

Recommendation

40. The Committee recommends that the Department of the Arts, Sport, the Environment, Tourism and Territories exercise a coordinating role to overcome delays in assent to legislation. The Committee also recommends that the Commonwealth Government consider adopting a policy to require responses within a fixed period of receipt of notification from the Norfolk Island Administrator of legislation requiring assent. (para 7.11.3)

Comment

During the period 1 June 1989 to 31 May 1991, twelve proposed laws were reserved for assent by the Governor-General. The average time which elapsed between the reservation of these proposed laws, and assent by the Governor-General, was approximately eight weeks.

Response

Agree that DASETT continue to exercise its coordinating role.

Note that the varying complexity of issues and external factors affecting the assent process makes the imposition of a general time limit impractical.

Recommendation

41. **The Committee recommends that Australian citizenship be a requirement for eligibility to stand for election or to vote in Norfolk Island Legislative Assembly elections, for all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined before the end of 1991.** (para 7.12.8)

Comment

This recommendation is largely consistent with a proposal which was referred by the Minister for the Arts, Tourism and Territories to the Norfolk Island Government (NIG) for comment in 1990.

The Norfolk Island Government is opposed to this recommendation on the grounds that:

- it might progressively disenfranchise about a quarter of local voters (of non-Australian origin, principally New Zealand citizens);

- it was the Commonwealth itself which gave the Island's Assembly the option of abolishing citizenship requirements;

- dual or multiple citizenships would not demonstrate any particular commitment to Australia;

- the present lack of a citizenship requirement has not presented any practical problems; and

- an Australian citizenship requirement would be unfair, discriminatory and merely ideological.

A citizenship requirement for membership of the Assembly was abolished in 1985. At the time, this was seen as consistent with the Island's separate immigration laws, under which "permanent residents" rather than Australian citizens participate in Island affairs. It was also said that it would give recognition to the Island's distinctive heritage, particularly its association with Pitcairn Island, and would be more consistent with the practice generally applying at the local government level.

Response

Disagree. The issue was very carefully considered by Government in 1985, and there is no compelling reason at present to vary the current position.

Recommendation

42. **The Committee recommends extending the operation of the Administrative Appeals Tribunal, Ombudsman Act and the Freedom of Information Act to an appropriate range of decisions, but only as an interim measure, pending the development by the Norfolk Island Government of an independent Administrative Review Tribunal.** (para 7.13.8)

Comment

The Acts are already capable of application (according to their tenor) to various Commonwealth decisions and Commonwealth documents affecting or relating to Norfolk Island, that is, decisions taken by or documents held by Commonwealth Ministers and/or Commonwealth public servants.

The Norfolk Island Government is committed, as a matter of high priority, to the establishment of an Administrative Review Tribunal.

Response

Note that the Norfolk Island Government has as a high priority the establishme of an Administrative Review Tribunal. This could be achieved in a similar tir frame to the extension of Commonwealth legislation.

Recommendation

43. The Committee recommends that the Commonwealth continue to work closely with the Norfolk Island Legislative Assembly to ensure that all the industrial relations legislation of Norfolk Island be developed to the point where Australia's obligations under International Labour Organisation Conventions are met. (para 7.15.10)

Comment

In 1988, following extensive consultation with the Commonwealth, the Legislative Assembly passed the Employment Act 1988, to provide for workers' compensation, minimum wages and conditions, machinery for the conciliation and adjudication of industrial disputes and safe working practices. The Act has been assented to by the Governor-General, but has not yet commenced, pending the determination by the Norfolk Island Government of an appropriate minimum wage in consultation with employee and employer organisations on the Island. This consultative process has now concluded and the legislation is expected to be brought progressively into operation, on 1 July, 1 September and 1 November 1991.

Once the legislation is in force, Australia will be able to lodge declarations in respect of a number of outstanding ratified ILO Conventions and to revise various of its existing declarations for Norfolk Island, including minimum wage fixing, forty-hour week, and workers' compensation.

Response

Agree.

Recommendation

44. The Committee recommends that the Commonwealth adopt, in principle, an increasing cost recovery approach. (para 7.16.6)

Comment

The Committee stated that "the Commonwealth should not reduce the level of services or expenditure to the Island, but rather that the Commonwealth adhere to its undertaking to ensure that Norfolk Islanders receive equivalent benefits ... this approach should aim at an increased cost recovery approach" (para 7.16.5). On the other hand, the Norfolk Island Government (NIG) argues for "the staged reduction of the level of services and expenditure by the Commonwealth". The NIG sees reduced Commonwealth expenditure as preferable to increasing cost recovery, which in its view "provides the Island with the requirement to pay for, but usually not the ability to control, the programmes concerned".

Initiatives such as the transfer of ownership of the Norfolk Island Aerodrome to the NIG and the proposed policing agreement between the NIG and the Australian Federal Police will have the effect of reducing Commonwealth outlays on Norfolk Island, although overall expenditure will remain essentially constant. The difference will be that the NIG, instead of the Commonwealth, will bear responsibility for the greatest share of the cost of these services, consistent with its progress towards internal self-government.

Response

Agree that, where appropriate, the Commonwealth adopt the principle of increasing cost recovery in relation to Norfolk Island, noting that Commonwealth outlays will decrease as more responsibilities devolve to the Norfolk Island Government under the service delivery approach adopted by the Norfolk Island Government and the Commonwealth.

Recommendation

45. The Committee recommends that the Department of Social Security establish a formal review mechanism to monitor the adequacy of social security provisions on Norfolk Island. (para 7.19.6)

Comment

"Social Security" is a Schedule 3 item under the Norfolk Island Act 1979. Schedule 3 lists matters in respect of which the Norfolk Island Government (NIG) has executive authority, but legislative authority is subject to Commonwealth veto. That is, legislation relating to a Schedule 3 matter may only be assented to by the Administrator on the instructions of the Minister for the Arts, Tourism and Territories.

In practice, this means that whenever the NIG wishes to vary the rate of a social security benefit, introduce a new benefit or change the eligibility criteria, the proposed law must be referred to the Minister for approval. The Commonwealth therefore already has an inbuilt review mechanism. In addition, both benefit rates and the amount of "other income" which can be earned while in receipt of a benefit are adjusted half-yearly by reference to a Benefit Adjustment Factor which is ascertained at 30 June and 31 December each year.

In providing its advice to the Minister, DASETT consults with the Department of Social Security, as appropriate, on the terms of the proposed legislation, including the adequacy of benefit levels and its equity aspects. If the levels of benefit were thought to be inadequate, it would be open to the Minister to express that view to the NIG and/or to instruct the Administrator to withhold assent to the legislation or return it to the Legislative Assembly with recommended amendments. In this way, the Minister can exercise considerable influence over the rates and types of benefits provided under the Social Services Act 1980 of Norfolk Island.

Response

Disagree; note that DASETT monitors Norfolk Island Government proposals relating to social security in Norfolk Island, consulting with the Department of Social Security about benefit levels and equity aspects as appropriate.

Recommendation

46. The Committee recommends that the Commonwealth Grants Commission undertake a review of the living standards, social security provisions and economic base of Norfolk Island. (para 7.20.5)

Comment

The Nimmo Royal Commission (1976) into matters relating to Norfolk Island had wide terms of reference and reported on matters as diverse as land development and ownership, taxation and social services, the disposal of garbage and the practice of allowing cattle to wander at large on common grazing areas. The Norfolk Island Government (NIG) considers that another

such inquiry would be "unnecessary, undesirable and a diversion of scarce Island resources".

Consistent with its progress towards internal self-government, the NIG provides a range of services to the community including social security benefits, a Healthcare scheme and employee compensation. While the benefits under these schemes are not the same as those applicable on the mainland, they are comparable to mainland standards in their relationship to the cost of living on the Island.

In its Report, the Committee acknowledged that the NIG "is generally acting with goodwill in safeguarding the interests of Norfolk Island residents" (para 7.20.4) and accepted that "the level of social services provided to the residents of Norfolk Island is generally adequate" (para 7.19.5).

DASETT continuously monitors conditions on the Island as part of its day-to-day activities and as previously mentioned, there is also a review mechanism in place to monitor the adequacy of social security benefits payable on the Island. It is considered that, in all the circumstances, a Grants Commission Inquiry would serve no useful purpose.

Response

Disagree, noting the review mechanisms which already exist in relation to the Island and the Island's progress towards internal self-government.