Christmas Island: A question of self-determination

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DECLARATION OF AUTHORSHIP

I declare that this Research Project is my own and contains work which has not previously been submitted for a degree at any tertiary education institution.

Kelvin Matthews
February 2019
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Disclosure

From 2009 to 2016 I was Chief Executive Officer (CEO) at the Shire of Christmas Island. I received financial support from the Shire from the commencement of my study until October 2016. I also received funding from the University of Notre Dame Australia’s Research Office for the purpose of my final thesis sub-editing cost.
Abstract

The notion of self-determination for Christmas Island has been considered for many years. There have been a range of reports, studies, inquiries and indeed protests (on the Island and in Canberra) over the years that have failed to provide a solution which is satisfactory to residents of Christmas Island and Australia’s Commonwealth Government. Accordingly, the purpose of this thesis is to explore and investigate the possibilities and options of the Territory of Christmas Island:

a) becoming an autonomous self-governing region (Parliamentary Legislative Assembly);

b) being incorporated into the legislative arrangements of West Australia (WA) or Northern Territory (NT);

c) developing an alternative mixed delivery model of governance, incorporating elements from the above options (such as an ‘internal territory arrangement’); or

d) maintaining the status quo.

The thesis will discuss and examine the principles of democratic governance, including responsible government and representative democracy. It will also consider the unique history, culture and demography of Christmas Island, as well as the financial arrangements underpinning the existing governance model. It will discuss land tenure and asset ownership, which are both contentious issues on the island. Finally, the various future governance options will be examined, with a view to considering whether how effectively they might work within the Christmas Island context. The thesis utilises a range of reports and submissions made on the issue during parliamentary inquiries, as well as contemporary literature on self-determination and governance.
CHRISTMAS ISLAND: A QUESTION OF SELF-DETERMINATION

INTRODUCTION

Christmas Island is a non-self-governing external territory of Australia. The island was transferred from British control as the British Straits Settlement (Singapore), to Australia in 1958 but the islanders were never consulted about the transfer of sovereignty or the governance model that applied at that time. The current model of limited self-governance has been in operation since the recommendations of the Islands in the Sun Parliamentary Inquiry Report in the early 1990s and the subsequent promulgation of the Shire of Christmas Island as a local government entity in July 1992. Accordingly, there is a need to examine whether these governance arrangements on the island meet and embody democratic principles. There is also a need to better understand how services and facilities are delivered on Christmas Island and whether there are alternative forms of governance which would be more democratic, and better at meeting the aspirations of Christmas Islanders. The project is significant because Christmas Island’s governance has never been benchmarked against principles of democratic representation. The island’s case for self-determination has never been considered, and there has never been a referendum on the island regarding their form of government.

The thesis will therefore measure Christmas Island’s governance arrangements through the lens of democratic governance, drawing on principles of representation, federalism and electoral democracy. The project will also examine Christmas Island’s case for self-determination, by examining the island’s historical development and demographic composition, and how it differs from mainland Australia. The findings of the study may also have significant implications for other jurisdictions which are similar to Christmas Island, including islands in the South Pacific and further afield.
Introduction

There is no *a priori* assumption on the part of the author about the optimal governance model that should apply to meet the needs of Christmas Islanders. This thesis examines the current model and its strengths and weaknesses. It then examines other potential models and considers practical issues which may arise in their implementation. This analysis is undertaken within a framework of representative democracy (that includes the concepts of deliberative, sovereignty and autonomy), responsible government, self-determination and federalism. Any realistic and viable options are for the Christmas Island community to consider.

Research Question and context

The purpose of this thesis is to explore and investigate the governance possibilities and options of the Territory of Christmas Island:

a) becoming an autonomous self-governing region (Parliamentary Legislative Assembly);

b) being incorporated into the legislative arrangements of West Australia (WA) or Northern Territory (NT);

c) developing an alternative mixed delivery model of governance, incorporating elements from the above options (such as an ‘internal territory arrangement’); or

d) maintaining the status quo.

In considering the above options, the purpose of the research must be clearly linked to research questions that will provide a response to the stated outcomes of the study as follow:

- Does the governance model for Christmas Island embody commonly held democratic principles?
• Do Christmas Islanders have a case for self-determination, given the history and culture on the island?
• What alternative models of governance could be considered for the island?

It is anticipated that the study outcome will therefore inform Christmas Islanders regarding the nature of their future possible governance arrangements.

Research Design

The concepts of praxis and phronesis are critical to the research design and methodology in this thesis. The term or notion of praxis is the practical application of theory in a chosen field of study. That is, praxis refers to the act of transforming the theoretical outcomes of any research into the action required as a result of the theoretical research or investigation. The term phronesis signifies practical wisdom, good judgement and intelligent virtue and was a term that first appeared in early Greek philosophy.

As Bent Flyvbjerg notes in his article *A Perestroikan Straw Man Answers Back*, the principal objective for phronetic political science is to perform analyses and derive interpretations of the status of values and interests in politics and administration aimed at praxis. Phronesis is problem driven, not methodology driven and provides a way to analyse relations of power and to evaluate these results in relation to specific groups and interests. Phronesis focuses on analysing problems within a framework that deals with deliberation, judgement and praxis.¹ In this regard the objective of this study is to explore those theoretical possibilities of self-determination which can be applied practically, where the community can decide

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Introduction

how they govern themselves with a model they have considered and chosen themselves. In other words, the project links theoretical notions of self-determination with the reality of Christmas Islanders wanting some form of meaningful consultation (referendum) to be undertaken as a means of realising this outcome. Flyvbjerg also argues that we must effectively and dialogically communicate the results of our research to our fellow citizens and carefully listen to their feedback. That is why the options regarding Christmas Island governance should be put to residents of the island before any decision is made.

The design and methodology of the thesis is therefore integral to the outcome of the study; it is essential that the process is first undertaken within a framework that examines the democratic concepts of representative democracy, responsible government, self-determination and federalism as applied to Christmas Island. This includes highlighting current (and past) applied governance arrangements which are unaccountable through a lack of consultation with the community and demonstrating how this has led to demands for self-determination, or at the very least demands to be heard with regard to how they are governed. The problem which will be extrapolated is the lack of representative democracy and responsible government; the community are not only denied the right to vote in the way they are governed but also the principle of responsible government that applies to the rest of Australia.

The overall approach and rationale of the study is to also gather and interpret quantitative data and information to examine not only the issues directly related to Christmas Island, but also other Australian and/or overseas examples. In their

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\(^2\) Flyvbjerg, 413.
publication *Australian Public Policy: Theory and Practice*, Maddison and Denniss define quantitative research as a process of inquiry into the quantitative elements of an issue or problem.\(^3\) Within this project, a quantitative research approach is used to generate numerical statistics, such as that from the 2016 Australian Bureau of Statistics (ABS), that can be translated into relevant and usable data to inform the study. This data analysis will be supplemented through consideration and analysis of previous reports/inquiries/studies, together with the available literature. In this regard the design of the research study employs data collection and analysis, along with consideration of primary sources emanating from all levels of government. In the first instance, the numerous Commonwealth Joint Standing Committee on the National Capital and External Territories (JSCNET) inquiries over a period of years provide a wealth of information regarding the way in which governance on the island is viewed by decision-makers in Canberra, and residents on the island. In doing so, it became evident that there was a lack of progress regarding the implementation of the many recommendations contained within these previous reports, studies and submissions. In addition, current data from the Australian Bureau of Statistics (ABS) was useful particularly to Chapter Three of the study. Other relevant academic (including peer reviewed) literature dealing with the broader subjects of governance and democracy in the Australian context was utilised where appropriate to the thesis chapters. While there is a strong focus on the use of governance and democracy literature in the study, given the purpose of the thesis, other literature that provided factual information on the social, cultural and historical background of the Island as well as environmental and financial factors was also researched and utilized.

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Introduction

**Thesis outline**

Chapter One will discuss the notion of democratic governance that is central to the subject regarding the consideration of self-determination and the subsequent models of self-autonomy that would/could be implemented. That is, the key notions of democratic governance, such as responsible government and representative (and deliberative) democracy as well as sovereignty and autonomy, in the context of federalism and the Australian Constitution are important to the discussion of the study thesis.

To understand fully (or as much as possible) the notion of self-determination that Christmas Islanders have long harboured, Chapter Two will discuss the brief historical habitation and settlement of the island. In this regard, the geographical and economic importance of Christmas Island has also played a significant role in shaping its social history that drove (and continues to drive) the notion of self-determination. The very isolation of Christmas Island has also enhanced its rich diverse environmental significance. Accordingly, consideration of the historical and geographical background will encompass the social, economic and environmental history of the island.

Chapter Three discusses the demographic cultural and social nature of the island’s people not only a sociological perspective but also the perspective of how the economic conditions shaped the demographic environment of the island. Most importantly, it is necessary to consider how any proposed changes to the governance and legislative arrangement for Christmas Islanders will influence the social fabric of the community. This social fabric manifests itself in the economic social conditions, such as cost of living and wage parity that in turn shape the cultural attitude of the islanders, given the historical ‘colonial’ conditions they endured after colonisation of the island in the late nineteenth century owing to the discovery of phosphate.
Chapter Four will explore in more detail the governance and legislative arrangements relevant to the current situation on Christmas Island as well as the various models for consideration and application to its future governance. In particular, a strong focus will be maintained on the current WA applied legislation arrangements to the island through the ‘Service Delivery Agreements’ (SDAs) with the Federal Government that occurred without direct consultation with the community. Further, it is explained how this governance arrangement also disenfranchises the Christmas Island population from voting in the West Australian electoral process although the WA-based legislation enacted by the WA Parliament is still applied. This chapter will therefore discuss the current governance structure on Christmas Island, Federalism and the status of the island as a non-self-governing external territory and explore the notion of self-determination and its application to the final study outcome.

Chapter Five is an important component of the study, given the current financial dependency of the Territory of Christmas Island on the Commonwealth and the Island’s own means of raising enough revenue to meet its expenditure requirements. Accordingly, the chapter will discuss the financial arrangements and funding dependency for the administration of Christmas Island that are currently the responsibility of the Commonwealth Department of Infrastructure Regional Development and Cities (DIRDC). The Department administers its operations financially from offices on Christmas Island (that also serve Cocos Keeling Islands) as the ‘Indian Ocean Territories Administration’ and they also have an office located in Perth WA with the head office being located in Canberra. The Shire of Christmas Island receives operational financial grants from the Commonwealth by way of the WA-administered Grants Commission process that applies normally to all WA State-based local government authorities. Funding for capital grant projects that are normally directly available to mainland state-based local government authorities are considered under the ‘state-type grant’ process that requires assessment approval by
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the Commonwealth. Previously, this assessment process also included the relevant WA State Government agency; however, in 2014 this arrangement was changed so that now any such consideration is by the Commonwealth directly.

Chapter Six will discuss the current land tenure and asset ownership arrangements on the island, especially in defining the ownership and responsibility of various government agencies. In this regard, there are clear synergies between other chapters in the study where, for example, the vesting of religious sites and its infrastructure on the island require ownership identification and funding maintenance. The current ‘Land Disposal Policy’ of the Commonwealth is both cumbersome and erratically implemented, depending on influencing circumstances such as financial availability and commitment by the Commonwealth to projects intended for the use of the land and/or the political will and commitment by Canberra to any project requiring land availability.

Chapter Seven comprises the thesis summary and recommendations of the study that can be eventually presented to the community of the island. The conclusion will summarise the historical, geographical, political, governance, legislative, social, economic and environmental factors of Christmas Island that are integral to the context of considering self-determination. The recommendations will provide optional self-determination models for consideration as outlined in the Introduction that are based on the research that the study has analysed.
Figure 1
Chapter 1: The Notion of Democratic Governance

Current Governance Arrangements on Christmas Island

Currently, Christmas Island is a non-self-governing external territory of Australia and has been since the ‘transfer’ of rights in October 1958 from the British Straits Settlement (Singapore) authority by virtue of section 122 of the Australian Constitution. That is, chapter VI, section 122 of the Australian Constitution prescribes that the Parliament may promulgate laws for the government of any territory surrendered by any State to, and accepted by, the Commonwealth, or of any territory placed by the Crown under the authority of, and accepted by, the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of Parliament to the extent and on the terms that it thinks fit.17 In this regard, the transfer of Christmas Island from the British Straits Settlement (Singapore) to the Commonwealth of Australia was executed expressly by order of the Queen (at the time) and by legislation by the Parliament of the United Kingdom and the Parliament of the Commonwealth of Australia. Neither the excision from the ‘Colony of Singapore’ nor the transfer to Australia involved any reference/question to the people living on Christmas Island at that time. Christmas Islanders still celebrate ‘Territory Day’ in recognition of attaining ‘independence’ from British (and Singaporean) colonial rule.

The historical arrangements (including social, economic and legislative) for Christmas Island amounted to governance by the British as a ‘dominion’ of the Empire. From its transfer to Australia as a non-self-governing external territory in 1958, Christmas Island was governed directly from Canberra until the first comprehensive consideration of the constitutional status and system of laws

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The Notion of Democratic Governance

applying to Christmas Island occurred in 1991 when the Parliament of the Commonwealth of Australia’s House of Representatives Standing Committee on Legal and Constitutional Affairs reviewed the legal regimes of Australia’s external territories. The subsequent report, *Islands in the Sun, Parliamentary Inquiry Report on the Governance of Christmas Island – Commonwealth of Australia 1991*, proposed several reforms that form the basis of the current applied governance regime as introduced by the ‘Territories Reform Act 1992’. Thus, the report *Islands in the Sun* and its subsequent findings are integral to the study and will be examined in more detail in Chapter Four. Of particular interest specifically in respect of Christmas Island, the Committee recommended that the Commonwealth ensure, in its administration of Christmas Island, that the Territory not assume the characteristics of a non-self-governing Territory within the terms of Chapter XI of the United Nations Treaty. The reasons that this recommendation (among others) was not implemented will again be discussed and considered in further detail in Chapter Four of this study, given the change in demographic, legislative and financial circumstances some 20 years after the report completion and implementation.

**Representative Democracy and Responsible Government**

The principle of representative democracy discussed in this chapter will frame the discussion in Chapter Four regarding its application to the self-determination options for Christmas Island. This in turn will inform the options for the community to consider in Chapter Seven. This chapter will discuss how the principle of representative democracy is based on the principle of the rule of the people through their elected representatives. More specifically, in representative democracies the people’s elected representatives vote on legislation that apply to them; Chapter Four

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Chapter 1

will explore whether this process is extended to the community of Christmas Island. This has particular relevance where ‘delegated’ legislation from Western Australia is in effect. As noted in the Introduction, this chapter will draw on several significant areas of literature including previous reports, studies and submissions made regarding the nature of governance arrangements on Christmas Island. Chapter One will begin by discussing relevant literature dealing with the broader subjects of governance and democracy in the Australian context.

Given Australia is a federation, its political system is divided by the Constitution into two tiers, with the Commonwealth Government forming the first tier and the state governments forming the second.\(^{19}\) There is an explicit sharing of power between levels of government, and no level has legal power to dominate the other level(s) in all policy domains as the essence of federation is coordination and not hierarchy. In their publication *An Introduction to Australian Public Policy*, Sarah Maddison and Richard Dennis define Australian Federalism as a division of powers between a central or ‘federal’ government states or provinces.\(^{7}\) In the *The Reform of the Federation White Paper: Issue 1 September 2014* it is noted that Federalism is regarded as one of the best systems for ensuring government is close to the people that enhances democracy. Federalism increases participation in the democratic process, as people are able to elect representatives in more than one government, can vote for different (political) parties at the regional and national levels, and can lobby


\(^{7}\) Maddison and Dennis (2013), 24.
more than one government. Therefore, this system fosters and reinforces responsible government and representative democracy, such as that described by Drum and Tate where Parliament embodies the principle of representative democracy, which is defined in the Australian setting as ‘government by elected representatives of the people’.

That means, instead of citizens themselves voting directly on issues, they delegate that authority to elected representatives who debate and discuss the issues of the day, and ultimately make decisions on citizens’ behalf.

In other words, in democratic countries (such as Australia) good governance is a result of the proper functioning of democratic institutions and in such systems the desire to govern well by our democratic leaders is driven by their direct accountability to the citizens. While representative democracy is a defined process where citizens elect people to represent them in the political system, who ultimately distribute resources based on public policy (e.g., for health care, unemployment, environment and transport) on their behalf for the betterment of all society, the discussion and clarification of representative democracy must also include the concept of ‘deliberative’ democracy as the supporting notion to that of representative democracy. Grayling explains in his publication Democracy and Its Crisis that this is where deliberative democracy is the democracy of debate, discussion, the mutual giving of reasons with the aim of reaching agreement or consensus upon which decisions can then be based.

In other words, deliberative democracy is a form of democracy in which deliberation is central to the decision-making process. In this regard the deliberative nature applied to representative democracy.

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democracy implies a consultative process that is imperative in order to achieve a
desired outcome based on purposely intended consultation and decision making. As
Bessette further notes in his publication *The Mild Voice of Reason: Deliberative
Democracy and American National Government*, deliberative democracy is the (inter)
relationship between policy making and public opinion and the concomitant
responsibilities of public officials.  

Further, those elected are also ultimately
accountable at each election cycle to the people who elected them, not only based on
their (past) performance but also on the public policy approach they have adopted
(or propose to adopt) in the distribution of resources. A recent example of the
diametrically opposed public policies of the (then) Labor Government and the newly
elected Coalition Government (in 2013) specifically relevant to Christmas Island can
be found in the different approaches to immigration and border protection regarding
asylum seekers. In this example, the 2013 election outcome was (in part) based on
the public policy approach proposed by the Coalition being ultimately accepted by
the voting public of Australia whereby the authority to govern was revoked from the
(former) Labor Government by the Australian people, who exercised their option to
elect a Coalition Government from the genuine alternatives provided for the
applicable election cycle fixed term of three years.

A view of representative government by Pitkin notes that it is a device adopted
instead of direct democracy, because of the impossibility of assembling large
numbers of people in a single place, and therefore, while representation as a concept
is a substitute for direct participation, it is a far more preferable substitute.  


21 Hanna Fenichel Pitkin, ‘The Concept of Representation’, (Oakland: University of California Press,
1967), 191.
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view is also supported by Jackson, who notes that direct democracy is difficult in large communities and that since widespread citizen participation in politics is difficult to achieve, representative democracy has evolved. Thus, while it can be said only the government can possibly satisfy all the demands of society in which all the people participate, and that any such participation is beneficial, it follows then that the ideal type of government must be fully representative. Williams defines representative democracy as having diverged into two modern meanings, socialist and liberal. In the socialist tradition, representative democracy continues to mean ‘popular power’, that is, the state in which the interests of the majority of the people are paramount and in which those interests are practically exercised and controlled by the majority. In the liberal tradition, representative democracy means open election of representatives and certain conditions (democratic rights, freedom of speech and political opposition) absent from the socialist meaning, which maintain the openness of election and political argument. In the liberal context, representative democracy must therefore not only allow voting rights, but must also allow citizens and the media some freedom of speech, freedom of assembly and importantly political opposition. These rights to additional forms of participation by citizens are an essential element of liberal representative democracy. Drum and Tate note that although Australia is one of the world’s oldest liberal democracies, it is also a young state and a young nation. Further Grayling notes that ‘participatory and

24 Drum and Tate, 1.
deliberative’ democracy means equal participation (by all citizens) in the making of decisions, and in the outcome of these decisions. According to David Held and Gareth Schott in *Models of Democracy* part of the attraction of democracy lies in the refusal to accept *in principle* any conception of the political good other than that generated by ‘the people’ themselves. Held and Scott further expand on the principle and definition of democratic autonomy by noting that persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the processes of deliberation about the conditions of their own lives and in the determination of these conditions, so long as they do not deploy this framework to negate the rights of others. In any given political system there are clearly limits to the extent of liberty which citizens can enjoy. What distinguishes the model of democratic autonomy from many of the other models discussed is a fundamental commitment to the principle that the liberty of some individuals must not be allowed at the expense of others, where others can be a majority or significant minority of citizens. In this sense, the concept of liberty presupposed by the model of democratic autonomy allows in some respects a smaller range of actions for certain groups of individuals. If the principle of autonomy is to be realized, then some people will no longer have the scope to, for instance, pollute the environment of others, accumulate vast unregulated resources,

16 Grayling, 121.


18 Held and Schott, 293.
or pursue their own life opportunities at the expense of those of their lovers or wives. The liberty of persons within the framework of democratic autonomy will have to be one of progressive accommodation to the liberty of others. While, therefore, the scope of action may be more limited for some in certain respects, it will be substantially enhanced for others.\textsuperscript{19}

In his publication \textit{Democratic Autonomy: Public Reasoning about the Ends of Policy}, Henry Richardson argues that citizens must arrive at reasonable compromises through fair, truth-oriented processes of deliberation in order to avoid bureaucratic and administrative domination. Richardson takes the four strands of the democratic ideal – liberalism, republicanism, rationalism, and populism – to create a conception of democracy as democratic autonomy where he outlines a conception of democratic reasoning to highlight what is at stake when we reason democratically together and also to address the problem of bureaucratic domination. For Richardson, bureaucracy poses a threat to democracy, however democracy is conceptualized. The policy making power that resides in administrative hands and is counted on by modern states and provincial and transnational governments, is hard to control in practical terms and difficult to reconcile with the democratic ideal. While acknowledging that discretionary administrative power is part of the permanent landscape of modern governments, including democratic ones, Richardson’s concern is whether this discretionary power will be used arbitrarily. When this happens, administrative power creates an illegitimate type of domination that exists independently of a democratically elected legislature.\textsuperscript{20} This argument (or point)

\begin{footnotes}
\item[19] Held and Schott, 299 -300.
\end{footnotes}
may be relevant to Christmas Island regarding its relationship with Commonwealth Government agencies that it has interactions with, especially regarding the SDAs consultative processes that is raised in other chapters of this study.

Accordingly, the definition of representative democracy must include the notion that citizens have genuine choices among alternative candidates at the time of relevant election cycles. Drum and Tate support this view in emphasizing that the principle of representative democracy underlies our democratic system in Australia and makes our government responsible to us. This may be applied to the ‘House of Representatives’ where the term implies exactly what the notion of representative democracy is intended to mean, representation. The House of Representatives is colloquially known as the ‘people’s house’ and is where government in Australia is ultimately formed following elections. That is, the party or parties that are able to gain the support of the majority of the voting population in the House of Representatives form the government. While the principle of representative democracy applied in this definition allows Christmas Islanders to currently participate in the election cycle as ‘constituents’ through the Federal Electorate of Lingiari in the NT (the same as all Australians can do in their relevant electorates), they are denied any participation in the election cycle where West Australian legislation is applied through the current SDAs between the Federal Government and the WA Government, which is further discussed in Chapter 4 of this study.

Another concept relevant to Parliament is responsible government; that is, the government only has the right to make decisions that affect us because we elected them to undertake that role. In addition, it is important to note that responsible government...
government simultaneously means that all governments must be responsible for their actions and Parliament Question Time provides the principle of accountability of this process. Further, one of the most important elements within any liberal democracy is the mechanism that holds the government to account and within Australia’s political system, Parliament is the traditional body that does this. Importantly Parliament is sovereign where the doctrine of Parliament means it is Parliament which is sovereign and not the people, and no other body (neither the Crown or the people) is sovereign. Grayling further notes that there was never an intention to place sovereignty in the hands of the populace otherwise it would been to be embodied in legislation as a defined Act, and it has never been the intention of Parliament to do so. The principle is that Parliament is sovereign and not the people. Parliament acts on behalf of the people; from its majority those who govern are drawn and there is no power which can overrule it; not the Crown and not the courts. As Prinsen notes the concept of sovereignty has its origins in the negotiations that resulted in the seventeenth century’s Peace of Westphalia in Europe and was the foundation for early nineteenth century nationalism and mid twentieth century decolonization, leading to today’s notion of sovereignty.

In her article *Do Uniform Schemes of Legislation Undermine State Sovereignty?* Annemieke Jongsma cites Dicey (and other authors) who describes the powers of

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26 Drum and Tate, 112.

27 Drum and Tate, 124.

24 Grayling, 132.

25 Grayling, 174.

uncontrolled Parliaments as being sovereign however the correctness of the doctrine of sovereignty has been increasingly questioned as to whether it truly applies to Australia. This is because prior to Federation the constraints of the Colonial Laws Validity Act did not enable the notion of absolute sovereignty for the colonies and post-federation any degree of sovereignty attained was restricted by the continued links to the Imperial Parliament. However, the evolution of Australia’s constitutional independence has meant that by the time the Australian Acts were passed there was a complete and of the legal sovereignty of the Imperial Parliament and the recognition that the ultimate sovereignty resided with the Australian people.²⁷

While the literal dictionary meaning of ‘responsible’ is to be liable to be called to account and answerable for actions, and although governments are held accountable to the people through elections, in between elections the function of the parliament is to hold the government accountable. This is achieved through mechanisms such as parliamentary questions (Public Question Time), debate on legislation and parliamentary standing committee investigations. Saunders notes that the rules of responsible government are not confined only to the House of Representatives, but that the government must also take into account the Senate. The government is responsible to the whole parliament, including the Senate and, of course, Ministers may be members of either House. Accordingly, Ministers who are Senators must also answer questions in the Senate the same as Ministers who are members of the House of Representatives and appear before Senate Committees.²⁸ This process

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underpins the concept of responsible government and goes some way to ensuring the government of the day and its Ministers are accountable for their actions, and those actions of the Department’ they have responsibility for according to their portfolio allocation. For example, the Minister for Immigration would be obliged to respond to questions from the Opposition Shadow Minister (or Opposition Leader) during the allocated ‘Public Question Time’ in Parliament regarding questions concerning immigration and/or other issues of portfolio responsibility that the Minister for Immigration might have.

In the edited publication *Constitutional Law*, it is noted that responsible government is a convention developed in eighteenth century Britain where the Parliament would choose the King’s ministers and that they must be members of Parliament. The Founding Fathers regarded responsible government as so obvious that it did not need to be written into the constitution, but some of them pointed out that it could not work together with federalism. The theoretical principle of responsible government then means the public should receive regular information and advice about the particular issue raised during Public Question Time that is subsequently reported by the media, although in practice the answers provided by Ministers are often predetermined and/or misleading. The issues the framers of our Australian Constitution were debating at the various federal conventions of the late nineteenth century would no doubt have been influenced by the historical concepts of responsible government and representative democracy, suggesting that responsible government and representative democracy have been a debatable concept for some time that long predates the discussions and negotiations regarding the construction of the Australian Constitution and subsequent Federation at various Constitutional Conventions in the late nineteenth century.

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29 Matt Harvey, Michael Longo, Julian Ligertwood and David Babovic, ‘*Constitutional Law*’, (Sydney: Lexis Nexis Butterworths, 2010), 92.
Between the 1850s and 1890, the six colonies of Australia progressively and independently achieved responsible government managing their own affairs while remaining part of the United Kingdom. While control of some matters was retained by the Colonial office in London, the arrangements for responsible government by the six colonies were confirmed by the Colonial Laws Validity Act 1865. The Colonial Laws Validity Act 1865 was a British Act of Parliament to define the relationship between local (‘colonial’) and British (‘imperial’) legislation. It confirmed that colonial legislation was to have full effect within the colony, limited only to the extent that it was not in contradiction with any Imperial Act that extended to that colony. The Colonial Laws Validity Act 1865 (UK) was intended to provide a significant level of self-government to colonial parliaments within the Empire.\(^{30}\) The Act had the effect of clarifying and strengthening the position of colonial legislatures, while at the same time restating their ultimate subordination to the British Parliament. Reynolds notes in his biography of Edmund Barton (Australia’s first Prime Minister) that when the Constitution for self-government for the Australian colonies was under discussion the elder statesmen, William Wentworth sought unsuccessfully to have provision made for a General Assembly of the colonies to deal with inter-colonial questions.

There is evidence in Barton’s private papers that he carefully studied Wentworth’s proposal when he was preparing for the 1891 National Australasian Convention and further, that with the advent of responsible government in New South Wales, Edward Deas Thomson retired from the post of Colonial Secretary and entered the new Legislative Council. For six years (1856–1862), he devoted himself to the cause

\(^{30}\) Drum and Tate, 337.
of Federation, which he firmly believed essential for the progress of all the colonies.\textsuperscript{31} As Reynolds further notes, during the 38 years (1862–1901), which lay between the entirely honourable failure of Deas Thomson and Gavan Duffy to achieve any progress towards federal union and the foundation of the Commonwealth, the colonial governments held many conferences to discuss questions of mutual concern.\textsuperscript{32} This preamble work subsequently laid the foundations for the more formal National Australian Constitutional Conventions that began in 1890 and occupied most of the ensuing decade towards Federation. Several National Australian Conventions were held from 1890 to discuss the framework of what would ultimately be the Australian Constitution and Federation. These Constitutional Conventions were the Australian Federation Conference in Melbourne on 6–14 February 1890; the National Australasian Convention in Sydney, 2 March–9 April 1891 and the Australian Federal Convention that met in three sessions: Adelaide (22 March–5 May 1897), Sydney (2–24 September 1897) and Melbourne (22 January–17 March 1898).\textsuperscript{33}

The debate regarding the composition of the Constitution during this time considered various matters for inclusion, where for example, one of the few ‘rights’ in the final Constitution is the right to a free and fair vote and is one of the most important privileges held by Australian citizens currently. While Saunders notes that section 41 of the Constitution guarantees that everyone who could vote in State elections at the time of federation could vote in federal elections as well, there is obviously nobody alive today to take advantage of this. However, most Australians

\begin{itemize}
  \item \textsuperscript{31} John Reynolds, ‘Edmund Barton – Prime Minister of Australia’, (Melbourne: Bookman Press Pty Ltd, 1979), 83.
  \item \textsuperscript{32} Reynolds, 85.
\end{itemize}
still have these rights to a free and fair vote at present and these derive from Acts of Parliament or the common law and not specifically from the Constitution. One of the reasons these rights were not included in the Constitution was that there was no status of Australian citizen at the time of federation. However, as noted by Drum and Tate, within its first two years of existence, the Commonwealth Parliament passed the Commonwealth Franchise Act 1902 to determine who had the right to vote in Commonwealth elections and thus democracy existed very early within the Commonwealth. Barton’s own retrospective comments on the Convention’s approach was that it is essential to remember that the main provisions of The Constitution were for ensuring a Federation that could work under a system of responsible government.

A principal problem facing the delegates to the Federal Convention in the process of developing the constitution (and federation) was to solve the dilemma propounded by Western Australia where ‘either Responsible Government will kill Federation or Federation will kill Responsible Government’. Eventually the obstacle was overcome, as further noted by Barton, that to have endowed the Federation with responsible government, and at the same time to have taken away that principle of government from the States, would have been an equal absurdity, once granted that State individuality was to be preserved. Now that the system of democratic responsible government which worked in the States through a broad suffrage and the two Houses of Parliament, that naturally was a system adopted for the Federation, in which case, one chamber represented the people of Australia according to electorates, while in the other they were represented in equal numbers.

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34 Saunders, 84.
35 Drum and Tate, 31.
36 Reynolds, 127.
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according to States. It was therefore essential to finally provide the Federal Government with sufficient powers to allow it to function effectively, while preserving the identity of the States. The Federation movement that involved the numerous Constitutional Conventions of the 1890s is also discussed in more detail in the next section of this chapter since it relates to Australia’s federal system of government.

Responsible government derives from the Westminster system of government that exists in the United Kingdom. According to the Westminster system, while the monarch (or Crown) is the official head of state, ministers, who are representative of, and responsible to, the electorate and accountable to the Parliament, carry out the majority of government functions. The six colonial governments that existed within the Australian continent before 1901 all inherited from the United Kingdom a common tradition and practice of government known as the Westminster system of responsible government. Writing about Westminster in 1867, Bagehot explained that the history of English politics is the action and reaction between ministry and the parliament. The concept of a Westminster model of government in the Australian context is synonymous with the older expressions applied to the British system of government, which have been used with varying degrees of prescriptiveness since self-government was mooted in the Australian colonies.

However, crucial elements of the Westminster system as it exists in the United Kingdom, not least the idea that the lower house of government is the sovereign house, and is therefore unlimited in its legislative authority, is absent in the

37 Reynolds, 128.
38 Harvey, Longo, Ligertwood and Babovic, 63.
39 Drum and Tate, 71.
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Commonwealth. The Westminster system in the United Kingdom is also at odds with other features of our Commonwealth system of government. For instance, unlike Australia, the Westminster system in the United Kingdom does not necessarily exist within a federation.\footnote{Drum and Tate, 71.} In this regard, the particular practices of responsible government in Australia have developed and changed since their adoption from the Westminster system; however, the basic principles of ministerial responsibility and parliamentary accountability remain constant.\footnote{Harvey, Longo, Ligertwood and Babovic, 63.} Grant and Fisher cite Rhodes and Wanna who argue that under any Westminster system, the legitimate node of decision making is the political realm, not administration.\footnote{Bligh Grant and Josie Fisher, ‘Public Value: Positive Ethics for Australian Local Government’, Journal of Economic and Social Policy - Vol 14, Issue2, Article 7, (Southern Cross University Library, NSW, 2011) 8.} Ideally then, public servants are responsible to ministers, with ministers responsible to Parliament and Parliament to the electorate. Therefore, the interaction between ministers and public servants (the bureaucracy) is critical to the function of responsible government under the Westminster system. Essential to the concept is the symbiosis of the temporary (as elected) political minister and the experienced, permanent and often silent public servant. Both have an indispensable contribution to make where a considerable body of public servants are necessary to undertake the daily workload, research specific issues and ultimately provide knowledgeable advice to the Minister on important decisions and/or policy. The Minister acts on this advice to make final politically responsible decisions bringing, as Walter Bagehot puts it, ‘the burning glass of common sense to that rubbish of office’.\footnote{Bagehot, 151.} Perhaps this analogy by Bagehot is a little too harsh on the modern-day Australian bureaucracy. However, the experience of Christmas Islanders in the delivery of Commonwealth services since the transfer of the Territory to Australia (and perhaps beforehand)
would suggest that these public servants quite often abrogate their responsibility despite the representation made by Christmas Islanders to the relevant Minister of the Indian Ocean Territories (IOTs). Examples of these are further discussed in Chapters Four, Five and Six of this study.

Consistent with the Westminster system of government is the Westminster convention that is particularly relevant to Australia. Most of the procedures of the Westminster system of government (as noted earlier) have originated from the conventions, practices and precedents of the Parliament of the United Kingdom, hence the relationship to Australia. Conventions do not have the status of law. They are simply agreed practices or traditions. For example, the Westminster convention that the Governor General acts on the advice of the elected ministers is necessary for the operation of the Westminster system of responsible government. Without this one convention, there would be no secure democratic government in Australia, because the Governor-General, acting under the terms of the Constitution, could, and possibly would, override the actions of the Commonwealth Parliament or Prime Minister at will.\textsuperscript{45} Saunders also notes that conventions are not written into the Constitution or any law but are important constitutional practices, which are nearly always followed.\textsuperscript{46} That is, a convention is agreed unwritten rule(s) of behaviour accepted by participants (in most instances) in public life in Australian politics and parliament who must or should follow these. These rules can be ignored only if justification is clear, or can be provided; otherwise, consequences follow and may include ignoring some other convention that has until then been followed. Conventions may change but they do not do so necessarily because they may not be upheld on any particular occasion. Accordingly, convention is important in the

\textsuperscript{45} Drum and Tate, 78.

\textsuperscript{46} Saunders, 5.
Westminster system of government, where many of the rules are unwritten and certainly not explicitly written in the constitution.

Drum and Tate support this importance of conventions in our Westminster system of government where the only principle preventing the Governor General from exercising this independent power is the Westminster convention that states that the monarch always acts on the advice of his or her ministers. While some conventions are not as important as others, such as the procedure for the replacement of retiring Senators that is not considered a crucial convention, one of the most important conventions that is discussed further in the next paragraph is that of the Governor General’s political neutrality that is fundamental to the existence of parliamentary democracy in Australia.

While the above paragraph provides a brief explanation of the Westminster convention, the application of the convention by example can be best described by the events that occurred in November 1975 where the (then) Governor General dismissed the (then) Prime Minister of Australia. While it is not the intention of this study to provide a specific critique of the events and circumstances relating to the dismissal of the Whitlam Government, given the ample literature available on the subject, a brief description as it relates to the notion of representative democracy and responsible government, and in particular the Westminster convention, is presented. That is, this is a case where the Governor-General’s ‘neutrality’ was interpreted by some as a breach of the Westminster convention, thereby creating problems for the principle of responsible government and representative democracy. The dismissal of the (Labor) Whitlam Government by the (then) Governor-General in 1975 (often referred to as ‘The 1975 Constitutional Crisis’) was actually a crisis of responsible government as the (executive) government could not obtain the Senate’s approval

\[47\] Drum and Tate, 78.
for its budget (supply) bills. The Governor General applied a new idea of responsible government to say that the executive could not govern without supply, and therefore, used his reserve power under the Constitution to dismiss the Prime Minister and appoint the Leader of the Opposition as ‘caretaker’ Prime Minister. Thus, the conventions of responsible government were swept aside by a Governor General using his literal power under the Constitution to dismiss a minister (indeed a whole ministry) that still enjoyed the confidence of the House of Representatives.\(^{48}\)

The literal interpretation of the Australian Constitution by the Governor-General to justify the dismissal of the Prime Minister of the day can equally be interpreted as violating the conventions of responsible government. Drum and Tate describe the Australian system of government resting on a paradox where the Australian constitution provides enormous power to the Governor General to act independently of the advice of ministers; yet, Australian democracy depends on the Governor General not exercising this power at all.\(^{49}\)

The 1975 crisis forced this incompatibility to the fore, with the result that the other feature of the Commonwealth also dormant to this time (the constitutional power of Governor General to act independently of the advice of ministers, and therefore independently of convention) was also brought into play.\(^{50}\)

As noted earlier, it has not been my intention to discuss the details and circumstances that led to the Constitutional Crisis of 1975, but to highlight that there was a breach by the Governor-General in 1975 of ‘constitutional conventions’ that arose from the failure by the Governor General to maintain political neutrality by dismissing the Prime Minister when other alternatives appeared to have been available to him. For example, the Governor General could have acted in an

\(^{48}\) Harvey, Longo, Ligertwood and Babovic, 93.

\(^{49}\) Drum and Tate, 78.

\(^{50}\) Drum and Tate, 80.
arbitrator role calling on the Senate to reconsider its refusal to pass the Supply Bill or have instructed Whitlam to advise him (the Governor General) to call an election or face dismissal, or maybe even made his opinion public thereby exerting pressure on both the competing political parties. However, it can be argued that the Governor General does not have a role as arbitrator in the Australian Constitution and therefore could do nothing on his own initiative other than offering to provide his advice and counsel to the Prime Minister. Further, as Watson notes, the mechanisms provided for breaking deadlocks between the two Houses (section 57) could not be used to solve a dispute over the budget because the Government would run out of money long before they could be implemented. The ambiguity might have been resolved by a High Court case, but again time would not allow that. 51 Ultimately, there was a ‘constitutional deadlock’ as the Whitlam Government insisted on the Westminster convention, as enunciated by Herbert Asquith (then Prime Minister of the United Kingdom), that the party that controls the lower house has the right to govern. Conversely, the Fraser Opposition enunciated the principle that the Commonwealth is a federal system and if the government of the day lacks the confidence of an elected Senate, then it must return to the polls. 52 In summary, the 1975 Constitutional Crisis occurred when the ‘convention’ that the majority political party in the lower house (House of Representatives) should be allowed to govern, came into conflict with the written provision of the Constitution which allowed the upper house (the Senate) to render that government inoperable by refusing supply, leading to the Governor General intervening.

Therefore, the convention of the maintenance of the Governor General’s political neutrality is fundamental to the existence of parliamentary democracy in Australia.

52 Drum and Tate, 80.
Despite the actions of the Governor General in breaching this fundamental convention, irreparable damage to parliamentary democracy has not necessarily resulted even though there was an outcry regarding the Governor General’s actions by some that raised serious questions about the future of parliamentary democracy and responsible government. Accordingly, the dangers in violating the convention of responsible government may or could lead to its replacement in the strictest sense of the constitution by ‘undemocratic’ conventions. Watson notes that the Governor General was placed in a difficult position where he had to ultimately decide whether or not to intervene; either way the result would be seen as partisan by one side of politics, and the Constitution had failed to provide him a satisfactory solution.\textsuperscript{53}

\textbf{Australia’s Federal System of Government}

As noted in the previous section, Australia is a federation. Its political system is divided by the constitution into two tiers, with the Commonwealth Government forming the first tier and the state governments forming the second, which implies a federation has a constitutional division of power and functions between a central government and the set of peripheral governments.\textsuperscript{54} Wilcox comments further and defines federalism as a system of government where power and responsibility are formally (that is constitutionally) divided between two tiers. This formal division distinguishes federalism from unitary or ‘one-tiered’ political systems, where ultimate power and authority is vested in a single government.\textsuperscript{55} In the Australian context, the federal system recognises the Federal (or Commonwealth) government in addition to the State and Territory government’s as distinct legal entities.\textsuperscript{56}

\textsuperscript{53} Watson, 56.
\textsuperscript{54} Wilcox, 140.
\textsuperscript{55} Wilcox, 140.
\textsuperscript{56} Harvey, Longo, Ligertwood and Babovic, 63.
Federalism then can be broadly defined as a system of government in which powers are divided between a central government and governments in states and/or provinces, each being quite independent of the other in its own areas of responsibilities, as described by Solomon.\textsuperscript{57} Saunders provides a further definition of federation in layman's terms as enabling separate communities to make decisions for themselves in some matters while joining together to make decisions about matters of interest to all of them.\textsuperscript{58} Modern federalism has a long and venerable pre-history, which Elazar traces from the Achaean League of Ancient Greece to the confederations and leagues of the cities of Europe in the Middle Ages.\textsuperscript{59} The League can be considered one of the earliest historical attempts to achieve national unity without necessarily sacrificing local (state) independence. Elements of federalism existed in the Roman Empire and during the Middle Ages where many leagues of states or provinces were formed for specific purposes. The original seven united provinces of the Netherlands can be described in nature as a federation and was a strong Protestant religious force that was formed for specific purposes (i.e., to counter Catholic influence). Switzerland is popularly considered a prime example of a federal state that commenced the process of federation in the late 1290s with perpetual binding alliance treaties between the provinces (cantons) that gradually increased until formal federation occurred in the 1840s. The government of the Weimar Republic of Germany was federal in form, and certainly, the former Union of Soviet Socialists Republic was federal in principle by giving cultural autonomy to the different peoples of the various states and provinces.


\textsuperscript{58} Saunders, 15.

After some experience as a confederation, the United States adopted the federal form of government in 1789 and its Constitution has been imitated by many countries especially in Latin America, and, of course, in Australia. Drum and Tate note that our notion of federalism is a key element drawn from the United States, which established a national government yet left many roles and responsibilities to the founding states.\(^{60}\) Reynolds notes in his biography of Edmund Barton that the United States Constitution was the starting point for the Australian Constitution: ‘We are taking a copy from where advisable; but we are exercising our own judgement as to what is advisable’, was how Barton described the debt to the US Constitution.\(^{61}\) This is also supported by Galligan, who notes in Australia’s case a classic federal Constitution exists modelled on the American prototype.\(^{62}\) However, Walter notes that the form of federalism instituted in 1901 has usually been portrayed as a combination of elements from British and American systems where the British contributions were: first, the Westminster conception of responsible Cabinet government, wherein the executive was drawn from, and accountable to, parliament (in particular, the lower house); second, a political party system, which gave shape to the electoral contests of parliamentary democracy; and third, a continuing role for the monarch (through delegation to the Governor-General) as head of state of the Commonwealth.

The American system of federalism involved a written Constitution (in which the Federal Government’s powers were enumerated, leaving the residue to the states); an upper house (Senate) giving equal representation to each state; and judicial review. Further the British and the American elements were necessarily in conflict,

\(^{60}\) Drum and Tate, 86.

\(^{61}\) Reynolds, 17.

since some of the ‘founding fathers’ recognised, but most crucially in regard to a possible deadlock between the two Houses of the Federal Parliament, where the so-called states house, the Senate, could obstruct the passage of supply for a government holding a majority in the lower house. This, of course, is exactly what occurred in the Constitutional Crisis of 1975 as discussed in the previous section.

The Australian model can be best described as predominantly a hybrid model between Westminster and the United States where the founders of the Australian Constitution were inspired by the Westminster model of parliamentary responsible government; the United States federal model (1789); and other federal systems, such as the Swiss (1848) and the Canadian (1867) models. The pre-existence of the colonial States (and their constitutions) provided some foundation to modelling a federation for Australia, based on the British Westminster system, that commenced with the 1891 national convention, although there was dissent from several of the participating colonial states at the time who had some reservations that federation may result in centralised power, such as that found in unitary state arrangements. For example, in Britain (a unitary system) the national government is legally empowered to dissolve the regional councils. They were concerned that too much central power would be granted to a central government (the Commonwealth) that could diminish the control and functions that the strong states had already established.

In this regard, as noted by Saunders, the delegates to the numerous Conventions of the 1890s who met to draft the Australian Constitution agreed on some general principles of basic ideas, which set out what they wanted to achieve. These

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64 Harvey, Longo, Ligertwood and Babovic, 106.
65 Wilcox, 140.
principles were a good indication of their priorities. For example, they wanted to be sure that trade between the colonies was absolutely free and that the new Commonwealth would take responsibility for defence for everyone. Conversely, they did not want to give any more power to the Commonwealth than was necessary. Solomon notes that the Australian Constitution was written at a series of three conventions in 1891, 1897 and 1898 by leading colonial politicians of the day. Opinions differed widely among those political figures, not least between those who wanted a strong central government and those who wanted to retain as much power as possible for the states. In this regard the demands of the states, or colonies as they were at the time, which set a price for federating, went beyond preserving their sovereignty, their exclusive right to legislate in certain areas of policy where they also insisted on preserving and writing into the Constitution provisions for state intervention in the operation and institutional arrangements of the Commonwealth Government.

Conversely, the British Westminster tradition had been one of an unwritten Constitution and colonial governments established in the nineteenth century had adopted these conventions and operated in accord with them, so it was automatically assumed that they would apply and operate in the new Commonwealth Government. Therefore, the development of Australian federalism (and the Constitution) was an attempt, as described by Wilcox, to accommodate the requirements of the colonial governments that their political strength be maintained. The authors of the Australian Constitution drafted a document designed to give the new states guaranteed strength, if not the upper hand, in the federal system. Hence Commonwealth powers and responsibilities were listed in an attempt to limit them.

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66 Saunders, 17.
67 Solomon, 22.
68 Watson, 52.
Chapter 1

The assumption of the authors of the Constitution was that textual definition of the responsibilities of the Commonwealth would therefore provide a means by which to limit them.\(^{69}\) Eventually at the end of the nineteenth century, when representatives of Australia’s colonies met to discuss the formation of a national government, they saw federalism as an appropriate system for sharing power between a national government and state governments.\(^{70}\)

As occurred in the formation of the United States, the architects of the Australian Constitution eventually found agreement in the drafting of the Constitution to separate and delegate certain functions to the centralised government (Commonwealth) while retaining residual powers to the States. For example, direct responsibility and delivery for health, education, local government, law and order and transport services is held by the States, while direct responsibility for defence, taxation, telecommunications and customs and immigration is held by the Commonwealth. Wilcox noted that this separation was a deliberate manoeuvre to limit the Commonwealth’s power by definition rather than concede to the delegates’ demands at the various Constitutional Conventions. As described by Drum and Tate, in the Australian context, federalism is generally taken to refer to the dispersing of power between our national government, known as the Commonwealth, and our six States plus two major Territories.\(^{71}\) In Australia, the federal structure was officially adopted at the time of ‘Federation’ in 1901 that drew together as a nation all the previous colonies into the Commonwealth of Australia. In this regard, Australia became a parliamentary federation where its main characteristics are a combination of a federal division of powers and a parliamentary

\(^{69}\) Wilcox, 142.

\(^{70}\) Drum and Tate, 86.

\(^{71}\) Drum and Tate, 85.
mode of operation of executive authority as noted by Solomon.\textsuperscript{72} Therefore, the Australian Constitution is integral to the concept of Australian Federalism as a document that enshrines the composition of the Federal Parliament in its roles and responsibilities, and more importantly in a federal context its relationship with the existing States and Territories. Then, the original purpose of the Australian Constitution was to provide a set of written rules determining the shape of the nation’s government. Drum and Tate support the importance of the Constitution to our federal structure, arguing that federation would never have been achieved without the creation of a Constitution that expressly declared, but in doing so also limited, the powers of the new Commonwealth Parliament.\textsuperscript{73} Further, it is impossible to understand the nature of our federal system without understanding how it is dealt with in the Australian Constitution.\textsuperscript{74}

When originally drafting the Australian Constitution, it was clear that the Federal Government should be given complete executive control over certain aspects of policy (as noted earlier), for example, defence, taxation, telecommunications, customs and immigration. However, there was much debate at the time about whether any further additional powers should be handed to the Federal Government. Saunders notes that there were delegates in favour of a stronger Federal Government and those who expressed concern and wanted to protect the ‘state’s’ rights and that this second group of delegates (the more numerous) did not want to give any more power to the Commonwealth than was necessary.\textsuperscript{75} Federalism, at the very least, requires two levels of government. The Australian Constitution clearly states that the Commonwealth cannot use its powers to

\begin{itemize}
\item \textsuperscript{72} Solomon, 10.
\item \textsuperscript{73} Drum and Tate, 73.
\item \textsuperscript{74} Drum and Tate, 88.
\item \textsuperscript{75} Saunders, 17.
\end{itemize}
Chapter 1

discriminate against the States or between them. It certainly cannot use its powers to destroy the States of their ability to function, and within the limits of their power to legislate to affect the Commonwealth at all, the States cannot discriminate against the Commonwealth either.\textsuperscript{76}

Having established then that the Australian concept of federation is based on a constitutional division of power and functions between a central government (the Commonwealth) and peripheral governments (the State and Territories), the essence of federation should then be one of coordination and not hierarchy. This would be debatable among some, especially Premiers and Chief Ministers of Australia’s States and Territories who would argue that from time to time, the Commonwealth appears to take on a more ‘unitary’ (British) approach that tends to occasionally diminish the rights of the States and Territories. This is reinforced by section 109 in Chapter V of the Constitution which states that when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.\textsuperscript{77} This is also supported by Harvey, Longo, Ligertwood and Babovic who note that when a valid State law is inconsistent with a valid Commonwealth law it ceases to operate and the word ‘invalid’ in section 109 has been interpreted to mean inoperative rather than ultra vires.\textsuperscript{78} In the end, the Australian Constitution granted to the Federal Government only those powers, which, at the end of the nineteenth century, seemed essential for the purpose of Federation.

How the Australian Constitution and Federation will be referenced as contextual points that specifically relate to the purpose of this study, as well as the governance

\textsuperscript{76} Saunders, 133.

\textsuperscript{77} \textit{The Australian Constitution}, 42.

\textsuperscript{78} Harvey, Longo, Ligertwood and Babovic, 119.
structure of Christmas Island, Federalism and the status of non self-governing territories that has been noted briefly in this chapter, is further explored and discussed in Chapter Four of the thesis.
Chapter 2: Historical Background

From the beginning of the European settlement of Australia the various Australian colonies began as part of the British colonial empire. While Australia attained Federation as a Commonwealth in 1901, Christmas Island remained as a British administered colony since settlement in the late nineteenth century until 1958 when ‘sovereignty’ of the Territory of Christmas Island was transferred to Australia without any consultative process with the community by either the British or Australian governments at the time. The history of Christmas Island therefore tells three key stories: the first is the economic and social dominance of phosphate mining since the late nineteenth century, which continues to the present day; the second is the relative recent arrival of ‘Australia’ or ‘mainland conditions’ to the Island despite the formal annexure in 1958; and the third is the unique community that has been created, as evidenced by the remarkable cultural and social composition of the community and unusual administrative and institutional arrangements. The historical development of Christmas Island is intrinsically linked to these key themes and an important contextual background to the thesis is the historical habitation and settlement of the island. The importance of Chapter Two is intended to provide an understanding why the historical development of Christmas Island played such a significant role in shaping its social history that drove (and continues to drive) the notion of self-determination. This chapter will also be used to establish the extent to which colonization of the island may substantiate any local claims of self-determination.

The Early Years

As noted in Figure 1, Christmas Island is an irregularly shaped island approximately 350 km south of the western part of Java, Indonesia, and consists principally of a plateau as part of a distinct volcano mountaintop. As Bartleson describes, far out in the Indian Ocean at 10° 25’S and 105°40’E, there is a tiny island whose unforgiving
terrain successfully discouraged intrusion by the outside world for hundreds of years. British explorer John Milward made the first recorded sighting of the island in 1615 but did not land. Twenty-eight years later on 25th of December 1643, as he hove to off shore, Captain William Mynors of the British East India Company bemoaned his inability to find a safe anchorage even as he named the island Christmas in honour of the day. Adams and Neale also note that Christmas Island was named by a British East Indies Company Captain, William Mynors, on Christmas Day in 1643 when, with many sick crew members, his ship stood off the Island unable to find safe anchorage, presumably because of the ‘swell’ conditions that often occur during the wet season of the year. These two references confirm that although William Mynors sighted, named and anchored at Christmas Island in Flying Fish Cove on the northern side of the Island, he did not actually make land. Again, Adams and Neale note that the first recorded landing was made in 1688 by the redoubtable English adventurer William Dampier, searching for water. Further, Christmas Island must have been sighted by Dutch mariners between the period of William Mynors’ sighting and Dampier’s landing because the Island appears named as ‘Moni’ on a 1666 Dutch map by Pieter Goos and for numerous years Christmas Island appeared under different names with the Dutch continuing to use the name Moni until the late eighteenth century. The Book of Australia Almanac notes that Christmas Island is inhabited predominantly by people of Chinese and Malay origin, which the publication The Phosphateers supports, with the commencement of phosphate mining operations on Christmas Island and the need to import indentured labour. Other references to the indigenous population of Christmas


81 Adams and Neale, 7.

82 The Book of Australia: Almanac’, (Sydney: Hodder and Stoughton, 1990), 42.
Island are discussed in more detail in Chapter Three of the study regarding the social and cultural demography of the island as well as in other chapters where reference is made to the findings of the University of Western Australia cultural study undertaken on the island in 2016.

While several sightings and (some) expeditions occurred from the first recorded sighting in the seventeenth century to the late nineteenth century, it was an expedition in 1857 by the crew of the ‘Amethyst’ that was the first attempted exploration of the island where they tried to reach the summit of the island but found the cliffs impassable. Some 25 years later in the 1880s, a Canadian-Scottish oceanographic scientist, Dr John Murray, lobbied the British Government to send Royal Navy vessels to visit Christmas Island to obtain rock samples for his research. Two visits in 1887 led to exploration to the highest part of the island, where mineral samples were secured and sent back to Murray in Scotland. They proved to contain phosphate of lime, and Murray made an inspired guess that the island contained major phosphate deposits. He was correct. This is also supported by Adams and Neale who state that Murray confirmed the presence of phosphate in a pebble embedded in coral brought from Christmas Island and was convinced that the sample had formed on land.

Christmas Island was colonised by the British, mainly with Chinese and Malays, to work the phosphate rock, although the actual mining quarry work was undertaken by indentured contract Chinese labour, often then referred to as ‘coolies’. This in fact is the translation applied by Hunt in his publication *Suffering Through Strength – The*

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84 Adams and Neale, 12.
Men Who Made Christmas Island’ where the literal meaning of ‘coolies’ is applied. Conversely, the Malay workers were employed directly by the mining company, as opposed to the employment of the coolies by a contract labour organisation, and were mainly used in marine work (and later in domestic duties). The Malay Headmen, who brought in relatives from their home kampongs, recruited them and many were able to bring their families with them. They were paid relatively well and were happy. The Chinese coolies did not fare so well, overall. The Company employed a Chinese labour contractor to be responsible for mining recruitment, and conditions of service under which the coolies labored were often harsh, constituting 11 hours a day and eight on Sunday. Later in this chapter, reference is made as to how these conditions were slowly improved because of the work and effort of the Union of Christmas Island Workers (UCIW).

Colony Establishment

In 1900, the Island was incorporated into the Straits Settlement of Singapore that eventually became the Crown Colony of Singapore after the Second World War. This period coincided with the first shipment of phosphate from the Island, and it was characterised by the harsh conditions that the non-European population were subjected to in establishing the social and working environment of the Island. Predominantly, the ‘coolies’ suffered the most with working and living conditions being extremely difficult and characterised by poor diet and health, and separation from their families. This was because of the poorly paid mining work required to extract the phosphate and the brutal regime imposed by the mostly Chinese overseers (Mandors) under the tacit approval of the European mining company (Christmas Island Phosphate Company, hereafter CIP Co.). The mostly Cantonese-speaking coolies were contracted through an astute Singapore-based labour

85 Hunt, xiv.
86 Adams and Neale, 32.
contractor, Ong Sam Leong. Employed by the mining company, he established a network of more highly paid Island-based foremen known as Mandors to protect his investment.\textsuperscript{87} Although technically illegal, the coolies were often subjected to beatings with a cane by the Mandors that were directly linked to the increase of mining productivity. This obviously caused resentment and in some cases as Hunt notes, outright rebellion and murder when coolies killed two Mandors in 1902.\textsuperscript{88} Poor housing and sanitary conditions also contributed to the discontentment of the coolies since they were housed in cramped living quarters separated from the European, and even Malay, community.

Adding to this discontentment was the poor diet of the coolies that ultimately led to the outbreak of ‘beri-beri’ that claimed many of the coolies lives. In 1901, it was uncertain whether mining could continue on Christmas Island because the coolies were dying at such an alarming rate. Beri-beri was a little understood vitamin B1 deficiency disease that affects the nervous system and/or heart. Common symptoms include lassitude, loss of appetite, digestive complications, numbness, paralysis and often death.\textsuperscript{89} Bartleson notes that the Settlement cemetery, which is over a century old and still in use today, was primarily established to serve the needs of the old hospital where the numbers of deaths from beri-beri reached epidemic proportions by 1901.\textsuperscript{90} The coolies believed that the disease was caused by a wind blowing up from their feet into their body, and called it ‘foot swelling breath disease’. Those most susceptible were the new arrivals.\textsuperscript{91}

\textsuperscript{87} Margaret Neale and Jan Adams, ‘We Were the Christmas Islanders – Reminiscences and Recollections of the People of an Isolated Island’, (Canberra: Watson Ferguson, 1988), 22.

\textsuperscript{88} Hunt, 32.

\textsuperscript{89} Adams and Neale, (1993), 20.

\textsuperscript{90} Bartleson, 27.

\textsuperscript{91} Hunt, 25.
Figure 2.1 Ceremonial lowering of the flag at Tai Jin House circa 1916.
Figure 2.2 Proclamation of Christmas Island at District Officer’s residence circa 1908.
Figures 2.3 and 2.4 Early Coolie Village at Flying Fish Cove circa 1908.
Figures 2.5 and 2.6 Sikh Police (Jagas) on military parade and on either side of the Island Manager next to sentry box, both circa 1930.
Historical Background

Figure 2.7 Group of Coolies after a day’s work circa 1910.

Figure 2.8 Group photograph of Mandors with the coolie labour contractor (seated wearing pith helmet) Ong Sam Leong circa 1915.
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Fortunately, beri-beri was eventually controlled and eradicated by the wonderful medical work of Dr Sara Robertson (who died in 1907 and is buried on Christmas Island) and her husband Dr William McDougall. However, ultimately these terrible events culminated to become a tragic and historical part of life for many Christmas Islanders in the early years of settlement on the Island. Hunt notes that the Christmas Island beri-beri epidemic was in some ways one of the more shameful episodes in British colonial history. It reflected little credit on the CIP Co, and even less on Ong Sam Leong, the labour contractor.92 Hunt’s comments refer specifically to the neglect by CIPCo. in addressing the epidemic as a result of the harsh (and unsanitary) living conditions endured by the coolies, while Adams and Neale note the work undertaken by Dr William MacDougall through research from 1904 to 1908 that eventually contributed to the eradication of beri-beri on Christmas Island.93

The historical development of Christmas Island in the second decade of the nineteenth century was dominated primarily by the decreasing production of phosphate owing to the outbreak of the First World War and the subsequent reduction in shipping movements to the Island, and although it was not directly involved in the war, phosphate was drastically reduced.94 However, as noted in the previous paragraph, while the eradication of beri-beri decreased the death rate of the coolie workers, the work rate demand and appalling conditions for the coolies did not change much. Coolies were put to work upgrading mining facilities, with the most significant improvement being the construction of 11 miles of railway line across the jungle plateau to South Point, the next phosphate deposit exploited after Phosphate Hill. South Point was to subsequently become the Island’s largest settlement, and its lucrative deposits were to be mined for the next 60 years, until

92 Hunt, 34.
1971–1972 when it was abandoned.\textsuperscript{95} The first decade of the twentieth century had been clearly the most profitable for the mining company, who exploited the workforce to maximise these profits at the expense of the health and welfare of the imported coolie labour. Simultaneously, while the early period of the twentieth century tended to ignore the development of facilities on Christmas Island (e.g., housing, transportation, mining infrastructure and health), the second decade allowed for an expansion of amenities that gradually improved the living conditions for the islanders owing to the downturn in phosphate demand. Construction of the ‘Incline’ commenced in 1914 and was completed in 1915, along with the first operation of locomotives bringing phosphate from South Point to the new Drumsite village, to be then transported down the Incline and loaded on the ships at Flying Fish Cove harbour. With the demise of the old Phosphate Hill village settlement, the hospital that was built there to replace the original hospital of plank wood and thatch roof east of Flying Fish Cove was replaced by a new hospital that was constructed at Settlement (not far from the site of the original hospital).

Housing gradually improved, and while the living and housing conditions for the European community was always of a high standard, the housing for the Malay (and small Indian Sikh) community also improved. The Malays had always lived separately from the coolie workers in what is a traditionally Kampong settlement that mirrors their origins in Malaysia and Indonesia. Their timber houses were set on stilts with atap (coconut thatch) roofs. Nearby were the quarters of the company’s Sikh jagas (watchmen), who stood guard over the European houses.\textsuperscript{96} In this regard, the European community truly retained its colonial status as a part of the British Empire that did not change much until the Japanese occupation of Christmas Island in the Second World War.

\textsuperscript{95} Neale and Adams, (1988), 23.
\textsuperscript{96} Hunt, 45.
The period following the end of the First World War until the commencement of the Second World War saw the expansion again of phosphate mining. The newly developed urban areas of South Point, and to a lesser degree the already established areas of the Kampong and Settlement areas, were upgraded with new infrastructure, such as a hospital, living quarters, road works and mining infrastructure. Hunt notes that during the 20-year period from 1920 to 1940, conditions of life improved generally for all members of the population without threatening the systems of class and racial separation that made possible the continued profitability of the phosphate operations. Conversely, Bartleson notes that this did not necessarily coincide with better work or living conditions for the coolie and Malay workforce. By the 1930s, although the mining loading system had changed somewhat and the miner’s work hours had been reduced to 10 hours per day, 6 days a week, with 8 hours on Sundays, conditions remained harsh. When the price of phosphate was reduced during both World Wars and the Depression years, it was the miners, at the bottom of the food chain, who suffered the most.

While there are differing opinions, the welfare and living conditions of the Island’s (mainly Asian) population remained terrible during this time, but this period generally saw the emergence of prosperity and development for Christmas Island. Further historical developments on the Island during this time included the arrival of the first wireless station (that meant instant and regular connection with the outside world), the first electric lights and the construction of a school in 1929 that initially housed Malay children only but in 1930 expanded to include European children with a Chinese teacher from the Singapore Education Department. In 1934, construction was completed on a greatly improved hygienic sanitation system for

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97 Hunt, 105.
98 Bartleson, 20.
99 Hunt, 106.
the coolies’ living quarters at Settlement and a new Sikh Temple was constructed.\textsuperscript{100} While there were many Chinese temples around the Island, the Sikh Temple was the first to be built on the Island, together with a new mosque being built and opened in 1938. A steady program of building construction followed with living conditions (housing) and services being upgraded to cater to what was becoming a settled population. Purpose-built police barracks were constructed at South Point where the majority of the population worked and resided owing to the expansion of phosphate mining activities in that area. In 1932, a landslide swept down the slope of the cliffs above the Kampong, dislodging trees and large rocks. The Malay Kampong at the bottom of the slope was engulfed and the houses destroyed.\textsuperscript{101} The subsequent damage required a total rebuild of the Kampong village, and while some of the European administrators advocated a new location for a rebuilt Kampong, the local Malays insisted on the Kampong being built on, or close to, the same location. In 1936, this construction of a new Kampong village was completed at Flying Fish Cove, the same year that the English School moved to larger premises because of the increase in its school population.\textsuperscript{102} The Malay Kampong remains at this location (Flying Fish Cove) currently.

Integral to the success of mining phosphate was/is the transportation of the product to overseas markets, mostly via Singapore that also allowed for the provision of passengers and cargo essential to the Island’s community. The shipping service provided by the mining company to Christmas Island was affectionately known as ‘The Islander’. The first service started in the early 1900s, and in 1907, a second purpose-built ship replaced it. A third vessel of the same name commenced operations in 1929 on the Singapore–Christmas Island route that also included

\begin{itemize}
\item \textsuperscript{100} Hunt, 116.
\item \textsuperscript{101} Hunt, 106.
\item \textsuperscript{102} Hunt, 67.
\end{itemize}
regular supply visits to the Cocos Islands and continued until the 1960s.\textsuperscript{103} Currently, Christmas Island receives regular shipping visits from Singapore to transport phosphate out and bring in cargo containers, as well as from Fremantle to bring general cargo. The European community of Christmas Island prospered particularly well during the years between both World Wars, enjoying the colonial lifestyle that the British Empire provided. Most Europeans were provided services such as ‘laundry boys and housekeepers’ that complemented their high salaries and luxurious housing and living conditions, while the majority of the Asian community (especially the coolies) continued to suffer hardships. The exceptions in the Asian community were the Chinese Mandors and the Asian staff employed by the mine in positions such as administrative clerks and domestic duties. Some of the Malay community were also employed in tasks such as fishing and stevedoring, while a majority of the police force on the island consisted of members from the Sikh community.

The discrepancy in the living conditions for coolies is highlighted by Hunt, as the coolies had no real stake in Kasma Town, as they called Christmas Island. They did not have their wives with them—indeed, if they had wives, the women were back in China and they would not see them except after intervals of several years. Living on the Island was a necessity, a way of earning a living, with a few simple pleasures and traditional Chinese festivals to relieve the monotony. They still lived in 16 male-only dormitories, although improved common bathing and toilet facilities were constructed in 1934 and the (mining) company kept their housing in good repair. While the period between the World Wars was historically a tranquil period on Christmas Island compared with the preceding decades, it was still a period of some discontent especially for the coolie labour work force. This was to change

\textsuperscript{103} Hunt, 119.
dramatically with the coming of the Second World War and Japan entering the conflict in 1941, especially for the European population of the Island.

*Figure 2.9 Colonial style bungalow of European residence, noting the Sikh Jaga on duty, circa 1919.*
Figure 2.10 Europeans on the deck of the first S.S. Islander ship circa 1915.
Figure 2.11 Coolie workers extracting phosphate in the quarry using only chankul (hoe) and basket circa 1906.
Figure 2.12 A coolie clearing and preparing land; note that the chankul is still being used; circa 1949.
Historical Background

Figure 2.13 The work of clearing the jungle and laying railway tracks to South Point circa 1915.

Figure 2.14 Photograph of first train locomotive on Christmas Island circa 1914.
Figure 2.15 Japanese soldiers addressing Christmas Islanders at Settlement circa 1942.

Figure 2.16 Japanese occupying soldiers celebrating at phosphate quarry site circa 1942.
Historical Background

Island Occupation

During the Second World War, Christmas Island was occupied by the Japanese. However, before the Japanese entered the Second World War, the phosphate mining company suffered shipping losses in its Pacific Ocean operations in 1940 because of German raiders, which led to an increased demand for phosphate from Christmas Island. Increased tonnage production was ordered for 1941 along with an attempt to strengthen and improve the local defence force and infrastructure on the Island, based on the presumption that any threat to Christmas Island would come from the German military operations in the Indian Ocean. A six-inch naval gun was sent to Christmas Island, together with a detachment from the army consisting of a Captain, six other British soldiers and about 30 (Sikh) Indian soldiers. The gun was installed on the cliffs overlooking the (Flying Fish) Cove and the troops accommodated in temporary quarters close by. The next step was enrolling the male civilians in the Malayan/ Singaporean Volunteers with some elementary instructions on military training.¹⁰⁴ This presumption, of course, changed in December 1941, with the expansion of the Second World War to include Japan having direct and immediate implications for the residents of Christmas Island. Not only were the European community of Christmas Island becoming concerned with the news of Japanese military expansion through South-East Asia (Malayan peninsula), but news of the Japanese atrocities towards the mainland Chinese population, especially at Nanking, also unsettled the Chinese population of the Island.

By early 1942, most of the European population, especially women, children and non-essential persons to the operations of the Island were evacuated, either to Singapore and Batavia (Indonesia), or to mainland Australia. Japanese troops brushed aside all opposition as they advanced down the Malayan Peninsula and by 31 January 1942 had reached the causeway bridge linking Johor and Singapore.

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Christmas Island lost wireless communication with Singapore, and on 17 February 1942, District Officer Cromwell sent a telegram to the Secretary of State for Colonies in London seeking approval for ‘semi-compulsory evacuation’. Neale and Adams note that some of the Christmas Islanders who had left earlier to go to Singapore had been lucky enough to board ‘The Islander’ just prior to the fall of Singapore on 15 February 1942 and arrived on Christmas Island on route to Australia to convey first-hand to Christmas Islanders the news.

In January 1942, the Norwegian ship the ‘Eidsvold’ was being loaded at Flying Fish Cove with phosphate bound for mainland Australia. As the ship prepared to move from its moorings, an explosion hit her amidships caused by a torpedo fired from a submarine. With no steering and loss of engines, the ship began to list and drifted to the north side of the Island where she finally ran aground (off Margaret’s Beach) and the crew swam ashore. This was/is the first recorded incident of Japanese aggression against Christmas Island and was a prelude to eventual events. The bombing and utter capitulation of Singapore in February 1942 was an ominous omen for Christmas Island and a realisation, especially by the European community, that Singapore could no longer offer safe refuge or protection for the Christmas Island population. The British and Australian authorities did not consider the 1565 Asian residents of the Island at risk by any imminent Japanese occupation and indeed considered the Asian population on the Island as potentially hostile to maintaining any defence on the Island. In March 1942, Japanese aircraft and naval ships bombed Christmas Island causing the loss of several lives. It was then obvious to the Island’s population that the Japanese could occupy Christmas Island at any time.

105 Hunt, 176.
107 Hunt, 176.
they chose. The Malays built underground shelters at the back of the Kampong for protection from bombing, and the Chinese population, mindful of the atrocities of Nanking and elsewhere in China, decided to protect their women. The young girls had their heads shaved and were dressed as boys. The prostitutes decided to conceal their identity by seeking out older unattached men of power in the community (many of them Mandors) and moving in with them. In this way, they could pretend that they were married women.\textsuperscript{109} The final occupation of Christmas Island by the Japanese in late March 1942 followed one of the most tragic and disgraceful incidents of the Island’s history.

The European community who remained on the Island split into two parties concerning the defence of the Island. One party led by the (then) District Officer Thomas Cromwell wanted to surrender to the Japanese as the only alternative for preserving the lives of the population, arguing that occupation was inevitable. Indeed, during the air and naval bombardment, he (Cromwell) raised the white flag at the gun emplacement then the shelling ceased almost immediately.

However, the army contingent led by Captain Williams opposed any surrender and overrode the decision by Cromwell by raising the British Union Jack and ordering the soldiers to guard the gun emplacement. Unfortunately for Williams (and unknown to him), a large component of the army contingent were Sikh soldiers who were not in favour of any prospect of fighting the impending Japanese invasion on behalf of the British Empire. This dissatisfaction manifested itself in outright mutiny and murder of the British soldiers, including Williams, who were shot while they were asleep. Whatever their reasoning, the mutineers were joined by most of the Sikh police and they murdered Captain Williams and the four other British troops,

\textsuperscript{109} Hunt, 179.
throwing their bodies into the sea. The Sikh mutineers quickly moved to arrest all the remaining European population, including Cromwell, in readiness for the inevitable Japanese landing. They called the remaining Europeans to the Fort (gun emplacement) intending to kill them all; however, their lives were saved by the heroism of the Indian Subadar (Lieutenant) who had taken no part in the mutiny and threatened to take his own life if any more murders occurred. The Europeans were held in captivity for 21 days until the Japanese returned, bombarded the defenceless Island again and made an unopposed landing on 31 March 1942. The Europeans were then held as prisoners of war and were treated far worse than any of the other islanders, who in general were able to follow their own pursuits. The inevitable occupation of Christmas Island was therefore finalised, which was to be a feature of Island life for the next three years.

The Japanese occupying force arrived on Christmas Island and immediately set about commandeering key installations, such as the military fort at Smith Point and the mining phosphate plant and infrastructure, and emptying European houses. The majority of the Island’s population, especially the coolies, had fled into the jungle since resistance was out of the question and any show of reluctance was met with slaps and kicks by the Japanese. However, the worst fears of reprisals similar to those that had occurred when the Japanese occupied mainland China were not realised. Initially, the Japanese Commander of the occupying force allowed his soldiers to rampage through the community but the mass rape that had become notorious in China did not occur. Slowly, the Asian population that had originally fled to the jungle when the Japanese first landed began returning to their homes and

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110 Adams and Neale, (1993), 70.
111 Adams and Neale, (1993), 70.
112 Hunt, 183.
113 Hunt, 184.
living quarters. The Japanese had made it clear that they had no intention of committing atrocities against the local Asian population and were more interested in subjugating the European population. Indeed, the Japanese motive was to solicit the cooperation of the local Asian population as much as possible to enable them to continue with the mining production of phosphate.

This cooperation occurred mainly through the coercion of some of the local Asian population, who were engaged by the Japanese to ensure the previous workforce could continue with the production of mining activities. In this regard, life on Christmas Island did not cease because of the Japanese occupation, although it could not be categorised as being normal. Food and other essential supplies were in short supply, and as the war continued and the Japanese military suffered defeats, the regularity of shipping to the Island bringing these essentials decreased. Evidence of this occurred when the Japanese ship Nissei Maru was being unloaded at the wharf and was struck by torpedoes from an American submarine. The sinking of the ship also affected the wharf loading operations, which effectively halted not only the import of freight cargo to the Island but also the export of phosphate. With no regular shipping service available to the Island, the export of phosphate virtually ceased and the workforce was engaged mainly in the storing of mined phosphate and plant maintenance. In December 1943, it was announced that the majority of the Japanese were leaving. Almost two-thirds of the population also left the Island; for the Asian population, this appeared to be mostly a voluntary process. All the Indian soldiers left along with the police and watchmen, about 750 Chinese (mostly coolies), the European prisoners of war and all of the Japanese phosphate company staff. Only the old Island Asian elite, the managers, tradesmen and locomotive drivers

114 Hunt, 193.
The occupation of Christmas Island by the Japanese was left to a much smaller force than that which first occupied the Island in early 1942.

In June 1945, the bulk of the Japanese left and only a sergeant and 14 men remained. About a week after the atomic bomb was dropped on Hiroshima on 6 August 1945, the remaining Japanese advised the Island population that they would be leaving, appointed representatives from each racial community to represent the islanders and handed over all the food and everything else to the representatives for distribution to the community. The Japanese hoped that a situation similar to that in Indonesia would develop where the local nationalist movement had been armed by the occupying Japanese administration and was preparing to prevent the Dutch from reasserting colonial rule. In this, they were wrong since Christmas Island was still fervently loyal to the British. However, the subsequent departure of the remaining Japanese soldiers did not eventuate into any retribution by the remaining Christmas Islanders, merely relief that the occupation was over. The occupation of Christmas Island by the Japanese from 1942 to 1945 did not bring the economic boom in phosphate exports that the Japanese had counted on. Indeed phosphate export production was diminished to an extent where it was nearly non-existent owing to the constant harassment by British and American naval activity in the Indian Ocean vicinity. The return of the British to Christmas Island finally occurred in October 1945 with the British ship the ‘HMS Rother’ sailing from Singapore to the Island, and the next phase of the history of Christmas Island was about to commence.

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115 Hunt, 194.
116 Hunt, 197.
117 Hunt, 196.
Post Second World War
Following the end of the Second World War until the transfer of sovereignty to Australia of Christmas Island, most of the pre-occupying ‘colonial’ governments returned to the countries that they had previously occupied. This included the Dutch in Indonesia (Dutch East Indies), the French in Indo-China and, of course, the British in Singapore and Malaya. In this regard, the British returned to Christmas Island to resume the administration of the Island from Singapore. The first few years after their return were spent mainly on the reconstruction of the Island’s mining infrastructure and housing. Everything was in a shambles with company staff having sabotaged as much of the equipment as they could before the impending Japanese occupation, which was followed by nearly three and half years of neglect.\(^{118}\) Hence, the reconstruction process was long and arduous with little materials and supplies, which were in equal demand from other post-war countries in the reconstruction phase.

In addition to the reconstruction phase of rebuilding Christmas Island, the British administration was intent on bringing the mutineers that had murdered the British garrison soldiers in 1942 to justice. As noted by Hunt on 21 January 1946, two Indian Army Officers and a Royal Engineers corporal arrived from Batavia to conduct an inquiry into the mutiny.\(^{119}\) The eventual outcome after more than a year of the inquiry and subsequent military trial was to find six of the accused mutineers guilty. These mutineers were sentenced to death by hanging, although the main ringleader of the mutiny was never located. However, the mutineers submitted petitions and pleaded for mercy, which led to a delay in their execution and continued imprisonment, first in Singapore and then by transfer on request from the newly created Pakistan Government where they remained in prison in Pakistan.

\(^{118}\) Adams and Neale, (1993), 76.

\(^{119}\) Hunt, 209.
Coupled with the massive post-occupation reconstruction problems faced by the Island’s mining administration was the acute shortage of labour. The occupation period had not only seen the displacement of the European population in management positions, but more importantly the loss of the mining and associated labour duties needed for the recommencement of phosphate production. A large proportion of the workforce had been taken to Surabaya in 1943, leaving only 260 adult males (some of whom had retired) and a small number of female office and hospital staff.

The pre-war (mining) operation was labour intensive and typically required about 1,000 employees with one source of labour for the (mining) company being on-island recruitment, which had been undertaken for some years before the war. It now became more urgent and the children of the leading Chinese families now found themselves good white-collar jobs in the company office, usually straight from school. However, this did not entirely relieve the labour shortage problem for mining operations and as the reconstruction phase slowly progressed to the extent of allowing the mining company to recommence production, it became ever more urgent to identify a reliable and effective workforce. This was eventually overcome in part by the importation of labour from Singapore and China through a newly appointed labour contract company. Ong Boon Tat’s (previous) company did not resume its island operations; it had been hard hit by the war, and Koh Ee Whee stepped into the gap. Koh Ee Whee also supplied labourers of an unusual kind: Hakka women from three districts of Sanshui County in Guangdong Province. Many of these were unmarried and physically strong, and they became a feature of island life until the 1960s. Labour was also recruited directly from Singapore on a month-by-month contract basis; however, the mining management (and Island

120 Hunt, 222.
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Administration) soon realised that the new labour workforce was far less compliant than the pre-war workforce, many of them were strong trade unionists and some even sympathised with the outlawed Malayan Communist Party. Therefore, it is impossible to discuss the historical development of Christmas Island and not include the industrial impact. This became particularly relevant in the post-Second World War period of reconstruction and redevelopment, not only on the Island but worldwide, which was equally influenced by the post-war ‘independence’ movements in many of the countries where Christmas Islanders had their origins. For example, India gained independence from the British in 1947, Singapore and Malaya experienced an increasing independence movement that finally succeeded in the late 1950s and early 1960s and Indonesia gained independence from the Dutch in 1949 while political turmoil was underway in China with the Mao Tse Tung Communist regime fighting with the Kuomintang led by Chiang Kai-shek.

The demographics of the Island were slowly changing as a result of the required labour demand that would continue into the future and form an important part of the Island’s cultural, industrial and demographic history. The industrial changes to the Christmas Island community eventually arrived in the 1970s and 1980s; however, the influence of the post-war independence movements on the Christmas Island community remains minimal to this day and will receive more attention in Chapter Three.

Amidst the ongoing problems of labour shortage and working conditions was the eventual change of ownership of the phosphate mining company. The British Phosphate Commissioners (BPC) had long harboured a desire to directly control the phosphate mining operations on Christmas Island and had sought to wrest this control from the CIP Co. on several occasions prior to the Second World War.

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121 Hunt, 222.
Critical to these ongoing negotiations was the Chief Executive of the BPC Alfred Harold Gaze, who had managed the phosphate operations on both Nauru and Ocean Islands as the Australasian representative for both the BPC and CIP Co. since the 1920s. The war served to emphasise the total dependence of rural industries in Australia and New Zealand on the importation of raw materials for the manufacture of fertilisers.

The economics of the industry meant that at Christmas Island, as at Ocean Island and Nauru, the Commissioners primarily served Australian and New Zealand rural interests. In this regard, the history of Christmas Island mining is also linked to the British phosphate Islands of Nauru and Ocean Island in the Pacific Ocean. Nauru and Ocean Islands were managed by BPC from the 1920s, and Christmas Island from 1949, when the BPC managed phosphate mining on all three Islands for the direct benefit of the Australian and New Zealand Governments. BPC involvement in Christmas Island continued until 1981, when the Australian Government took direct responsibility for phosphate mining. No such ‘independence’ or de-colonisation occurred on Christmas Island and it was not until the mid-1980s that the Island achieved any level of political representation. Nauru secured independence in 1968 and Ocean Island in 1979 (when it was transferred to Kiribati). As noted by Kerr, the governmental arrangements for Christmas Island changed slightly in 1946, when legislation in the United Kingdom repealed the existence of the Straits Settlements as a single colony. An order-in-council decreed that the Island of Singapore, with the dependencies of Cocos and Christmas Islands, which had been attached to it for administrative convenience, were to be governed and administered as the separate

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Colony of Singapore. Therefore, Christmas Island continued as part of the Colony of Singapore from 1946 to 31 December 1957 and soon after the arrival of the BPC in 1949, Australia raised with Great Britain the possibility of transferring Christmas Island to its own jurisdiction. The motive, of course, was continued access to phosphate deposits, which could not be guaranteed under a soon-to-be-independent Singapore. Further, the Australian Government was concerned not only about a continued supply of phosphate to its rural industry, but also about territorial expansion and consolidation of its political influence in the Indian Ocean. It is also noted by Kerr that Australia had two particular interests in Christmas Island: one as a source of phosphate and two as a strategically located island.

The 1950s brought expansion in all areas of the island since more Australian staff were recruited and the building of houses and facilities increased. In particular, the education of children on the Island increased significantly with the arrival of Mr George Fam Choo Beng from Singapore, who became the first (non-European) School Principal of the ‘Asian School’, which will be given further attention in Chapter Three. The next 20 years would be one of expansion and optimism during which a true sense of community developed. The period also witnessed the gradual movement towards transfer of governance arrangements from Singapore’s control to Australia. Eventually, sovereignty was transferred through detaching Christmas Island from the Colony of Singapore and making it a separate Crown Colony (1 January to 30 September 1958), following which Australia took sovereignty on 1 October 1958. The leader of the majority party in the pre-

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123 Alan Kerr, ‘A Federation in these Seas: An account of the acquisition by Australia of its external territories’, (Canberra: Commonwealth Attorney Generals Department, 2009), 318.

124 Adams and Neale, 77.

125 Williams and McDonald, 352.

126 Kerr, 318.

independence Singapore Legislative Assembly agreed to this arrangement and there was no significant debate about it in Singapore at the time.

To compensate the Singapore Treasury for lost phosphate royalties and taxes, the Australian Government made an act of grace payment of Malayan $20 million that led to the mistaken belief (even today) that Singapore ‘sold’ Christmas Island to Australia.\(^{128}\) The Report of the Australian Parliament 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’ in March 1991 provided the first comprehensive review of the legal regime on Christmas Island (as well as other Australian Territories) that had been in force since the United Kingdom had placed Christmas Island under the authority of the Governor of the Straits Settlement (Singapore) in the late nineteenth century. While this will be subject to further detailed discussion in Chapter Four of the study, the relevance in this chapter is to the historical development in the 1950s of the first real indication that Christmas Island was formally progressing towards being a part of Australia, which eventually occurred in October 1958. The transfer was subsequently facilitated by the UK Parliament’s enactment of the *Christmas Island Act 1958*. This was followed by the *Christmas Island (Transfer to Australia) Order in Council 1958*, which empowered and then arranged for the Island to be placed under the authority of the Commonwealth. The Commonwealth of Australia formally accepted Christmas Island as a Territory under the authority of the Commonwealth under the *Christmas Island Act 1958*. The Act was proclaimed to come into operation on 1 October 1958.\(^{129}\)

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\(^{128}\) Hunt, 238.

Transfer of Sovereignty to Australia

By the end of the 1950s, Christmas Island was formally a part of the Australian Commonwealth, at least in a governance and legislative context, although other developments on the island throughout the 1950s continued to affect the lives of Christmas Islanders. This was especially the case, as noted earlier in this chapter, with the regional influence of ‘independence’ movements in neighbouring colonial South-East Asian countries on the predominantly Asian community of Christmas Island. Since it became apparent that colonial disengagement was imminent after the Second World War, independence movements in Singapore, Malaya and Indonesia were of particular relevance to the Asian community of Christmas Island, as well as more broadly in Indo-China, the Philippines, Burma and India. For example, Hunt notes that many in the new labour workforce recruited from Malaya and Singapore after the Second World War were strong trade unionists even though no trade unions were permitted on Christmas Island at that time, and in fact, either sympathised with, or were members of, the Malayan Communist Party.¹³⁰

The Asian community on Christmas Island had been used to the colonial system that governed their lives from the establishment of phosphate mining. As noted by Williams and McDonald, this created a general demeanor among the labourers of being used to a paternalistic approach, with the older men and many of the younger ones saluting passers-by in a countrified way.¹³¹ The historical social hierarchy created on Christmas Island, with European colonialists at the top, was a replication of the colonial approach adopted in many of the neighbouring South-East Asian countries. The one pervading characteristic conveying tremendous prestige was their overwhelming power that often went unchallenged. As noted by Ayris, because of its extreme isolation Christmas Island was a human laboratory in which old habits

¹³⁰ Hunt, 222.
¹³¹ Williams and McDonald, 394.
and customs died hard. Elsewhere in the world, the British Raj style of government had long been on the wane but on Christmas Island, it was almost as though nothing had changed since the mine had opened more than half a century earlier and the colonial way of life and its embedded institutions remained the same. When the BPC took over, Australian supervisors were flown in and they took to white superiority like ducks to water.¹³²

However, from the 1950s, this attitude dissipated slowly over the ensuing decades as the Christmas Island Asian community became more aware of living and working conditions on mainland Australia, together with increasing exposure to the freedom afforded to the Asian populations of newly independent countries, such as Singapore, Malaysia and Indonesia, from the previous colonial control of Great Britain and the Netherlands. Further, people born on the Island after October 1958 were Australian citizens by birth, and under the *Christmas Island Act 1958*, adults who were British subjects and ordinarily resident on the Island on 1 October 1958 could apply for Australian citizenship within two years of that date.¹³³ One of the first local Asian couples to make the declaration for Australian citizenship was Mr George Fam Choo Beng, MBE, who was the first Principal of the Christmas Island Asian School, and his wife Mrs Pamela Fam.¹³⁴ As the 1950s came to a close, it was evident that the community on Christmas Island was slowly changing. Nevertheless, as Waters notes, two communities on Christmas Island were in fact still quite distinct and different from each other and the lack of opportunities for contact on other than a master–servant basis prevented any understanding developing between them.¹³⁵ This relationship took time to change and the social change that occurred is


¹³⁴ Hunt, 238.

¹³⁵ Waters, 7.
discussed in more detail in the next chapter. However, it is important to note in this chapter that economic, social and industrial development historically occurred more rapidly in the 1950s than it had in the previous 40 years.
Figure 2.17 Newly constructed incline that allowed for the transport of phosphate circa 1951.
Figure 2.18 Newly constructed downhill phosphate conveyor system over Murray Road circa 1960.
Figure 2.19 Raising of the Australian flag at Smith Point on the proclamation of Christmas Island becoming an Australian non-self-governing Territory on 1 October 1958.
As noted at the beginning of this chapter, the history of Christmas Island tells three key stories: the first is the economic and social dominance of phosphate mining since the late nineteenth century, which continues to the present day; the second is the relative recent arrival of ‘Australian’ or ‘mainland conditions’ to the Island despite the formal annexure in 1958; and the third is the unique place so created as evidenced by the remarkable cultural and social composition of the community and unusual administrative and institutional arrangements. The 1960s saw these key themes continue to develop at a more rapid rate than had occurred in the previous 40 years as the community adjusted to becoming (officially) a part of Australia. This was especially the case with the development of infrastructure on the Island, not
only to facilitate the phosphate mining industry, but also the social development of the community. A new downhill conveyor system replaced the old incline method of transporting phosphate from the mining operations at Phosphate Hill to the harbour loading facilities, which meant that phosphate could be lowered (and loaded) at a much faster rate. Road infrastructure also improved with the completion of the Incline road (Murray Road) from the Settlement and Kampong areas up the steep hill escarpment to the settlements of Poon Saan and Drumsite, which was wide enough to accommodate vehicles of all types in both directions. Expansion of phosphate production also meant upgrading communication facilities, although the local island authorities became increasingly concerned because the Asian population now tuned into propaganda from the Sukarno government in Indonesia.

One report from Indonesia was that there was a long-range gun pointing directly to Indonesia (noting that Christmas Island is only about 350km south of Java), but in fact, this was the newly constructed ‘cantilever’ built at the harbour for loading phosphate on ships. Eventually, the local authorities diverted one of the broadcast transmitters for local use only, which was intended to stop the local population from tuning directly to Indonesia, and until date, this transmitter broadcasts locally. Direct access by the Island community to Indonesia undoubtedly added to their awareness of events not only in neighbouring Indonesia but also in Singapore and Malaysia. This awareness influenced the local Asian population’s views regarding its social standing in a community that was still dominated by the economics of phosphate mining and the colonial management systems in place that ensured its maximum export production. For example, in 1961, in spite of many technical, managerial and political difficulties, Christmas Island (phosphate) production

136 Neale and Adams, (1988), 120.
reached 600,000 tons a year with a projected target of 800,000 tons per year by 1964. In this regard, the continuing economic production of phosphate mining still dominates most aspects of life on Christmas Island, even though the grade quality of ore has diminished, and the improvement of infrastructure and the mechanisation of mining extraction was/is critical to ensuring the Island’s development continues.

In 1960, there were approximately 600 pupils in the ‘Asian Primary School’ and 23 pupils in the ‘European School’, which grew in 1961 to 640 primary school pupils and a combined primary and secondary total of over a thousand pupils at the Asian School. The demand for education expanded rapidly in the post-war period, and the Singapore Department of Education was responsible for providing teachers and teaching material. Even after the transfer in 1958 of Christmas Island to Australian sovereignty, the Christmas Island education system continued to follow the Singapore curriculum until the early 1970s with the eventual closure of the Asian School (which is now the site for the Shire of Christmas Island). The increase in school enrolments was also reflective of the change in the social fabric of the Island, and while this receives more attention in Chapter Three, it is relevant in this chapter to the historical development of the Island, especially in regard to the (social) infrastructure that was required to accommodate these changes.

Social educational infrastructure, although slow in developing, improved the conditions for the community with the assistance, for example, of the WA Department of Education in 1967 of a new Technical Training Centre being built to meet the growing demand for skilled tradesmen. Of course, it was also beneficial

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138 Williams and McDonald, 459.
141 Williams and McDonald, 525.
Chapter 2

to the mining company to improve the skills of its employees and shift from the traditional reliance on a migrant semi-skilled workforce that had been in place since the beginning of phosphate mining. Consequently, from the early 1960s, the Australian Government had been faced with ever-increasing responsibilities and it had assumed a more active role on the Island, especially in providing education services.\textsuperscript{142} Most of the Asian children that attended the school from the 1960s onwards were born on Christmas Island, even though their parents (and grandparents) may have migrated to the Island, and were therefore classified as Australian citizens, given that Australia had achieved ‘possession’ of Christmas Island in 1958. However, the Australian Government began expressing its concern over the status of long-term Christmas Island residents since Christmas Island families began agitating towards identifying their rights. Some of these families and individuals were now clearly Australian citizens, while some still had claims to Singaporean or Malaysian citizenship and others seemed to be effectively stateless.\textsuperscript{143} However, territorial transfer did not translate into full incorporation of Christmas Island and its people into the Australian nation.

As noted in the publication \textit{The Phosphateers} and discussed in Chapter Four of this study, successive Australian Governments continued to treat Christmas Island as if it were a colony to be exploited in the manner of a nineteenth century empire and the Island was effectively run by the mining company that generally survived until all discrimination regarding immigration and citizenship was removed in June 1980.\textsuperscript{144}

\textsuperscript{142}Williams and McDonald, 457.
\textsuperscript{143} Williams and McDonald, 457.
\textsuperscript{144} Williams and McDonald, 556.
Pressure on the Australian Government was not confined only to increasing educational services and infrastructure but was more generally to provide services and infrastructure that would be expected as normal by Australian mainland standards. The initial standards of healthcare (services and infrastructure) were poor since no real development had occurred on the Island after the construction of the two hospitals some 50 to 60 years earlier and the engagement of medical professionals (from Singapore) that was largely in response to the beri-beri epidemic.

Following the eventual eradication of beri-beri, the operation of the hospital by the mining company continued with the provision of healthcare to the community. Medical supplies and health care professionals were sourced from Singapore hospitals. The new hospital that was built in the Settlement area of the Island in the 1920s to replace the previous hospital(s) at Flying Fish Cove, Grants Well and Phosphate Hill was improved by several extensions and renovations in the post-war period. Further, healthcare facilities (and treatment) gradually improved where new sections of the hospital consisted of a ‘labour ward, operating theatre, dressing station, pharmacist and single wards for Europeans’. Instrumental also in the improvement of healthcare, and healthcare infrastructure on the Island, was Mr Walter Oorloff whose life on the island stretched from the earliest coolie times to the post-war years. Of Anglo-Sinhalese origin, he came to the island as a medical dresser with Sara Robertson in 1901 and was held in such respect that he was frequently called ‘Doctor or Uncle’ by the many patients for whom he was their first medical contact. He was able to work among the European population just as easily as he worked with the Chinese and Malay community and contributed significantly to improving healthcare standards on the island, surviving the beri-beri epidemics, Japanese occupation and post-war reconstruction. Critical to the post-war

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reconstruction that rapidly increased in the late 1950s into the 1960s was the mining company’s approach to improving all aspects of the island’s life. The BPC was a more progressive company than the (previous) CIPCo, in matters both industrial and social. They set about catering for the large Asian population in an unprecedented style. They outlaid millions on upgrading houses according to Singapore housing standards and built playgrounds, shops, clubs and (as noted earlier) schools. Accommodation, a public transport system, upgraded hospital and dental services, picture shows, education and all other municipal type services were provided free to the workers, staff and dependents by the company.¹⁴⁷

This historical period of Christmas Island reflected the post-war reconstruction phase of infrastructure development and services. While the 1960s were characterised by major infrastructure development (both economic and social) and the introduction of the Australian dollar to replace the Singapore currency, it also heralded a change in industrial conditions that became more robust in the 1970s. Again, the link between industrial and social progress is discussed in more detail in Chapter Three with regard to the social and cultural development of the Christmas Island community.

The Modern Era

The rapid infrastructure and social developments that characterised the 1960s, as noted in the previous paragraph, were largely progressed without obstruction or dissatisfaction from the community, who were responsive to these positive changes as they carried through to the early 1970s. A decision was taken in late 1969 to replace the bulldozed emergency airstrip on the island with a permanent runway capable of taking aircraft up to Boeing 727 standard and this airport became

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operational in 1974.\textsuperscript{148} However, while the 1970s saw the continued development of infrastructure and services improvement on the island, it also saw the beginnings of change in the community with the realisation and awareness of mainland Australian conditions after the transfer to Australian sovereignty in 1958, predominantly in the industrial and political arena. That is, territorial transfer in 1958 did not necessarily change the manner of a nineteenth century empire and, generally, this view survived until all discrimination regarding immigration and citizenship was removed in June 1980.\textsuperscript{149} Waters notes that some of the problems that arose in the 1970s had their origin in the failure to realise that the population was no longer just a lot of indentured coolies.\textsuperscript{150} The scenario was set for major social, political and economic change as the workers of the mining company (and other employers) on the island began agitating for improved working and social conditions.

Adding to the unrest was the intention of the newly elected Whitlam Government’s Minister for External Territories (LW Morrison) to repatriate the Asian Christmas Islanders to their original country of residence in Singapore, Malaysia or Indonesia, while those who were eligible for Australian citizenship or were effectively stateless could apply for residence in Australia. The Government was confident that the scheme could be implemented without disruption to the phosphate industry and believed that by giving the Asian residents the opportunity to resettle off island in a planned, gradual way, the Government would be discharging Australia’s obligations towards these people and would be acting in their best interest. The best interests of the Asian residents of another of Australia’s external territories had also been in the news at about the same time as the Christmas Island resettlement proposal. Complaints by the Cocos Malays on Christmas Island on behalf of their fellow

\textsuperscript{148} Williams and McDonald, 525.
\textsuperscript{149} Williams and McDonald, 556.
\textsuperscript{150} Waters, 5.
community members still under the Clunies-Ross regime, had led to an investigation.\textsuperscript{151} In the case of Cocos (Keeling) Islands, it was eventually agreed that should any islanders wish to settle in Australia, their applications would be sympathetically considered.\textsuperscript{152} This set a precedent for Christmas Island to follow.

As noted, the 1970s was characterised by a significant change in the social, industrial and political situation on Christmas Island. This change was not only because the community was more aware of living and working conditions on the mainland (Australia), but also because they translated this awareness into eventual action. Again, the specific details of these social, industrial and political changes are discussed in more detail in Chapters Three and Four of this study; however, the development of these changes are relevant to this chapter in the context of the history of the island. Assisting and promoting these changes was the arrival of Mr Bill Worth in 1975 as the first Administrator of Christmas Island who had power to act. Until his arrival, all the significant decisions relating to the island had been taken in Canberra and the Administrator had really only been a post office for Canberra. Obviously, this colonial attitude could not continue.\textsuperscript{153} This administrative change had come as a result of the creation of a Ministry for Home Affairs, which had responsibility for all territories, including Christmas Island and the Administrative Services to which the Phosphate Commissioners for Australia reported.\textsuperscript{154}

Under the Whitlam Government of 1972–1975, the formation of trade unions had been encouraged, which subsequently assisted the social and industrial changes on

\textsuperscript{151} Williams and McDonald, 530.
\textsuperscript{153} Neale and Adams, (1988),185.
\textsuperscript{154} Williams and McDonald, 540.
The formation of the UCIW was an important and significant turning point in the short history of the island. It was a formation resulting from several factors on the island, the changes on mainland Australia that the community were increasingly aware of, the ongoing paternalistic approach by the mining management to the Asian workforce, the unequal and substandard living conditions endured by the Asian community, the unfair parity in wage conditions and the (joint) Government and BPC attitude towards recognising Asian members of the island community as having equal access to Australian residency and citizenship status.

Waters notes that there was another community on the island containing people referred to under the generic term Supervisors, who were engineers, accountants, chief clerks and foremen. They were mostly engaged from the Australian mainland. Some had worked for the BPC on Ocean or Nauru Islands. They were often attracted to the island by high salaries free of income tax, furnished accommodation at a low nominal rent and amenities that included automatic free membership of the golf club, boat club and exclusive staff club. Two or three Asians were given this status, such as the Labour Officer, the Principal of the Asian School (George Fam Choo Beng) and, at one stage, the dentist. This meant that Europeans rarely encountered the rest of the workforce in any situation other than the work area, and here almost invariably in the context where the European was the authority figure whose orders could not be disputed.\(^\text{156}\)

Not only was the paternalistic approach by the European management a source of increasing discontent among the Asian population of Christmas Island but so too was the unequal parity of wage conditions and housing standards. While housing

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\(^{155}\) Williams and McDonald, 540.

\(^{156}\) Waters, 6.
had been improved towards the end of the 1960s and early 1970s with new concrete blocks of family flats being built to conform to standards set by the Singapore Housing and Development Board, these were unfurnished and had no hot water facilities.\textsuperscript{157} This change in attitude of the Asian community in the 1970s was a significant shift compared with the complacent position of their predecessors who were quite prepared until recently to tolerate the paternalistic European management approach.

The Asian community on the island viewed these changes as too slow, and eventually, events were bought to a head on the island, which also assisted in the creation and formation of the UCIW that was to deal not only with wage parity issues, but the entire social and industrial fabric of the island. The review of wages and conditions on the island was a clear signal for change, and when (Government) officials conducting the review visited Christmas Island in March 1974 they were able to witness the first strike to occur on the island. The strike was provoked not by the dissatisfaction with conditions in the phosphate industry but by the dismissal of Teo Boon How, a government clerk for what was alleged were gambling debts and his method of collecting these. The unprecedented support of the strike by the island workforce reflected not only the political power within the Asian community for Teo Boon How, but also a long standing unease over the status of aged people on the island and the pressure on them to leave at retirement.\textsuperscript{158} Conversely however, Hunt notes that there were several strikes in the history of the mining operations on Christmas Island, namely, in 1901, 1906, 1913, 1919, 1938 and 1946, with the last being a general strike that was called over conditions of work at the ship-loading facility where European staff and crew members of ‘The Islander’ were needed to

\textsuperscript{157} Waters, 8.

\textsuperscript{158} Williams and McDonald, 534.
help operate the cranes to unload the ship. However, the strike called in 1974 regarding the dismissal of Teo Boon How was the precedent for change on the island especially given the effect it ultimately had because of the exposure it received and the fact that the BPC management miscalculated these implications. Teo Boon How was summarily dismissed and ordered to leave the island the next day on a ship already at anchor off Flying Fish Cove on 27 March 1974. By the next day, more than 1,100 workers had assembled in a protest march and did not report for work.

To the shock of the mining management, those in the mob were unrecognisable as the usually obedient workers who dug the phosphate at the mine daily. By noon that day, Teo Boon How was able to report to the Chinese, Malay and Indian workers that the Acting Administrator had changed his mind and that he no longer had to leave the island and was suspended on full pay pending an inquiry. This was (and is still) seen as a significant turning point in the (previous) unequal relationship between the dominant European management and the Asian community on the island. The formal registration of the UCIW and election of its first (Asian) President, Lim Sai Meng in 1975 cemented this historical change.

The dismissal (and reinstatement) of Teo Boon How had commenced the change needed to improve conditions on the island for the Asian community and the formation of the UCIW. However, it was only the beginning of the process and the remainder of the 1970s saw continued struggle to establish the UCIW movement for improving the social and industrial conditions needed. For example, the arrival of some 20 people from the Commonwealth Teaching Service in 1975 upset all the relativities of salary levels on the island. They were paid much more than teachers

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159 Hunt, 225.
160 Ayris, 16.
on the island had ever been paid (most of whom had come originally from the Singaporean educational system) and this gap highlighted serious anomalies in the structure of the Administration that needed changing.\(^{161}\) The Commonwealth Government had sought a review of the education arrangements on the island since 1973 and because of reforms, many of these new teachers arrived in 1975, one of whom was Mr Michael Grimes.\(^{162}\) Michael Grimes was eventually to become the first General Secretary of the UCIW, although initially on a part-time basis, having been actively involved in various Teachers’ Trade Unions around Australia.

Teo Boon How first approached Michael Grimes to consider becoming the UCIW’s first General Secretary, recognising that the latter had the expertise needed for the UCIW that was not evident among its members. Michael Grimes identified with the cause of the Asian workers on Christmas Island and played a prominent part in establishing the UCIW.\(^{163}\) Grimes took the view that the UCIW had a prominent place at the centre of the Christmas Island community, although this was not a view shared by the majority of the European management on the island, who were horrified when it was recommended that the segregation of the schools on the island should be abolished. An immediate consequence of this recommendation was almost total opposition from the European community to the integration of the island’s schools, partly on racial grounds but mostly because they believed that the standard of education would be affected.\(^{164}\) Despite this opposition, the change was inevitable and, at present, Christmas Island students enjoy a harmonious relationship at the one integrated school.


\(^{162}\) Waters, 23.

\(^{163}\) Williams and McDonald, 536.

\(^{164}\) Williams and McDonald, 536.
Most notable in the continued struggle for improved social and industrial conditions on the island was the arrival of a full-time General Secretary of the UCIW in the late 1970s. In September 1978, Grimes resigned and was replaced by Gordon Bennett, who was a much more militant and aggressive unionist than Grimes, more extreme in his attitudes and demands and more inclined to encourage strike action. The tenure of Grimes as the first UCIW General Secretary was one of consolidation rather than agitation, and he would often be criticised for taking a lenient approach to negotiations and arbitration, which was much different from that of his successor. Waters notes that credit should be given to Mike Grimes for knowing when to leave. Having been vital in the formation (and consolidation) of the Union, he had come to dominate the scene to an extent that much dissatisfaction with the Union Executive came to be directed against him. Another man might have been tempted to hold on, but this could have led to serious divisions with perhaps a rival organisation forming; therefore, at the critical moment he removed himself and sought a replacement in Perth. He was as frustrated as the Asian community over the glaring discrepancies in their standard of living and wages compared with those of their white masters. With the departure of Grimes and the arrival of Bennett, this situation would change.

The late 1970s was also characterised by a significant shift in the Australian attitude towards the environment, and it seemed that Christmas Island was not exempt from this change. Although Chapters Four and Six of this study devote more detail to the implications of this environmental change, it is for the purpose of this chapter a significant historical development of the island, given its conflict with the long-established mining phosphate industry. The unique environment of Christmas

165 Williams and McDonald, 545.
166 Waters, 158.
167 Ayris, 71.
Island had long been a matter of study, with most interest being aroused by the island’s bird life, some of which was under threat. The Asian workforce (had long) found many of the bird species a delicacy, and despite the best efforts of the Administration and BPC management, continuous poaching of young birds threatened the survival of many rare varieties.

While some attempt was made during the 1970s to reforest the mining areas on the island, the interests of the conservationists eventually led to the establishment of the first Christmas Island National Park embracing the southwest corner of the island. Environmental effects of mining (on Christmas Island) became of particular concern in the 1970s, with a particular focus on the Abbott’s Booby bird, a rare seabird that only nests on Christmas Island. In 1974, the House of Representatives Standing Committee on Environment and Conservation examined the effects of mining and other activities on the island’s flora and fauna as well as the adequacy of attempts to rehabilitate the forest (post mining), to advise on further measures required to protect the environment. One recommendation was that a conservation area be reserved, and on 21 February 1980, the Christmas Island National Park was proclaimed under the National Parks and Wildlife Conservation Act 1975.

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168 Williams and McDonald, 532–533.

Figure 2.21 Protest march by workforce outside British Phosphate Commissioners’ office.
Figure 2.22 Some members of the UCIW protesting outside the old Parliament House in Canberra.
Figure 2.23 Photograph of Bob Hawke and Gordon Bennett addressing a crowd of protesters at the Christmas Island airport circa 1979.
Figure 2.24 Group photograph of (from left in foreground) Gordon Bennett, Bob Hawke and Teo Boon How circa 1979.
In 1979, the scene was set for the new General Secretary to make his mark on the island community. At a meeting held at the cinema site in Poon Saan, nearly the entire workforce and community of the island listened to Gordon Bennett address the crowd advocating for the improvement to wage conditions that he had submitted in a log of claims to the BPC. The meeting listened intensively to Bennett and voted in accordance with his recommendation to take strike action. First began a series of selective strikes, which bought the mining operation to a stand still. Within days, the rock bins were full and BPC was paying wages to 1,200 men without producing any phosphate. The strike action was to eventually lead to Bennett and some of the UCIW Executive taking their concerns to Parliament House in Canberra where they established a ‘protest tent camp’ and engaged in a hunger campaign. As Ayris notes, setting up protest camps outside Houses of Parliament was to become almost clichéd in later years but in 1979, it was a novel event. As Bennett had prophesied, journalists were attracted to the small tent site like moths to a candle.

The media had a field day, and headlines appeared in every daily newspaper in the nation along with regular TV and radio broadcasts. The (then) Australian Council of Trade Unions (ACTU) President, Bob Hawke had visited the island and addressed UCIW members in support of their action to increase wage parity and living conditions, a visit that also received broad publicity on the mainland. This ultimately led to the ACTU Executive passing a resolution put forward by Bennett at its Annual Congress condemning the continued social and economic apartheid practised by the BPC and the Australian Government on the Australian Territory of Christmas Island, noting that the ACTU supports: ‘1. Parity of the Christmas Island minimum wage with mainland minimum wages. 2. The same citizenship rights as those

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170 Ayris, 97.
171 Ayris, 116.
172 Ayris, 100.
enjoyed by all other residents of Australia. 3. The introduction of social services to protect the unemployed, aged and sick. 4. A Public Inquiry into the operations of the British Phosphate Commissioners’. 173

Notwithstanding the social, industrial, political and environmental changes on Christmas Island during the 1970s, there was also continued development of infrastructure and services. For example, the newly constructed airport saw the arrival of regular Trans Australia Airlines Boeing 727 flights, which also went once a week to Cocos (Keeling) Islands, and the BPC-operated flights from Christmas Island to Singapore. 174 The UCIW took an optimistic view of the future for Christmas Island in its Newsletter of 1978 declaring that both major employers, the BPC and the Australian Government, were proceeding with planned expansion programs and the Government was refurbishing and upgrading its transport fleet to ensure reliable transport on the island.

The major construction work at the (Flying Fish Cove) ship-loading facility had commenced and was proceeding rapidly. New transformers were installed to improve the electricity system on the island, and there were plans to install a new telephone exchange system. New road-making and line-marking machinery and plant were purchased to improve road safety and transport access on the island, and (as noted above) improved airline services to the island were expected because of the upgrading of the airstrip runway. 175 Neale and Adams summarise that the 1970s bought ‘winds of change’ to Christmas Island by which there was a certain inevitability about the course of subsequent events in the 1980s. 176

173 Waters, 138.
175 Waters, 59.
The 1980s began then with a notable shift in the momentum and approach by the UCIW with Gordon Bennett as its General Secretary and in conjunction with the Sweetland Inquiries of 1980 and 1982, to examine the viability of the phosphate resource industry that was also responsible for dramatic improvements in employees’ living and working conditions.\textsuperscript{177} The Royal Commission of Inquiry into the Viability of the Christmas Island Phosphate Industry, led by W.W. Sweetland (and assisted by Howard Nathan) who was appointed in December 1979, commenced its work in January 1980 and conducted numerous public hearings at which the UCIW was represented along with 14 other island organisations to give evidence.\textsuperscript{178} More specifically, the Terms of Reference of the Sweetland Inquiry allowed the UCIW to express its views and provide information.\textsuperscript{179}

The Sweetland Inquiry had significant implications for the island, although understandably not all parties on the island were satisfied with the final report. For example, the BPC were critical in their analysis of the final report commenting that the Inquiry process had not thoroughly consulted all parties of interest in the mining industry. To the (BPC) Commissioners it seemed that the Report of the opinions regarding the implications for the ‘landed’ cost of Christmas Island phosphate rock for the present wage levels for regionally engaged workers on Christmas Island and particular wage levels for such workers up to and including parity with Australian minimum federal weekly wage together with associated industrial Sweetland Inquiry failed to tackle many of the critical issues, that conclusions were sometimes


\textsuperscript{178} Waters, 143–144.

\textsuperscript{179} Waters, 143.
in conflict with the evidence presented and that, perhaps, insufficient weight had been given to commercial considerations as they saw them.\textsuperscript{180} Conversely, the UCIW was surprised and delighted with the majority of the Inquiry Report outcomes.\textsuperscript{181} Sweetland had concluded in his report that the Christmas Island phosphate industry was viable. The remaining reserves were a known natural resource of proven quality; there was an established and secure market and demand could be expected to be maintained for about eight years.

The industry’s infrastructure was sound and there was a skilled, experienced workforce. The Commissioner said that the conclusion he had reached on the viability of the industry was based on the assumption that the Australian Federal minimum wage would be paid to workers.\textsuperscript{182} Naturally, the outcome of the Sweetland Inquiry Report led to a general level of optimism for the island community in the early 1980s and the UCIW were applauded by the workers and the general community for its involvement in the process, although there were still some aspects of the Inquiry Report that remained to be pursued. Not all the recommendations of the Sweetland Commission were put into effect quickly. Negotiations, some of them long and protracted, were carried out on the island and in Melbourne and Canberra. Even when agreement was reached, legislation was often required by Parliament and this could entail delay since there were matters other than Christmas Island needing Government attention. The federal election towards the end of 1980 meant that some of the proposed Sweetland recommendations were held up by two or three months.\textsuperscript{183}
The political landscape continued to change in the 1980s, not only as a result of the Union’s efforts and the recommendations of the Sweetland Inquiry, but also because of the awareness of mainland conditions by the local community and the exposure it was receiving as a result of the media reporting of events on the island. As noted earlier in this chapter, territorial transfer to Australia in 1958 did not translate into full incorporation of the island and its people into the Australian nation. Indeed, as Williams and MacDonald note, every Australian Government since 1958 treated Christmas Island as if it were a colony to be exploited in the manner of a nineteenth century empire and, generally this view survived until all discrimination regarding immigration and citizenship was removed.\footnote{184 Williams and McDonald, 556.}

The Commonwealth \textit{Migration Act 1958} was finally extended to Christmas Island on 23 January 1981, and it officially conferred Australian ‘resident’ status on all those residing on Christmas Island at that time. All residents who were not Australian ‘citizens’ at that time were eligible to apply for Australian citizenship under the \textit{Citizenship Act}.\footnote{185 Heng and Forbes, 74.} While this was in itself a significant achievement for Christmas Islanders in accordance with the recommendations of the Sweetland Inquiry, it did not completely fulfil the community’s expectations. Not until after 1984 with the implementation of the right to access social security, vote in federal elections and the removal of the much-hated resettlement scheme, which required the workers to leave the Island in 1985, did Christmas Islanders begin to feel they were a part of the Australian nation. The right to local decision-making through the establishment of a local government style of Assembly and services was created in 1985, again because of the Sweetland Inquiry recommendations, and this important development will be discussed in more detail in Chapter Four of this study. The Christmas Island
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Assembly was established in 1985 and was designed to bring the Island and its community into the mainstream of Australian life. Recommendation 15(b) of the Sweetland Inquiry noted that administrative anomalies that distinguish Christmas Island from the mainland should be progressively removed such that the Island’s social and political institutions were less like ‘those of a colonial possession’. In this regard, Commissioner Sweetland recommended that once an acceptable form of political representation was established, the office of the Administrator should be abolished. However, this did not occur, and Michael Grimes, the first UCIW General Secretary, returned to the island in 1986 as an appointed Administrator after a turnover of no less than four Administrators in that year.

Events in 1987 changed the positive mood of Christmas Island that had arisen because of some of the gains by the UCIW in the early to mid-1980s. The significant change was the shock announcement by the Australian Government’s (then) Minister for Foreign Affairs Bill Hayden that the Christmas Island phosphate mine was to close. While heard through a radio broadcast announcement and unconfirmed, the news spread quickly around the island and dejected islanders were anxious to seek clarification. So too was Bennett who arranged hastily convened meetings with the UCIW Executive, the Administrator and the Mine Manager. Soon, the fax machines on Christmas Island were receiving news reports of the Government’s announcement, such as ‘A commercial liquidator has been appointed by the Federal Government to close down the Christmas Island phosphate mine following a secret Cabinet decision. Although Cabinet has yet to make an official announcement, sources confirm that a Canberra based liquidator

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187 Neale and Adams, 207.

188 Ayris, 182.
would begin assessment of the mine almost immediately. Cabinet made the decision to close the mine a month ago but has delayed its implementation. The same Cabinet meeting supported a recommendation from the Minister for Territories, Mr Brown, to sack the Island’s nine man Assembly formerly headed by Mr Bennett for financial reasons’. While the references used in this study by Les Waters, Union of Christmas Island Workers (1983), and The Phosphateers: A History of the British Phosphate Commissioners and the Christmas Island Phosphate Commission by Williams and McDonald (1985) were published before these events occurred and were therefore not described in these publications, there is reference to future prospects of mining on Christmas Island that ironically (and unfortunately) became a reality. At the 1979 rate of production, sufficient reserves are available for mining to continue until 1988.

Despite the findings of the Sweetland Inquiry report some six years earlier, it seemed the positive outlook that islanders had started to believe in as a result of the momentum of struggle by the UCIW and the community, was all for nothing. The community was devastated by the announcement but quickly went about arranging a delegation to go to Perth to meet with the government, and lobby for the Government decision to be overturned. The subsequent meeting arranged by Warren Snowdon (Member for Lingiari in the NT), who was the federal elected member representing Christmas Island, was with Senator Graham Richardson and his advisors. The meeting concluded with Richardson advising Bennett and the UCIW delegation that the decision to close the mine was because of poor industrial relations and that he (Richardson) hoped that the UCIW would co-operate with the Government and do the best for their members. Bennett was naturally outraged,

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189 Ayris, 184.
190 Waters, 161.
191 Ayris, 189.
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not only because there had been no courteous advice provided before any announcement was made but also because the decision was made by a Labor Government in power, which should have been more sympathetic and understanding of the industrial relations and social implications for the community. Unperturbed, Bennett held a media conference and announced that the UCIW would commission a report of its own into the viability of phosphate reserves on the Island to prove to the Government that mining on the island was still commercially viable.

The subsequent report was detailed and expensive but revealed that there was a viable mining prospect for the Island. In fact, the report was even more optimistic than Bennett and the UCIW had expected. The geologists’ report had forecast an estimate of nearly 1.8 million tonnes of A Grade ore and 9 million tonnes of B Grade ore and with a workforce of approximately 212, the lifespan of the mining operations at production of 920,000 tonnes per year would be more than 30 years. This was enough for Bennett to embark on promoting the viability of the mining industry to anyone who would listen to him, but the Government refused to listen to any overtures to revoke its decision despite the overwhelming evidence in the report. Eventually in 1988, it was the (somewhat poorly advised) statement by the then Minister for Territories, Mr Punch, that provided the opportunity that Bennett seized. The statement by Punch was that if the islanders thought the mine was still viable then they should put their money where their mouth is and buy the mine. They did, and following a public appeal, the UCIW Mining Fund raised a staggering amount of AUD $3.3 million from community and member donations. However, this did still not translate into an agreement by the Government to allow a UCIW

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192 Ayris, 200.
193 Ayris, 202.
194 Ayris, 204.
partnership consortium to own and reopen the mine and the struggle continued. This included discussions with other mining companies, such as Century Metals and Mining, Croesus Mining and Orion Resources. With the Government continuing on its aggressive campaign against Bennett and the UCIW, the situation was becoming desperate on the island for the community as it grappled with the realisation of unemployment and no possible future on the island.

In 1987 and 1988, the recently established Christmas Island Assembly and Services Corporation announced it would abolish the Housing Allocation Committee, which consisted of representatives from the UCIW, the mine and the government administration. Minor repairs and maintenance were to become the responsibility of the tenant, even though the landlord of public housing was the Commonwealth. It would demand rent in advance for new or returning residents to the island. Essential costs of living, such as for water, electricity and sewerage were to be increased and the closure of some of the community assets, such as the swimming pool was also announced. These measures together with the uncertainty of mining operations were seen as a deliberate approach by the Government to depopulate the island and placed enormous pressure on the community.

Eighteen months after the Government closed the mine, the UCIW had finally won the long and protracted legal battle with the Government to allow a new tender process to commence. It was a significant achievement for the UCIW and the community, and although there was still a long way to go in regard to having some certainty in the economic and social future of the island, it was an optimistic development. Assisting this optimism was the appointment of a new Minister for

195 Ayris, 207.
196 Ayris, 193.
Territories, Clive Holding, who was in favour of reopening the mine and made his views known to the UCIW and the community during visits to the island. Finally, towards the end of the 1980s the tender process for the sale of the mine was awarded to a consortium between the UCIW, John Booth Saleys and Clough Engineering. Eventually, the UCIW acquired the percentage owned by both other partners and the phosphate mine became solely owned by shareholders of the UCIW members and the community. This was a remarkable result, given the adversity that confronted the UCIW and community only three or four years earlier, although it had taken a personal toll on Bennett’s health. By 1990, the mine was reopened and operated as Christmas Island Phosphates (CIP). The events throughout the 1980s had transformed the community of Christmas Island to the extent that the islanders realised that the destiny of their future could be changed even if only through struggle and determination.

In July 1991, Gordon Bennett, or ‘Tai Ko Seng’ as he was affectionately known by the Christmas Islanders, died of a heart attack. Bennett had fought long and hard, since first arriving on the island for the betterment of the islanders, to improve their working and social conditions. In a mark of respect, he is buried on Christmas Island in a splendid octagonal memorial at the Gaze Road cemetery between the ocean and the towering jungle-clad cliffs and Christmas Islanders regularly visit his tomb to this day. Bartleson notes that its location on a rise overlooking the ‘Coolies Memorial’ and surrounding graves gives it a somewhat higher status than is usual in the traditional hierarchy of a cemetery. The beginning of the 1990s also saw the first comprehensive consideration of the constitutional status and system of laws.

197 Ayris, 235.
198 Ayris, 248.
199 Ayris, 261.
200 Ayris, 263.
201 Bartleson, 55.
applying to Christmas Island, when the Parliament of the Commonwealth of Australia’s House of Representatives Standing Committee on Legal and Constitutional Affairs reviewed the legal regimes of Australia’s external territories. Their report, *Islands in the Sun*, published in March 1991, proposed a number of reforms to ensure that the residents of the external territories receive the same benefits, rights and protection under the law as other citizens of Australia, a situation that the Committee found did not currently occur. As a background to the Inquiry, the Committee was mindful of the difficulties arising during 1987 and 1988 in connection with the prosecution for a murder on Christmas Island. The prosecution of this matter highlighted the fact that the laws of Christmas Island and the Cocos (Keeling) Islands had not, at the time, progressed sufficiently to ensure the residents of those Territories a right to trial by jury.202

The Terms of Reference for the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry were developed as an options paper for discussion with Island residents in August 1990.203 The subsequent Inquiry Report recommendations are the basis for the current applied laws regime, as introduced by the *Territories Reform Act 1992* that will be subject to more scrutiny and discussion in Chapter 4. However, from an historical perspective the intention of the Inquiry was to consider a replacement of the outdated (and at times ineffective) hybrid of Commonwealth and former Singaporean (British) laws that were irrelevant, complicated and/or unfair in their application to the daily lives of Christmas Islanders. In this regard, the Inquiry and subsequent *Islands in the Sun* report was an important development in the lives of Christmas Islanders. It is also relevant to note that the recommendations of the Report imposed SDAs between the Commonwealth and the WA Government. While these arrangements receive more attention in

202 Islands in the Sun, 3.

203 Islands in the Sun, 192.
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Chapter Four, this historical development affected the daily lives of Christmas Islanders as a direct result of the WA-based applied laws regime. The creation of the Shire of Christmas Island because of the Report was also a significant development with the appointment of the representatives commencing on 1 July 1992 from the former Christmas Island Services Corporation. A formal election was held in 1993. This was the first democratically elected local representation to occur since the abolition of the former Christmas Island Assembly by the Australian Government in the late 1980s and heralded locally elected community representatives in the same way as mainland Australian local governments.

While many social improvements, such as specific gazettal of Public Holidays in recognition of the unique culture of the Christmas Island population (e.g., Chinese New Year and Hari Raya) and the establishment of local groups and organisations gained more prominence in the early 1990s and will receive more discussion in the next chapter, it has been demonstrated that the community had begun to recognise for itself its own distinctive culture and social expectations that were reflected in their numerous festivities and celebrations. The 1990s also witnessed a number of ‘boom and bust’ developments. The granting of a casino (resort) license by the Commonwealth in 1993 provided employment to over 300 employees and increased the island population as a result of workers coming from the mainland (and overseas). However, in 1998, the casino resort closed, which created significant social and economic implications for the community. Plans to construct and develop a commercial satellite launching facility were also considered and although planning for the project advanced, actual construction at an identified site at South Point never progressed beyond the planning stage. However, the resilience of Christmas Islanders had been by now well forged through their continued struggles and other development projects continued to be recommended.
The expansion of the Christmas Island Phosphate mining industry resulted in major capital infrastructure improvements to the mine ‘dryers’, the port loading facilities, cantilevers, plant and equipment and company-owned housing stock. Tourism also became a potential opportunity in the 1990s for economic and social development of the island. In 1989, the Christmas Island National Park was extended to incorporate approximately 63 % of the Island. The Management Plan of the Christmas Island National Parks identified eco-tourism, or nature-based tourism, and visitor services as a potential economic stimulus especially in the area of nature bird watching, diving, snorkeling and land-based tours. The development of tourism as a viable economic opportunity for the island required significant infrastructure improvements as well as financial support from the Government and island businesses for the potential to become a realistic opportunity. The enhancement of tourism on Christmas Island was subject to a Report by the House of Representatives Standing Committee on the Environment, Recreation and the Arts in 1990. That is, the development of tourism industries in the Christmas and Cocos Islands is necessary for the establishment of a viable economy in the two Territories.

The report also notes that otherwise the Commonwealth Government will need to heavily subsidise the Islands if local residents are to achieve standards of living and services equivalent to those available to mainland Australians. Several recommendations were made that included air services to the island. The cost and regularity of flight services to Christmas Island was a major impediment to increasing tourism visitation. While the airport runway and terminal had been

205 Director of National Parks, 21.
improved in the 1970s and 1980s to allow larger aircraft to land, the cost of flights to/from Perth were still expensive. It was also a concern to the majority of Christmas Islanders whose origins were in Malaysia and Singapore that no regular flight was available to them, although this changed in the late 1990s with irregular charter flights from Christmas Island Tourism Association (CITA) based on local business and government membership, which enhanced the progress of tourism on the island. CITA became an active lobby group for improved tourism services and infrastructure improvements. For example, the development of nature-based boardwalks and trails in conjunction with the Christmas Island National Parks and Committee on the Environment, Recreation and the Arts, when the Commonwealth should commit to upgrading infrastructure where it is necessary to do so to attract and facilitate the creation and maintenance of tourism enterprises standard tropical island holiday destination.207

However, the Report by the House of Representatives Standing Committee on the Environment, Recreation and the Arts noted a major impediment to promoting tourism on Christmas Island: Unlike the Cocos Islands, Christmas Island does not have the appearance of an ideal tropical island resort with palm-fringed beaches and coral-filled lagoons. It lacks many of the prerequisites for development, such as shallow inshore reefs that depend upon tide and wave height, making surfing impossible.208 Tourism then would take a long time to develop and was certainly not the immediate panacea to an economic-based activity.

207 House of Representatives Standing Committee on Environment, Recreation and the Arts, ix.
208 House of Representatives Standing Committee on Environment, Recreation and the Arts, 14.
Historical Background

Figure 2.25 UCIW General Secretary Gordon Bennett in deep discussion with a local resident.

Figure 2.26 Gordon Bennett’s memorial at Gaze Road, Christmas Island.
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The 1990s was by and large a progressive decade for the community of Christmas Island with evident improvements to the Island’s infrastructure, the implementation of the recommendations of the *Islands in the Sun* report for political and governance improvements, the reopening of the mine under community shareholder ownership and a more active community through the many social cultural groups and organisations. For example, the Chinese Literary Association became more active in promoting its regular activities, which included opening a specific Chinese Noodle House restaurant to provide low-cost meals to the predominantly Asian community. Similarly, the formation of the Malay Association of Christmas Island provided social-type activities for the Malay community around the Kampong area of Flying Fish Cove that had been previously provided by the Christmas Island Islamic Council, which could now concentrate on providing more religious services (that also included religious teaching to children) to the Islamic community.

The contemporary history of Christmas Island from 2000 onwards was/is characterised by immigration issues (asylum seekers) and the continued aspiration of Christmas Islanders for some form of self-determination status. The Cocos (Keeling) Islands had successfully lobbied the United Nations for some form of self-determination in the 1980s. While not intending to dwell on the process the Cocos (Keeling) Islanders undertook in pursuing their notion of self-determination in this chapter, it has historical relevance to the question of this study as regards how Christmas Islanders felt about the developments of its neighbours on the Cocos (Keeling) Islands primarily because Christmas Islanders felt ignored and overlooked when the referendum for self-determination that was overseen by the United Nations was held on Cocos (Keeling) Islands in 1984. The matter will also receive more attention in Chapter Four of the study where, for example, the formal transfer of the Cocos (Keeling) Islands from Great Britain to Australia occurred before that of Christmas Island. For the purpose of this chapter it is noted that, in possibly the smallest ever act of self-determination and under the auspices of the Australian
Electoral Commission and observed under a United Nations mission, the Cocos Islanders resolved to remain a part of Australia as a ‘Non-Self-Governing External Territory’ under the Cocos (Keeling) Islands Self-Determination (Consequential Amendments) Act 1984. The Cocos (Keeling) Islands community continue to celebrate this occasion annually. While mining continued as a viable economic industry with the extension of mining leases by the Commonwealth Government to CIP Co. in 2012 until 2029, other industries have complemented the economic stability of the island and enhanced the social improvement of the community.

One of the main industries to have affected the historical development of the island (as previously noted) has been immigration and the construction of an Immigration Detention Centre (IDC). On 26 March 2002, 88 unauthorised arrivals on Christmas Island were the first group to be accommodated. These measures also included the excision of Christmas Island from the Australian migration zone and plans for the reception and accommodation of asylum seekers and the processing of their claims for protection at various offshore locations. Thereafter, then Prime Minister John Howard noted that he would try to change Australia’s immigration laws to prevent people who arrived without permission at Ashmore Islands and Christmas Island from applying for asylum in Australia under the Migration Act, by excising these islands from its migration zone.

Although subject to variations, different Australian Governments have maintained the controversial ‘border protection refugee asylum seeker’ policy. The positive and negative effects of the Government’s immigration policy on the community of Christmas Island are contrasted in the ABS Census data of 2011 and 2016. Where

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209 Kerr, 288.

210 Heng and Forbes, 79.

211 Heng and Forbes, 79.
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there is a distinct difference in the language spoken at home, employment levels for the ‘locals’, increased small business activity (e.g., to the supermarkets and trade areas of plumbing and electrical services), integration of asylum seeker children into the mainstream Island School and an improvement to infrastructure, such as increased capacity of the island’s water and sewerage plants, road network and the construction of a new power generation facility. Conversely, the mining industry argues that the increase of traffic on the road network on the island is detrimental to their own road use requirements for heavy haulage, and organisations such as the CITA continue to express concerns about the negative publicity that Christmas Island receives because of the Government’s immigration policy despite the increase of regular commercial flights to the island.

Chapter Summary

This chapter intended to provide not only an historical description of Christmas Island but, more specifically, to portray that this historical development has demonstrated that Christmas Island has an identifiable colonial past, which is unique and different from the history of mainland Australia that continues to the present time. The transition from United Kingdom’s (and Singaporean) control to Australia in 1958 did little to change the daily lives of the Asian population on the island, who continue to remain subordinate to the Australian Government. This is demonstrated in recent times with the imposition of the IDC on the island without any community consultation, or as noted earlier in this chapter, the announcement by the Australian Government in 1987 that the Christmas Island phosphate mine was to close, without consultation with the community of Christmas Island or explanation of its likely effects on the population. Similarly, in 1980, the Christmas

Island National Park was proclaimed under the *National Parks and Wildlife Conservation Act* with no reference to the community and ways in which this might affect the economic viability of phosphate mining on which the community relies. While in 1984, some concessions were gained (through the hard work of the UCIW) with the right to access social security, to vote in federal elections and the removal of the much-hated resettlement scheme that required the workers to leave the Island, by and large since 1958 until date, Christmas Island continues to be treated as if it were a colony to be exploited.

The use of historical photographs in this chapter has also been intended to purposely provide pictorial evidence in support of the narrative description of the Island’s population, especially the working conditions of the indentured workforce (mainly Chinese coolies) that reinforced the colonial hierarchy and subsequently gave rise to the resentment of colonial subjugation. This in turn explains to some degree why the local Asian population of Christmas Island desire some form of self-government. Currently, phosphate mining continues as it has done for more than a century as a viable economic industry for the Island although the processing of asylum seekers at the IDC has gradually declined since 2014 as a valuable contributor to the economy, and in fact by 2018 has all but closed. The Christmas Island casino resort is waiting the outcome of its casino license application with the Commonwealth to reopen again following strong lobbying by the local Shire on behalf of the community.

Christmas Island has a unique geography and natural environment owing to it being an isolated oceanic island, and its history is both fascinating and unique in the Australian landscape. So too is its status as a typical South-East Asian pluralist society, the three dominant ethnic groups being people of Chinese, Malay and European descent, which will receive more attention in Chapter Three of the study.
Chapter 3: Social and Cultural Demography

The previous chapter noted the historical development of Christmas Island that predominantly included its social, economic, environmental and political processes of change. The community of Christmas Island, its cultural groups and social practices are all relevant to the thesis study regarding the development of the community. This chapter will therefore discuss more specifically the social and cultural demography of the Island’s community in terms of the predominant ethnic groups, the Chinese, Malay and Europeans, which are reflective of the ABS 2016 statistics and are consistent with the residential settlement pattern and historical development of the Island as described in the previous chapter. This chapter also provides information about the demographics and cultures of the Island that builds upon the historical facts and experiences from the previous chapter. It also raises broad community concerns about the Commonwealth Government’s practices and policy (past and present), particularly as these deny the community its history and culture. The purpose and importance of this chapter to the thesis is to emphasise the demographic cultural and social nature of the island’s people, not only from a sociological perspective but also from the perspective of how the economic conditions shaped the demographic environment of the island. This chapter will also explore how any proposed changes to the governance and legislative arrangements for Christmas Islanders will influence the social and cultural fabric of the community. Specific social and cultural changes have helped shape identity on the island; for this reason this chapter should be read in conjunction with the previous chapter on the island’s history. In particular, this chapter will outline the community of interest and cultural composition which is markedly different to the Australian mainland, given the predominance of the island’s Chinese and Malay community.

It will be further argued in Chapter Four that the policy approaches by successive Commonwealth Governments towards the unique social and cultural aspects of the
Christmas Island community have in fact contributed to the desire of the islanders to aspire to some form of self-determination. This argument is supported by the *Islands in the Sun* report where Christmas Island was in a position of ongoing subordination owing to historical, administrative and economic elements, namely, the hegemonic control exerted by the Christmas Island Phosphate Commission, a joint authority of the Australian and New Zealand governments concerned primarily with exploitation of the Island’s resources and only secondarily with the welfare of its workers.\(^{213}\) Further, the Sweetland Royal Commission Inquiry Reports of 1980 and 1982 provide a critique of past discriminatory or poor practice towards the Christmas Island community by the Government that has ignored the cultural demography of the Island’s population and thereby progressively harboured the Asian community’s desire for equal recognition and participation in all the affairs of the Island. For example, recommendation 14 of the Sweetland Report notes that residents of Christmas Island should qualify for citizenship in exactly the same manner as foreign nationals who take up permanent residence on the Australian mainland, regardless of their original ethnicity.\(^ {214}\) Since the adoption of the majority of the Sweetland Report recommendations in early 1982, Christmas Islanders were afforded full citizenship rights in the late 1980s. Integral to these continued aspirations is the social and cultural demography of the community of Christmas Island, particularly in the context of the origins of the Chinese and Malay communities as outlined in the previous chapter owing to the historical development of the Island for more than 100 years. The predominant cultural groups and their social practices that live at present on the Island are a direct result of this historical development and, in this regard, it is essential to understand the Island’s demographic elements when attempting to provide the most effective governance arrangements possible.

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\(^{213}\) *Islands in the Sun*, 43.

\(^{214}\) Waters, 147.
As a contextual backdrop to this chapter, the 2016 ABS data indicated that there were currently 1,843 people living on Christmas Island on census collection night, which included 1,130 males and 712 females.\textsuperscript{215} This figure is reasonably accurate compared with the 2011 ABS data that included a large proportion of ‘fly-in fly-out’ workers resident on the Island at the time of data collection in August 2011 because of the activities of the IDC on the Island. The local population figures that more accurately reflect the current demographic and cultural composition of Christmas Island can be extrapolated from the ABS 2016 census data in Table 3.1 as follows:

- Approximately 62\% of the population was born overseas and 38\% born in Australia (including on Christmas Island).

- Of those born overseas, 28\% were born in Malaysia, Singapore, Vietnam, Thailand, China or Indonesia, approximately 9\% were born in Europe and 35\% were recorded as being born in Australia. Notably, there was a significant drop in those born in Africa or the Middle East compared with the 2011 census data, which can be attributed to a decline in the IDC activities between the census collection data periods.

- Among the population, 17\% speak only English and 83\% speak languages other than English.

- Of those who speak other languages, approximately 18\% speak Chinese languages and 11\% speak Bahasa Malay (in the home).

- Approximately 72\% of the population stated they have a religion, with their predominant religions being Buddhism (19\%), Islam (20\%), Christianity (16\%) and religion not stated (22\%).

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Table 3.1 below provides this statistical general community profile data in table form extracted from the 2016 ABS census regarding the population composition on Christmas Island.
### Table 3.1: ABS 2016 Census General Community Profile Data

<table>
<thead>
<tr>
<th>Religious Affiliation Responses</th>
<th>Christmas Island: Persons</th>
<th>Australia: Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buddhism</td>
<td>334</td>
<td>563,674 2.7</td>
</tr>
<tr>
<td>Islam</td>
<td>357</td>
<td>604,240 2.9</td>
</tr>
<tr>
<td>No Stated Religion</td>
<td>515</td>
<td>6,933,708 29.3</td>
</tr>
<tr>
<td>Catholic</td>
<td>164</td>
<td>5,291,834 22.6</td>
</tr>
<tr>
<td>Anglican</td>
<td>69</td>
<td>3,101,183 13.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Birthplace of Parents Responses</th>
<th>Christmas Island: Persons</th>
<th>Australia: Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both parents born overseas</td>
<td>796</td>
<td>8,051,196 34.8</td>
</tr>
<tr>
<td>Father only born overseas</td>
<td>98</td>
<td>1,488,092 6.9</td>
</tr>
<tr>
<td>Mother only born overseas</td>
<td>130</td>
<td>1,094,591 4.8</td>
</tr>
<tr>
<td>Both parents born in Australia</td>
<td>304</td>
<td>11,070,538 43.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Language Spoken at Home: Other than English</th>
<th>Christmas Island: Persons</th>
<th>Australia: Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahasa</td>
<td>231</td>
<td>238,617 0.8</td>
</tr>
<tr>
<td>Mandarin</td>
<td>312</td>
<td>596,711 2.8</td>
</tr>
<tr>
<td>Cantonese/Hokkien</td>
<td>103</td>
<td>255,549 1.1</td>
</tr>
<tr>
<td>Thai</td>
<td>10</td>
<td>55,444 0.2</td>
</tr>
<tr>
<td>Tagalog</td>
<td>9</td>
<td>111,273 0.4</td>
</tr>
</tbody>
</table>

In many regards, the composition and features of the Christmas Island community as extrapolated above set it apart from mainland Australian communities. With the exception of some more densely populated urban areas of the Australian mainland that have a high concentration of Asian immigration, the cultural makeup of Christmas Island is unique; the Asian community of Christmas Island can demonstrate the longevity of its ancestry and cultural features through longstanding connections that are rarely found on the Australian mainland. Further, the data reflecting that more than 17% of the community have stated their religion as
Buddhism (being of Chinese ancestry) are reflected in the many Buddhist and Taoist temples on the Island, noting that the ABS Census may not necessarily reflect separate Taoist representation in the final ‘Buddhism’ data, given that no specific definition is provided. Similarly, the Malay community who predominantly practice their religion of Islam built their mosque and religious school that are a focal point of their community life on the Island. The historical description of Christmas Island in Chapter Two provided information from various literary sources regarding the cultural development and composition of the Island community since it was first settled. In this regard, minimal ABS statistical census data are available for Christmas Island that provide any specific cultural and demographic composition until after official census data commenced, and even then, it took some time before any comprehensive data became available for Christmas Island.

As noted above in the 2016 census data, the majority of the current population on Christmas Island was born overseas and this has remained consistent with the 2011 census data, noting that at the August 2011 census night, a majority of people on Christmas island (at the time) were engaged in employment at the IDC in occupations such as interpreters (translators) based on a ‘fly-in fly-out’ basis. Accordingly, the statistics of the ABS data from the 2011 census collection reflect the origins of these interpreters, even though they did not reside permanently on Christmas Island. Notwithstanding this data and the explanation provided for the population of overseas-born persons who are identified as working on the Island at census collection night, the ABS 2016 data strongly reflect the local population who identify as either being born overseas or having immediate family who identify as being born overseas. This is supported by the ABS 2016 data where languages spoken at home indicate the diverse society of Christmas Island, especially in the large percentage of Chinese language dialects that ensures a strong and diverse multicultural society remains on Christmas Island. The Chinese and Malay communities on the Island maintain strong cultural links and traditions, including
the maintaining of temples and shrines, and the mosque, as well as the celebration of traditional festivals and occasions. Also relevant to the social and cultural demographics of the Island are the residential settlement patterns on Christmas Island that are concentrated on the Island’s North West Point. There are a number of distinct residential areas each of which have historically been associated with certain cultural groups within the (previous) colonial structure on the Island. The larger detached houses of Settlement, Silver City and Drumsite were traditionally occupied by the (generally) European supervisors, teachers and Island middle classes, while the flats at Poon Saan and Kampong were associated with the Chinese and Malay communities respectively. While persisting on a general level, the enforced residential groupings of the past are no longer relevant because the Christmas Island population cultural groups have dispersed around the Island in recent decades to all the settled areas.

While the history of human settlement on Christmas Island spans little more than a century, the cultural diversity and settlement pattern arrangements as outlined above are not just contemporary factual statistics, but legacies of Christmas Island’s colonial origins and development that the community brought with them from their countries of origin. Notwithstanding the predominant Chinese and Malay groups that have a historical and cultural connection to the Island, other ethnic groups are also present on the Island although they are later arrivals. However, for the purpose of the thesis study, this chapter is more concerned with the cultural groups that have a demonstrated association and presence in the Island community as a result of their historical development on the Island and can therefore claim an Island ‘identity’ in regard to the demonstration of cultural roots being the principle qualification. The publication *The Right to Self-Determination under International Law* by Sterio will be referenced in this chapter (and other chapters in the study especially Chapter Four) in regard to the interpretation that she applies to ‘colonised peoples and minority groups’ and how this may be applicable to the population of Christmas Island in
their quest for some form of self-determination. The publications cited in the previous chapters will also continue to be referenced where applicable to the social and cultural practices of the Island’s community.

Figure 3.1 Statistical map of the residential built areas of habitation on Christmas Island.

Figure 3.2 View of the majority of the residential built areas of habitation located on the North East Point of Christmas Island taken from Territory Day Park with the Malay Kampong in the foreground, the Harbour, Settlement and Silver City (on the hill). Source: Shire of Christmas Island Local Planning Strategy 2012.
Chinese Community

The largest ethnic group on Christmas Island are the Chinese who have a direct relationship with, and identity related to, the commencement of phosphate mining on the Island. That is, because of the discovery of phosphate on the Island and the commencement of mining operations, the Chinese were originally brought to Christmas Island as an indentured labour force (coolies). Bartleson notes that by June 1899, the first 200 indentured Chinese labourers, eight Europeans, five Sikh policemen and a small group of Malay boatmen had arrived on Christmas Island to begin mining.216 This is also supported by Hunt as noted in the previous chapter, where the newly created CIP Co. decided to use Chinese indentured labour that had been successfully used in the Malay States for some years, especially in tin mining.217 In this regard, the subservient colonial rule that had been established in South-East Asia was (conveniently) replicated by the mining company on Christmas Island at the commencement of phosphate mining operations that was to last well into the twentieth century. This colonial approach by the mining company involved using instruments such as a labour contractor to recruit Chinese coolies to work the phosphate mine. The mining company’s first appointed (European) Island Manager was Vincent Samuel, who made enquiries in Singapore, which was the major point of entry for Chinese labour brought from China, and chose Ong Sam Leong to be the labour contractor to recruit indentured labour.218 Ong Sam Leong’s agents went to the small villages of ‘Kwangtung Province’ in Pearl River Delta region of southern China to recruit the required labour force where most of the young men were labourers living in family houses and in abject poverty.219 Therefore, recruitment of these young men was not difficult, given the hardships they endured on a daily basis.

216 Bartleson, 9.
217 Hunt, 10.
218 Hunt, 11.
219 Hunt, 13.
to support their families and the fact that they were nearly all totally illiterate and not able to understand the contract conditions to which they had submitted. The mining company had no regard for (or indeed any interest in the cultural and social factors of the labour they required for the mining operations. They were only concerned with treating the imported Asian society as an economic means to productivity, of taking short cuts to economic progress and growth without any regard to the social factors. As a result, the mining company’s colonial approach created an economy based on phosphate production and profit on Christmas Island without creating a means for effective social management and integration. This social integration, especially for the Chinese coolies, was essentially left to themselves to establish, which they gradually did.

The Chinese coolies that first came to Christmas Island brought with them their cultural traditions, languages and religious beliefs, and currently, the Chinese community on Christmas Island comprises Chinese groups speaking several ethnic languages, such as Cantonese, Hakka, Hokkein, Teow Chiew and Mandarin, which reflect their origins from mainland China and South-East Asia. This is supported by Bartleson who notes that headstone inscriptions at the various Chinese cemeteries around Christmas Island indicate that for more than 50 years most of the Chinese labour force came from the Guangdong (Kwangtung) area of southern China, with lesser numbers from surrounding provinces in China, such as Fujian, Jiangxi and Hainan Island. There is also an imbedded observance of traditions and festivals, such as Hungry Ghost and Moon Cake Festivals, God’s Birthday and the traditional Lion Dances (especially at the lunar Chinese New Year period), and the maintenance of numerous temples around the Island (Buddhist, Taoist and Confucian). These have all developed over a period as a direct result of the presence of the Chinese community on the Island since their initial arrival as indentured coolies. The

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220 Bartleson, 9.
establishment of a cultural network for maintaining their traditional cultural customs was necessary for the Chinese community, especially given that the mining administration paid scant regard (or care) for any of their social practices. For these earliest coolies who came from the poor rural areas of southern China, in the absence of family structures on Christmas Island it was important to establish a structure that was based on their village and clan links and communicate in a common Chinese language (dialect), such as Cantonese.

Some of the early coolie arrivals would have almost certainly added the support of ‘Hung Men Hui Brotherhood’ membership that had existed in China for centuries and had a large following among the poor and unemployed. The brotherhood’s activities were well organised, and with traditional links to temples, gave a sense of security, order and focus through family rituals. The brotherhood would have taken responsibility for the construction of a ‘Joss House’ at the earliest opportunity to provide a social and spiritual base for its members. The bonding of the Chinese coolies in these early years continued to manifest itself in various social activities and customs that are still maintained by the Chinese community on Christmas Island. For example, on the site of today’s Tai Pak Kong Temple (at Gaze Road Settlement), the brotherhood had fulfilled their oath of obligation to fellow members and built a substantial Joss House with a cement floor, wooden plank walls and a zinc roof from where, in addition to their traditional rituals, they could organise the rare social events and festivities enjoyed by the men. They could also offer assistance with tasks, such as reading or letter writing when needed, and dispense community justice in the resolution of disputes. Further, their support of fellow members during illness was vital to their survival in a place where the earliest make shift hospital had few facilities, which was particularly relevant during the beri-beri crisis described in the previous chapter. For those who died, brotherhood members took responsibility

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221 Bartleson, 11.
for funeral and burial arrangements. In such circumstance, the brotherhood sustained its members with a depth of comradeship not unlike the traditional mateship so highly valued by (mainland) Australians.\textsuperscript{222} No doubt this practice arrived with the Chinese coolies indentured in the early twentieth century to work on the Island whereas common practice was for ‘voluntary associations’ to be established for various activities, such as burial societies to ensure that members would be assured of a properly conducted funeral, and to form welfare and progress activities, such as literary clubs and religious organisations.\textsuperscript{223} Figure 3.3 depicts the ‘All Souls Coolies Memorial’ at the Chinese Gaze Road Settlement Cemetery erected in 1971 in memory of the early Chinese workers who were buried at the various Chinese cemeteries around the Island.\textsuperscript{224}

\begin{flushright}
\textsuperscript{222} Bartleson, 16.
\end{flushright}

\begin{flushright}
\textsuperscript{223} David Steinberg, ‘In Search of South East Asia: A Modern History’, (Sydney: Allen & Unwin, 1989), 260.
\end{flushright}

\begin{flushright}
\textsuperscript{224} Bartleson, 62.
\end{flushright}
Figure 3.3 The ‘All Souls Coolies Memorial’ at the Chinese Gaze Road cemetery. Source: Golden Leaves – A History of Chinese Cemeteries on Christmas Island 2008.

Housing conditions for the Chinese coolies was rudimentary at its very best and reflected the disdainful attitude of the mining company towards the coolies. There was a clear hierarchy on the Island (not only in housing but also in all other forms of social well-being), and the coolies were at the bottom of this pecking order. The social pecking order referred to by Ayris would survive both World Wars and several social revolutions. It started in those first early days when the Island received irregular visits from ships bringing food from Singapore where the rules governing the distribution of food and supplies were immutable. That is, first choice went to Europeans, then came the Mandors (Chinese-appointed foremen), followed by skilled labourers and tradesmen and finally the coolies.225 As in other (neighbouring)...

225 Ayris, 6.
Asian countries where the colonial rulers had created a social hierarchy with the European at the top, the Christmas Island hierarchy was derived from the mining company and the subsequent government administration developed the same regime. Generally, the hard facts of power as established by the colonial hierarchy were enough to create this ranking without much effort in enforcing it. The colonial attitude demonstrated one significant characteristic that conveyed their tremendous prestige—its overwhelming power of control that manifested itself in the different clothing Europeans wore, the houses they built and lived in and the food they prepared and ate and through nearly every other aspect of living that excluded and separated them from the Chinese (and Asian) community of Christmas Island. This social exclusiveness was justified by the European mining management and administration on the grounds of prestige and privacy, much the same as it was through all of the neighbouring South-East Asian colonised countries of the time. For example, as noted in the publication *In Search of South East Asia: A Modern History* the building of modern administrations by the colonial rulers of South-East Asian countries at the time was above all a great cultural achievement in the minds of the aliens (colonisers) holding the new power.  

Further, the Western capitalist mode of production, characterised by large units under a single management, cheap labour, investment of money capital and scientific methods, was in all respects quite different from prevailing pre-colonial methods of (mining) production in South-East Asia. For that reason, it was not a natural out growth from local economic activity but entirely imported from outside and run entirely by the colonial governments in South-East Asia at the time. As noted by Neale and Adams, according to the principles of colonial capitalism, for the

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226 Steinberg, 204.

227 Steinberg, 226.
extraction of raw materials from the colonies all that was needed was an inexhaustible supply of cheap labour. The same colonial ideology held that to be white and wealthy placed one indisputably at the top of the socio-economic order. This in turn fostered an authoritarian system predicated on racism.²²⁸ This colonial practice was certainly evident in the attitude taken by the European mining management and administration towards the Chinese coolie population of Christmas Island that remained largely unchanged (with the exception of minor improvements) for nearly 80 years. It would have been psychologically and physically impossible for Europeans of this colonial era to live in their role on the Island had they not persuaded themselves that they were superior to the Asian community they exercised control over. In this regard, the European colonisers continued the entrenched practices of subjugating the population on the Island that they had previously exercised in their colonial rule in South-East Asian countries that they controlled at the time.

Accommodation for the first Chinese coolies occupied a strip of land from the workshops and loading piers along what is now the Gaze Road foreshore area and consisted of eight sleeping huts made of planks with ‘atap’ (coconut thatch) roofing. The huts were 35 feet long, 20 feet wide and 10 feet 6 inches high at the point of the roof and the low wooden sleeping platforms in each hut were divided into four spaces separated by upright planks. Each space was occupied by four coolies and each man thus had a personal space of approximately 3 square metres. These huts remained in use until 1941.²²⁹ This rudimentary accommodation lacked any sanitary facilities with washing and cooking being communal and rubbish waste thrown underneath the huts. The space under the floors was filled with rubbish; no water

²²⁹ Hunt, 18.
supply or drainage had been connected to the new buildings and latrines were insufficient.\textsuperscript{230} In these unsanitary conditions, it was no wonder that the coolies were subject to disease and sickness that was exacerbated by the atrocious daily working conditions they endured. The relocation of a new hospital to the Phosphate Hill site provided some improvement for coolies suffering ill health. This coincided with new phosphate mining production at the Phosphate Hill site with accommodation being constructed that also relieved the need for coolies to walk daily up and down the steep incline from their accommodation at the Gaze Road foreshore. The site of the Phosphate Hill Chinese Cemetery is testament to the fact that coolies still suffered from poor working and living conditions, which continued until the discovery of more lucrative phosphate deposits at South Point and the subsequent demolishment of Phosphate Hill village. As Bartleson notes, this is where victims of the extremely hazardous work conditions at the nearby quarry were buried until the cemetery’s closure in 1914–1915, when huge deposits of phosphate were found at South Point.\textsuperscript{231}

In this regard, all of the Chinese cemeteries of Christmas Island provide a tragic indictment of the suffering that the coolies endured and in part explain the strong social and cultural bonds that developed (and still exist) among the Christmas Island Chinese community. Generations of the (Chinese) community members continue to visit not only the Phosphate Hill Cemetery but also the Gaze Road Settlement Cemetery (and other cemeteries around the Island) to honour the souls of these early coolie pioneers and therefore represent significant cultural importance to the Chinese community. As noted in Figure 3.3, in 1971 the ‘All Souls Coolies Memorial’ at the Chinese Gaze Road Settlement Cemetery on Christmas Island was erected in memory of these early Chinese workers who were buried at the various Chinese cemeteries around the Island.

\textsuperscript{230} Hunt, 27.

\textsuperscript{231} Bartleson, 22.
Currently, the early coolie accommodation and housing of the Settlement, Phosphate Hill and South Point areas are long gone, replaced progressively by modern buildings constructed from the post-Second World War period that can be best described as being appropriate to the time they were built. However, until new subdivisions were created to release new land opportunities following the outcome of the Islands in the Sun report and adoption of the regime of WA applied laws (including town planning legislation), these housing arrangements still reflected the colonial social hierarchy as evident in the flats at Poon Saan or the Kampong at Flying Fish Cove. Undoubtedly then, these earlier accommodation and housing patterns of ‘ethnic demarcation’ had a significant influence on the social and cultural
behaviour of the Chinese community on Christmas Island. The ethnic demarcation patterns were evident not only in the housing arrangements, but also to some degree in the public building infrastructure. The most notable examples of these were the Christmas Island Club, which was a club exclusively for Europeans, and ‘Tai Jin House’, which was formerly the District Officer’s (and later Administrator’s) residence located at Smith Point away from the general community. Neale and Adams describe the ‘Club’ as being the primary entertainment for the Island’s European population, who were all members, where they played tennis, snooker and badminton and had a swimming pool adjacent to the Club.232

The Christmas Island Club was built in the late 1920s and is historically significant as one of the only surviving pre-Second World War buildings on the Island, although it is now dilapidated and not in use. It was built exclusively as a European Staff Club and was the focus of social and community gatherings of the European community on the Island from approximately 1930 to 1980. Membership of the Club excluded the Chinese (and Asian) community with the exception of those who were European servant staff who provided services to the Club. Little wonder then that this exclusion gave rise to resentment among the Chinese community, who have little regard for the conservation and refurbishment of the building even at present, regarding it as a symbol of the colonial structure that socially excluded them from participation. Similarly, Tai Jin House is one of few surviving pre-Second World War buildings on the Island and remains in good condition and use today. The District Officer occupied it as a residence and government office until the transfer of Christmas Island to Australia in 1958 when it became the Administrator’s Office and residence. The Chinese community hold Tai Jin House in higher regard than they do the Christmas Island Club, which could be owing to the fact that one of the functions of all the District Officers who occupied the building was that of ‘Protector of

\[\text{232Neale and Adams, (1988), 55.}\]
Chinese’. In fact, the name ‘Tai Jin House’ derives from the colloquial terminology by the Chinese community for the position of District Officer. In his memoirs, District Officer Victor Purcell states that he was virtual ‘Pooh Bah’ having all the functions for the community, such as Magistrate, Assistant District Judge and Assistant Protector of Chinese, and that when any of the Chinese community requested to meet with him, they would ask to see the ‘Tiajin’, or big man in his capacity as Protector of the Chinese. He was District Officer on Christmas Island in 1926 for a period of seven months.\(^{233}\) In this regard, it was the position that was respected and not necessarily the Caucasian person who held it from time to time.

Notwithstanding the overt social hierarchy that prevailed between the European and Chinese community on Christmas Island, there was also a distinct separation within the Chinese population. This was particularly evident in the control of the coolies by the European-appointed labour contractor’s use of Mandors who were widely despised by the coolie population. The Mandors exerted control over the coolies in nearly every aspect of their life, social and working. They were often cruel, beat the coolies with rattan canes (although this practice was legally prohibited) and often extorted bribes from the coolies. The use of Mandors by the mining company and the appointed labour contractor instilled long-term deep resentment among the coolie population, and although working conditions gradually improved, this resentment manifested itself in isolated incidents of Mandor murders until the 1960s.\(^ {234}\) The influence Mandors had on the daily lives of coolies was far-reaching since they controlled all aspects of the coolies’ life, including the dispensing of opium at often inflated prices, which was imported by the Labour contractor with the government administration condoning the practice. In fact, by 1912 the government

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\(^{233}\) Neale and Adams, (1988), 35.

\(^{234}\) Adams and Neale, (1993), 33.
assumed the monopoly of opium distribution throughout the Straits Settlement and
the District Officer sold opium in either small packets or sealed tubes.\textsuperscript{235} Adams and
Neale note that many of the coolies were actually addicted to opium before coming
to the Island because of its availability in their countries of origin. The mining
company (and administration) condoned the use of opium as a means to keep the
workforce docile.\textsuperscript{236} Therefore, the use of opium on Christmas Island was endemic in
the coolie population as a means of relief from the arduous life they endured and it
continued unabated until the Second World War only decreasing slightly with the
Japanese occupation and the non-availability of opium imports. It ceased altogether
after Australia took possession of Christmas Island in 1958, when it became illegal.

Commensurate with opium use as a pastime for the coolies is gambling, a pastime
that continues at present. From the very early days of the arrival of Chinese on
Christmas Island, gambling was a practice that was both encouraged and condoned
by the government administration. Hunt notes that even after the Japanese
occupation, the head Mandor wanted gambling reintroduced legally to the Chinese
community and the then Mining Manager (John Paris) supported the proposal as a
means to keeping the workers quiet. In 1947, approval was given to allow gambling
in a controlled environment at the ‘Tea Gardens’ on the Gaze Road foreshore for the
Chinese population only (Malays were excluded) with proceeds of the gambling to
be placed in a fund for old or sick coolies to travel back to China.\textsuperscript{237} This practice
continues in a similar form currently at the Poon Saan Club, and has been a feature
of the Christmas Island Chinese community’s way of life for more than a century. It
provided a social means of interaction and although gambling has inherent social
problems, it certainly provided relief for those early Chinese coolies as a way to

\textsuperscript{235} Hunt, 61.

\textsuperscript{236} Adams and Neale, (1993), 56.

\textsuperscript{237} Hunt, 230.
endure the hardships they encountered in their daily lives. Also providing some relief to the hardships of life for the coolies was prostitution, although, as Neale and Adams note, it was unlikely many coolies were able to engage in the practice, given the expense and ‘social pecking order’ of the Island that controlled access to the brothels. Further, the prostitutes were often booked on a roster system and at a cost of about $6 per night the lowly paid coolies could not afford the price. According to Ayris, a Christmas Island pecking order was established, which was to survive both World Wars and several social revolutions. This again led to resentment within the Chinese community bearing in mind the large coolie workforce on the Island that were continually denied access to some of the minimal pleasures available to them on the Island.

One of the most striking examples of this resentment in the Chinese community was the action of Jimmy Kang, who was Chief Superintendent of the mine during the time of Japanese occupation. He forced Chinese women who had placed themselves under the protection of powerful Chinese men (such as Mandors) on the Island as wives to revert to prostitution for the Japanese. According to Hunt, the women despised the idea of having to work for the Japanese as prostitutes; Jimmy Kang’s actions violated traditional Chinese principles by forcing the women back into prostitution and was an attack on Confucian values, which was bitterly resented. The site of the earlier brothels on Christmas Island at the ‘White House’ on the Gaze Road foreshore and at South Point have long gone and despite an attempt to revitalise the ‘trade’ by enthusiastic men on the Island after the Japanese had left, the doors remained permanently closed at the White House.

239 Ayris, 6.
240 Hunt, 190.
Chapter 3

The traditional customs, beliefs and social activities that the Chinese community developed on Christmas Island because of their origins continue to a large degree at present. The many temples and shrines around Christmas Island are testament to these earlier social beliefs and customs. For example, the Chinese traditional belief was that the unquiet dead would come to Earth to cause mischief in an attempt to force humans to pray and make offerings on their behalf. As Christmas Island had more than its share of men who had passed away without fathering sons, or died by suicide or violence, the most common way a man could end up was as a ghost. Hence, altars would be located in places where untimely deaths had occurred, food would be offered, and joss sticks and paper from material goods would be burned for the spirits. The hospitals and graveyards were the obvious places for this practice, although small altars were also established in the jungle where a runaway coolie had died or below a tree where another may have hanged himself. Bartleson also supports this fact and notes that the two Festivals of the Dead, Qing Ming (also known as All Souls Day) and the Hungry Ghost Festival are major celebrations on Christmas Island.

Other traditional Chinese festivals that have continued since the first arrival of Chinese coolies on Christmas Island include Chinese New Year, Moon Cake Festival and Lantern Festival. While some of the earlier temples, especially those smaller ones in the jungles of Christmas Island, no longer exist, a majority of the temples and shrines are still active and in use by the Chinese community. One of the largest of these is the South Point Temple (see Figure 3.5). Even though there is no longer any community living there since the phosphate deposits were exhausted by 1970 and the satellite township was closed, the Chinese community maintains the temple and celebrates the ‘Kang Tian Tai Di’ (God’s Birthday) Festival each year. Thus, the

\[241\] Hunt, 57.
\[242\] Bartleson, 67.
modern-day Chinese community continues to instill these social customs and beliefs in the younger Chinese generation on Christmas Island, with most of the celebrations and festivals being well attended, not only by the younger Chinese generation but also by the broader community of Christmas Island. This then ensures the continuation of the Chinese customs and beliefs that were brought to the Island with the first Chinese coolies more than a century ago.

Figure 3.5 South Point Temple. Source: Shire of Christmas Island Local Planning Strategy 2012.

Central to maintaining the established Chinese customs, beliefs and social activities on the Island was/is the Chinese Literary Association that was first established in the early twentieth century and has a proud history of service to the Chinese community in all aspects of social well-being. Despite a brief period of decline in the 1970s, the Chinese Literary Association maintains a strong presence in the community of Christmas Island currently. It is a focal point for organizing various community events and activities aimed at highlighting the Chinese community presence on Christmas Island and preserving its cultural heritage. It has recently opened a museum at its location on the Gaze Road foreshore precinct and also operates a commercial traditional ‘noodle house’ restaurant that enjoys strong patronage from
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Chinese and non-Chinese patrons. As noted by Waters, the Chinese Literary Association had come into existence to preserve and maintain Chinese cultural features. In this regard and together with the Poon Saan Club and the Kung Fu Association (that maintains the traditional Lion Dance and continues to train younger people for the activity), the Chinese Literary Association ensures that the customs, beliefs and social practices of the original Chinese population on Christmas Island continue. Hence, the future of the Chinese culture on Christmas Island is positive and strong with the Chinese community ensuring its traditions and customs are maintained.

The Chinese (Mandarin) language is taught at the local school as an elective (along with Malay) and the school curriculum includes an emphasis on Chinese art and history, especially the latter with its anthropological and demographic relevance to Christmas Island. The annual Territory Day celebrations on 1 October each year (celebrating Australian sovereignty for Christmas Island in 1958) also include social and cultural activities by the Chinese community that continues to portray its strong presence in the Christmas Island community. This highlights the significant cultural and social contribution the Chinese community has made (and continues to make) to the Island’s community that will no doubt continue to be just as strong in the future. The identified beliefs and customs of any community are integral to their quest for self-determination recognition in accordance with the meaning provided by Sterio as a ‘minority group or people’ that is further discussed at the end of this chapter, and in Chapter Four of this study.

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243 Waters, 5.
Figure 3.6 Chinese Literary Association entrance to the building on Gaze Road. Source: Shire of Christmas Island Our Future: Community Strategic Plan 2011 to 2021.
Malay Community

The Christmas Island Malay community is the second-largest community group on Christmas Island with its members initially recruited from Ambon and Bawean Island in the (then) Netherlands East Indies (now Indonesia) in the early 20th century. Subsequently, others arrived from peninsular Malaya, Java, Sumatra, southern Thailand, Singapore and Borneo and at first, they were predominantly employed in boat-handling and marine-type work. The Malay community are nearly all Muslims and overwhelmingly follow the cultural and religious practices of Islam. They originally lived as a separate community in the ‘Kampong’ area of Flying Fish Cove.244 At the time of the ABS Census collection in August 2016, the Malay community was celebrating the annual ‘Ramadan’ (fasting month) and subsequent ‘Hari Raya Aidilfitri’ festivities. This meant that a proportion of the Malay community was not present on the Island during census collection night, being either overseas (Malaysia or Singapore), or on the Cocos (Keeling) Islands or in Perth celebrating with family and friends, which is the usual practice in the Islamic Malay community during this period. Therefore, the ABS 2016 census data statistics reflect this fact showing a smaller than usual response from the Malay community. Similar to the Chinese community on Christmas Island, the Malay settlement patterns are currently widely dispersed around the Island’s urban area, although the focal point of Malay social activity remains at the original Kampong site that has always been interpreted as its cultural heart. The Mosque, Malay Club and Islamic School are situated here; this was the traditional early settlement area for the Malay population.

The Malay community on Christmas Island did not suffer the same extreme hardships as the Chinese coolies did, mainly because they were not recruited for the sole purpose of working in the phosphate mine as indentured labour. As noted by Hunt, the Malays were not employed on precarious labour contracts with enforced

244 Hunt, 16.
penal provisions and the shadow of debt, as were the Chinese coolies, and Malay employment was mostly with the mining company (or government administration), mainly in marine and port services. Further, the Malays had ample opportunity to fish because of their location at the Kampong; they had a mosque; and they had a Headman as they did in their communities at home in Malaysia or Indonesia. More importantly, most of the Malay adult men were married and had families with them. The Malay men also played football and other physical sports, such as the traditional Malay form of ‘Sepak Takraw’, while the Malay women were active among their own community with various family social activities and in the traditional arts of batik weaving and hand-woven basket making. The fact that the Malay community were permitted to marry and have families naturally meant the Malay population would increase over time. In the space of 40 years since the Malay community was first established on Christmas Island from 1901 when there were only 21 men, no women and no children, the Malay community population grew to more than 50 men, 25 women and 47 children by 1941. In this regard, the Malay community was the only ‘normal’ community on Christmas Island in terms of sex ratio and family stability. Accordingly, the Malay community has been able (allowed) to develop and establish a distinct social pattern that values the concept of family, its solidarity, traditions and social status from the early days of settlement on Christmas Island.

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245 Hunt, 118.
246 Hunt, 151.
This strong Malay family structure is usually large, patriarchal and functionally extended, which is especially evident because of the earlier housing arrangements of
the Kampong, which was the original place of accommodation for the Malay families and community. The strong values of Islam are also followed where gender segregation is still practised in the Mosque and to a lesser degree in the household although modern Malay practices on Christmas Island have changed over the decades and certainly no gender segregation in the Christmas Island workforce. Therefore, the family values of the Malay community still largely follow their origins of Malaysia and Indonesia, especially in the Islamic context. That is, even at present it is unusual for a Christmas Island Malay to marry a ‘non-Muslim’ unless that person converts (of his or her own free will) to Islam. Neale and Adams note the difficulties experienced by Jasmine Draman and Mohamed Noor in their relationship in the late 1960s where both of them underwent extreme scrutiny by both the Island’s Muslim leaders and the European Island community, to the extent where their impending marriage was strongly discouraged; nonetheless, they married anyway.²⁴⁷

There is also a strong connection between the Malay communities on Christmas Island and the Cocos Islands Malays, although not as harmonious as would be expected. Forbes and Heng note that the original settlement of Christmas Island by the Clunies-Ross family also included Javanese people as well as some Cocos Malays.²⁴⁸ Williams and MacDonald also note that there were sharp divisions between the Christmas Island Malays and the Cocos Islands Malays, since the latter, having lived under the Clunies-Ross regime for generations, had adopted European names, moved away from Muslim orthodoxy and regarded the local Christmas Island Mosque with disdain.²⁴⁹ This division is evident to the extent that in the current Christmas Island Cemetery Malay section that was established after the

²⁴⁸ Heng and Forbes, 71.
²⁴⁹ Williams and McDonald, 394.
Second World War on the north side of Gaze Road, the Cocos Islands Malay are buried separately from Christmas Island Malays. Prior to the establishment of the current Malay cemetery, there was a Malay cemetery located near the Kampong at Flying Fish Cove. As Adams and Neale note, when a large group of Cocos Island Malays came to Christmas Island to work and live, the local Malays were stunned because they had Scottish names and spoke Malay with Scottish accents. They played the fiddle and sang Scottish songs and dances they had learned from Clunies-Ross. While there is this historical division between the Christmas Island and Cocos Islands Malays, they still maintain a common bond in most of the Malay cultures, customs and social practices even if this does not necessarily extend to the strict Muslim orthodoxy practised by most of the Christmas Island Malays. Currently, the descendants of the early Cocos Islands Malays still live on Christmas Island and coexist in the social fabric of the Christmas Island Malay community.

As with the Chinese community, the Malay Christmas Island community strictly observe and actively participate in many of the festivities and celebrations associated with their culture on the Island. These include (as noted earlier) the observance of Ramadan and Hari Raya Aidilfitri as the most important events on the Island’s Malay social calendar. They also celebrate Hari Raya Haji and the Prophet Mohammed’s Birthday, which have also become part of the social festival calendar. While fasting during the month of Ramadan, the Malay community refrain from eating and drinking in daylight hours (as well as other activities, such as smoking and sexual relations) and attend the Mosque regularly for prayers, in the same manner as Muslims worldwide. The Hari Raya Aidilfitri (see Figure 3.8) celebrates the end of the Ramadan fasting month and is usually a time for visiting family and friends around the Island and, of course, cooking and eating. With reference to the experience of Eve Akerman and her husband on Christmas Island from 1946 to 1948,

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250 Adams and Neale, (1993), 64.
Neale and Admas note that Malay feast days came to celebrate religious, family or community events and they were loud joyful affairs at Flying Fish Cove beneath the palms by lantern light or by the full moon at the end of the Ramadan fasting month. There were trestle tables with a great deal of food, such as chicken and fish curries with rice that were hotly spiced and served with abundant amounts of chilli and tamarind. Food is an integral part of the Christmas Island Malay community life, and in accordance with Islamic adherence, all food prepared and consumed by this community is halal.

There are also numerous examples of the traditional arts practised by the Malay community, not only during festivals but also at other social community events and at weddings. The Malay Club located at the Kampong precinct was built in the early 1950s by the mining company as one of the community facilities provided for the Malay population. It demonstrates certain social features of the Island in the post-war period in which it was built, such as being a place for the association of Malay workers under the umbrella of an ostensibly cultural organisation in a climate where any overt association of workers was discouraged. At present, it is actively involved in maintaining the various Malay forms of arts and customs passed down from generation to generation of Christmas Island Malays. While woodcarving has never been a commercial industry, the traditional woodcarving art has been practised on Christmas Island since the Malays first came to the Island.

This was primarily because of the need to make fishing boats, which was a means of livelihood for the Malay community especially given their origins as traditional coastal Malays (orang laut) meaning sea people.  

252 The Malay fishermen made their own ‘kolehs’ that were used in and around Flying Fish Cove to catch tuna, salmon and mackerel, and while currently, this fishing provides an exciting sport, the Malays only interest was, and still is, to provide a good meal for family and friends.  

253 The tradition has recently been revitalised among the Malay men, who have built several

252 Hunt, 118.

kolehs involving the community, and has included teaching the younger Malay men the art form of building the kolehs. In this regard, there was (and still is) no shortage of ample product on Christmas Island for woodcarving and boat building, or even housing construction, which the Malay men were/are particularly skilled in. The Christmas Island Malay men also perform one of the oldest traditional Malay customs of martial art known as ‘Silat’ that is also practised in a danceable art form. The Silat is often combined with the music of ‘Kompang’, which is a rhythmic beating of hand drums and a popular activity at social community events. These social events also see the Malay community dress in traditional costumes that are an integral part of their custom since first arriving on Christmas Island. In this regard, as Islam became more widely embraced, the Malay community started wearing the more modest yet elegant ‘bajukurung’, which is a knee-length loose-fitting blouse and is usually worn over a long skirt with pleats at the side. It can also be matched with traditional fabrics, such as the ‘songket’ or batik. Typically, these traditional outfits are completed with a ‘selendang’ or headscarf. The traditional attire for Malay men is the ‘bajumelayu’, which is a loose tunic worn over trousers and is usually complemented with a ‘sampan’, which is a short sarong wrapped around the hips (see Figure 3.9). Although the Christmas Island Malay community suffered social exclusion during the colonial period of Christmas Island, it did not suffer to the extent that the Chinese community did during this time. This difference can be attributed largely to the fact that the Malay community was allowed to develop its family structures and thereby retain its culture and customs, which were not impeded by the harsh working conditions that the coolies endured. As Waters notes, the Muslim Malays, perhaps, had a greater sense of unity since they lived in a Kampong that was also the location of the Mosque and the Imam, or religious teacher, and there was also a Malay Club.254 Currently, the Malay population on Christmas Island is a vibrant community that continues to celebrate its cultural diversity and sense of unity in a harmonious way.

254 Waters, 5.
Figure 3.9 Traditional Malay costume circa 1920s. Source: From the late Basil Murphy collection cited in ‘Suffering Through Strength – The Men Who Made Christmas Island’, John Hunt, Blue Star Print ACT, page 152.
European (and others) Community

The European community has had a presence on Christmas Island since phosphate was first discovered and mining commenced in the late nineteenth century and have historically comprised the smallest proportion of the Island’s ethnic group. However, while this presence has been continuous, Christmas Island has no identified generational European families that can source their roots to the beginning of settlement on the Island. This can be attributed largely to the transient nature of European employment practices on the Island, and while some European families can claim a generation of living on the Island, there is no evidence to support long-term family roots on the Island in the same context as the Asian community. The primary purpose of Europeans coming to, and living on, the Island has always been related to employment. Common examples include those engaged as public servants (police, teachers, health services and administration), in mine management or in other related ancillary services, such as small business. There was in fact another community on the Island containing people referred to under the generic term Supervisors, who were engineers, accountants, chief clerks and foremen. They were mostly engaged from the Australian mainland and some had worked for the BPC on Ocean or Nauru Islands. They were often attracted to the Island by advertisements offering salaries free of income tax, furnished accommodation at low nominal rent and amenities, which included (exclusive) a staff club, and boating and golf clubs. Further, they came into an atmosphere in which the character and nature of the undertaking and accepted attitudes had long been established during the colonial period, and hence, naturally enough they continued to absorb the opinions and assumptions of their more experienced colleagues with whom they mixed with almost exclusively.255 As Ayris also notes, life was comfortable for the Europeans. They lived in spacious homes overlooking the sea; they were addressed as ‘mem’ or ‘tuan’ by their Chinese or Malay servants; the men wore white suits and pith helmets

255 Waters, 6.
and most families had an ‘amah’ to look after the children. The heat of the afternoon could be made bearable by a pig-tailed coolie discreetly seated outside the house pulling a ‘punkah’ fan over the heads of the sweating masters.\textsuperscript{256} While this social segregation has dissipated over the past 20 to 30 years, the older generations of the Chinese and Malay communities still remember their exclusion from the European community with some disdain. In this regard, the long-term colonial rule on the Island created psychological impressions on the subject people (Asian community).

Some among the European community did not necessarily subscribe to the view of the majority of the European population on the Island about mixing socially with the Asian community. Neale and Adams refer to the arrival of Dr John and Eve Akerman circa 1948 on the Island and that during their short stay on the Island they had so endeared themselves to the Asian population that they were bid farewell with tears and an hour-long fireworks display that expressed gratitude and goodwill reserved for the special few.\textsuperscript{257} The Akermans mixed freely and comfortably with the Asian community during their stay on the Island and considered many as their genuine friends; however, this was not necessarily without criticism from the majority of the European community. In particular, Eve received much of the criticism and when she often replied that some the Asian community were indeed her friends, she was met with the reply from the (mostly) European female population with a typical colonial smile and advice that ‘but my dear, it’s just not done’.\textsuperscript{258} All of the publications referenced and used in this study provide a narrative and pictorial description of the colonial European impact on the Island, and on the Island’s Asian community. As evident in other South-East Asian countries, the European colonial rule created a social hierarchy with the European at the top and

\textsuperscript{256}Ayris, 6.

\textsuperscript{257}Neale and Adams, (1988), 96.

\textsuperscript{258}Neale and Adams, (1988), 96.
from the early settlement of the Island they (the Europeans) were essentially interested only in treating the Asian community as an economy without any real regard to the social factors of the community that created a plural society. As Steinberg notes, the importance of economic industries in South-East Asian countries during the colonial period and the subsequent requirement to import an immigrant labour workforce contributed directly to the growth of plural societies in those countries.  

Having said this however, there is no evidence that the European community on Christmas Island overtly attempted to disrupt the traditional social and cultural practices of the Chinese and Malay communities, especially during the colonial period on the Island.

The improvement of industrial conditions on Christmas Island from the 1970s played a significant part in the gradual improvement of social well-being for the majority Chinese and Malay community. The dismissal of Teo Boon How in 1974 was the catalyst for this change and although it was initially industry related, its social implications for European and Asian relations were more far-reaching. The dismissal of Teo Boon How stirred feelings throughout the Asian community and although a new Administrator on the Island reinstated him, strength had been given to those among the workforce who were promoting the formation of a trade union. This action promoted further awareness in the Asian community of their fundamental rights to be treated as equals of their European counterparts living in

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259 Steinberg, 240.

260 Williams and McDonald, 535.
Figure 3.10 Straits Settlement Government District Officer McFall with ‘companion’ circa 1913.
the community, not only from an industrial perspective but also generally in a social context. For example, the practice of the mining company (with government support) to pressure aged retiring Asian employees to leave the Island, which threatened to divide generations of families on the Island, caused resentment among the community.\textsuperscript{261}

A majority of the European community were shocked at what was occurring (especially the mining management), mostly because they could see a threat to the lifestyle they had led for so long, although there was sympathy in some quarters of the European community. This sympathy was evident in the arrival of Europeans on the Island who were exposed to the changing social conditions and values on mainland Australia. One of these was Mike Grimes, who was a teacher instrumental in forming the inaugural Christmas Island Teacher’s Association, eventually becoming involved in forming the first trade union on Christmas Island and appointed its first Secretary.\textsuperscript{262} Grimes struggled with the colonial environment of the Island that he and his family had come to and it was not long before he incurred the wrath of the dominant BPC European management and a majority of the European community when he began making changes. His view was that the Union had a place at the centre of Christmas Island society (all of the society) and since it was the only democratically elected body on the Island, it had a responsibility to represent the interests of a majority of the people in a whole range of areas.\textsuperscript{263}

Evidence of this change to the comfortable lifestyle of the majority of Europeans on the Island is summarised by Mike Grimes in his interview with Neale and Adams that refers to the only (first and last) Managers’ Gala Charity Ball that he and his wife attended in 1975 –

\textsuperscript{261} Williams and McDonald, 535.
\textsuperscript{262} Waters, 24.
\textsuperscript{263} Neale and Adams, (1988), 197.
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‘We were greeted at the door on arrival at the Ball by the Manager and his wife, the Administrator and his wife and a host of other Island European dignitaries and the Manager’s wife pinned an orchid on us all especially flown in from Singapore. It was the last Ball because apparently we had spoilt it. We were those dreadful unionists who spoilt everything for the European way of life on the Island. Fancy expecting workers to sleep on proper mattresses imported from Singapore when the cost of these mattresses would mean they could not buy the Singapore orchids they needed for their Ball. How dare they do this, it was really preposterous and the unionists were really dreadful people’.\textsuperscript{264}

The change was indeed a shock to the European community that had enjoyed a lifestyle that was to dramatically alter to the extent where social equality has gradually become a normal aspect of community life on Christmas Island. Currently, the European community on the Island is an integral part of the community and although still transient in nature, there is some evidence of long-term residency especially in the small business sector of the Island. The reference by Hunt can best summarise the European dominance on Christmas Island that has now dramatically changed. That is, relations between Chinese, Malays and Europeans in the period from 1899 to 1948 were shaped in a world different from the current times. People held assumptions about others, racial stereotypes that sometimes glided into racism, which were accepted and unchallenged. It is difficult in the twenty first century to grasp the strength of these powerful feelings, which underpinned virtually every aspect of Christmas Island life.\textsuperscript{265}

\textsuperscript{264} Neale and Adams, (1988), 200.

\textsuperscript{265} Hunt, 154.
One of the smaller ethnic groups that first came to the Island in the colonial period is the Indian Sikh community. They were originally engaged on Christmas Island from the turn of the early twentieth century in policing functions and as mining company watchmen (known as Jagas) under the direct control of the colonial government. They practised all of the social cultural customs they had brought with them from their countries of origin, noting that a majority of the Sikhs were from the South-East Asian British colonial dominions, such as India, Malaysia or Singapore. The Sikhs on Christmas Island originally had a small circular temple near where the current Roundabout Road is located (at Settlement), and they would conduct services on Sundays. Drums would summon the worshippers and prayers were read from the ‘Granth Sahib’ holy book. Sweet food wrapped in leaves was available to all people entering the temple. As noted in the previous chapter of this study, the Sikhs were the subject of one of the more tragic events that occurred on the Island.

This event was the murder of five British army troops stationed at the Smith Point Fort on Christmas Island that preceded the Japanese occupation of the Island although importantly, not all the Sikhs on the Island participated in the murder. Currently, there is still a small Indian (generational) community on the Island even though they do not appear to practice all of the formal Sikh traditions, and while a minority have also converted to Islam, they do still celebrate some of the earlier cultural traditions, such as the annual Deepavali Festival. One of the more remarkable men on Christmas Island in the early colonial period was Walter Oorloff. He was of Sri Lankan origin, although Eurasian with a Sri Lankan mother and European father, and he lived on Christmas Island for more than 40 years having first arrived in the early 1900s. He was engaged originally as a medical dresser and

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266 Adams and Neale, (1993), 52.
267 Hunt, 106.
although he had no formal medical qualifications, he enjoyed the confidence and support of the entire community, even some of the European women. He and his wife had 10 children but they all left the Island, and with the departure of Walter Oorloff owing to ill health in 1948, no descendants remained.\textsuperscript{268} In this regard, the Indian community played a significant role in the cultural demography of Christmas Island, especially in the Island’s early settlement period that was reflective of the South-East Asian countries in which other cultural groups, such as the Chinese and Malays, originated. This presence is greatly diminished now, unlike that of the other cultural groups, who maintain a strong presence and continue to practice their cultural customs and traditions.

**Chapter Summary**

Sociologists emphasise culture as an existence of collective language, systems and conventions that is distinguishable and specifically distinctive from elsewhere as a way of life of a group of people. This definition is provided in *The Dictionary of Sociology* by sociologists and anthropologists using culture as a collective noun for the symbolic and learned, non-biological aspects of human society, including language, customs and convention, by which human behaviour can be distinguished from that of other primates.\textsuperscript{269} In this regard, the culture of the Chinese and Malay communities on Christmas Island (as well as the other minor groups) is distinctive of the cultures they bought with them when they first arrived on Christmas Island from their countries of origin. This can even be extended to some degree to the European community, since the early colonial period of occupation on Christmas Island displayed a distinctive way of European life in this period. Therefore, it is quite easy to distinguish the cultural practices of the different groups on Christmas Island by

\textsuperscript{268} Hunt, 158.

the cultural characteristics they display. As noted earlier in this chapter the present Chinese community on Christmas Island display distinctive cultural practices in their celebration of festivities and significant religious events similar to those they bought with them when they first arrived on the Island as indentured coolie labour. Their activities were well organised and with traditional links to temples, gave a sense of security, order and focus through family rituals that had existed and been practised in China for centuries. Similarly, the Malay community retained their cultural distinctiveness that they had originally bought with them from peninsular Malaysia or Indonesia as early immigrants to Christmas Island. The exception, as indicated, were the Cocos Malays who, for want of a better term, had assimilated with the European Scottish descendants of Cocos Keeling Islands over the course of occupation on the Cocos Keeling Islands.

The intent of this chapter has been twofold. First, it provides information about the various demographics and cultures of the Island that builds upon the historical facts and experiences from the previous chapter, many of which are still evident in the Christmas Island community. Second, it provides this description in a context that could be applicable to defining the community as a distinct minority group or peoples that can be interpreted according to Sterio as fulfilling the requirements of self-determination, an issue that is further explored and discussed in Chapter Four.

Under the principle of self-determination provided by Sterio, a group with a common identity and link to a defined territory is allowed to decide its political future in a democratic fashion. However, for this group (that is Christmas Islanders) to be entitled to exercise its collective right to self-determination, it must

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270 Bartleson, 11.
qualify as a ‘people’. In this regard, Sterio notes that an objective and subjective two-part test applies to this qualification as a ‘people’. The objective test seeks to evaluate the group to determine the extent to which its members share a common racial background, ethnicity, language, history and cultural heritage, as well as the territorial integrity of the area the group is claiming. Hence, the difference between the various majority groups on Christmas Island (Malay, Chinese and Europeans) would only partially fulfil this objective test, especially given the separate and distinct racial, language and cultural practices of each group. The subjective test examines the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct people, and the degree to which the group can form a viable political entity.\(^{272}\)

The objective and subjective tests described by Sterio will be explored further in Chapter Four, especially since it relates to Christmas Islanders and to determine the extent to which these tests are applicable to defining them as a distinct minority group or peoples that can be interpreted as fulfilling the requirements of self-determination. Further, the status of Christmas Islanders as colonised or non-colonised peoples is a necessary discussion, given the interpretations provided not only by Sterio but also by Cassesse in his publication ‘Self-Determination of Peoples: A Legal Reappraisal’ and Weller in ‘Escaping the Self-Determination Trap’. These authors point out that the right to self-determination was expressed under the United Nations Covenant on Civil and Political Rights and the United Nations Covenant on Economic, Social and Cultural Rights where under the Covenants the right to self-determination acquired a new meaning and an obligation on behalf of the Covenant’s Member States to respect a peoples’ right to some form of democratic self-governance.\(^{273}\)

\(^{272}\) Sterio, 16.

\(^{273}\) Sterio, 11.
While this process was afforded to the people of the Cocos (Keeling) Islands in 1984 under observance by the United Nations, which is discussed further in Chapter Four, no such process has ever been afforded to the people of Christmas Island. Moreover, the right to self-determination was expressed in two different formats, one for non-colonised peoples and the other for colonised peoples. Weller notes that the notion of people is distinct from minority rights where the latter protects the existence of religious, linguistic or ethnic groups and facilitates the development of their identity to ensure they can participate fully and effectively in all aspects of life within the mother state. Therefore, should Christmas Islanders be classified as colonised or non-colonised people, and what is the meaning of people and minority rights for the purposes of self-determination in accordance with their cultural and historical composition?

The historical and demographical analyses of Christmas Island (and its community) in Chapters Two and Three have positioned the discussion towards arguing that Christmas Islanders have been systematically subjugated by the controlling European powers, first the United Kingdom and then Australia. While the circumstances of colonisation may have changed historically in a century, the definition remains the same where the Australian Government continues to regulate the daily lives of Christmas Islanders while denying them their rights to vote. In particular, this chapter has demonstrated that Christmas Island displays the characteristics of a colonised regime where the continued existence of a hierarchy with colonising powers is clear together with the subjugation of the cultural group(s) on Christmas Island. These cultural groups continue to preserve their distinct cultural practices despite the ongoing colonial subjugation through the historical

274 Sterio, 11.

economic exploitation (phosphate mining) and the disenfranchising of their democratic voting rights through the application of the applied laws regime.

The use of photographs in this chapter has been similarly intended to provide pictorial evidence of the social and cultural conditions on the island that are specific to the Asian population in comparison with the colonial European community. This explains to some degree why the local Asian population of Christmas Island desire some form of self-government and expression that reinforces their cultural identity as a distinct group. Accordingly, the interpretations by Sterio, Weller and Cassesse (among others) not only sets the context in which Chapter Four will discuss the governance and legislative arrangements on Christmas Island (and the IOTs), especially from a global perspective, but are also integral to the direction of this research in regard to applying the principle and right of self-determination by Christmas Islanders, who can demonstrate they have been historically subjected to various forms of colonial rule.
Chapter 4: Governance and Legislative Arrangements

This chapter will begin with discussing the notion and meaning of self-determination as described by various academic literature sources, with particular emphasis on its application to Christmas Island (and the IOTs) in accordance with the study outcomes. The chapter will also discuss the current governance and legislative regime applicable to the non-self-governing Territory of Christmas Island that has developed since the Island was first settled. In doing so, a comparative analysis will be made with other non-self-governing and self-governing territories, not only in Australia but also with some recent overseas models. For the purposes of providing a context to this chapter, the historical development of governance and legislative arrangements that have been explained in some of the previous chapters will again be briefly discussed as an introductory context to the current arrangements in the IOTs that is consistent with the intent of the design and methodology approach of the study as outlined in the Introduction. This will also include reference to previous literature that has been cited in the thesis study to date and the introduction of other literature and references that are relevant to this chapter’s discussion that again has been discussed in the literature review of the Introduction.

Against the backdrop of the historical governance and legislative arrangements that currently apply to Christmas Island (and the IOTs), the purpose of this chapter is to then discuss the issues regarding these arrangements, as well as explore other alternative self-determination models that can be proposed in the study summary and conclusion. Further, based on the definition of a non-self-governing territory under Chapter XI of the United Nations Charter (Article 73) ‘Declaration Regarding Non-Self-Governing Territories’, where a territory such as Christmas Island has not achieved a full measure of self-determination, the issue of governance subordination must be addressed in the development of any improved governance arrangements.
This chapter will build on Chapter One, demonstrating that the principle of representative democracy is not present on Christmas Island given the applied laws regime and Service Delivery Agreements (SDAs) which underpin the island’s governance. The chapter will outline how the (WA) elected representatives who vote on the WA laws which apply on the island are not accountable to the people who live there. It will also show how the SDA process does not include consultation with the community, either for the purpose of informing them about service delivery or in its review process. At best the consultative process has been sporadic and the results of any consultative and/or review process are only evident in the Annual Reports that the Commonwealth produce. The chapter will begin by considering the current arrangements and the ways in which these can be improved. Exploring the current governance arrangements will facilitate a discussion in Chapter Seven about whether there are alternatives which might better embody democratic principles and meet the aspirations of Christmas Islanders.

The Notion of Self-Determination

Thomas Franck provides a definition of self-determination as the oldest aspect of democratic entitlement, stating that hence its creditability is the best established. Self-determination postulates the right of a people organised in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of democratic entitlement. While this definition is only one of many, it underpins the principle of self-determination as being the right of a community to control its own destiny. The very notion of self-determination, as briefly noted at the end of the previous chapter, has a significant bearing on the contents and discussion of this chapter. What are the circumstances within the self-

determination paradigm where Christmas Island can realistically claim any self-determination status? The interpretations and comments by Sterio, Weller, Corbett, Franck and Cassese regarding the notion of self-determination (internal and external), and the meanings of people and minority groups as well as colonised and non-colonised peoples, are not exhaustive although they are the primary and important contextual reference points for discussion and consideration in this chapter.

To determine whether or not the community of Christmas Island are colonised or non-colonised people has significance in the discussion outcome for Christmas Islanders in positing themselves in relation to legitimately and democratically progressing their self-determination aspirations. Sterio continues with her explanation of colonised and non-colonised peoples which was briefly referenced at the end of the previous chapter, where non-colonised peoples living within larger mother States became entitled to a form of internal governance within their mother State. However, non-colonised peoples did not acquire the right to seek independence from their mother States. Thus, colonised peoples acquired the right to determine their political fate: to form an independent State, or to remain a part of their existing coloniser or to associate with another State.\(^{277}\)

Cassese supports this, stating that unlike non-colonised peoples, colonised peoples could rely on the (United Nations) Covenants to exercise their right to self-determination and to seek a legal separation from their coloniser through remedial secession.\(^{278}\) As Corbett notes, there is growing recognition that cultural practices can and do contribute to the maintenance of democratic institutions, and that hybrid

\(^{277}\) Sterio, 11.

arrangements are not always a perversion of either an ideal modern or traditional system. Conversely Weller provides a persuasive discussion against the application of the right to self-determination based solely on the old model of traditional and cultural independence for colonial entities and argues that the concept of self-determination in the post-colonial era should concentrate more on resolving the current ongoing self-determination conflicts globally. Weller also provides a discussion regarding the meaning of remedial self-determination in his definition of self-determination as the right of all peoples to freely determine their political, economic and social status and examines a wide range of options utilised in realising self-determination, which also includes constitutional self-determination. As Sterio notes, towards the end of the decolonisation movement in the early 1970s, the legal position on self-determination could be summarised as follows. First, all peoples subjected to colonial rule had the right to self-determination, pursuant to the provisions of the Covenants, as well as to two Resolutions passed in the General Assembly, namely Resolution 1514 of 1960 (the so-called Declaration on Granting Independence to Colonial Countries and Peoples), and Resolution 1541 passed one day later. This second resolution contained an annex specifying the modalities of self-determination for colonised peoples. Second, for colonised peoples the right to self-determination entailed the choice to freely decide their future status. Third, the right belonged to a people as a whole, living in a given colonial territory. Thus, if various ethnic groups lived in a single colony, their right to self-determination had to be exercised as a whole, with all ethnic groups uniting to a single ‘self’ that corresponded to the entire territory of that colony.

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280 Weller, 23.  
281 Sterio, 11.
In this regard, it must be demonstrated that the community of Christmas Island, noting the various predominant ethnic groups such as the Malay and Chinese that were discussed in the previous chapter, can exercise their right to self-determination under this qualification, given they live (and have lived) in a single colony and can exercise their self-determination as a whole group (or people). Accordingly, the question raised is should Christmas Islanders be classified as including colonised or non-colonised peoples according to the meaning applied by Sterio, Weller and Cassese? That is, should the contemporary community of Christmas Island be classified as colonised or non-colonised people considering the historical development and cultural composition of the community that has developed progressively under colonial conditions? Hence, the answer to this question is integral to applying the notion of self-determination to the Christmas Island community in regard to the circumstances in which they currently live as a people in a community, which was previously a colony of Great Britain (and under the Straits Settlement of Singapore) and then Australia when sovereignty was formally transferred in 1958 as a non-self-governing external territory, as explained in Chapter Two regarding the historical background of Christmas Island.

According to Steele and Rockman, the term “colonisation” is derived from the Latin word ‘colere’, which means ‘to inhabit’.282 The Dictionary of Sociology notes that the terms colonialism and imperialism are interchangeable.283 Further, its meaning was often given to a system of organised colonial trade and organised colonial rule.284 However, these simple definitions of ‘colonisation’ are not sufficient in determining whether Christmas Islanders can be classified as colonised or non-colonised people.


283 Abercrombie, Hill and Turner, 120.

While Chapter Two discussed the historical background of Christmas Island and the way in which the island was settled, one of the main criteria when considering applying the concept of colonisation to Christmas Island is that there were no recorded inhabitants on the Island prior to Great Britain declaring sovereignty of the Island for establishing phosphate mining. In this regard, the large Asian labour workforce that was required for the mining of phosphate was ‘imported’ from neighbouring countries under the subjugation and control of the (then) British colonial administration. Therefore, it can be argued that colonisation on Christmas Island occurred progressively (as described in Chapter Two) to the extent where there was a migration pattern established to Christmas Island by the colonisers (British) who kept their strong links with the (then) British Empire. They did so for the purpose of retaining their status and privileges by subjugating the other peoples also living on the Island (the Asian population) that were bought to the Island for the specific purpose of providing economic services to the colonisers.

Notwithstanding this historical development is the fact that Christmas Island was uninhabited prior to the British establishing sovereignty, and therefore perhaps, the true meaning of ‘terra nullius’ (as incorrectly applied to the Australian mainland by the British explorer Captain Cook), is relevant to Christmas Island prior to British control. This aspect was established by the recent 2016 University of WA Study commissioned jointly by the Shire of Christmas Island and the CIP mining company that is referred to later in this chapter. As Weller notes, no formal definition is provided of what constitutes a colonial territory; however, as a rule of thumb it only includes those territories that one would intuitively recognise as such. These are territories forcibly acquired by a racially distinct metropolitan power, divided by an ocean during the time of imperialism and subjected to a colonial regime for the purposes of economic exploitation. The long list of qualifications contained in this sentence indicates the lengths to which governments have gone to ensure that self-
determination cannot ever be invoked against them.\textsuperscript{285} Therefore, it would seem obvious that this interpretation by Weller could be applied to Christmas Island, given the historical development of the Island and its current status as an Australian non-self-governing external territory. Weller further notes that the classical right of colonial self-determination is now a core part of international law, enjoying a status that is legally superior to other international norms that do not enjoy this elevated position, and it is applied only to colonial and non-self-governing territories of which practically none remains.\textsuperscript{286}

Christmas Island is not included in this reference by Weller as it remains today as a non-self-governing external territory and the community of Christmas Island has never been afforded the opportunity to consider and decide its self-determination status. Similarly, defining (and applying) the meaning of peoples and minority groups to Christmas Islanders is important for determining the classification of the community of Christmas Island. Sterio refers to the definition applied by Scharf that under the principle of self-determination, a group with a common identity and a link to a defined territory is allowed to decide its political future in a democratic fashion. For a group to be entitled to exercise its collective right to self-determination, it must qualify as a people. Traditionally a two-part test has been applied to determine when a group qualifies as a people. The first prong of the test is objective and seeks to evaluate the group to determine to what extent its members ‘share a common racial background, ethnicity, language, religion, history, and cultural heritage’, as well as ‘territorial integrity of the area the group is claiming’.

\textsuperscript{285} Weller, 34.

\textsuperscript{286} Weller, 35.
Chapter 4

The second prong of the test is subjective and examines ‘the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct people’, and ‘the degree to which the group can form a viable political entity’.287 Further, it necessitates that a community explicitly express a shared sense of values and a common goal for its future. Accordingly, under the principle of self-determination, all self-identified groups with a coherent identity and connection to a defined territory are entitled to collectively determine their political destiny in a democratic fashion and to be free from systematic persecution. For such groups, the principle of self-determination may be brought about through a variety of means, including self-government, substantial autonomy and free association, or arguably, in certain circumstances, outright independence/full sovereignty. For a group to be entitled to a right to collectively determine its political destiny, it must possess a focus of identity sufficient for it to attain distinctiveness as a people.288

The discussion in Chapter Three regarding the social and cultural demography of the Christmas Island community is therefore relevant to the discussion of determining the entitlement of the community to exercise any collective right as a people. It has been demonstrated in Chapter Three that the community of Christmas Island would in part meet the objective test as described above by Sterio and Scharf, where even though there are separately distinct cultural minority groups on the Island, such as the Chinese and Malay communities, they appear to meet the first prong of the test by sharing a common racial background, ethnicity, language, history and cultural heritage, as well as territorial integrity of the area they may claim. The one exception is religious, where the Malay community are overwhelming Islamic and the Chinese community are Buddhist. While only partly

287 Sterio, 16.

meeting the objective test as described by Sterio and Scharf, undoubtedly the community would completely meet the subjective test as Christmas Islanders do perceive themselves as a collective distinctive group, given the long historical connection they have with the Island, and importantly with each other. Further, the collective group has already demonstrated they can form a viable political entity by exercising their democratic right to elect, and be elected to, the local government authority on the Island.

This event occurred with the creation of the Shire of Christmas Island at its establishment in 1992 in accordance with the recommendation(s) of the *Island in the Sun* report. As Sterio notes, the term ‘people’ is also distinct from the notion of minority group rights where the latter confer on a minority group living within a larger state a set of rights.\(^{289}\) Weller expands on this distinction by providing that self-determination is also a right that can be invoked by members of certain groups, such as national, religious, ethnic or linguistic minorities. In this sense, self-determination is congruent with minority rights. Minority rights protect the existence of national, religious, linguistic or ethnic groups, facilitate the development of their identity and ensure that they can participate fully and effectively in all aspects of public life within the state. While it was previously argued that minority rights are only held by members of minorities individually, it is clear that they can be exercised in a community with others.\(^{290}\)

Wippman notes, few issues in the history of the modern state have proved more vexing than the relationship between majorities and minorities. Even the definition of minorities is contested, so much so that most contemporary international legal instruments dealing with minority rights fail to include a definition of the rights.

\(^{289}\) Sterio, 17.

\(^{290}\) Weller, 6.
holders. Some theorists emphasise objective markers of identity, such as race, language or religion that distinguish members of minorities from other sub-state communities. Others focus on subjective characteristics, such as belief in common descent or possession of a shared culture. Most theorists insist that minorities can only be defined by a combination of objective and subjective elements. This refers to a combination of objective and subjective characteristics that defines a minority as a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language. For the purpose of a precise definition, it is necessary only to recognise that the defining characteristics of minorities, whatever they may be in a particular case, are sufficient ‘to set the group apart’ from the rest of the society in the eyes of the group members as well as outsiders.

This perception of difference lends itself to political mobilisation, whether on behalf of minorities or against them, and there in lies the central difficulty of minority–majority relations. Having said this, what then is the definition of minority group rights in its distinction from the term of people, especially in its application to the community of Christmas Island? The summary provided by Sterio would seem to provide some answers for the purpose of determining the situation regarding self-determination for Christmas Islanders and how they may be referred to as a ‘people’ for the purpose of allowing them to pursue self-determination. This will be further qualified at the end of this chapter given that ‘all peoples are also a minority group, but not all minority groups qualify as a people’. Thus, the distinction in international

law between a minority group and a people is purposeful and incredibly significant. Often, identifying a people may be the first step towards assessing the groups’ rights to self-determination.\textsuperscript{292}

The final discussion regarding the notion of self-determination concerns the concept of ‘internal’ and ‘external’ self-determination and the ways the meaning of either can be applied to Christmas Island as a model of self-determination to consider. According to Sterio, self-determination of such groups that qualify as a people can be effectuated in different ways: through self-government, autonomy, free association or, in extreme cases, independence. Co-existence of a people within a larger central state, where the people have rights to self-government, political autonomy and cultural, religious and linguistic freedoms, is an example of internal self-determination.\textsuperscript{293} Scharf also supports this view, where the right to self-determination can take different forms that are less intrusive on state sovereignty than is secession.\textsuperscript{294} Conversely, Weller advocates external free association, or in extreme cases, independence. Co-existence of a people’s self-determination in the form of secession and independence is his preferred model of self-determination that is the basis for his publications, \textit{The Self-Determination Trap} and \textit{Escaping the Self-Determination Trap}. For example, at the conclusion of his article Weller notes that there is a sense emerging that it is necessary to escape from the current self-determination trap, either by engineering new forms of co-governance within states or by accepting that secession cannot, in the end, be ruled out if other options do not suffice.\textsuperscript{295}

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\textsuperscript{292} Sterio, 18.
\textsuperscript{293} Sterio, 18.
\textsuperscript{294} Scharf, 379.
\textsuperscript{295} Weller, 27.
\end{flushright}
In this regard, Weller puts forward a persuasive argument against the broad application of the right to self-determination based solely on the old model of independence for colonial entities and conflates self-determination with secession and independence. While recognising and analysing other options of self-determination in his articles, Weller appears to prefer the external model of secession as the only realistic means to achieve self-determination and hence the need to escape the ‘self-determination trap’. To agree solely with his definition of self-determination limits its scope and usage to independence or secession and is a narrow application of the definition. Self-determination should retain its original connotation wherein all peoples freely determine their political, economic, social or other status without a prescription of the form it takes. Whatever arrangement is agreed upon with the State should not be seen as precluding self-determination but as an affirmation of this right. For the right to self-determination to mean solely independence or secession, as Weller implies, would be an infringement upon the right of peoples to freely determine their status. As Sterio notes, the international community views secession with suspicion and traditionally the right to independence or secession as a mode of self-determination has only applied to people under colonial domination or some kind of oppression.\(^\text{296}\)

It is apparent from the above definitions of internal and external self-determination that the internal model would be the applicable form for Christmas Islanders to pursue. The choice becomes more relevant when considering the simple comparison by Weller where external self-determination will normally be taken to include the right to secession while internal self-determination concerns the choice of a system of governance and the administration of the functions of governance according to the will of the governed.\(^\text{297}\) No conflict exists within the Christmas Island community or

\(^{296}\) Sterio, 19.

\(^{297}\) Weller, 6.
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oppression of any type by the mother state (Commonwealth) as described by Weller that would warrant any consideration by the community to choose the external model of self-determination. Conversely, pursuing the internal model of self-determination for the Christmas Island community would appear to be the most favourable, and most likely to succeed. This is because the distinction between internal and external self-determination serves the purpose of limiting secession to extremely narrow circumstances, and by providing peoples other forms of (self-determination) autonomy within the existing mother state through the exercise of internal self-determination, international law achieves the goal of preserving territorial integrity of existing states, except in truly exceptional circumstances.298

Finally, it is important to note that according to Weller (and other academics) the right to self-determination expires once exercised. As noted by Weller, this is particularly evident in the doctrine of ‘uti possidetis’ (Latin for ‘as you possess under law’) and in the view that self-determination is a one-time-only event and the existence of the right of self-determination therefore served as a convenient legitimising myth for the existing state system.299 While Christmas Island has never been afforded the right to self-determination, contrary to the principles of Chapter XI, Article 73 of the Charter of the United Nations Act 1945, applying this concept to the Cocos (Keeling) Islands would imply that the Cocos (Keeling) Islands community has exhausted the only opportunity they had to express the right to self-determination.

On 6 April 1984, in what was described by Australian and United Nations officials as an act of self-determination, the Cocos Islanders voted for integration of the Islands

298 Sterio, 22.

299 Weller, 26.
with Australia. However, in support of Weller’s comments, Tahmindjis further notes that paragraph two of the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV) of 14 December 1960 states: ‘All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. The Cocos situation illustrates that the ‘freedom’ of the determination may be effectively a myth and that once the political status has been decided the freedom to determine economic, social and cultural development is extinguished if integration with another State is chosen and what would therefore appear to be clear to the Australian Government is that once the expression is exercised, self-determination has been completed and the resulting situation must then be determined by reference to other areas of law and politics.

Prinsen notes in his article that one striking aspect of the decolonization process is that since the 1980s no non-self-governing islands has either opted (or voted) for, or acquired full independence from its colonial metropole. While the Cocos (Keeling) Islands vote in 1984 substantiates this, there is no such ambiguity regarding this situation for Christmas Island since the community has never been afforded the option of determining its right to self-determination.

Recommendation 13 of the Joint Standing Committee on the National Capital and External Territories (JSCNET) Report, Current and Future Governance Arrangements for the Indian Ocean Territories of May 2006 supports this position and reiterates the principle that self-determination should retain its original connotation wherein all peoples freely determine their political, economic, social or


301 Tahmindjis, 197.

other status without a prescription of what form it takes. The Committee recommended that the Australian Government undertake to develop options for future governance for the IOTs 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. Importantly, as with all JSCNET Inquiry outcomes, these are recommendations only and the Government is not obliged to follow and/or implement them. Possible options could include, but not be limited to, maintaining current governance arrangements with some refinement, incorporation into the State of WA and a form of limited self-government.303

However, this was contradicted in the recently released 2016 JSCNET Final Report where there is no reference to any referendum or plebiscite with the community and only minimal reference to consulting with the community about the outcome of discussions between the Commonwealth and the NT and the WA State Governments. This is referenced as Recommendation 19 of the Final Report: ‘The Committee recommends that the Australian Government seek formal advice from the Governments of Western Australia and the Northern Territory to determine whether they are receptive to the proposal for incorporation of the IOTs into their State or Territory. Based upon a positive response to this proposal, the Australian Government should develop an incorporation model for consultation and review’.304 Whatever arrangement is agreed upon with either the State (WA) or (Northern Territory), it should not be at the expense of consulting with the community and


conducting a referendum or plebiscite to gauge the views/opinions of the community. Further, it should also not be seen as excluding the question of self-determination and should be seen as an affirmation of the right for the community.

Governance and legislative arrangements in the non-self-governing external Indian Ocean Territories

Christmas Island was placed under the authority of the Governor of the Straits Settlements in 1889 and incorporated within the Settlement of Singapore in 1900.\textsuperscript{305} This was, of course, the first legislative instrument for the governance of Christmas Island and remained in force (with minor amendments) until the Japanese occupation of the Island from 1942 to 1945. Not until the Japanese departed did

\textsuperscript{305} Islands in the Sun, 33.
governance arrangements change when the Singapore Colony Order-in-Council of 1946 provided that the Island of Singapore and its dependencies, which included the Cocos (Keeling) Islands and Christmas Island, shall be governed and administered as a separate colony and should be called the Colony of Singapore. In 1955, the Cocos (Keeling) Islands were excised from the Colony of Singapore and transferred from the United Kingdom to the Commonwealth of Australia.

Shortly afterwards, in 1958, Christmas Island was also excised and transferred from the United Kingdom to the Commonwealth of Australia. Neither excision from the Colony of Singapore or transfer to Australia involved any reference/ question to the people living on Cocos (Keeling) Islands or Christmas Island at that time. The subsequent agreement for self-government for Singapore included agreement that Singapore would no longer administer Christmas Island and would receive compensation from the Australian Government for the loss of income from phosphate royalties. The possibility of transferring the sovereignty of both places (Christmas Island and the Cocos Keeling Islands) to Australia was discussed for the first time. Australia had been advised that Singapore seemed to have little interest in either Cocos or Christmas Islands. These Islands were deemed dependencies, by accident, of Singapore. According to Kerr, they had no real connection with the Colony of Singapore and any question of allocating funds for them was bitterly resented there. Both these transfers were enacted on the authority of the Queen and by legislation of the Parliament of the United Kingdom and the Parliament of the Commonwealth of Australia when each Island became a separate external non-self-governing territory of Australia.

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306 Islands in the Sun, 33.
307 Williams and McDonald, 440.
308 Kerr, 269.
The Commonwealth of Australia formally accepted Christmas Island as a Territory by authority of the Commonwealth under the *Christmas Island Act 1958* and the Act was proclaimed to come into force on 1 October 1958.\(^{309}\) Christmas Island celebrates the 1st of October every year as ‘Territory Day’ and has a week of festivities and celebrations. Similarly, the Cocos (Keeling) Islands annually celebrate the 23rd of November 1955 when the Cocos Islands Act was proclaimed with the formal transfer of the Cocos (Keeling) Islands to the Commonwealth of Australia.\(^{310}\) The Cocos (Keeling) Islands also mark the significance of 6 April 1984 every year when the smallest act of self-determination ever conducted occurred under the auspices of the Australian Electoral Commission, observed by the United Nations mission.\(^{311}\) As Heng and Forbes note, each of Australia’s external territories owes its existence to an Act of Federal Parliament. Under section 122 of the Australian Constitution, the Federal Parliament retains authority to enact laws for all territories, including its external territories. As a plenary power, all that needs to be demonstrated to support an exercise of this power in the form of a statute is that there is sufficient connection between the law and the relevant territory. Thus, Federal Parliament retains overall plenary power to promulgate laws as it sees fit in respect of all its Territories, subject to any other inherent limitations contained in the Australian Constitution.\(^{312}\) While both Islands of the IOTs achieved representation in the Australian Commonwealth, some years elapsed before any further meaningful progress was made towards further governance incorporation and representation. This occurred because of the *Islands in the Sun* Parliamentary Inquiry into the legal regimes of Australia’s external territories that was released in March 1991. This Parliamentary Inquiry envisioned the introduction of the applied laws system within a broader package of initiatives.

\(^{309}\) Islands in the Sun, 34.

\(^{310}\) Tahmindjis, 185.

\(^{311}\) Tahmindjis, 192.

\(^{312}\) Heng and Forbes, 73.
and actions to ensure that the system had relevance that the laws were applied in a manner acceptable to the community, and that other political and administrative reforms occurred.

At the very least, the laws of Christmas Island were outdated, anachronistic, incomplete and not readily identifiable. The prospect of retaining the status quo was quite untenable. Further, the *Territories Law Reform Act* 1992 amended the *Christmas Island Act* 1958 whose laws were largely based on those of Singapore. The *Territories Law Reform Act* 1992 applied certain Commonwealth Acts and the laws of the State of Western Australia as were capable of being applied subject to amendments and modifications in Territory Ordinances made by the Governor-General. It represented a major advance for the Territory. Therefore, the *Islands in the Sun* Parliamentary Inquiry recommendations are the basis for the current applied laws regime as introduced by the *Territories Reform Act* 1992 in the IOTs, including Christmas Island.

The current governance and legislative arrangements in the IOTs have been in place without any significant change or review since the recommendations of the *Islands in the Sun* Parliamentary Inquiry were implemented. This situation is despite the numerous Commonwealth Inquiries and Reports, the latest being the JSCNET Inquiry commissioned in 2015 with the final report released in March 2016. This is specifically referenced in the Report which made recommendations for improvement. Yet, it seems that change, when it has occurred, has not always been for the better or necessarily benefited IOTs’ residents.

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313 Islands in the Sun, 195.
314 Heng and Forbes, 74.
Integral to this study then is to undertake an analysis of the current applied governance arrangements that should or will reveal the inadequacies and the undemocratic application of these arrangements more than 26 years after their implementation. This is despite the several recommendations of various JSCNET Inquiry Reports over the years, and while there is no procedural obligation by the Government for the implementation of any JSCNET Report recommendation, it nonetheless appears that many have not been implemented. The analysis will also suggest or recommend outcome options to consider in progressing to new governance arrangements for Christmas Island that are consistent with the outcome intentions of this study.

Fundamental to this is the principle of undemocratic representation currently evident in the IOTs (both Christmas and Cocos Islands). The application of the West Australian legal regime does not translate into the people of the IOTs having any democratic vote (and therefore parliamentary representation) in the WA political system that subsequently enacts and enables legislation that is applied to the IOTs. Section 8A of the Territories Law Reform Act 1992 provides the legislative base for the application of WA laws to the IOTs. Under this model, WA laws are applied to the IOTs as Commonwealth laws. New and amended laws in WA automatically apply as Commonwealth laws in the IOTs unless the Commonwealth Parliament determines otherwise, and the Commonwealth decides if the WA laws should be applied to the IOTs. All non-judicial powers in applied WA legislation are vested in the Federal Minister for Territories, who has delegated most of these powers between the Administrator of the IOTs, officers of the Commonwealth Department
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and officials from the WA Government under SDAs.\textsuperscript{316} There are also no democratic arrangements in place where most of the WA State-type services are delivered by the WA State Departments under SDAs to the community of Christmas Island as negotiated and administered between the Commonwealth and the WA Government from time to time, without simultaneous political democratic representation of the community of the IOTs in the WA electoral system.

The practical outcome in almost all cases is that the WA Parliament legislates, and then that legislation applies to Christmas Island despite the fact that Christmas Islanders do not vote for any representatives in the WA Parliament. This was noted in the recent JSCNET Report under a specific heading in chapter 7 of the Report ‘A Democratic Deficit?’ The IOTs effectively have no state-level representation. The IOTs’ federal member and Senators are located in the NT but the territories do not have an NT Legislative Assembly representative. IOT residents are subject to applied legislation from WA, yet they have no representative in the WA Parliament either.\textsuperscript{317}

In short, WA laws are applied to Christmas Island without reciprocal democratic voting representational rights for Christmas Islanders in the WA electoral process. As noted by Grayling in his recent publication Democracy and Its Crisis, no constitutional system should allow a partisan group to hijack the interests of the whole since that is primarily contrary to the principle of what the architects of representative democracy intended and fundamentally against the interests of the


\textsuperscript{317} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 134.
people. This principle is clearly absent in the IOTs because of the application of the WA legislation to the IOTs that not only is representatively undemocratic but also is confusing and not understood by the Island’s community. Further, one of the most important elements within any liberal democracy is the mechanism that holds the government to account and within Australia’s political system, Parliament is the traditional body that does this.

Perhaps for this reason alone, the current applied law model should be repealed or abolished purely on the grounds that it is an undemocratic process that disenfranchises the community of Christmas Island from the fundamental right to vote in the parliament that makes the laws that bind them. Again, Drum and Tate emphasise the importance of voting in Australia for demonstrating the views of the electorate and giving government legitimacy through public support. Saunders reinforces that the most obvious democratic right is the right to vote. Sections 7 (the Senate) and 24 (House of Representatives) of the Australian constitution reflect the necessity of this representation. While the IOTs are represented at the federal level in the NT House of Representatives electorate seat of Lingiari (based in Alice Springs in the NT) as well as the NT Senate, again this principle is absent with the application of WA legislation to the IOTs prohibiting the accountability of the WA Parliament’s actions to the Christmas Island community.

As noted earlier, amendments made from time to time to WA-based legislation by ascension from the WA Parliament have an immediate effect on the Christmas Island community (relevant to the particular legislation) unless the Commonwealth

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319 Drum and Tate, 124.
320 Drum and Tate, 206.
321 Saunders, 81.
determines to override the amended legislation. However, the Commonwealth Minister (from time to time) has not exercised this right since the introduction of the Territories Reform Act 1992. Accordingly, no accountability process is available to the Christmas Island community by way of consultation in terms of the effect of the particular legislation, nor is there any democratic representational right afforded regarding the process by which the WA Parliament makes such legislative amendments. Recently, an example of this democratic inconsistency occurred where the Shire of Christmas Island enacted a local law in 2013 for the control of its cemeteries. The process was similar to that followed by mainland WA local governments, which are compelled to follow the local law process in accordance with the provisions of Part 3, Division 2, subdivision 2 of the Local Government Act (CI) 1995. However, section 3.12 (7) of the Local Government Act (CI) 1995 provides that ‘the Minister may give directions to local governments requiring them to provide to the Parliament copies of the local laws they have made and any explanatory or other material relating to them’.323

In this regard, the WA Minister has no jurisdiction in the IOTs as explained above in relation to the recommendations of the Islands in the Sun report. Despite this, the WA Legislative Council Joint Standing Committee on Delegated Legislation required that the Local Law be provided to the Joint Standing Committee for review in accordance with the Directions made in 2010 under the provisions of section 3.12 (7) of the Local Government Act 1995. The object of these Directions, given by the WA Minister for Local Government under section 3.12(7) of the Local Government Act 1995, is to assist the Joint Standing Committee on Delegated Legislation with its examination of Local Laws and other subsidiary legislation that are subject to section 42 of the WA Interpretation Act 1984. The Joint Standing Committee on Delegated Legislation is

authorised to perform a scrutiny function of the Local Law under its Terms of Reference to assist the Parliament of Western Australia and the Committee, and where part of the process, the Committee may seek an undertaking from a local government to amend the Local Law when failure to comply may render the Local law inoperable. Hence, even though the Shire of Christmas Island complied with all the requirements of the legislation relevant to the procedure in making the local law as prescribed by the provisions of the Local Government Act (CI) 1995 and duly consulted with its community, the local law could have potentially been rendered inoperable because the process of review by the Joint Standing Committee on Delegated Legislation (JSCDL) was not adhered to by the local government.

While this process is acceptable and reasonable in mainland WA local governments in accordance with legislative accountability, it displays an undemocratic process for the local governments of the IOTs because the process requires (WA) parliamentary scrutiny without any democratic representation. Following objections raised by the Shire of Christmas Island to this undemocratic process in 2015, the (then) Commonwealth Department of Infrastructure and Regional Development revised this process and resolved that the process by which the IOTs adopt their local laws are no longer required for referral to the WA Parliamentary Joint Standing Committee on Delegated Legislation. Instead, once the Shire has formally adopted the local law, they are only required to send them to the (now) Commonwealth Department of Infrastructure, Regional Development and Cities (DIRDC) where the local laws will be listed on the Federal Register of Notifiable Instruments.\(^{324}\) This revised process by the Commonwealth (in consultation with the WA Government) serves to highlight the inconsistencies of the applied regime of WA laws that would have (presumably) continued had the Shire of Christmas Island not raised the issue in the context of undemocratic representation.

Further, the *Islands in the Sun* report noted that it is axiomatic in a democracy that, to the greatest degree possible, citizens should be empowered to participate in decision-making, particularly that which affects their daily lives.\(^{325}\)

Recommendations five, six and seven of the *Islands in the Sun* report specifically expressed the following:

‘Five: 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’.

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

‘Seven: The Commonwealth accelerate the development of administrative and political reform on Christmas Island to ensure the progressive development towards the establishment of a local government body on Christmas Island with an expanded role, including direct access to the Minister in respect of laws to apply on the Island, for reviewing Western Australia laws for their appropriateness to the Territory’.\(^{326}\)

These recommendations were based on consideration of five options to address inadequacies identified in the system of laws applying from the time that Christmas Island became an external territory of Australia. The Committee was convinced that

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\(^{325}\) *Islands in the Sun*, 202.

\(^{326}\) *Islands in the Sun*, xx.
maintenance of the status quo was unsupportable, even if urgent steps were taken to undertake a detailed program of law reform. As discussed under Option Two of the Islands in the Sun report, the laws of Christmas Island are inadequate, past efforts at law reform have floundered and there are swathes of matters that are simply not the subject of appropriate regulation.

While a dedicated law reform process could be expected to address the more obvious deficiencies in the laws, it is valid to question whether the integrity, let alone the identity, of the legal base from which the laws would grow or the level of resources required to achieve real reform would justify this approach. It has long been recognised that it is not wise to build on a base of shifting sand. The Islands in the Sun Parliamentary Committee’s subsequent preference was for an amalgam of Options Four and Five in the Report where Option Four was posited to apply the laws from time to time applying in WA with the proviso that any law of Christmas Island inconsistent with an applied law is repealed to the extent of any inconsistency and that no laws will be applied without prior consultation with the residents. The application of the laws of a mainland jurisdiction to Christmas Island is obviously, in terms of resource usage and time, an attractive option. Overriding the application of the laws would be the continued existence of the Commonwealth’s plenary powers to make laws for the peace, order and good government of the Territory. In the context of Option Three (which was similar to Option Four except that it proposed the repeal of all existing laws), it is necessary to ensure that those aspects of the extant legal regime that serve a specific purpose are retained and that the residents of Christmas Island are fully consulted and involved in the process of change to a new regime, which are issues of paramount concern.

327 Islands in the Sun, 196.
Mechanisms for ensuring that appropriate laws are retained and that genuine consultation occurs, however available, should be insisted upon.\textsuperscript{328} A final Option Six related to the question of political integration rather than the applied laws system and therefore did not explicitly discuss law reform but incorporation of the Territory within the geographic and political boundaries of either WA or the NT.\textsuperscript{329} Had Option Six been pursued and researched more intensely at that time, Christmas Island (and the IOTs) could have been incorporated politically into either the NT or WA and the issue regarding the applied legislative regime would now be irrelevant. That is, the legislation of either the NT or WA would have (automatically) applied simultaneously with electoral representation and therefore provided a democratic process for the community in either the NT or WA Parliament. More importantly, the community of Christmas Island would have had the right to vote in either the NT or the WA (Territory or State) elections thereby providing electoral representation that is fundamental to our democratic principle of government.

As noted earlier with reference to Saunders, representatives of the people perform most of the governing in a democracy. Democratic rights are rights that each community considers necessary to make its democratic arrangements work. The most obvious are the rights to vote and to stand for Parliament or for any elected office.\textsuperscript{330} This fundamental principle is currently absent in the IOTs at either the WA State or NT level. This principle also implies that the community should be involved and included in the participation and consultation processes that affect their daily lives. The consultation process by the Commonwealth with the community of the IOTs was in fact raised in the submission by the Shire of Christmas Island in its submission to the Joint Standing Committee on National Capital and External Islands in the Sun, 200.

\textsuperscript{328} Islands in the Sun, 200.

\textsuperscript{329} Islands in the Sun, 58.

\textsuperscript{330} Saunders, 81.
Territories (JSCNET) Inquiry in 2005, as the issue of ineffective consultation in the face of insufficient decision-making roles or political representation within the community had been emphasised repeatedly in Government inquiries and reports.\textsuperscript{331}

In the recently released JSCNET Report of 2016, the Shire of Christmas Island reiterated the lack of consultation by the Commonwealth in their submission(s); these were supported by numerous written and oral submissions who all stated that community consultation conducted by the then Department of Infrastructure and Regional Development (DIRD) was inadequate.\textsuperscript{332} One of the most obvious examples of neither the consultative or participatory process occurring is in the application of the SDAs, although the Commonwealth have reacted to the 2016 JSCNET Report outcomes by commencing the SDA renewal process in 2017 even though no significant progress has been made, given how out of date the SDAs are.

The process of extending these SDAs have been undertaken by Commonwealth and WA State Government bureaucrat agencies only and has not included regular consultation or participation with the community of Christmas Island, thereby ignoring and further denying the right of the Island’s community for any say in the legislation that applies and affects their daily lives. For example, currently 37 SDAs that expired in 2011 are applied to the IOTs and these have been consistently extended by the Commonwealth and the WA Government with minimal reference and/or consultation with the community. Further, there are three WA Government Departments providing SDA-type services to the IOTs without any formal SDA in

\textsuperscript{331} Shire of Christmas Island, ‘Our Future in Our Hands’, (Christmas Island: Submission by the Shire of Christmas Island to the Joint Standing Committee on National Capital and External Territories Inquiry, 2005), 45.

\textsuperscript{332} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 89.
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place at all, and at least two SDAs have been cancelled (Small Business Development Corporation and Lottery West) by the Commonwealth and WA Government without any reference and/or consultation with the community. During the April 2015 JSCNET Inquiry held on Christmas Island, the Shire of Christmas Island President raised this matter again in his submission.\textsuperscript{333}

Notwithstanding the comments above regarding the absence of representative democracy for Christmas Islanders, of equal relevance is the fact that Christmas Islanders are denied the process of responsible government with the application of WA State legislation. That is, responsible government means that all governments must be responsible for their actions to the people who have elected them and the traditional means by which they are held accountable is through Parliament that is the link between government and the people. Without our collective consent, the government would not be legitimate.\textsuperscript{334} Again, this principle is absent in the governance and legislative arrangements applied to the IOTs with the example provided earlier where previously any local law adopted by the IOTs’ local governments required scrutiny by the WA Parliamentary Joint Standing Committee on Delegated Legislation. Therefore, the imposition of this Committee in a process where the WA Parliament has no political and/or electoral jurisdiction is undemocratic and legislatively inconsistent with the application of the WA State Government SDAs. The community of Christmas Island can also not be expected to hold the WA Parliament accountable in accordance with the principle of responsible government when there is no electoral provision to allow such accountability, which in turn denies the community any democratic representation.

\textsuperscript{333} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 6.

\textsuperscript{334} Drum and Tate, 112.
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The IOTs were, of course, not part of Australia at Federation and hence not considered in the Constitution apart from section 122, which allowed ‘any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the Australian representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.’ The framers of the Constitution gave the Commonwealth wide powers to determine how it would deal with territories as and when they became part of Australia. In the context of section 123 of the Australian Constitution regarding incorporation of a Territory within a State, the Parliament may with the consent of the Parliament of a State and the approval of the majority of electors of the State increase the limits of that State. Therefore, it is possible for an external Territory (such as Christmas Island) to be incorporated within a State.\textsuperscript{335} While Recommendation Eight of the \textit{Islands in the Sun} report is that the Commonwealth initiate discussion with the WA Government in respect to the long-term future of Christmas Island, including its possible incorporation within the State of Western Australia, there is no evidence that this option was pursued to the extent of considering its feasibility for incorporation into either the WA State or the NT at the time. Further, it would be unlikely currently that either the NT or the WA State would consider such an option, if for no other reason than the financial implications.\textsuperscript{336} The 2016 JSCNET Report referred to this noting that previous parliamentary committee reports have discussed the notion of incorporating the IOTs into a state. As early as 1991, the \textit{Islands in the Sun} Parliamentary Committee report recommended that the Commonwealth initiate discussions with the WA Government regarding the long-term future of Christmas Island and the Cocos

\textsuperscript{335} Islands in the Sun, 203.

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(Keeling) Islands, including their possible incorporation into the State of Western Australia.337

Had this option been pursued and indeed implemented as a result of Recommendation Eight of the *Islands in the Sun* report, what would the governance situation on Christmas Island be like today? That is, if for no other reason than alleviating the arduous and complicated process currently in place regarding the imposition of WA applied legislation through the cumbersome SDA process. Hence, the applied legislation of WA to the IOTs and its financial cost is crucial to the discussion of self-determination in regard to democratic representation and responsible government. For example, the financial cost of providing SDAs alone in the 2015–2016 annual financial Commonwealth Budget Book was $35.3 million with the total operational budget of $111.3 million, which is less than that in the 2013–2014 year.338

As aforementioned, the communities of the IOTs are disenfranchised in the process of voting in the WA election cycle and therefore denied the democratic opportunity to vote in a system that simultaneously applies the WA State legislation to their daily lives. The laws of any country in some part govern the daily lives of the ordinary citizen of that country and it is therefore paramount that at the very least the citizens have not only an understanding of these laws but also can participate in the process of applying these laws to their everyday life. This, of course, implies that they (the citizens) must understand to some degree how these laws not only work but also how they are applied, and in the situation regarding Christmas Islanders, this is not

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337 *Islands in the Sun*, 53 and 87.

338 Department of Infrastructure and Regional Development, ‘*Commonwealth 2015/16 Annual Budget Book: Indian Ocean Territories*’, (Canberra: Commonwealth of Australia, Communications Branch, 2014), Table 2 – page 4.
entirely evident. Saunders supports this view in her description of democratic rights where the most obvious expression by a community of the democratic process is the right to vote.

Further, as an important part of this process, people need to know what their representatives have done, are doing and are proposing to do, for deciding who to vote for. They need to able to talk to each other about these matters and to talk to their representatives. Accordingly, most of the community on Christmas Island have either no idea, or equally no interest in, who the WA political representatives are because they are disenfranchised from the voting system in WA. As noted by Drum and Tate, broad or universal franchise is only one aspect of ensuring that our system is truly democratic. This is particularly relevant where the community of Christmas Island do not qualify for enrolment on the WA Electoral Roll or indeed on any other State or Territory Electoral Roll and are only provided the opportunity to exercise their voting rights through the Federal Electoral Roll process where most of the community of Christmas Island are enrolled in the Federal House of Representatives seat of Lingiari and the Senate in the NT. The establishment of local governments on the IOTs in accordance with the recommendations of the Islands in the Sun report have also indirectly disenfranchised the community in the election process. The existence of the local government authorities on the IOTs is governed in the same context as on mainland Australia as noted by Grant. In the Australian context local governments are overseen by other tiers of government and conceptualized as political/administrative entities, rather than local polities overseeing local administrations.

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339 Saunders, 82.
340 Drum and Tate, 198.
341 Grant and Fisher, 11.
The specific legislation providing for local government elections for the two Shires in the IOTs is governed by the WA *Local Government Act (CI and CKI) 1995* respectively and subsidiary legislation, such as the WA Local Government State Electoral Roll for the Legislative Assembly in WA, and therefore excludes enrolment for residents of Christmas Island. The electoral process used by the local government on Christmas Island (and the Cocos Keeling Islands) is to combine the ‘Owners and Occupiers’ Roll in accordance with section 4.38 of the *Local Government Act (CI and CKI) 1995* with the Federal (Residents) Electoral Roll for Lingiari, to form the Consolidated Roll used for local government elections. Through this process, persons on the Consolidated Roll for the local government (Shire of Christmas Island and Shire of Cocos Keeling Islands) are able to exercise a vote, at least in the local government election process. Simultaneously, the community of Christmas Island, irrespective of whether they were entitled to vote in the local government election process, are afforded due consultation in regard to local legislative matters that do affect their daily lives. For example, the adoption of the Cemeteries Local Law by the Shire of Christmas Island, and more recently (2018) numerous other local laws now registered as Federal Notifiable Instruments that affect the local community demonstrates democratic representation where the authority of the people (at the local level) has been delegated to the elected representatives of the Shire of Christmas Island, who are in turn accountable at every electoral cycle (local government ordinary elections) to the community. The reference by Drum and Tate would seem to be appropriate and applicable (at least at the local level), where the central notion of voting as a means for legitimising government is whether the voting systems we use provide fair representation. Certainly in the case of

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343 Drum and Tate, 206.
Chapter 4

Christmas Island (and the Cocos Keeling Islands), the absence of voting in the WA election process where simultaneous WA laws apply, would clearly appear not to provide fair representation. Saunders reinforces this principle, where in a democracy, representatives of the people perform most of the governing.344

Most of the academic literature referenced in this study relevant to the democratic rights of people in our society refer to, and have a direct relationship with, the Australian Constitution that was noted in Chapter One of the study. In this regard, the community of Christmas Island should be no different. Section 122 of the Australian Constitution is the applicable constitutional instrument relevant to the non-self-governing Territory of Christmas Island that allows the representation of Christmas Island in either House of the Parliament to the extent and on the terms that it thinks fit.345 However, as aforementioned, Christmas Island is not represented in either the WA State legislature (although WA legislation applies) or in the NT legislature, although federal legislative representation applies. The non-representation of Christmas Island in the WA applied legislative process together with the democratic voting deficit is the most striking anomaly critical to ensuring that Christmas Islanders are afforded fair electoral representation. Further, section 123 of the Australian Constitution applies in regard to the consent being given by the Parliament of the State (WA), and the approval of the majority of the electors of the State voting on the question of including or integrating the non-self-governing Territory of Christmas Island into the State of Western Australia.346 This obvious anomaly will/must be addressed in the outcome of this study where several options will be proposed to provide more equitable and democratic models for the community of Christmas Island to consider.

344 Saunders, 81.
345 The Australian Constitution, 45.
346 The Australian Constitution, 45.
To quote the (then) Hon RJ Withnall, the Minister for the Northern Territory and Independent Member for Port Darwin in 1974 that ‘government cannot be arranged on the instant coffee principle whereby you take 19 elected members, 2 teaspoons of hope and a dash of finance and you can have instant government – of course this is completely ridiculous’. Applied in context to the missed opportunities of the Islands in the Sun report recommendations for the IOTs, this satirical comment may seem appropriate. He was, of course, referring to the proposed constitutional reforms by the Commonwealth Government at the time for the NT regarding the establishment of its Legislative Assembly.

Figure 4.2 Raising of the Australian flag at Smith Point on the proclamation of Christmas Island becoming an Australian non-self-governing Territory on 1 October 1958.
Governance and legislative arrangements in the non-self-governing external Territory of Norfolk Island

In May 2015 Norfolk Island became a non-self-governing external territory. This occurred with the passing of the *Norfolk Island Legislation Amendment Bill 2015* by the Commonwealth Parliament in May 2015 that has resulted in the removal of the Norfolk Island Legislative Assembly to be replaced by a form of Regional Local Government by July 2016 similar to that currently applicable for the IOTs. Accordingly, the Norfolk Island Regional Council commenced as a political entity on 1 July 2016 and held elections for local government councillors shortly afterwards, in accordance with the applied legislation from the State of New South Wales.

The *Norfolk Island Legislation Amendment Bill 2015* that was passed in May 2015 consisted of a package of eight bills to reform the legal and governance framework for Norfolk Island. The Amendment Bill also included *Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015*, a new *Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015*, *Health and Other Services (Compensation) Care Charges Amendment (Norfolk Island) Bill 2015*, *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Amendment (Norfolk Island) Bill 2015*, *Health Insurance (Pathology) (Fees) Amendment (Norfolk Island) Bill 2015*, *Private Health Insurance (Risk Equalisation Levy) Amendment (Norfolk Island) Bill 2015* and *Aged Care (Accommodation Payment Security) Levy Amendment (Norfolk Island) Bill 2015*, all relevant to the legislative framework on Norfolk Island.\(^{348}\)

While this transition was confirmed on the 1\(^{st}\) of July 2016, the discussion in this section will concentrate on the historical developments of Norfolk Island that led to

the establishment of its Legislative Assembly and limited form of self-government with reference to the recent events being made at the end of this section.

Situated some 1,580 kilometres from Sydney and 1,060 kilometres from Auckland, Norfolk Island does not conform to the accepted pattern or idea of a Pacific island and is a distinct and separate settlement. There have arisen political difficulties and differences, some of which have been resolved by the elected Legislative Assembly that was first inaugurated in August 1979. While this brief description by Hillier provides an historical background for this section of the discussion regarding the governance and legislative arrangements in the self-governing Territory of Norfolk Island, other literature will also be referenced to provide the context and relevancy of Norfolk Island’s development to this study.

Following the discovery of Norfolk Island by Captain James Cook in 1774, the island was established primarily as a convict settlement first from 1774 to 1814 and then from 1825 to 1856. The closing of the second penal settlement in 1856 coincided with the arrival of the ‘Pitcairners’ to Norfolk Island, who were the descendants of the Bounty mutineers that had settled on Pitcairn Island in 1790. The closing of the Norfolk Island penal settlement and the transfer of the Pitcairn Islanders to their new home coincided with a constitutional change. By an Act of the British parliament passed in July 1855, followed by an Order-in-Council on the 24th of June 1856, Norfolk was severed from Van Diemen’s Land and created as a distinct and separate Settlement, and the proclamation to this effect was made by Sir William Denison, Governor of New South Wales on the 31st of October 1856.

351 Hoare, 68.
352 Hoare, 72.
No significant legislative or governance changes occurred on Norfolk Island from 1856 until the turn of the twentieth century other than ‘on Island’ laws passed from time to time for administrative purposes. In the early 1900s, a move had been made towards more Commonwealth control of the island, but the government had to attend to more pressing matters. However, around 1910, the possibility was raised again, and many citizens protested against the proposed transfer. With the passing of the *Norfolk Island Act 1913*, which became operative on the 1st of July 1914, the Commonwealth assumed authority of the Territory of Norfolk Island, control being vested in the Governor General of the Commonwealth.353

The Commonwealth control of Norfolk Island was further confirmed with the (then) Prime Minister of Australia (Andrew Fisher) officially appointing the Island’s first Administrator, Mr M V Murphy.354 The tenure of Murphy as Administrator was not an easy task, and as O’Collins notes, it was undertaken during a period when federal politicians and government departments were preoccupied with Australia’s role in the First World War. Murphy had to contend with the inherent problems of being the first resident Administrator, initially for New South Wales, and then for the Commonwealth.355 Murphy left Norfolk Island in 1919, although he was to return later as Acting Administrator for a short term.356 This could equally apply to the tenure of Administrators on the IOTs; however, Norfolk Island has an earlier and more tumultuous history of experience with Commonwealth appointed Administrators, even to the current day. Whatever the relationship between

353 Hoare, 113.


355 O’Collins, 114.

356 Hoare, 123).
Administrators, government departments and the community of Norfolk Island was, there is no doubt that the presence of Commonwealth control on Norfolk Island eventually led to the dissatisfaction by Norfolk Islanders being expressed to the extent where the gradual process for legislative and governance change gained momentum.

Following the passing of the *Norfolk Island Act 1913* that became operative on the 1st of July 1914, and the consolidation of the Island’s first Administrator, several legislative and governance instruments were subsequently enacted that continued to reinforce the Commonwealth’s control on Norfolk Island. The *Norfolk Island Act 1935* was passed to amend the 1913 Act. The Executive Council on the Island was replaced by an Advisory Council consisting of eight members elected annually. The *Norfolk Island Act 1957* repealed the *Norfolk Island Acts of 1913 and 1935* but re-enacted the provision for an Advisory Council of eight members to be known as the Norfolk Island Council. This Council assumed the powers of the previous Advisory Council. The Act also provided for the possible grant to it of some executive powers in the future. It should be noted that although the 1957 Act repealed the 1913 Act, such repeal did not affect the effectiveness of the declaration of acceptance of Norfolk Island by the Commonwealth.\(^{357}\) Hoare notes that by 1954, with exports failing, employment scanty and business unsatisfactory, Norfolk citizens were pressing for more control in local government.\(^{358}\)

In 1960, it was decided to confer on the Advisory Council a wide range of local government powers. Accordingly, the *Norfolk Island Council Ordinance 1960*, which gave the Council normal powers with regard to local functions, was passed. The

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\(^{358}\) Hoare, 140.
powers were to be exercised by a fully elected Council with an elected president. It was also proposed that the Council should maintain the electoral roll. Immediately after being elected in July 1960, the Council resolved that it could not accept the proposed powers because, first, the Administrator was given a power to veto by-laws (Local Laws) passed by the Council and second, the Council would have to raise its own revenue, the then Administrator having stated that the traditional sources of revenue would be denied it.\textsuperscript{359} The Commonwealth chose to re-establish this process with the newly created Norfolk Island Advisory Council in 2015 that provided legislative functions to transition Norfolk Island from its (previous) self-governing status of a Legislative Assembly to that of a local government-type arrangement. In 1961, the Commonwealth submitted a draft set of proposals to the Council. These proposals would have transformed the Council into an Administrator’s Council and would have given Council power to direct the Administrator concerning those functions listed in section 63 of the Ordinance (i.e., normal powers with regard to local government functions). The Norfolk Island Act 1963 was passed and came into effect in April 1964. It amended earlier Acts to provide for the wish of the Island people not to participate in executive government of the Island and for the 1960 Ordinance to be repealed. It also provided for a large measure of consultancy between the Council and the Administrator.

In 1965, in the case of \textit{Newbery v The Queen (Cth)}, Justice Eggleston held that the Commonwealth Parliament had power under section 122 of the Constitution to enact laws for the Government of Norfolk Island. In 1968, the Norfolk Island Council Ordinance was amended to vary the provisions in relation to eligibility to vote for, and to stand for election to, the Council. In 1970, a proposal was made that the Chairman of the Council should be elected and the Council should exercise some

\textsuperscript{359} Hoare, 37.
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executive powers. It received little support at the July 1970 Council elections.\textsuperscript{360} This legislative and governance process set the scene for significant change. It is against the above historical background that the Australian Government in 1975 sought, through a Royal Commission, to obtain well-informed recommendations relating to the Island’s future status, its constitutional relationship to Australia and the most appropriate form of administration for it.\textsuperscript{361}

The 1975 Royal Commission \textit{Into Matters Relating to Norfolk Island} was headed by the Honourable Sir John Angus Nimmo and the subsequent findings of the Royal Commission were known as the ’Nimmo Report’. It was a Labor Federal Government that commissioned the Royal Commission to commence enquiring into the future constitutional status of Norfolk Island.\textsuperscript{362} The Terms of Reference for the Royal Commission were to inquire into the future status of Norfolk Island, its constitutional relationship to Australia and the most appropriate form of administration for Norfolk Island if its constitutional position were changed. The Inquiry and Recommendations were to extend to and take into account:

a) the interests of Norfolk Island residents;
b) the historical rights of the descendants of the Pitcairn settlers, arising from their settlement in 1856;
c) Norfolk Island’s legal position as a Territory of Australia;
d) the present and probable development of the economy of Norfolk Island;

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\textsuperscript{360} Hoare, 37.

\textsuperscript{361} Ric Richardson, ‘A Political History of the Pitcairn People in Norfolk Island from 1856 to 2004’ 6\textsuperscript{th}Edition, (Norfolk Island: Compiled by and The Association of Norfolk Islanders, Greenway Press, 2004), 23.

e) whether social security, health, educational, compensation and other benefits should be provided at levels similar to those which other Australian citizens enjoy;

f) the capacity and willingness of the Island to pay through taxation or other impost for the provision of those benefits;

g) the extent to which Norfolk Island has been, and is now being, used to provide a base for activities (e.g., income tax, gift duty and death duty avoidance or evasion) harmful to the interests of Australia or of other countries;

h) conditions for permanent entry into the Island community;

i) the need for adequate communications between the Island and Australia, and the rest of the world; and

j) the need for adequate law enforcement and judicial machinery.

This process was to be undertaken as expeditiously as possible. The Royal Commission concluded in November 1976, and as Hoare notes, the Nimmo Report, carried out in 1975 and 1976 by Sir John Nimmo, was the most extensive and penetrating study of Norfolk Island affairs in the Island’s history. The Nimmo Report made 74 recommendations, including that Norfolk Island be integrated (i.e., annexed) into the Commonwealth of Australia as part of the federal electorate of Canberra and not as a part of any State.

Importantly, Nimmo specifically stated that no referendum on Norfolk Island should be allowed. This specific recommendation had implications for the process by which Norfolk Islanders could seek recourse through the United Nations in regard to determining (by Referenda) their non-self-governing status, and will

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364 Hoare, 151.
365 Richardson, 23.
receive further discussion later in this section, similar to the situation on the IOTs, remembering that (at that time) the Cocos (Keeling) Island had not undertaken the process (this occurred in 1984) and Christmas Island has never been afforded the process. Other recommendations of importance were that the Norfolk Island Council be abolished and replaced by an incorporated body to be known as the Norfolk Island Territory Assembly (not to be confused with the later Norfolk Island Legislative Assembly), and that all social security, all pension and all medical, hospital and other health benefits dispensed by the Commonwealth Government be extended to residents of Norfolk Island as well as all taxation and other imposts as apply in the Australian Capital Territory (ACT) apply to Norfolk Island.366 With Australia (through the Nimmo Report recommendations) refusing to allow Norfolk Islanders to conduct a referendum, another way of making their feelings apparent was by Norfolk Islanders signing a ‘Solemn Declaration’ in which 94% declared that they did not wish to be integrated into Australia, but the Australian Minister responsible (then) for Norfolk Island (Senator Reg Withers) said that the ‘Solemn Declaration’ was totally, completely and utterly valueless.367

Understandably, most Norfolk Islanders were not impressed with the statement by Senator Withers or with the majority of the Nimmo Report recommendations. However, the 1976 Nimmo Report illustrated the dilemmas that have continued to confront Australia in its relationship with Norfolk Island, even to date. As will be noted later, the concerns of the Australian Government could have been addressed adequately without having to resort to methods of diminishing and/or removing governance and legislative arrangements to achieve what appears to be a gradual erosion of self-determination.

366 Hoare, 152.
367 Richardson, 24.
In 1978, a new Commonwealth Minister, the Hon RJ Ellicott, visited Norfolk Island and announced that the Australian Government had decided not to implement the *Nimmo Report*. Instead, it would devise a form of self-government, provided that Norfolk Island could support itself from its own resources. Embodying Mr Ellicott’s design, the *Norfolk Island Act of 1979* restored a measure of (so-called) self-government to the people of Norfolk Island, although Australia retained many powers, which it promised to review within five years.\(^{368}\) As O’Collins notes, since Australia was not willing to cast Norfolk Island adrift, alternative reforms had to be devised with the aim of providing a greater degree of self-government. The *Norfolk Island Act 1979* incorporated many of the *Nimmo Report* recommendations and a nine-member Norfolk Island Assembly was established, with the Administrator taking on a more representative role.\(^{369}\)

In May 1979, Ellicott visited Kingston (Norfolk Island) and unfolded the government’s policy for Norfolk Island. Nimmo’s recommendation for the extension of Australian laws had not been accepted, and in particular, the government had decided not to introduce Australian taxation and social services, for ‘now’. However, the recommendations for the replacement of the Norfolk Island Territory Assembly by a Legislative Assembly with legislative and executive powers had been accepted. Ellicott also said that a decision on representation in the Federal Parliament would be deferred pending discussions with the new Legislative Assembly; exemption from Australian sales tax would continue; workers compensation would not be extended provided a suitable local system was implemented; a land use development plan should be considered within 12 months; upgrading of the airport would be considered; an economic feasibility study would soon begin; a referendum

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\(^{368}\) Merval Hoare, 155.

\(^{369}\) O’Collins, 146.
would not take place; and within five years of the Assembly’s inauguration, an extension of its legislative powers would be considered.\(^{370}\) In his speech to the Federal Parliament House of Representatives on the 11\(^{th}\) of May 1979 (recorded in Hansard), the Hon RJ Ellicott advised the House regarding his visit to Norfolk Island and the government’s policy on Norfolk Island as follows:

‘May I say at the outset that the Government recognizes the special situation of Norfolk Island, including the special relationship of the Pitcairn descendants with the Island, its traditions and culture. It is prepared over a period of time, to move towards a substantial measure of self-government for the Island. It is also of the view that although Norfolk Island part of Australia and will remain so, this does not require Norfolk Island to be regulated by the same laws that regulate other parts of Australia. One of the main recommendations of the Report of Sir John Nimmo on Norfolk Island was that, except in special cases, all laws which applied to other parts of Australia generally should also apply to Norfolk Island. Having considered all the relevant matters the Government has decided not to accept this recommendation but to allow the present situation to continue under which laws of the Australian Parliament only apply to this Island if special provision is made in the particular law’.\(^{371}\)

Further, in his speech to the House of Representatives the Minister concludes that in the government’s view no referendum should be held on Norfolk Island.

\(^{370}\) Richardson, 25.

‘The Government has also considered the proposals that have been made for a referendum. It has already received a wide expression of views from the Council and the community. In reaching its decisions it has taken those views fully into account. In all the circumstances and having regard to the decisions it has made, the Government has decided that a referendum should not be held’.\textsuperscript{372}

Accordingly, the particular policy on not holding a referendum for the people of Norfolk Island is relevant to the future governance status of Norfolk Island since it appears to have been purposely instigated as a means to remove the Norfolk Islanders from the process of making application to the United Nations in accordance with Resolution 1514 where there was a clear and definite responsibility by the Commonwealth to afford the people of Norfolk Island with the opportunity to consider their self-determination status. Specifically, in accordance with General Assembly Resolution 1514 passed in 1960 by the United Nations regarding the Declaration on the Granting of Independence to Colonial Countries and Peoples, ‘all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Further, any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations’.\textsuperscript{373} Again, it is important to note that Christmas Island appears to have been ignored in this process in the holding of a referendum in accordance with the above United Nations Resolution, and recently, Norfolk Islanders have posited themselves in making application to the United Nations for a referendum now that the Commonwealth has

\textsuperscript{372} The Hon RJ Ellicott, Minister for Home Affairs Speech, 2253.

introduced the *Norfolk Island Legislation Amendment Bill 2015* that took effect in July 2016.

The first Norfolk Island Legislative Assembly took office in August 1979, and the nine-member Norfolk Island Legislative Assembly remained in office until the recent reforms by the Commonwealth were implemented in 2015–2016. As O’Collins notes, progress towards complete self-government continued slowly in the years following the establishment of the first Norfolk Island Legislative Assembly and was criticised particularly by those islanders seeking an even greater degree of representation for indigenous people of the Island because they believed they were entitled to a vote for self-autonomy.374 Richardson notes that the Society of Pitcairn Descendants continued to pursue its contention that the Pitcairners are a separate and distinct people and called into question Australia’s behaviour in not extending the two international Covenants to the Pitcairners of Norfolk Island.375 That is, the two international covenants being the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Undoubtedly, after the enactment of the *Norfolk Island Act 1979*, Norfolk Island enjoyed a degree of self-government not enjoyed by the Cocos (Keeling) Islands and Christmas Island.

However, this was not to the extent that Norfolk Islanders had expected and indeed continued to demand. This resistance was demonstrated when the outcome of the *Islands in the Sun* report became evident in chapter seven of the Report which discussed the legal regime of Norfolk Island. Consideration was specifically given to progress made on Norfolk Island since self-government was introduced in 1979 and

374 O’Collins, 149.
375 Richardson, 31.
to areas of law in which further action could be taken to ensure that Territory residents have benefits, rights and protection under the laws that are the same as, or at least comparable with, mainland (Australian) standards.376

Until the recent Norfolk Island Legislation Amendment Bill 2015 that was passed by the Commonwealth Parliament in May 2015, numerous other governance and legislative changes occurred on Norfolk Island since the recommendations of the Islands in the Sun Report. Some of these can be summarised by the several JSCNET Inquiry Reports, including the most recent 2014 JSCNET Inquiry Report Same Country: Different World – The Future of Norfolk Island that led to the introduction of the Norfolk Island Legislation Amendment Bill 2015, the 2011 Road Map and numerous Commonwealth Government Departmental Reports all of which were responded to, and rejected by, the Norfolk Island Legislative Assembly(s) over time. Norfolk Island was given a significant degree of autonomy in 1979. The Legislative Assembly created in that year had plenary legislative power, subject only to a restricted list of matters on which it could not legislate or could do so only with the Federal Government’s consent. Therefore, the Assembly could legislate on many matters that in mainland Australia would have been matters for the Federal Parliament, including immigration, social security, customs, quarantine, postal services and telecommunications.

At a local government level, the island’s democratic institution had authority over a wide range of local matters, such as roads, water and electricity supply, sewerage, garbage, building control and museums. The Assembly could also legislate on matters typically under the authority of a State in the Australian federal system, for example, education, surface transport, firearms, registration of births, deaths and marriages, and public health. In addition, the Legislative Assembly also passed

376 Islands in the Sun, 12.
many innovative laws, including a statutory social security system, a no-fault workers compensation scheme, a health care scheme, statutory and strategic land planning, and land titles legislation. The Norfolk Island 2013–2014 Annual Report demonstrated the exhaustive list of matters for which the Norfolk Island Assembly was responsible.\textsuperscript{377} The recent introduction and passing of the \textit{Norfolk Island Legislation Amendment Bill 2015} by the Australian Parliament has effectively removed the delivery of these functions by the Norfolk Island Assembly with the abolishment of the \textit{Norfolk Island Act 1979}. While the Norfolk Island Assembly accepted the legislative changes proposed in the \textit{Territories Law Reform Bill 2010} in return for financial assistance that was embodied in intergovernmental agreements, it did not contemplate the abolition of the Assembly or Norfolk Island’s other democratic institutions.\textsuperscript{378}

The expressed preference of the Norfolk Island Government was federal-type functions to be assumed by the Australian authorities, leaving state-type and local government functions to be undertaken by the elected representatives of the Island’s community. Instead, the notion that the Norfolk Island Legislative Assembly should be abolished only arose quite recently, in the JSCNET Inquiry Report published in October 2014. That JSCNET Committee’s perspective was that a new legislative framework was required and that state-level type services should be provided by a state government (preferably New South Wales) on a contracted fee-for-service basis. This model mirrors the governance model of Australia’s IOTs, Christmas Island and the Cocos (Keeling) Islands. The response by the Norfolk Island Assembly to this part of the JSCNET Inquiry Report was that it cautioned against


\textsuperscript{378} Commonwealth of Australia, ‘\textit{Commonwealth Territories Reform Act 1992}’, (Canberra: Commonwealth Publishing Service, Number 139, 2010), Division 1 page 4.
merely adopting another external territory’s model, be it the IOTs or Lord Howe’s and applying it to Norfolk Island.379

Accordingly, Norfolk Island is faced with the prospect of a democratic deficit where the delivery of state-type services, including such essential functions as education and health, are delivered by unelected persons under opaque arrangements of an unknown kind and where they are likely to experience the same problems and issues that the communities of Christmas and Cocos (Keeling) Islands do with the applied legislation model. In seeking to avoid this outcome, the Norfolk Island community was given the opportunity by the (outgoing) Legislative Assembly to express their opinion in a referendum, which was held on the 8th of May 2015, and in which the electors of the Island overwhelmingly expressed their opinion that the Commonwealth Parliament should not pursue the contemplated changes until the Island’s community had exercised their right to freely determine their political status and future. Conversely, the Commonwealth upholds the virtues of what they have imposed, or will impose, on the Norfolk Island community in the recent 2016 JSCNET Report for the IOTs. Political will and determination, devoting adequate resources, having a clear mandate, good leadership and sound execution, together with providing for full community engagement have proved integral to the timely progress of the reforms on Norfolk Island.380 In this regard, the political future of Norfolk Island continues to remain precariously balanced, especially given that the community continue to actively pursue their democratic rights through the United Nations process.

Governance and legislative arrangements in the self-governing mainland internal territories of the Northern Territory and the Australian Capital Territory

The NT was governed as part of New South Wales until 1858, when it was transferred to South Australia and later to the Commonwealth. An advisory Legislative Council was established in 1947, but NT self-government did not come about until 1978.\textsuperscript{381} For the purpose of this section, the study is primarily concerned

\textsuperscript{381} Drum and Tate, 95.
with the events that occurred since 1978 concerning self-government for the NT as an internal territory of Australia. The inauguration of the NT Legislative Assembly involved a torturous process. After years of pressure from the Territory, the Liberal and Country Party government in Canberra in 1972 was moving to grant a small reform, including full executive authority over some local functions and revenue areas. This was the starting point for the NT having its own form of self-government and even though a change of Federal Government occurred in late 1972 that slowed progress, a unicameral legislative chamber was eventually achieved, although to date, it still does not have full independent legislative powers. That is, the Federal Government retains the right to legislate for the NT and to also overturn any legislation passed by the NT Legislative Assembly. For example, the Federal Government exercised this power when it repealed the Territory’s voluntary euthanasia law in 1996, which it is entitled to do so under section 122 of the Australian constitution.

Despite the landmark event of the formation of the Legislative Assembly, in terms of government and administration, the period from 1974 to 1978 was essentially only a partial ‘Cabinet government’ and very much a transition period. The Northern Territory (Administration) Act 1974 established an Administrator’s Council of the Administrator and five persons as members of the Legislative Assembly, although it retained the definition that had been previously established for the NT Legislative Council and was interpreted as well short of responsible Cabinet government. The Northern Territory (Self Government) Act 1978 established the first formal Ministry, replacing the previous transition situation; finally, a real Cabinet had been

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382 Jaensch and Marshall, 5.

383 Harvey, Longo, Ligertwood and Babovic, 144.

384 Jaensch and Marshall, 256.
Sections 6 to 10 of the *Northern Territory (Self Government) Act 1978* prescribes the role and function of the Administrator of the Northern Territory where the Legislative Assembly has power, with the assent of the Administrator, that every proposed law passed by the Legislative Assembly shall be presented to the Administrator for assent. This is an interesting difference between the function and role of the Administrator of the Northern Territory, to that of the Administrator of the Indian Ocean Territories (and the recently created Norfolk Island Regional Council), where no such situation is relevant to the IOTs because of their status as non-self-governing external territories. The non-self-governing external IOTs have no capacity to make and/or propose any laws as they are subject to the applied legislation of WA through the SDA process.

The exception to this is the (limited) capacity of the local governments of the IOTs to make local laws (for example Shire of Christmas Island *Cemeteries Local Law 2013*), although this process is still subject to the provisions of the WA applied legislation. In 1998, the NT Government convened a Constitutional Statehood Convention and this Convention subsequently submitted a draft Constitution to the Legislative Assembly that recommended, inter alia, statehood for the NT at the earliest. The draft Constitution was adopted by the Assembly. The subsequent referendum on whether the Territory should become a State was held in the NT later that year, which was narrowly defeated, and it remains an intriguing possibility that the Territory might one day become a State, and in particular, under what conditions they would be admitted to the Federation. In response to the failure of the referendum, the (former) NT Chief Minister (Denis Burke) wrote in 2003 that a

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385 Jaensch and Marshall 257.
387 Harvey, Longo, Ligertwood and Babovic, 144.
plebiscite on the question of Statehood should be held and it should be made quite clear what exactly is being asked and the kind of state the NT would be, before being voted on. In this regard, it would be far better to have that question out of the way before getting down to the details of the framework and structure of the state.388

At present, the Northern Territory Government consists of a ministry appointed by the Administrator from the elected members of the Legislative Assembly. The Administrator, in turn, is appointed by the Governor General of Australia. The Administrator normally appoints the leader of the majority party in the Legislative Assembly as the Chief Minister and on the advice of the Chief Minister appoints the remaining members of the ministry. That is, while it is the Governor of each Australian State that appoints the Premier of that State, it is the NT Administrator who formally appoints the Chief Minister. The NT is represented in the Commonwealth Parliament by two members in the House of Representatives, those for Solomon and Lingiari, and two members in the Senate. The Member for Lingiari also represents voters from Australia’s IOTs, while the NT Senators represent those voters in the Senate. As Drum and Tate note, one difference between states and territories is the degree of representation in federal politics. Given their small representation (territories), handing them equal Senate representation would be problematic because it would mean that they would be highly over-represented per capita, compared with the larger states.389 Financial arrangements for the NT are largely reliant on Commonwealth assistance through the Commonwealth Grants Commission with the capacity of the NT to raise its own revenue limited. The rapid population growth of the NT, and its subsequent demand on infrastructure to


389 Drum and Tate, 95.
support this growth, compounds its fiscal problem and its continued reliance on the Commonwealth.\textsuperscript{390} The Commonwealth Grants Commission included the NT in the federal Financial Assistance Grant process in 1988–1989 in the same way as the States and it also received special revenue assistance to smooth its adjustment.\textsuperscript{391} This will be further discussed in the next chapter for comparative purposes with the IOTs.

In summary, the granting of self-government to the NT did not provide an equivalent authority. The Assembly’s authority was local autonomy rather than state-type sovereignty. Its authority was (and is) subject to the oversight and, if it so desired, the direction of the Commonwealth Government. The transfer of powers does not restrict the Commonwealth from enacting laws on any issue. Hence, even if the intention was that the Commonwealth would legislate only to the extent necessary to secure the relevant national policy objective and in consultation with the NT Government, the NT Assembly is, in fact, still subordinate. Even with self-government, the Commonwealth retains a veto power over any Act of the NT Legislative Assembly. The Governor General (on the advice of the Commonwealth Government) retains the authority to disallow any law. The Act (Self-Government) did establish a component of responsible government at the local level, in that the Administrator acts on the advice of the NT Ministers, but the veto power retained in Canberra is a severe formal limitation.\textsuperscript{392} Therefore, this situation is relevant to the final discussion in the conclusion and recommendations of this study regarding Christmas Island.

\textsuperscript{390} Jaensch and Marshall, 322.
\textsuperscript{392} Jaensch and Marshall, 15.
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Figure 4.4 Coat of Arms and Flag of the Northern Territory.
The Australian Capital Territory was created as the seat of national government. After the establishment of Canberra in 1913, Canberra was administered federally, with self-government not granted until 1988. This was in fact consistent with section 125 of the Australian Constitution where colonial delegates flagged a need for a national territory during the Federation Conventions of the late nineteenth

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393 Drum and Tate, 95.
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century. That is, section 125 of the Australian Constitution provided that, following Federation in 1901, land would be ceded freely to the new Federal Government.\textsuperscript{394} The territory was transferred to the Commonwealth by the state of New South Wales in 1911, two years prior to the naming of Canberra as the national capital in 1913. In the period prior to self-government (1989), the Federal Minister for Territories made all decisions relating to the ACT. Advisory bodies were established to inform the Minister about matters of concern to the residents of the ACT. When the Federal Government decided that the ACT needed its own system of self-government, the Federal Parliament passed the \textit{Australian Capital Territory (Self-Government) Act 1988}, along with other related legislation that established self-government in the ACT. There were 117 candidates for the subsequent election to the Legislative Assembly, with the poll being held on 4 March 1989. The Assembly met for the first time on 11 May 1989.\textsuperscript{395} Unlike other self-governing Australian Territories (e.g., the NT), the ACT does not have an Administrator. The Crown is represented by the Australian Governor-General in the government of the ACT. Until late 2011, the decisions of the Assembly could be overruled by the Governor-General (effectively by the national government) under section 35 of the \textit{Australian Capital Territory (Self-Government) Act 1988}, although the Federal Parliament voted in 2011 to abolish this veto power, instead requiring a majority of both Houses of the Federal Parliament to override an enactment of the ACT.\textsuperscript{396} The Chief Minister performs many of the roles that a state governor normally holds in the context of a state; however, the Speaker of the Legislative Assembly gazettes the laws and summons meetings of the Assembly. Similar to the NT’s voluntary euthanasia legislation, the ACT legislated for same-sex

\textsuperscript{394} \textit{The Australian Constitution}, 46.


civil unions; however, the Commonwealth Parliament overrode this, and thus, while
the ACT (and the NT) have some democracy they are still subject to being vetoed by
the Commonwealth.\footnote{Harvey, Longo, Ligertwood and Babovic, 144.}

Further, in response to the legislation of euthanasia in the NT, and to ensure the ACT could not contemplate or include its own similar legislation, subsection 1A and 1B were added to section 23 of the \textit{Australian Capital Territory (Self-Government) Act 1988} by the Commonwealth Parliament in 1997 to prevent the enactment of euthanasia laws while permitting palliative care.\footnote{Australian Capital Territory (Self Government) Act 1988, 13.}

The level of Commonwealth control in the ACT is much greater than that which applies to the NT where the provisions of section 23 of the \textit{Australian Capital Territory (Self-Government) Act 1988} prescribe for the acquisition of property otherwise than on just terms, the provision by the Australian Federal Police of police services in relation to the Territory, the raising or maintaining of any naval, military or air force, the coining of money and the classification of materials for the purposes of censorship.\footnote{Australian Capital Territory (Self Government) Act 1988, 13.} The Governor General is also empowered to disallow Territory enactments such as that legislated by the ACT for same-sex civil unions under section 35 of the \textit{Australian Capital Territory (Self-Government) Act 1988} and to dissolve the ACT Legislative Assembly under section 16 of the \textit{Australian Capital Territory (Self-Government) Act 1988}.\footnote{Australian Capital Territory (Self Government) Act 1988, 18 and 9.} Accordingly, the potential (and actual) intervention by the Governor General remains an example of the veto control that the Commonwealth has over the ACT. The challenge then for the ACT seems to be to provide a workable ministry and government within the legislative constraints of Commonwealth control with little prospect of any other governance arrangements being contemplated for the ACT. Essentially the ACT was created specifically as the
location of the Commonwealth Government, and hence, it would be less likely to become a State. To achieve this, section 52(i) of the Australian Constitution, which gives the Commonwealth exclusive power to make laws for the seat of government might also need to be amended. Accordingly, there is little prospect of the ACT ever becoming a new State of the Commonwealth since section 125 of the Australian Constitution also clearly prescribes the seat of government to remain in Commonwealth territory, and therefore, for the ACT to become a State, the Commonwealth would need to determine a new location for the national seat of government within another territory, provided section 125 of the Australian Constitution contemplates such a change, which is highly unlikely.

Both the NT and the ACT have been included in this chapter in a comparative context as internal self-governing territories with the Indian Ocean and (now) Norfolk Island non-self-governing territories that will be summarised in the final chapter when considering governance models for the IOTs. In this regard, the option of considering the NT internal self-government system for Christmas Island seems more appealing, and certainly less constrictive than the ACT for the reasons outlined above.

**Governance and legislative arrangements of Lord Howe Island**

It is not intended to provide an exhaustive and comprehensive description of the governance and legislative arrangements on Lord Howe Island but merely a brief description as a contextual background for consideration in the governance options available to Christmas Islanders. In particular this model is considered because some reference to the governance arrangements of Lord Howe Island were included in some of the submissions to the recent JSCNET 2015 IOTs Inquiry and therefore

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Drum and Tate, 96.
should be considered a possible viable option. Lord Howe Island is situated approximately 760 kilometres northeast of Sydney NSW in the Pacific Ocean.\textsuperscript{402} Lord Howe Island is controlled and managed by a constituted Lord Howe Island Board (LHIB) and an Island Committee that defines their respective powers, authorities, duties and functions; to make provision relating to the tenure of land upon the said Island; to validate certain matters; and for purposes connected therewith of the Act.\textsuperscript{403} The LHIB, established under the \textit{Lord Howe Island Act 1953}, is a statutory body representing the Crown and is charged with the responsibility of administering the affairs of Lord Howe Island.

The seven member Board consists of four elected islanders and three members appointed by the Minister for the Environment. Under the Act, the Minister may appoint any member of the Board as Chairperson. Historically, and currently, a senior departmental representative of the Minister has been appointed to the role of Chair. However, with the adoption of the \textit{Lord Howe Island Amendment Act 1981}, the Board was re-structured in 1982. The Island Committee was abolished. Three of the five members of the Board were elected by the islanders.\textsuperscript{404} This was the first time in its history that Lord Howe Islanders had held the majority of seats on their own Board, and interestingly, the Board took on a semblance of a local government authority. Interestingly, the term ‘islander’ is defined in section 2 of the \textit{Lord Howe Island Act 1953} that gives substance to the definition, similar to the definition applied under the Preamble of the (former) \textit{Norfolk Island Act 1979} whereas the residents of


\textsuperscript{403} New South Wales State Government, \textit{‘Lord Howe Island Act 1953 Number 39’}, (Sydney: NSW State Law Publisher, amended version 2016), 3.

Norfolk Island include descendants of the settlers from Pitcairn Island and the Parliament recognises the special relationship of the said descendants with Norfolk Island and their desire to preserve their traditions and culture.\textsuperscript{405} That is, not all Lord Howe residents are islanders, but the definition of islander includes certain residential requirements. The Minister may, on the recommendation of the Board made in special circumstances, declare a person to have retained or acquired the status of an islander. Residence means residing in good faith on certain land ‘as his or her usual home, without any other habitual residence’.\textsuperscript{406} If, for no other reason, this can be an important model for Christmas Islanders to consider, given that there is already a constituted local government authority on Christmas Island, albeit currently constituted under the provisions of the WA applied legislation model.

Part 4 of the \textit{Lord Howe Island Act 1953} deals with land tenure and this will be subject to more detailed discussion in Chapter 6 of the study.\textsuperscript{407} From a legislative perspective in 1953, this was the centrepiece of the Act and is still of major legal and practical importance. However, the constitution of the Board, with its majority of islander members, is now significantly different from its original constitution in 1953 and therefore has implications for the practical application of the legislation. Primarily this is because the Island was placed on the United Nations World Heritage List in the 1980s. This listing has subsequently given the LHIB a weighty responsibility with the \textit{Lord Howe Island Amendment Act 1981} ensuring that future administrative decisions would be compatible with environmental values. Again, in this context a similar parallel can be drawn with Christmas Island concerning its heritage and environmental values, which will be discussed further in Chapter Six.


\textsuperscript{406} New South Wales State Government, ‘\textit{Lord Howe Island Act 1953 Number 39}’, (Sydney: NSW State Law Publisher, amended version, 2016), 2.

\textsuperscript{407} Lord Howe Island Act 1953 Number 39, 11.
Only one of the JSCNET 2015 Inquiry submissions recommended the adoption or incorporation of a Lord Howe Island model to the IOTs. Submission 41 to the JSCNET 2015 Inquiry proposed the formation of a Statutory Authority as an alternative model of governance for the IOTs to consider as an entity similar to the LHIB in NSW, or the Rottnest Island Authority in WA where the LHIB is a Statutory Authority established under the provisions of the Lord Howe Island Act 1953.

Responsible to the NSW Minister for the Environment, the LHIB comprises islanders selected by the community and members appointed by the Minister. The Board is charged with the control and management of the Island and the islanders’ welfare. Similarly, the Rottnest Island Authority Act 1987 gives that Authority the power to control and manage the island, reporting to the WA Minister for Tourism. The Board of the Rottnest Island Authority consists of a Chair, appointed by the Governor on the nomination of the Minister for Tourism, and five other appointed members.\textsuperscript{408}

However, this consideration would presume that WA would have to accept the IOTs if a similar Rottnest Island Authority were to be created in accordance with the provisions of section 123 of the Australian Constitution and as noted in the JSCNET Final Report 2016, this is unlikely to be supported by WA. Further, this proposal was not subsequently supported by the JSCNET 2015 Inquiry, even though establishing the Statutory Authority may be a proposal worth exploring further; The Committee however, could not tell from the information provided to it whether the proposed model for the IOTs along the lines of the LHIB and Rottnest Island Authority could be applied to the IOTs. Establishing another expensive bespoke governance model will not redress the underlying problem: that there is no State level of

\textsuperscript{408} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 144.
government and representation. In this regard, there certainly appears to be some opportunity to further explore this notion since little information has been disseminated to the Christmas Island community regarding the possibility of establishing a Statutory Authority for the IOTs as raised in several JSCNET Inquiry Reports. The outcome of this study can therefore provide further information and should be disseminated as relevant information to the community regarding what constitutes a Lord Howe Island or Rottnest Island Authority model for the IOTs to consider.

Governance and legislative arrangements of Nauru, Cook Islands and Niue

The final examples to consider and briefly discuss are the Pacific island nations of Nauru, the Cook Islands and Niue. The case of Nauru is relevant not only because of its unique transition from a self-governing territory of Australia and eventual independence, but also because of its similar economic development with Christmas Island owing to phosphate mining. From the end of the nineteenth century with the discovery of rich phosphate deposits in Nauru and Ocean Islands in the Pacific, and Christmas Island in the Indian Ocean, a thriving mining, shipping and distribution business was created and the political, social and economic destiny of these phosphate-rich remote islands had a common thread binding them together. More recently, there has been an unfortunate similarity between Christmas Island and Nauru owing to the Commonwealth’s immigration policy, or the ‘Pacific Solution’. Nauru is a coral island in the Pacific Ocean some 3,000 kilometres north-east of Australia, with an area of approximately 21.2 square kilometres, and is one of the

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410 Williams and McDonald, xvii.
world’s smallest independent republics. Nauru was originally a part of the German Marshall Islands Protectorate. It was formally incorporated into the European imperial system when it was officially annexed by Germany in 1888. The discovery of commercially exploitable quantities of phosphate a decade later changed the future of Nauru immeasurably even from the beginning. The British Empire emerged as the dominant economic interest on the island when the Pacific Phosphate Company started to exploit the reserves in 1906, under licence from Germany. The importance of the superphosphate fertiliser manufactured from these reserves became vital to Australian agricultural growth. Therefore, when the First World War broke out in Europe, Canberra sent an expeditionary force to seize Nauru in 1914, thus beginning the long association (and interference) by Australia in Nauruan affairs.

After the Second World War, Nauru became a United Nations Trust Territory under the joint authority of Australia, New Zealand and Great Britain, but administered by Australia. Although the United Nations insisted on self-determination for all dependencies, large or small, not even the most critical Eastern Bloc countries (at the time) were prepared to suggest that self-determination for the Nauruans (interpreted as meaning the protection of Nauruan interests) would involve much more than resettlement, an increased return from phosphate for the Nauruans and, perhaps increased powers for the Nauru Local Government Council. All agreed, as the New Zealand representative stated in the Trusteeship Council in 1960, that ‘the Nauruan community cannot be regarded as a nation in embryo; it is in no sense a

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412 Herr and Potterin, 201.
potential state’. Therefore, it appeared that Australia, New Zealand and Great Britain were happy to continue treating Nauru as a quasi-colonial territory under the mandate/trusteeship of Australia, which was clearly underpinned by the economic value of phosphate to each country, and saw any attempt at decolonisation as a threat to this economic prosperity. However, this relationship moderated by the United Nations enabled Nauru to hasten the pace of national self-determination at a time that was especially congenial in terms of international expectations of smaller polities. The Nauru Act of 1965 established by the Commonwealth allowed for a Legislative Council, an Executive Council and a judicial system, although the (Commonwealth) Nauru Independence Act of 1967 was to lead to eventual full self-determination and independence for Nauru with Australia declaring that it shall not exercise any legislative, administrative or jurisdictional powers over Nauru.

The export of phosphate ore provided the means in that its reserves, although finite with a projected life span of only 30 to 40 years by the late 1960s, were significant, especially given its small population. Unlike most aspirants for independence in the era of the 1960s, Nauru could actually afford to meet the financial costs of sovereignty provided it was prudent with its income to provide for its own future. There was an element of the ‘chicken and the egg’ argument regarding Nauru’s prospects for financial independence. The islanders would have this capacity if they secured control of their phosphate reserves but would need to achieve their political independence to assert their claims fully. Yet, political independence would not be credible without control of the phosphate. Eventually the Nauruans achieved both together. Contributing substantially to the successful negotiating of these complex and intertwined issues was the fact that Nauru was a United Nations Trust.

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413 Williams and McDonald, 466.

414 Herr and Potterin, 199.
Chapter 4

Territory.415 While Nauru achieved its independence under very favourable international conditions, it was able to press its claims both because it was a coherent nation and had the resources to pay its own way in the world. The former condition remains but the exhaustion of the phosphate reserves has raised very serious questions as to the latter.416 In other words, there was a short-term exchange for self-determination and independence at the expense of long-term financial viability of the state. Connell notes that failure has been the exceptional outcome of the ‘resource curse’ scenario. Nauru has moved from considerable affluence, based on the export of phosphate, to penury, where public service salaries cannot be paid and the basic functions of the state have collapsed. It is a history of both tragedy and farce.417

Nauru became self-governing in January 1966, and following a two-year constitutional convention period, it achieved full independence from Australia in 1968 that interestingly ignored some of the other self-determination models that Nauru could have considered during this two-year constitutional convention period, especially in its neighbouring Pacific region that still exists currently. For example, there were options available such as that of internal self-government adopted by the Cooks Islands only three years before Nauruan independence. Limited political control did not appeal to the Nauruans because it would not satisfy either their national or financial ambitions. Having the weight of the United Nations (and its deep philosophical commitment to decolonisation) behind them clearly benefited the Nauruans in their pursuit of independence, and this, as much as any other factor, sealed the issue.418 Conversely, as Hannum notes the Cook Islands and Niue located

415 Herr and Potterin, 202.
416 Herr and Potterin, 212.
417 John Connell, ’Nauru: The First Failed State?’, (Sydney: The Round Table, 95 (383), University of Sydney, 2006), 47.
418 Herr and Potterin, 203.
in the Pacific Ocean are self-governing in ‘Free Association’ with New Zealand and with New Zealand retaining primary responsibility for external affairs in consultation with the Cook Islands and Niue governments after previously being administered by New Zealand and are the only examples of decolonisation by means of free association to have been formally approved by the United Nations General Assembly Resolutions 1514 and 1541 since 1960.\(^{419}\) That is, the political and governance status of the Cook Islands and Niue are formally defined as states in free association with New Zealand. This is supported by Prinsen where more recent longitudinal analyses of economic and social indicators have confirmed that non-self-governing islands within the constitutional frameworks of colonial metropoles actually fare better than complete sovereign states.\(^{420}\) While New Zealand is officially responsible for the defence and foreign affairs of the Cook Islands and Niue, these responsibilities confer New Zealand no rights of control and can only be exercised at the request of the Cook Islands and Niue governments.

In fact, New Zealand has no legislative power over the Cook Islands on any subject, and in the case of Niue, may only legislate for it if the Niue parliament specifically makes a request, an option the Cook Islands abolished in 1981.\(^{421}\) Specifically in the case of Niue, the (Niue) Assembly which is modelled on a ‘village representation’ style, may make laws for peace, order and good government, including the power to repeal, revoke, amend, modify or extend any law in force in Niue. This is supported by Corbett who notes that in Niue, despite some of the 14 representative seats now


\(^{420}\) Prinsen, 63.

having only a handful of constituents, key architects of the Constitution remain committed to the principle of village representation. The arrangement between Niue and New Zealand is so permissive that Niue retains the unilateral right to terminate its relationship of free association with New Zealand at any time, assuming that a two-thirds affirmative vote of the Niue Assembly and a two-thirds vote in a popular referendum can be obtained. In support of their self-governing status, the Cook Islands and Niue have been recognised as sovereign states by some countries, and maintain diplomatic relations under their own name.

In contrast to the alternative, free association therefore implies a (high) level of autonomy, and for a non-self-governing territory, it can be seen as a viable self-governing alternative to emergence as a sovereign independent state (such as Nauru) or full integration with a sovereign state (such as Cocos Keeling Islands). This is especially important when considering ongoing financial viability and sustainability where the example provided earlier regarding Nauru demonstrated that there was a short-term exchange for self-determination and independence at the expense of the long-term financial viability of the (Nauru) state. From a self-governing perspective, both the Cook Islands and Niue have avoided this dilemma in their free association status with New Zealand. Hillebrink proposes that the (free) associated state should have full self-governance, although it may voluntarily delegate certain tasks to the ‘metropolitan’ state (i.e. New Zealand), especially in the fields of foreign affairs and defence; the association should be embraced by the population in an act of free choice observed by the United Nations and the territory should retain the guaranteed right to choose another status in the future. This

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422 Corbett, 211.
423 Hurst, 387.
424 Hillebrink, 85–86.
comment has direct relevance to Christmas Island where no such act of free choice has been afforded to its community by the Commonwealth.

In his Discussion Paper titled ‘Acceleration, Innovation and Self-Determination in Decolonization: Taking Stock and Looking Ahead with Particular Reference to the Remaining Non-Self-Governing Territories in the Pacific’ to the United Nations Special Committee on Decolonization Regional Seminar held in Nicaragua in May 2015, Professor Wolfers noted that as regards preparing for self-determination, much has been said about the need for political education in numerous territories. In this regard, it might even be relevant to ask whether the problem is that people do not know or understand the choice(s) before them, or whether the choices themselves do not address issues of public importance and/or have not been clearly defined. As Spector notes, it is therefore especially important that the community are fully informed and engaged in regard to the negotiation process for considering the option of free association as was demonstrated in the Niue process. Further, not only is it important that free association be the result of a free and voluntary choice by the peoples of the territory concerned (i.e. Christmas Island) and that it be expressed through a democratic process, it also clearly places the onus on the Commonwealth as the principal (metrople) state to show that the choice was the result of a genuinely free choice by the population of the territory and that this was achieved through an informed process.

The free association models of Niue and the Cook Islands and to a lesser degree the previous Norfolk Island Legislative Assembly model provide an interesting lesson

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for Christmas Islanders to take into account when considering self-determination models for its own future, if for no other reason than totally discounting the notion of independence as an option to consider where the primary reason, similar to that of Nauru, is one of financial viability and sustainability. In this regard Prinsen notes the financial arrangement and dependency of the Cook Islands on New Zealand where the Cook Islands budget over the 2004 to 2009 period was supported by grants from New Zealand, fluctuating between 16 and 21 percent of the island’s annual public budget. Therefore even when considering the Cook Islands, Niue or the (previous) Norfolk Island self-determination models, Christmas Islanders should be aware of the financial implications and sustainability associated with pursuing this model or form of self-determination and this should be fully explained to the community.

**Chapter Summary**

From 1991, when the current legislative and governance regime commenced on Christmas Island, to the present day, Christmas Islanders have sought to have the recommendations of the several parliamentary committee reports implemented to fully achieve legal, administrative and political reform. The Commonwealth of Australia has failed to provide any consultation or discussion regarding the level of self-determination for Christmas Islanders to consider as envisaged in these reports. The recent JSCNET 2016 Final Report is no different and many of the Committee comments, issues and indeed recommendations appear to merely repeat those in previous reports and recommendations. Therefore, it can be reasonably expected that the community will have little faith or optimism in them being implemented. In fact, the Report can be interpreted as being benignly paternalistic, while conversely, the Report comments and recommendations have completely ignored the issues raised in various submissions by the community to the Committee. For example,

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Prinsen, 66 - 67.
there is minimal reference by the Committee in chapter seven of the Report about considering self-determination where the Committee does not support a self-governance model operating in any external territory, including the IOTs.\textsuperscript{428} This is despite the numerous submissions made by the community to the 2015 JSCNET Inquiry that reiterated the recommendations of the 2006 JSCNET Inquiry Report, such as 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 and that it should be in force by 1 October 2018.\textsuperscript{429}

Only one of the submission recommendations was actually referenced in the Final 2016 JSCNET Report, namely, incorporation into the State of Western Australia, which, of course, has been discounted in the Committee Report. What is also evident in the Final 2016 JSCNET Report is that there is no reference to conducting any plebiscite or referendum with the Christmas Island community concerning deciding their governance future. This is also despite the numerous submissions to the Inquiry recommending that the Commonwealth do so, for example that the Commonwealth, through consultation with islanders, draw up options for a new model of democratic governance, with a view to putting any such model to a plebiscite on the Islands.\textsuperscript{430} Instead, the Final 2016 JSCNET Report recommends consultation with the community after it has written to the NT Government to

\begin{flushright}
\textsuperscript{428} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 145.
\textsuperscript{429} Joint Standing Committee on National Capital and External Territories Inquiry 2015 Committee Hansard Proof, 6.
\end{flushright}
ascertain their position in accepting the IOTs as part of the NT. The Committee recommends that the Australian Government seek formal advice from the WA and NT Governments to determine whether they are receptive to the proposal for incorporation of the IOTs into their State or Territory and based upon a positive response to this proposal, the Australian Government should develop an incorporation model for consultation and review.\textsuperscript{431} This appears to display a contradictory approach by the Commonwealth in supporting any option by the community to consider the question of self-determination. Therefore, it would appear that the Commonwealth has little intention of adhering to its responsibilities as a member of the United Nations by not progressing the rights of Christmas Islanders to determine their future governance status. This responsibility was defined by Judge Dillard when expressing his opinion in the 1975 Western Sahara case (and as referenced by Weller) regarding Christmas Island where ‘It is for the people to determine the destiny of the territory and not the territory the destiny of the people’.\textsuperscript{432} As discussed earlier in this chapter regarding the notion of self-determination, the community has never been afforded the option of determining its right to self-determination despite recommendation 13 of the JSCNET Report, Current and Future Governance Arrangements for the Indian Ocean Territories of May 2006, which supported this position. It reiterated the principle that self-determination should retain its original connotation wherein all peoples freely determine their political, economic, social or other status without a prescription of what form it takes.\textsuperscript{433} Conversely, the Final 2016 JSCNET Report ignored this

\textsuperscript{431} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 156.

\textsuperscript{432} Weller, 30.

recommendation by stating that the Committee does not support a self-governance model operating in any external territory, including the IOTs.\textsuperscript{434}

This chapter has also reviewed the current governance situation on Christmas Island where the WA applied law system denies the Territory any real say in the laws that apply. This is exacerbated by the fact that the laws apply immediately once they are proclaimed in WA, and therefore, it can be argued that the Commonwealth has ignored its constitutional responsibility in introducing such a system of applied laws. This was referred to in the Final 2016 JSCNET Report as a ‘Democratic Deficit’ and also noted in Chapter One as one of the fundamental principles underlying the Australian Constitution is that of representative government where government is by representatives of the people who are chosen by the people. Grayling purports several reasons for the existence of a democratic deficit that he relates to the current governance arrangements of the European Union, which are dominated by bureaucrats and national politicians rather than by the direct electorate. One reason is the failure of the (political) systems constituting representative democracy to operate as the theory of these intended to prescribe, mainly because those who take control of these systems, initially through the democratic process, deliberately redirect them in ways more convenient for the practice of government. Another reason is the interference and manipulation by (government) agencies with partisan interests, who may resort to undemocratic means to have their own preferred outcomes delivered.\textsuperscript{435}

Clearly, the WA Parliament representatives are not chosen by the people of Christmas Island and therefore cannot be representatives of these people. This is

\textsuperscript{434} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 145.

\textsuperscript{435} Grayling, 131–132.
again reinforced in the Final 2016 JSCNET Report which concedes that the IOT effectively has no state-level representation. The IOT federal member and Senators are located in the NT but the territories do not have an NT Legislative Assembly representative. IOT residents are subject to applied legislation from WA, yet they have no representative in the WA Parliament. The obvious solution as proposed by the Final 2016 JSCNET Report to fully address and overcome the issue of state representation is incorporation.

It also appears that an underlying theme to the position taken by the Commonwealth towards the community of the IOTs, as reflected not only in the recent Final 2016 JSCNET Report but also in previous reports, studies and inquiries, is that the Commonwealth view Christmas Island (and the IOTs) as strategically important to Australia.

The Committee recognises the ongoing significance of keeping the IOTs in the Australian jurisdiction and that maintaining a presence in the region is important. This is also reinforced by Heng and Forbes, where this remote island in the northeast sector of Australia’s Indian Ocean plays an important role in Australia’s western arc of instability as a ‘listening post’ for potential threats, and not only military ones, emanating from areas north and west of Australia; with so many concerns about national and international security, its strategic location lends it special significance. Further, Kerr notes that at the time when Australia was actively considering the transfer of sovereignty of Christmas Island from Singapore to

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439 Heng and Forbes, 81 and 69.
Australia in the 1950s, it was suggested that, for the benefit of defence and to assure phosphate supplies, it would satisfy Australia if the United Kingdom were to detach Christmas Island from Singapore and retain it under British control. That is, both articles support the view that retaining the IOTs under Commonwealth control is of strategic importance to Australia’s interests.

In summary, this chapter has focussed on considering the underlying social, administrative, political and economic aspects of non-self-governance that are applicable to Christmas Island currently as a framework or context in which better governance models can be developed to inform the community. This requires discussion and consideration of the current character of these arrangements where the Commonwealth Government has acted indifferently regarding past and current governance arrangements despite several reports, studies and inquiries, which have proposed that some dialogue with the community is necessary to address this indifference, and suggest/recommend options that could consider a move towards any new governance arrangements for Christmas Island. This is actively promoted by the United Nations whereas key underlying aspect must be a move away from a colonial form of non-self-government that currently exists (on Christmas Island), to a more progressive move towards greater self-determination by which the community is equipped with the knowledge and information to effectively decide their future. Accordingly, the governance models predicated on the discussion in this chapter will be proposed more succinctly for consideration by the community in the final chapter of this study and the Final Report of the 2016 JSCNET Inquiry will therefore be beneficial to informing the conclusion and summary of this study, together with the literature cited in this chapter and the submissions by the community to the numerous JSCNET Inquiries.

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440 Kerr, 322.
Figure 4.6 Christmas Island Act, No. 41 of 1958 (Acceptance).
Figure 4.7 Christmas Island (Request and Consent) Act, No. 102 of 1957.
Chapter 5: Financial and Funding Dependency

Critical to maintaining Australian standards of services to the community of Christmas Island (and the IOTs) are the financial arrangements with, and the funding dependency on, the Commonwealth. This chapter will discuss these financial and funding dependency arrangements for the administration of Christmas Island that are currently the responsibility of the Commonwealth DIRDC. The Department administers its operations financially from offices on Christmas Island (that also serve the Cocos Keeling Islands) as the ‘Indian Ocean Territories Administration’ (IOTA), and also has an office located in Perth WA, with the head office located in Canberra. The Shire of Christmas Island receives operational financial grants from the Commonwealth by way of the WA-administered Grants Commission process that applies normally to all WA State-based local government authorities. Funding for capital grant projects that are normally directly available to mainland state-based local government authorities are considered under the ‘state-type grant’ process that requires assessment approval by the Commonwealth.

As noted in the previous chapter, the Commonwealth have not consistently consulted with the community of Christmas Island regarding the explanation and review of the SDAs process that applies to the governance of the island. This includes the annual budgetary process and the allocation of revenue and expenditure, both recurrent operational and capital. Previous Administrators of the IOTs have often queried, and indeed complained that they have had little input into the annual departmental budget process on behalf of the community. An example of this was the complaint by former Administrator Jon Stanhope in 2014 in accordance with his ‘Administrators Bulletin’ where he advised the community of the IOTs of his (ongoing) frustration in having no input to the departmental budgetary process, which in turn would allow him to explain to local residents where the allocation of expenditure was made for the benefit of the community. The purpose of this chapter
is to therefore emphasise the critical importance on the financial and funding dependency that the Territory of Christmas Island has on the Commonwealth, and the Island’s inability to raise enough revenue to meet its financial requirements. It also seeks to outline challenges around the sustainability of the current arrangements. These challenges take place in an environment where the community has had little knowledge or understanding of the budgetary process. More broadly, this chapter situates the issue of budgets and funding arrangements within the context of earlier discussions on representative democracy and self-determination.

**Funding allocation**

Previously, this assessment process also included the relevant WA State Government agency. However, this arrangement was changed in 2014, so that now any such consideration is by the Commonwealth directly. In the 2013–2014 IOTs Annual Budget the total combined operating and capital budget for both IOTs was around $167 million.\(^441\) Using a proportional percentage division of approximately 65% of this total budgeted amount being expended only on Christmas Island, this translates to an amount of approximately $108 million. Two years later, in the 2015–2016 financial year, the Budget Book of the IOTs reveals a total operating and capital budget for the IOTs at about $128.8 million.\(^442\) While this is lower than the 2013–2014 budget and the 2014–2015 budget, the Department (DIRDC) advises in the 2015–2016 IOTs’ Budget Book that the change in the funding model between 2014–2015 and the subsequent years is owing to the commencement of the Indian Ocean Territories Special Account 2014 from 1 July 2015. In previous financial years, revenue earned


\(^442\) Department of Infrastructure and Regional Development, *Indian Ocean Territories Budget Book 2015–16*, (Canberra: Australian Government Publishing Service, 2016), Table 1 page 3, Table 2 page 4 and Table 11 page 22.
by the Department was deposited into the Consolidated Revenue Fund and returned to the Department in the Portfolio Additional Estimate Statements in February of the following financial year. From 1 July 2015, revenue is placed directly into the Special Account and immediately available for investment in the IOTs. However, this is not necessarily reflected in the latest DIRDC 2017–2018 Budget Overview Book where there does not appear to be any direct correlation between the Special Account inclusion in future IOT budgets and the total budget amount. At the very least, the increased Special Account, according to the Department comments in the 2015–2016 Budget Book, appears to be included at the expense of decreases in operational services when comparing with the previous annual budget descriptions. Further, there is no specific amount noted in the Budget Overview of the proposed $8,240 capital expenditure other than the description provided as expenditure on the Christmas Island Port Redesign Project.443

In summarising the budget comparison between 2013–2014 to the recent 2017–2018 budget, there is a distinct decrease in the funding allocation by the Commonwealth to the IOTs (and Christmas Island) that can perhaps be explained by the Commonwealth basing its funding allocation on a per capita basis where the decline in population, especially on Christmas Island, is explained by the 2016 ABS Census data noted in Chapter One of this study. Further, with the Commonwealth announcing, and therefore planning for, the closure of the IDC on Christmas Island, the decline in population could reasonably be expected to continue.

Both the IOT’ local governments receive operational Financial Assistance Grants from the Commonwealth by way of the WA-administered Grants Commission process that applies normally to all WA-state-based local government authorities.

This process is secured through the relevant SDAs between the Commonwealth and the WA Department of Local Government. Funding for capital grant projects that are normally directly available to mainland WA State-based local government authorities are considered under the ‘state-type grant’ process that requires assessment approval by the Commonwealth. In the 2014–2015 year, this arrangement was changed so that now any such consideration is by the Commonwealth directly through the Indian Ocean Territories Regional Development Organization (IOTRDO). Fundamentally, the Commonwealth predicate their financial assistance to the IOTs based on the principle that current arrangements, with annual adjustments, provide a level of services consistent with those in comparable communities in WA. This comparison in itself is problematic, given there is no comparative community in remote and/or regional WA to the IOTs. No other communities are separated from the nearest centre by vast distances of ocean, nor do they have the same cultural mix in their populations.444

The historical context in which the financial arrangements apply to Christmas Island can be found in the 1992 Islands in the Sun report. That is, it was clearly articulated in the Report that the Commonwealth Minister (from time to time) has administrative (including financial) responsibility for Christmas Island.445 Little has changed as noted above in the DIRDC 2015–2016 annual budget direct allocation for the IOTs. While this can be reflected accurately as the financial arrangements for DIRDC in its obligations to the IOTs, it also reflects the financial dependency of the IOTs on the Commonwealth. Other avenues of financial arrangements include:

- State-Type taxes imposed on the IOTs by the Commonwealth under administrative arrangements between the Commonwealth and the


445 Islands in the Sun, 41.
Chapter 5

WA Government such as mining royalties, alcohol sales, pay-roll tax, various stamp duty taxes, land transaction (conveyancing) tax and other financial taxes such as motor vehicle registry, gambling and lotto sales, with the revenue raised paid by the WA Government directly to the Commonwealth.446

- Local government revenue raising capacity through legislative rating of freehold properties on the island and various fees and charges it imposes for services, such as waste collection and landfill disposal, and private works. As noted above the local government also receives annual operational Financial Assistance Grants from the Commonwealth by way of the WA-administered Grants Commission process that applies normally to all WA State-based local government authorities. In the Shire of Christmas Island 2015–2016 Annual Budget, this annual Financial Assistance Grant allocation is $4.237 million from a total budget of approximately $14 million.447

An analysis of the funding arrangements also reveals the proportion of revenue collected and expenditure in defined services, both operational and capital. For example, expenditure on health related services through the Indian Ocean Territories Health Services (IOTHS) extrapolated from the 2015–2016 Annual DIRDC budget in the following Table 5.1, reflects $16.125 million allocated for direct health-related operational services, excluding funds allocated for capital projects:

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446 Commonwealth Grants Commission, 50.

Table 5.1: 2015–2016 IOT Health Service Budget

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees and Related Expenses</td>
<td>10,424,347</td>
</tr>
<tr>
<td>PATS (Patient Assistance Travel Scheme) Subsidy</td>
<td>1,469,665</td>
</tr>
<tr>
<td>Property and Maintenance</td>
<td>1,168,072</td>
</tr>
<tr>
<td>Medical Medivac</td>
<td>955,727</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>483,232</td>
</tr>
<tr>
<td>Medical Supplies and Services</td>
<td>396,132</td>
</tr>
<tr>
<td>Travel</td>
<td>387,387</td>
</tr>
<tr>
<td>Postage and Freight</td>
<td>216,906</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>190,907</td>
</tr>
<tr>
<td>St John Ambulances Training Grant</td>
<td>75,000</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>357,747</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16,125,122</strong></td>
</tr>
</tbody>
</table>

While the total amount in Table 5.1 above reflects the operating expenditure only for the 2015–2016 year, the total capital expenditure for the IOTs in this year is identified separately as $7.8 million and does not identify any capital programme expenditure for the IOTHS. In the 2013–2014, year capital expenditure for the IOTHS was identified at $23.808 million, which proportionately represented about 14% of the total 2013–2014 IOT Annual Budget. The Commonwealth funds the IOTHS to provide health services directly to the IOT communities. The IOTHS, under management from the island administration, operates a Primary Health Care Service combined with a 24-hour 8-bed health service on Christmas Island. In comparison to the recent 2017–2018 Budget Overview Book where the estimated expenditure on Health Services is $13,201 million, a decrease is evident that again may be...
attributable to the expected decrease in local population together with a decrease in health-related services owing to the closure of the IDC.\textsuperscript{448}

The above Table breakdown also reflects expenditure budgetary provision only (operational and capital) and does not reflect any income revenue to the Commonwealth that has appeared consistently in previous Commonwealth Budget Books. This is primarily because the IOTHS provides services in a ‘Medicare’ context where patients attending the IOTHS are ‘bulk billed’ under the Commonwealth Medicare system and are not required to pay any ‘gap’ amount for health-related services. Conversely, the delivery of services by the Commonwealth via the Indian Ocean Territories Power Authority (IOTPA) for the provision of electricity attracts a tariff for the consumer that is levied similarly to the tariff that applies on mainland WA. The Power Authority’s 2017–2018 Annual Budget expenditure estimate is $15.935 million, with the cost of delivering power in the IOTs being offset through revenue received from fees and charges.\textsuperscript{449}

The provision of Home and Community Care (HACC) health services, which is directly provided to the community by the IOTHS, is instead a funded program on the mainland by the Commonwealth to local government authorities. On Christmas Island, the IOTHS is the sole source of HACC-type services, and there is no community-wide health focus and minimal community participation in the health service. The services are limited owing to funding allocation by DIRDC, and not necessarily directly beneficial to the community, points that were included in a 2014 Aged Care Study commissioned by the Commonwealth. The issue of aged care on Christmas Island (together with HACC services), where there is no specific aged-


\textsuperscript{449} Department of Infrastructure, Regional Development and Cities, 4.
care facility comparable with that on mainland Australia and aged-care requirements are met by accommodating patients in a 24-hour, 8-bed facility of the hospital, resulted in a study on aged care. The (then) Department of Infrastructure and Regional Development contracted Australian Healthcare Associates to conduct an aged-care review of the IOTs, and a key finding of the report identified that there is a need for community and aged-care services that is currently unmet.\(^{450}\) Although the report was completed in early 2015, it was not released to the public until late 2015. As the senior’s demographics in the community grows, the need for access to aged-care services and facilities will only increase. There is no justification for the continued exclusion of the IOTs’ (aged) community from decision-making in these programmes and services. Further, the hospital owned and operated by the Commonwealth on Christmas Island is the only one in Australia that the Commonwealth directly operates, manages and funds, where simultaneously, there is no corresponding Hospital Board in place to govern the hospital unlike in models on mainland Australia.

The 2010 JSCNET Inquiry into the Changing Economic Environment in the Indian Ocean Territories Report identified that phosphate mining contributes approximately $27 million to the Christmas Island economy annually. It is the only contemporary JSCNET Inquiry Report that actually identifies any monetary figure, although subsequent JSCNET Reports such as the 2015–2016 Inquiry into the Governance in the Indian Ocean Territories Economic Development or the 2017 Inquiry into The Strategic Importance of Australia’s Indian Ocean Territories refer to the important contribution of the phosphate mining industry to Christmas Island.\(^{451}\)


Chapter 5

That is, for many years, the Christmas Island economy has been characterised by the phosphate industry as noted in Chapters Two and Three of this study, and therefore, it plays an important role in the economic and social viability of the community on the island. Certainly, it is difficult to identify from the Department and JSCNET Reports where any community input has occurred from the taxes and royalties paid, and the community has consistently raised this issue in submissions to several JSCNET Inquiries. Only a small proportion of the annual amount paid can be identified as financially beneficial to the community by direct payments by the mining company to community organisations. The 2010 JSCNET Report identified that the phosphate mining’s direct financial impact on the Christmas Island economy was:

- $17 million in company tax
- 4.9 million in income tax paid on employee wages and bonuses
- $3.2 million in phosphate royalties
- $1.3 million rehabilitation levy
- $260,000 fringe benefits tax
- $140,000 local government rates
- $24,000 rental of mining leases
- $200,000 annual community donations
- $250,000 annual sponsorships.\(^{452}\)

In the 2017 JSCNET Inquiry Report, the Committee received evidence that one of the main drivers of Christmas Island’s private sector economy is phosphate mining. The largest private sector employer is Christmas Island Phosphate Resources, which employs approximately 250 people in mining and subsidiary businesses. Concern

\(^{452}\) Commonwealth Joint Standing Committee on the National Capital and External Territories, 26.
was expressed by local residents about the mine’s uncertain future. This has been substantiated by recent media articles regarding the future of Christmas Island by the Shire of Christmas Island President, Gordon Thomson, when lobbying for the mine’s expansion in July 2017 where he stated that:

‘The Federal Government needed to urgently approve the land clearing application or risk the mine’s closure and the loss of 250 jobs and the whole economy won’t exist except for government services if the mine closes’.

In its 2018 Annual Report to shareholders, Phosphate Resources Limited (CIP) reported an operating consolidated profit after tax for the financial year ending 2017–2018 of $21.1 million. The Chair of Phosphate Resources Limited (PRL) also noted that this was a strong result, given the externalities that affected the business, such as the failure to access further mining tenement sites. This is an increase in comparison to previous years and highlights that PRL mining activities on Christmas Island contribute significantly to the financial viability of its economy. However, in a recent media article release by the Chair of PRL to the community of Christmas Island, in his response to the announcement by the Minister for Environment and Energy that the Government decided not to approve PRL’s

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456 Christmas Island Phosphates, 3.
proposed exploration program because it is likely to have a significant impact on the Christmas Island environment, the PRL Chair stated:

‘The decision by the Minister for the Environment and Energy to reject PRL’s application to re-clear a total of some 6.8 hectares of historic drill lines on Christmas Island is a slap in the face for PRL employees, shareholders and long-term Island residents wanting the Island to maintain industries capable of providing jobs well into the future. At a time when the island is facing an uncertain economic future with the impending closure of the Immigration Detention Centre, the Turnbull government seems determined to ensure that other potential job prospects are choked off before being properly considered. Clearly, the Government have no desire to provide a future, which balances both economic development and environmental protection’.457

While this decision by the Minister related to an application by PRL for exploration drilling permission, which was intended to be the first step in the evaluation of further economic resources and the possibility of making a future proposal for mining that could have guaranteed the continuation of mining jobs and investment beyond the current 2030 lease, the impact of the decision in regard to the long-term effects of the phosphate mining industry on the island now appears to question the island’s economic and social sustainability and future.

The 2014–2015 DIRDC budget reflects a similar amount as the 2013–2014 budget, albeit with a slight total amount decrease. That is, while the 2013–2014 total DIRDC budget for the IOTs was approximately $167 million, the total 2014–2015 budget is about $149 million (including capital), as shown in Table 5.2, as extracted from the

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recent JSCNET Final Report 2016 on Economic Development and Governance in the Indian Ocean Territories.\textsuperscript{458}

Table 5.2: IOT Budget Summary at 31 May 2015

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
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<tbody>
<tr>
<td>WA Service Delivery Arrangements $32,120,922</td>
<td>Administered Capital Budget $12,297,084</td>
</tr>
<tr>
<td>(includes 2013-14 offset funding)</td>
<td></td>
</tr>
<tr>
<td>Other Service Delivery Arrangements and Expenses</td>
<td>$1,947,230</td>
</tr>
<tr>
<td>Private Sector Contracts</td>
<td>$30,343,958</td>
</tr>
<tr>
<td><strong>Australian Government Managed Services</strong></td>
<td><strong>Major Capital Projects</strong></td>
</tr>
<tr>
<td>Policing $4,345,000</td>
<td>Fuel Consolidation Storage $3,000,000</td>
</tr>
<tr>
<td>Health Services $16,004,000</td>
<td>Flying Fish Cove Jetty Extension $8,000,000</td>
</tr>
<tr>
<td>Power Authority</td>
<td>$18,765,354</td>
</tr>
<tr>
<td>Support to the Community</td>
<td>$3,520,200</td>
</tr>
<tr>
<td>Support to Local Government</td>
<td>$7,234,970</td>
</tr>
<tr>
<td>Administration, Operations and Corporate Services</td>
<td>$11,902,366</td>
</tr>
<tr>
<td><strong>Total Operational Budget</strong> $126,184,000</td>
<td><strong>Total Capital Budget</strong> $23,297,084</td>
</tr>
<tr>
<td><strong>2014–2015 Total IOT Budget</strong></td>
<td><strong>$149,481,084</strong></td>
</tr>
</tbody>
</table>
The above 2014-2015 total budget allocation for the IOT was nearly $149.5 million. This comprised of an operational component of $126.2 million and capital works of $23.3 million. The IOT Budget Summary at the 31st of May 2015 is inclusive of Approved Additional Estimates, Movements of Funds, Revenue Adjustments and Parameter Adjustments.

Comparatively the 2015–2016 DIRDC budget for the IOTs reflects an intended decrease in the funding arrangements by the Commonwealth for Christmas Island, and this is repeated in the forward budget estimates for the years 2016–2017, 2017–2018 and 2018–2019. This could be explained by a combination of the introduction of the ‘Special Account’ by the Commonwealth as noted earlier and the anticipated decline in the population of the island, not only the local population but also the impact of the decline in the IDC activities since 2013 regarding fly-in fly-out workers. Previously, revenue earned by the Department was deposited into the Consolidated Revenue Fund and returned to the Department in the Portfolio Additional Estimate Statements in February of the following financial year. From 1 July 2015, that revenue was placed directly into the Special Account and immediately available for investment in the IOTs. This change is intended to allow the Department to better plan activities over the financial year.\textsuperscript{459} This was also reinforced in the Final 2016 JSCCNET Report where the Committee acknowledged that the Indian Ocean Territories Special Account empowers the Department to make payments for the delivery of essential services and providing infrastructure within the IOTs.\textsuperscript{460}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{460} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 99.
\end{itemize}
\end{footnotesize}
## Table 5.3: IOT Estimated Budget and Forward Estimates

<table>
<thead>
<tr>
<th></th>
<th></th>
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<td>1.700</td>
<td>1.600</td>
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The 2015–2016 Portfolio Budget Statements for the (then) Department of Infrastructure and Regional Development portfolio allocate up to $123.7 million to support communities in the IOTs. Therefore, the 2015–2016 budget allocation is similar to the 2013–2014 budget data, excluding capital project expenditure. That is, the total operating annual budget in 2013–2014 was approximately $127 million and the total capital budget amount was approximately $40 million. The forward estimates for 2016–2017, 2017–2018 and 2018–2019 reflect a decrease in financial arrangements for the IOTs by the Department; however, when reviewing previous departmental Annual Reports, they reveal that quite often the estimate budget for
the financial year and the actual expenditure are different, with over expenditure
more likely to occur.

In his Community Bulletin of July 2014, the (then) outgoing Administrator of the
Indian Ocean Territories (Mr Jon Stanhope) referred to the fact that in regard to the
financial arrangements in place in the IOTs, his view was that all policy and budget
decisions are made by federal public servants based in Canberra and Perth although
ultimately all budget decisions are signed off by the relevant Minister. Residents are
not consulted about the budget and are never asked for their views about
expenditure priorities. No draft budget is prepared or published, and there is
nothing resembling an estimates process. While it can be argued (certainly by
public servants) that there is no specific requirement for them to consult the
community on preparing and considering annual budget estimates, it does display a
lack of consideration for the community of Christmas Island, given that financial
arrangements and allocations are made without any consideration and consultation
with them (the community) and the process is merely viewed as a formality for the
public servants to present a budget to the responsible Minister (and government) of
the day. This is especially apparent since the Government abolished the Community
Consultative Committee (CCC), which was an avenue that the community had to
comment on matters that directly affected them.

This in turn reinforces the notion that a democratic deficit exists, given the lack of
transparent processes that allow the community to have any meaningful input into
the budgetary financial (and legislative) arrangements that affect their daily lives,
and the process appears to be controlled by unelected public servants. This was

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461 Department of Infrastructure and Regional Development, ‘Community Bulletin Office of the
Administrator Indian Ocean Territories’, (Canberra: Commonwealth Government Publishing Service,
2014), 3.
highlighted in the recent JSCNET Final Report 2016 which notes that the overall cost of public administration in the territories is high, yet resident satisfaction levels are low.\textsuperscript{462} Further the recent JSCNET Final Report 2016 notes that the IOTs do not have an overarching consultation protocol or formal consultation mechanism to focus community engagement with administration and service delivery.\textsuperscript{463} Hence, transparent information through effective consultation regarding expenditures and revenues is paramount to development of a better governance arrangement; not only does the community have a fundamental right to know this information it also feeds into consideration of future governance options. The community does not want absolute financial dependency on the Commonwealth except to the extent where the Commonwealth is similarly obliged across Australia to support State, Territory and local government activities and services. The community contributes its fair share of taxes (this includes corporate entities such as PRL and other small businesses), and is entitled to a commensurate return, mindful of its location, isolation and other historically based factors.

**Funding dependency**

The purpose of this section is to also outline the funding dependency of various agencies (government and non-government) and community organisations on Commonwealth financial assistance. The Shire of Christmas Island (the local government authority) on the island is the main other government recipient of Commonwealth funding. This funding assistance is received through the annual Commonwealth Financial Assistance Grants program administered on behalf of the Commonwealth by the WA Local Government Grants Commission (WALGGC). As

\textsuperscript{462} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 129.

\textsuperscript{463} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 79.
noted earlier, the Commonwealth Grants Commission Report 2007 states that the system of determining local government grants and road grants to the Shires results in outcomes similar to those of comparable Shires. It maintains that the system where the WALGGC performs annual assessments is the simplest and most practical way of updating the funding required for these purposes. The WALGGC visits the island in an approximate five-year cycle, similar to its visitation cycle to mainland WA local governments, with the intervening years being desktop returns assessments. In the 2013–2014 financial year funding and grants from WALGGC, DIRDC and the Commonwealth Roads to Recovery Program were the Shire’s main source of revenue and accounted for 59.06% of total budget revenue income. The 2015–2016 Financial Assistance Grant amount for the Shire of Christmas Island was $4.237 million, which comprised ‘untied’ funding of $3.827 million and the ‘local roads’ component funding of $410,000. The Shire of Christmas Island levies an annual ‘community services obligation’ on the Commonwealth Department of Border Protection (DIBP) for the amount of $456,000 and the IOTA for an annual amount of $825,000 that are in lieu of ‘rates’ applied to all private and freehold properties on the island.

The situation on Christmas Island is in contrast to mainland Australia, where the Government (Commonwealth and State) properties are normally exempt from payment of rates. However, the Shire and the Commonwealth confirmed this arrangement many years ago under a specific Memorandum Agreement to allow

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467 Shire of Christmas Island, 52.
this levy in recognition of the services provided by the Shire and the low revenue capacity base of the Shire. It also recognises the unique circumstances of the Territories where a simple copy of WA services and cost levels may not be appropriate. Primarily, the rationale behind imposing a ‘rates type levy’ on the DIBP through the annual Community Services Obligation is to financially recoup expenditure incurred by the local government for the provision of services, especially as a result of the increased housing purchased by the DIBP and its contractors as a result of the immigration activity on the island and the impost this activity has had.

Therefore, these financial arrangements between the Shire and the Commonwealth departments can be viewed as funding dependency where the Shire relies on this significant annual amount as part of its own revenue budget. The other source of funding dependency for the Shire is the annual grant it receives from the Commonwealth to maintain the road network outside its local government jurisdiction. This is principally the Commonwealth-owned outer urban road network that services primarily the IDC and the various mining leases on the island. This annual amount in 2015–2016 was $660,000 and is expended mostly on routine maintenance of the unsealed road network. Again, the Shire replicates this particular financial arrangement in accordance with the Main Roads WA (MRWA) Department model where the Commonwealth also provides state-type funding in Christmas Island in the absence of the State. The MRWA model used in rural remote mainland WA areas is known as the ‘Regional Roads Group (RRG)’ that have responsibility for recommending and allocating relevant State funding to local government regional areas, such as the Pilbara, Wheatbelt and Gascoyne. In turn, the participants in the RRGs allocate the funding for the relevant year to each local government area.

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468 Shire of Christmas Island, 52.
469 Commonwealth Grants Commission, x.
government authority member of the RRG for use on the particular road network that they have identified and requested funding for. Through RRGs, the state government provides local governments a voice in how the State’s contribution to local roads is spent. This organisational structure and regional framework recognises the understanding of the local community’s road needs that local government elected representatives have.470 This funding dependency and lack of commensurate funding by the Commonwealth acting as the (WA) State on the IOTs, therefore places added financial pressure on the IOT’s local governments to seek annual (maintenance) funding from the Commonwealth. Further, the role of RRGs is to recommend local government road funding priorities to the Advisory Committee and to monitor the implementation of the Local Roads Program in their own regions.471

The RRG structure is absent on Christmas Island and therefore, the local government is required to use a proportion of their annually allocated Financial Assistance Grants’ (FAGs) road component and untied funding. The definition of WA mainland RRGs should be applied to the IOTs whereby the annual Direct Grants, Road Project Grants and Supplementary funding assistance provided by MRWA (State) to RRG local governments based on determination of projects by the RRGs, should also apply to the IOTs and be provided by the Commonwealth (and not MRWA), given the Commonwealth functions in the absence of WA State jurisdiction on the IOTs. Under the RRG model, the share of State Road Funds to be allocated to local government roads is 27% of the estimated vehicle licence fees for that year.472 In 2015, the IOTA resumed operational management of the Motor Vehicle Registry

470 Shire of Christmas Island, 52.
472 Main Roads Western Australia and the Western Australian Local Government Association, 3.
operations on Christmas Island, which was previous the responsibility of the Shire of Christmas Island. In this regard, data extrapolated from the Shire of Christmas Island budget(s) for the years 2011–2012 to 2013–2014 reveal that a total of $3,172,545.00 was collected by the Shire of Christmas Island on behalf of the Commonwealth as Motor Vehicle Registration revenue, where translating the MRWA RRG allocation of 27% to the Shire would realise direct additional funding to the Shire of $856,587.00 for road maintenance allocation. This again highlights the absence of normal revenue streams that would come to the island were it to enjoy the same model that applies equally to mainland local governments.

The key issue for the IOTs in accessing WA State-type grants is that it is only accessible to WA State-based agencies (including local governments) through their relevant grants process. Christmas and Cocos (Keeling) Islands are the jurisdictions in Australia where a simple application process commences in the WA Government system, evolves to the Christmas Island Administration, then to the Perth Commonwealth Department and finally to Canberra. In any of these various stops, this funding can be rejected for reasons unknown.\textsuperscript{473} This is despite the SDA in place between the WA MRWA and the IOTs, which clearly prescribes the application of the WA legislation (including MRWA legislation) for the purpose of funding grants; at the very least, the MRWA should be assessing the funding opportunity for the IOTs and then recommending that the Commonwealth fund vital projects. Further, there is no direct equivalency because of the different manner in which the Commonwealth provides funds (as state-type funds) for the IOTs, as opposed to revenue provided by the state government to other local governments in WA. Administered funding is a key difference, giving absolute discretion to the Minister for Territories to decide grant allocations as he or she sees fit on the advice of

\textsuperscript{473} Main Roads Western Australia and the Western Australian Local Government Association, 5.
DIRDC. The Commonwealth may pay for advice from WA State Agencies via SDAs or contracts, but they are not necessarily compelled to accept the advice.

In 2014, access to the state-type grants process by the Shire and other community-based organisations was re-modelled and formalised by the Commonwealth on recommendation by the then Administrator through the newly established IOTRDO. In the 2013–2014 DIRDC Annual Budget, the first allocation to the IOTRDO under the Community and Economic Development Grants was $1.5 million. The allocation of $1.5 million for the IOTRDO 2015–2016 fund remains unchanged. It is historically divided between the two IOTs with final approval from the IOTRDO Board of recommended projects, and it is ultimately subject to approval by DIRDC and the Minister. In this regard, projects assessed and recommended for funding at the local level can still be rejected by DIRDC Officers based in Canberra on recommendation to the Minister. This is a process that further disenfranchises the local community, especially given that other state-type grant funding opportunities through the previous WA based system have been removed.

Other Commonwealth-type financial arrangements for Christmas Island are from the Christmas Island National Parks and the immigration detention activities on the island controlled by the DIBP. The presence of Christmas Island National Parks is because of about 63% of the island being designated as a National Park that covers approximately 85 square km of the total island land mass of about 135 square km. About a quarter of the island has remained cleared for mining and settlement purposes since 1888, and on 21 February 1980 Christmas Island National Park was designated.

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proclaimed under the *National Parks and Wildlife Conservation Act 1975*. The Christmas Island National Parks is also a major employer on the island with a majority of its personnel being locally employed from the community, thereby playing a significant financial role for the Island’s economy. The Christmas Island National Parks annual budget for the year 2013–2014 was $4.9 million, which included operating and capital expenditure and revenue of $2.6 million for mine site rehabilitation levy. The Christmas Island National Parks annual budget for the 2014–2015 year was $5.9 million, which included operating and capital expenditure and revenue of $3.1 million for mine site rehabilitation levy.

Similarly, DIBP has had a presence on the island since immigration detention activities markedly increased from approximately 2007, with the peak of this activity occurring from 2010 to 2013. DIBP contracts the management of Detention Centre activities to Serco Asia Pacific (and have done since 2009), who in turn sub-contract management of detention activities, such as security and maintenance functions, to various organisations. Both DIBP and Serco donate to various community organisations and events on the island, which not only enhances their corporate profile in the community but also significantly contributes financially to the island’s economy. It may be the case that the community is ambivalent on the question of asylum seeker detention while there are economic and financial benefits to the island’s community through corporate donations and local employment. The impact of immigration activities has been raised in several JSCNET Inquiry Reports, and in particular, by the CITA, since they (CITA) have argued that the increased immigration activity is detrimental to the tourist economy on the island.

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477 Director of National Parks Department of Environment, 18.

In the 2016 JSCNET Report, it is noted that while it can be argued that immigration detention activities on Christmas Island boosted the local economy to the extent that fly-in fly-out workers spent money on local services, the perception of Christmas Island as a domestic holiday destination suffered during that time. This impact has lingered, even though immigration detention activities have been winding down.\textsuperscript{479} Notwithstanding the JSCNET Report comments, the financial injection to the Christmas Island economy remains significant since the DIBP contributes an annual amount of $456,000 to the local government authority (2015–2016 budget) in lieu of land tax that is normally applied to other freehold properties. The recent downturn in asylum seeker activity to the island with the possible closure of the Detention Center, and therefore not only the presence of immigration contract workers on the island but also the effect on local employment, will be felt both economically and socially.

Turning to Norfolk Island and Lord Howe Island to briefly complete the discussion in a comparative context with the IOTs financial and funding dependency arrangements with the Commonwealth (or in the case of Lord Howe Island, the NSW State Government), it is important to note that they have also been discussed as comparable governance options in Chapter Four. First, it appears financially inconsistent for the Commonwealth to refer to the governance arrangements of the IOTs as a model to replicate on Norfolk Island when the cost outlined earlier in this section is considerably higher than in the Norfolk Islands pre-2015 situation and therefore does not appear to represent financial value to the Australian taxpayer. Submission 22 by Dr Martin Drum to the 2015 JSCNET Inquiry noted that Christmas

Island, with a similar population to Norfolk, receives almost 2.5 times the amount of Commonwealth funding. This discrepancy is even greater for the Cocos (Keeling) Islands considering that its population is about one-third of Norfolk and yet it receives more funding.\footnote{Commonwealth Joint Standing Committee on the National Capital and External Territories, ‘Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance – Submission 22 by Dr Martin Drum’, (Canberra: Commonwealth Government Publishing Service, 2016), 131.} This anomaly in Commonwealth funding distribution between Norfolk Island and the IOTs was further highlighted in the joint paper 

**Governance on Norfolk Island: A Comparative Study** whereby the combined total cost to the Commonwealth in the 2013–2014 year to deliver services to both IOTs was $163 million, compared with $38.5 million of the Norfolk Island Government in the same year.\footnote{Commonwealth Joint Standing Committee on the National Capital and External Territories, 131.} This comparison of the financial data between the IOTs and Norfolk Island, as extrapolated from both DIRDC and the Norfolk Island Government budgets, shows just how unviable is the model of the IOTs.

This fiscal comparison makes it clear that the move by the Commonwealth to introduce the applied laws (of NSW) regime to Norfolk Island is not predicated on any comprehensive financial modelling. Yet as recently as in the current JSCNET Report in 2016, the Commonwealth advocate the merits of what they have achieved with the abolishment of the Norfolk Island Government and the introduction of the applied NSW legislation. In that report, the Committee notes that reform is underway on Norfolk Island to reset the governance foundation there. This is reform that for many years was considered impossible. Recommendation comments in the report noted that ‘Political will and determination, devoting adequate resources, having a clear mandate, good leadership and sound execution, together with providing for full community engagement have proved integral to the timely...
progress of the reforms on Norfolk Island’. There does not appear to be any reference or mention regarding the specific cost of implementing the Commonwealth’s reforms on Norfolk Island. Conversely, the Commonwealth through the JSCNET 2016 Report advocates incorporation of the IOTs with the NT through Recommendation 19 of the Report. Again, there would be a defined cost of implementing this recommendation in the 2016 JSCNET Report.

The Lord Howe Island Act 1953 (as amended from time to time) prescribes that there shall be established and kept in the Treasury an account in special deposits account to be called the ‘Lord Howe Island Account’ and that all moneys received by the Board shall be for the conduct of the affairs of the Island. The relevant statute is NSW legislation and prescribes how the affairs of Lord Howe Island are conducted including those that are financial. The LHIB is a statutory body established under the provisions of the Lord Howe Island Act 1953 where the Board is charged with the responsibility of administering the affairs of the Island.

Dissecting the 2015 Lord Howe Island Annual Report reveals that it has legislative and financial responsibility for a variety of public services that are comparable to normal state-type public service functions, and indeed local government-type functions. This involves operational services and budgeted capital projects and

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includes an $8 million airstrip runway resealing project, which was jointly funded by the NSW and Commonwealth Governments. Further, the LHIB prepares an Operational Plan each financial year outlining specific outputs, activities and measures in response to the Corporate Plan’s direction. The Board’s adopted budget is consistent with its annual Operational Plan. In this regard, on average the LHIB requires around $7.4 million per annum to meet its annual operating budget commitments and about $2.2 million per annum to meet its annual capital budget commitments. The Board raises revenues through a variety of fees and charges and its own business operations. However, most of its funding is from recurrent and one-off grants (provided for specific purposes) from the NSW and Australian Governments. This is an important distinction to make in a comparative context with the IOTs, which receive no comparable state-type funding or grants. In 2014–2015, total grants and subsidies revenue was $9.2 million, consisting of $4.3 million in operating grants and $4.9 million in capital grants.

The main operating grants were:

- NSW Environmental Trust: $2.4 million
- NSW Treasury recurrent: $1.5 million
- NSW Department of Local Government: $192,000
- Commonwealth Caring for Our Country: $177,000.

The main capital grants were:

- NSW Treasury: $2.1 million
- Commonwealth Department of Infrastructure and Regional Development: $1.2 million

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486 Lord Howe Island Administration, 9.
487 Lord Howe Island Administration, 34.
• Commonwealth Australian Renewable Energy Agency: $500,000.  

While the above reflects some operational and capital funding from the Commonwealth, this funding is available throughout Australia and therefore not unique to either Lord Howe Island or indeed the IOTs. The IOTs are eligible to apply for comparable funding for the activities described above that Lord Howe Island receives. The 2014–2015 LHIB Budget was $18,724,832 as audited in the 2015 LHIB 2015 Annual Report. This annual budget amount is similar to the Shire of Christmas Island in the 2014–2015 year with an equally similar delivery of operational services and capital projects. The distinctions involve the commercial operations of a liquor store (similar to Norfolk Island) where it appears there was a net operating profit of approximately $319,000, the airport where there appears to be a net operating profit of about $315,000 and electricity where there appears to be a net operating profit of about $263,000. The Shire of Christmas Island does not operate any major commercial trading enterprises, although it did own and manage the Christmas Island Supermarket until sold in 2001; the responsibility of the airport, harbour port and electricity operations are the direct responsibility of the Commonwealth. Further discussion regarding Lord Howe Island’s land tenure arrangements will be presented in Chapter Six, noting that all land on Lord Howe Island is vested as Crown land with the LHIB, and therefore, no direct land tax levy (rates) are applied with a rental system for leased land being applicable. Further, the governance and legislative arrangements, particularly concerning the Lord Howe Island Governance Review Final Report of 2012 will be further discussed in Chapter Seven.

488 Lord Howe Island Administration, 34.
489 Lord Howe Island Administration, 50.
491 Lord Howe Island Administration, 50.
Chapter 5

**Chapter Summary**

The chapter provides an overview and description of the current financial arrangements for Christmas Island (and the IOTs) that explains how a majority of the financial arrangements have remained virtually unchanged since at least 1992 and largely unchanged since the transfer of sovereignty of Christmas Island in 1958 to Australia. The financial arrangements for Christmas Island are largely funding dependent on the Commonwealth and are likely to continue so, given the current governance and legislative arrangements for the IOTs. In this regard, the message coming from the JSCNET 2016 Report is not only ambiguous and confusing, but more importantly, it reflects uncertainty by the Commonwealth regarding the direction it intends not only for Norfolk Island but also the IOTs, although any JSCNET recommendations are essentially just that, recommendations only to the government, and do not necessarily constitute government policy. If there is uncertainty with any governance direction, then this will have certain implications for the financial cost, especially when considering the options of self-determination. Hence, the financial and economic implications outlined in this chapter have an obvious impact on the self-determination options for consideration by the community and should be considered in the context of the discussions (Chapter Four) regarding the ‘free association’ model relevant to Niue or the Cook Islands, where New Zealand remains responsible for providing necessary economic and financial assistance as well as external affairs and defence, or where incorporation with the NT or WA would provide similar economic and financial security for islanders.
Chapter 6: Land Tenure and Asset Ownership

The purpose of this chapter is to highlight the importance of land tenure and asset ownership on Christmas Island which are two important issues when assessing current governance arrangements. This discussion links with the previous discussion in that the vesting of religious sites and ownership of its infrastructure requires ongoing funding and community-based decision making. The ongoing preservation of religious sites is of paramount importance to both the Chinese and Malay communities on the island. In addition, land tenure and asset arrangements are critical issues for the Chinese community because they are integral to the location of, and preservation of the many temples located on the island. For example, analysing the land tenure and asset arrangements for the Chinese community in regard to the location of, and preservation of the many temples located on the island is critical. For this reason, involving the community and obtaining their input via a transparent consultative process is essential. At key junctures, land tenure arrangements on the island are confusing, especially where there is confusion around the application of the SDA process. This chapter will also highlight how decisions on the use of Commonwealth land usage is critical to economic development on the island, and therefore requires community input.

Land Tenure

The importance of land tenure arrangements has been highlighted in several Inquiries, Studies and Reports since the recommendations of the Islands in the Sun Report and as recently as in Chapter Four of the 2016 JSCNCET Final Report. The Western Australian Planning and Development Act 2005 (CI) defines land as generally including land, tenements and hereditaments as well as any interest in land, tenements and hereditaments that includes houses, buildings and other works and
structures. Land tenure then is the relationship between people with respect to the land and is a system that determines who has permissible access to the rights to use, control, develop and/or transfer the land, which include the associated responsibilities and constraints as prescribed in the aforementioned legislation. In this context, land tenure arrangements on Christmas Island have largely remained unchanged since 1992 with the introduction of the applied legislation regime in accordance with the Islands in the Sun report. Essentially, Crown land on Christmas Island is land owned and managed solely by the Commonwealth Government. This includes Crown land held under lease, licence or permit or in the case of the National Park where the Crown land has been specifically designated as a National Park.

In regard to the designation of Crown land specifically as the National Park, this initially occurred in 1980 because of the Christmas Island National Park being proclaimed under the National Parks and Wildlife Conservation Act 1975. The Park at that time comprised the entire south-west corner of the island, and in 1989, a further proclamation consolidated the previous three stages and further extended its boundaries. Currently, approximately 85 square kilometres or 63% of land on Christmas Island is administered by Parks Australia as the Christmas Island National Park. A large portion of the remaining Crown land is administered by the Commonwealth DJRDC with the Land Administration Act 1997 (WA)(CI) providing a number of land tenure options for Crown land on Christmas Island, such as freehold sale, general leases, conditional purchase leases, lease with option to purchase for

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494 Director of National Parks Department of Environment, 2.
Land Tenure and Asset Ownership

subsequent subdivision, licences and pastoral leases. These provisions are specifically prescribed pursuant to Part 6 of the *Land Administration Act 1997* (WA) (CI). These arrangements are also subject to Commonwealth Government policies and procedures, such as the *Public Governance, Performance and Accountability Act 2013* and the Commonwealth Property Disposal Policy. All Commonwealth land on the Island is subject to this Policy. The general policy is for ‘Commonwealth property, having no alternative efficient use, is to be sold on the open market at full market value’. There are three general exceptions to this general policy:

1. Disposal of property for housing and community outcomes: Where surplus Commonwealth property is considered suitable for facilitating an increase in the supply of housing, improved community amenity or the creation of new jobs, the property shall be disposed of under an approved strategy. This decision is made jointly by the Minister for Home Affairs, Minister for Finance and Deregulation and Minister for Housing.

2. Priority sales: These are made directly to a purchaser without having the property first being offered for sale on the open market, for example, where it is considered that a sale to State or Local Governments would optimise housing and/or community outcomes or where Commonwealth funded organisations seek special consideration in the disposal of surplus property to facilitate Commonwealth policy objectives. This decision is made jointly by the Minister for Home Affairs and the Minister for Finance and Deregulation.

3. Concessional sales: These are priority sales concluded at a purchase price below market value. This decision is made jointly by the Minister for Home Affairs

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495 State Government of Western Australia, ‘*West Australian Land Administration Act (CI) 1997*’, (Perth: State Law Publisher, 1997), 72–79.
and the Minister for Finance and Deregulation.\textsuperscript{496} The \textit{Mining Act 1978 (WA)(CI)} provides for mining leases to be granted on Christmas Island, which currently allows the mining of phosphate on the island. These provisions are specifically prescribed pursuant to Part 3, Division 1 of the \textit{Mining Act 1978 (WA) (CI)}.\textsuperscript{497} In this regard, the continual availability of suitable Crown land for the expansion of economic activity, including mining, is integral to the long-term viability of the Island’s economic prosperity. PRL supported this notion in their Annual Report 2018, considering that the decision by the Commonwealth based on environmental reasons to decline the application by PRL for further drilling exploration, which would have allowed them to continue their mining program, was extremely disappointing.\textsuperscript{498}


\textsuperscript{497} State Government of Western Australia, ‘West Australian Mining Act (CI) 1978’, (Perth: State Law Publisher, 1997), 21.

Figure 6.1 Land tenure and uses on Christmas Island. Source: Christmas Island National Park Management Plan 2014-2024.

National Park = 63%
Uncommitted Crown Land = 19.2%
Mine lease = 13.7%
Other Committed land = 4.1%
Figure 6.2 Statistical map of land use on Christmas Island. Source: Shire of Christmas Island Local Planning Strategy 2012.
Figure 6.3 Early surveyors’ map of the Flying Fish Cove Area circa 1920 provided in a comparative context where current planning mechanisms are inhibited by the historical establishment of industrial and housing infrastructure in a clustered environment. Source: Shire of Christmas Island Archival Records.
Chapter 6

In successive JSCNCET Inquiries, witnesses have consistently argued that the Commonwealth should release land, which together with effective land use policies will help stimulate economic development.\(^{499}\) The 2009 Commonwealth Crown Land Management Plan (CLMP) advocated the release of Commonwealth land, primarily for housing and economic development at full market value as a result of the 2006 JSCNET Report of Current and Future Governance Arrangements for the Indian Ocean Territories. Recommendation 2 of the JSCNET 2006 Report was that the Australian Government should adopt the policy that, in future, all Commonwealth land released for development on Christmas Island would be sold at full market value.\(^{500}\) Accordingly, the 2009 Report on the CLMP for the IOTs identified Crown land being assessed for conservation, economic, cultural and social values. This assessment provided the basis for a plan of management, which included recommendations on the appropriate future uses of land, land development priorities (i.e., short-term, medium-term and long-term priorities) and management options for those lands.\(^{501}\) The 2009 CLMP remains in force today as the Commonwealth’s principal document for land tenure and disposal on the island. The general principle of the CLMP was to sell and dispose of Commonwealth Crown land that had no alternative efficient use, on the open market at full market value. The Commonwealth reviewed the 2009 CLMP in 2016 because of comments and recommendations in the JSCNET 2016 Final Report and submissions from the community.


\(^{501}\) GHD Consultantcy and Commonwealth Attorney General’s Department, 1.
As noted earlier in this study, since 1992 the Australian and WA Governments have been party to SDAs for the provision of state-type services to Christmas Island and the Cocos (Keeling) Islands. Delegations provided by an SDA generally give WA officials the same powers on Christmas Island as they would have in WA to carry out state-type functions. In effect, this means that the WA Department of Planning has a critical role in determining local planning decisions. It provides planning and administrative advice to the Commonwealth to ensure the use and development of land are consistent with strategic planning, policy guidelines and planning standards. It also provides advice and assistance to the Commonwealth on coastal planning issues, professional and technical expertise, administrative services and resources to advise the WA Planning Commission (WAPC). The WAPC provides information, advice and recommendations to the Minister on land use planning and land development matters.502

The Shire of Christmas Island is involved in planning for the local community by ensuring that appropriate planning controls exist for land use and development, especially in the context of any Crown land that the Commonwealth intends to dispose. The key mechanism is the preparation and administration of its local planning scheme and strategy. Local planning schemes, scheme amendments and local planning strategies for the Shire of Christmas Island are governed by applied WA legislation and regulations and assessed by the WA Department of Planning and the WAPC under the WA approval system through SDAs. In February 2016, the Commonwealth and WAPC approved the gazettal of the Shire of Christmas Island’s adopted Town Planning Scheme Number 2 and the supporting Local Planning Strategy. The purpose and aim of the Scheme is (a) to appropriately plan for the

Chapter 6

Island’s diverse cultural, topographic and climatic characteristics; (b) to provide for future urban expansion in appropriate areas; (c) to enhance and diversify the Island’s economic base through the provision of land for a range of economic activities; (d) to recognise and enhance the Island’s unique heritage, both built and cultural; (e) to provide appropriate controls to protect development from the effects of extreme weather events; and (f) to preserve the Island’s unique natural attributes and environmental values.503

The gazettal of the Shire’s Local Planning Scheme Number 2 replaced the Shire’s Town Planning Scheme Number 1 that had been in force since July 2002 and was out of date in terms of land tenure and development controls on the island. A requirement of the review process for the Local Planning Scheme Number 2 was to adopt a Local Planning Strategy, which provided a comprehensive strategic overview of land tenure and use on the island. This had not been undertaken previously, despite the legislative requirement to do so in accordance with the Town Planning and Development Act 2005 (WA) (CI); the process was commenced in 2006 but never completed. The essential objective of the Local Planning Strategy is to provide a strategic vision and land use plan to guide future development on Christmas Island. The role of the Local Planning Strategy is to balance the needs of the natural environment, economic development and community expectations that will also provide background information and analysis to inform the strategic direction for Christmas Island as a guiding tool in the decision-making process, as well as informing a review of the Town Planning Scheme Number 2.

Ultimately, the land use and development initiatives and directions developed in the Local Planning Strategy are incorporated into a new Town Planning Scheme. As the statutory land use document for Christmas Island, the Town Planning Scheme Number 2 provides certainty and enhancement of the long-term direction that better reflects the changing economic circumstances on the Island as well as the potential unique land use challenges. The obvious purpose and effect of the Local Planning Strategy and the Town Planning Scheme Number 2 was to address issues of land tenure, especially in the context of releasing Commonwealth-owned Crown land for development. This was reflected in the Local Planning Strategy, recognising there was/is a direct relationship between it and the 2009 Commonwealth CLMP. Given that the majority of land on Christmas Island is owned or managed by the Commonwealth, as depicted in Figure 6.1 of this chapter, the outcomes of the land suitability and capability assessment and subsequent recommendations from the CLMP are especially relevant to ensure that land is released in accordance with the local planning processes undertaken by the Shire of Christmas Island through its Town Planning Scheme Number 2 and the Local Planning Strategy. Further, the project consisted of an initial assessment of Crown land on Christmas Island, which provided the basis for a plan of management, including recommendations on the appropriate future uses of land and land development priorities (i.e., short-term, medium-term, long-term priorities).

Importantly, the CLMP recognised that the most effective and recognised land management plan is, and will continue to be, the (Shire’s) Town Planning Scheme and that the Town Planning Scheme offers the most effective way of directing the future land uses on the Island to align with the strategic directions outlined in the

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In this regard, the Shire of Christmas Island plays a critical and important role in land management on the island and will continue to do so, given its mandate in accordance with the Town Planning Scheme Number 2 and the Local Planning Strategy, and where the WA Department of Planning also has a strong influence on the local (Shire) planning processes and decisions.

The Shire of Christmas Island Local Planning Strategy provides a comprehensive description and strategic direction of land use on the island that would be integral for consideration in any future governance options for the island. Given that the Christmas Island Local Planning Strategy depicts and recommends the future land use directions for the Island as a whole and its purpose is to guide the future development and long-term sustainable growth of the Island, the logical direction for this strategic development and growth is already well placed with the Shire to manage. Further, most of the land use priorities and opportunities that may require different approaches or have different objectives to future land uses have already been comprehensively identified for implementation in accordance with the regulatory requirements of the Town Planning Scheme Number 2 and therefore can be readily implemented. This posits the Shire in an advantageous position in terms of land tenure and control when considering options for future governance arrangements for the island where land tenure arrangements are integral to the discussion.

This is particularly relevant when considering that the community of Christmas Island will be deciding on the options for its future governance status and land tenure, especially urban development where a logical spatial framework for the expansion and integration with existing and planned infrastructure needs would be

505 GHD Consultantancy and the Shire of Christmas Island, 34.
506 GHD Consultantancy and the Shire of Christmas Island, 5.
Land Tenure and Asset Ownership

foremost in most of the community’s consideration. Depending on the option of self-determination that the community may favour, the Shire of Christmas Island would be able to facilitate the transition of land tenure and control through its Local Planning Strategy and Town Planning Scheme that is already in place as a regulatory mechanism.

Asset Ownership

For the purpose of this section, asset ownership can be considered to mean ownership of buildings, plant and equipment and infrastructure, such as roads, airports and ports. Given that the island economy was originally based around phosphate mining and government services, most asset infrastructure on the island has developed in response to this development. Many community assets are either directly under the control of the CIP Co. or the Commonwealth, or under vesting jurisdiction, such as the road network, or some public buildings by the Shire of Christmas Island. The road network was developed and built for the transport of phosphate from the mining quarries to the ‘dryers’ (the infrastructure needed to air dry out phosphate before shipping) and eventually to the port harbour, following the rapid mechanisation of mining operations as noted in Chapter Two. Similarly, the infrastructure for transporting the phosphate from the dryers to the port is by conveyor and cantilever process, as depicted in Figure 6.4.

As discussed in Chapter Five, expenditure by the Commonwealth is consistent with the Commonwealth’s ownership of the assets. In this regard, the Commonwealth is responsible for operating and maintaining a port on each of Christmas Island and Cocos (Keeling) Islands and Patricks Ports manages both ports on behalf of the
Commonwealth. While the port is primarily used for phosphate commercial shipping purposes, it also serves to receive and dispatch general freight for the island as well as for immigration purposes. For example, the Commonwealth’s capital expenditure in its 2013–2014 budget on extensions to the Flying Fish Cove jetty was about $6.7 million, capital upgrade to the port gantry and wharf crane was approximately $250,000 and port barge capital replacement was about $2 million to maintain its port assets. The ongoing expenditure by the Commonwealth on the port precinct demonstrates its obligation to maintaining assets it owns and operates on the island.


508 Department of Infrastructure and Regional Development, 11–12.
In the same year (2013–2014), the Commonwealth allocated expenditure (capital and operational) for other major assets it owns, such as the airport, hospital, power station, fuel storage facility, water treatment plant, employee and public housing, Recreation Centre, Customs and Policing, some community parks and public buildings, such as community religious places of worship and public conveniences. The total amount from the 2013–2014 Commonwealth budget for this allocation was around $38 million. As noted in Chapter Five, this amount decreased in the subsequent forward budget estimates years primarily owing to the change in the

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509 Department of Infrastructure and Regional Development, 6–12.
funding model between 2014–2015 and the subsequent years because of the commencement of the ‘Indian Ocean Territories Special Account 2014’ from the 1st of July 2015.\textsuperscript{510} Accordingly, the Commonwealth has responsibility for a diverse and complex array of assets. Similarly, CIPCo. made budget expenditure provision for upgrading some of its infrastructure, as noted by the Managing Director in the CIP Co. 2018 Annual Report where the financial results confirmed the need to increase output to offset the high fixed costs component of island operations.

To assist in meeting this challenge, CIPCo. has been investing further capital into its operations with the objective of improving efficiency.\textsuperscript{511} This has included new roofing over the dryer’s wet ore bins to provide greater weather protection, new automation throughout the conveyor system and improvements in instrumentation and surveillance to further enhance operational efficiencies.\textsuperscript{512} Therefore, CIP Co. is a major owner of infrastructure assets on the island and has been since it commenced mining operations (as depicted in Figure 6.5), although the nature and type of the infrastructure has changed over the years. In this regard, any input from the community in future governance arrangements would have minimal impact on CIP Co.’s asset ownership but would certainly influence their land tenure and economic development status.


\textsuperscript{512} Phosphate Resources Limited, 5.
The other major owner of infrastructure assets on the island, independent from the Commonwealth and CIP Co., is the Shire of Christmas Island that has either direct ownership of public buildings, plant and equipment and some of the road infrastructure (including footpaths), or vesting responsibility. Prior to the promulgation of the local government because of the Islands in the Sun report in 1992, the majority of current owned assets by the Shire of Christmas Island were under the ownership of the Christmas Island Assembly as part of the Commonwealth. The condition of the current Shire assets vary in accordance with their age and use, such as its current Administration building that was the former Christmas Island ‘Asian’ School, as noted in Chapter Two, or the Community Hall in Poon Saan, both of which were built in the 1950s. In this regard, the Shire faces significant building asset management challenges, which principally relate to the high levels of corrosion
caused by the harsh weather conditions. A high level of routine maintenance is required to protect all building components and minimise the effects of the tropical weather. Maintenance alone for these two assets in the Shire of Christmas Island 2015–2016 budget was approximately $250,000.\textsuperscript{513}

\textbf{Figure 6.6 Maintenance works on North South Baseline Road undertaken by the Shire.}

\textit{Source: Shire of Christmas Island 2014-15 Annual Report.}

The road infrastructure assets on the island were valued at $71.8 million in the Annual Financial Report at 30 June 2014, using a depreciated replacement cost method. This value includes roads within the Nature Reserve controlled by the Shire but fully funded by the Federal Government.\textsuperscript{514} The extensive road network on the island importantly provides access for the community, mining operations, Nature


Reserve (Parks) and the detention facility, and the network of unsealed roads are therefore strategically and financially important to the Shire and the community. The overall condition of the roads is considered appropriate for the current levels of service, although future maintenance and renewal of the Island’s road transport network is highly dependent on continued receipt of Commonwealth grant funding. In the absence of these grants, the network would be at significant risk of infrastructure failure owing to limited alternative sources of funding. This makes this issue a critical one when considering future governance models for the island. The following table provides data about the Shire of Christmas Island’s road assets as recorded in its Assets Register.⁵¹⁵

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Table 6.1: Shire of Christmas Island Road Expenditure and Projections – Shire of Christmas Island Asset Register

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sealed Roads, No Kerbing</td>
<td>22.00 km</td>
</tr>
<tr>
<td>Sealed Roads, Kerbing Both Sides</td>
<td>12.98 km</td>
</tr>
<tr>
<td>Sealed Roads, Kerbing One Side</td>
<td>6.81 km</td>
</tr>
<tr>
<td>Gravel Sheeted Roads</td>
<td>52.42 km</td>
</tr>
<tr>
<td>Footpaths</td>
<td>9.35 km</td>
</tr>
<tr>
<td>Bridge</td>
<td>1</td>
</tr>
<tr>
<td>Culverts</td>
<td>48</td>
</tr>
<tr>
<td>Signs</td>
<td>673</td>
</tr>
</tbody>
</table>

Critical major strategic asset management is an important issue for all owners of assets on the island, given the highly corrosive tropical coastal environment that results in a reduced lifecycle for metal-based (as well as non-metal) infrastructures. This has been a constant problem for all sections of the community on the island, given the harsh and at times extreme weather environment and also contributes to unavoidably high maintenance and renewal costs for these assets. Even though private asset ownership on the island is minimal, the high maintenance asset replacement cost and the limited source of capital for private ownership to replace these assets is still an issue. However, it does not have any direct financial impact cost to government agencies. This is also relevant to the road infrastructure where the tropical annual wet season causes high rainfall and subsequent damage to the road (especially unsealed) network, which in turn requires routine cyclic and costly maintenance. Further, the remaining useful lifespan of minor infrastructure assets in the tropical environment is highly dependent on the level and timing of future maintenance and makes lifecycle forecasting problematic. This is also a relevant factor for private ownership of smaller assets, such as small businesses. The
continual and regular maintenance of assets does contribute to achieving the maximum asset service life. However, asset maintenance is extremely expensive on the island, and only the larger organisations, such as the Commonwealth, the Phosphate Mining Company and the Shire, are in any position to realistically achieve this outcome.

Chapter Summary

In concluding this chapter, it is observed that both land tenure and asset ownership issues have been raised in previous and current Inquiries, Reports and Studies. PRL (CIP) has restated its requirement for more land to sustain mining operations on Christmas Island, noting in its submission to the JSCNET 2015 Inquiry that it needs to be understood that, without access to additional vacant Crown land, on current parameters, it is unlikely that the operation will be commercially viable beyond 2020. In addition, tourism associations of Christmas Island and Cocos (Keeling) Islands commented that visitor numbers to the IOTs could be increased if suitable land was made available for additional tourist accommodation. 516 Further, that land tenure issues have been of concern on Christmas Island for many years, is demonstrated by the 2010 JSCNET Inquiry Report into The Changing Economic Environment in the Indian Ocean Territories. The Report noted that the absence of a land use strategy or plan has been highlighted as a significant hindrance to business investment and development for both Christmas Island and the Cocos (Keeling) Islands. 517

Current Commonwealth policy does not include resolving the key issues identified by the Islands in the Sun report or subsequent JSCNET Reports and Inquiry


recommendations that have continually frustrated the community. Therefore, this approach continues to deny the islanders their fundamental rights, ignores cultural and historical sensitivities, maintains an unhealthy level of economic dependency and Commonwealth land ownership and continues to suppress community initiative, development, capacity and self-reliance. It also ignores Commonwealth constitutional, jurisdictional and legislative responsibilities to govern and to provide for the good governance of the IOTs, as noted in Chapter Four. The Shire of Christmas Island has released its Local Planning Strategy and Town Planning Scheme Number 2 that was gazetted in February 2016. However, the release of the final Commonwealth CLMP continues to hinder and influence any meaningful land tenure development on the island, as noted in the JSCNET 2016 Final Report. The essential objective of the Shire’s Local Planning Strategy is to provide a strategic vision and land use plan to guide future development on Christmas Island. The Local Planning Strategy attempts to balance the needs of the natural environment, economic development and community expectations to ensure the long-term sustainable development of Christmas Island. Ultimately, the land use and development initiatives and directions developed in the Local Planning Strategy are incorporated into the statutory Town Planning Scheme. Therefore, it is critical that a positive synergy be established between the Shire’s planning processes and that of the Commonwealth. As the statutory land use document for Christmas Island, the Town Planning Scheme provides certainty and enhancement of the long-term direction that better reflects the changing economic circumstances on the Island as well as the unique potential land use challenges.

Since the Island’s economy has been, and is still, primarily based around phosphate mining, developing alternative economies that include tourism, immigration detention, horticulture, education, and light industry is dependent on land tenure disposal as well as asset ownership and improvement. While the Commonwealth Government has made significant capital investment to upgrade existing facilities
and provide infrastructure for potential new industry, this must be aligned with any future economic development along with recognising land tenure being simultaneously critical to this growth.

In this regard, consideration of future governance options for/by the community will, and must, include these issues where land tenure and asset ownership are important factors, given the heavy historical reliance by the community on the Commonwealth regarding these matters. For example, any self-determination model that means incorporation with either WA or the NT should include the same legislation applying to land tenure where the local government maintains (some) control over land tenure and planning through its Local Planning Strategy and Town Planning Scheme. Similarly, a comprehensive audit of all assets on the island should be undertaken in the process to establish the assets longevity and cost concerning any transfer of ownership from the Commonwealth. Hence, the community must be fully informed during any consultation process of the likely effects of these issues when considering the self-determination options outlined in this study.
Chapter 7: Part One – Future Direction

The future of Christmas Island should be in the hands of the people. The fundamental premise of this study has been to identify and discuss the underlying governance problem on Christmas Island where the community is denied their democratic right to vote in a political system that applies delegated legislation from WA through an arrangement between the commonwealth and the state government. As noted in the Introduction of the study, the purpose of the research has been to explore and investigate the different options for the governance of the Territory of Christmas Island. In doing so, the study sought to draw a link between theories on democratic representation, responsible government and self-determination, and the current governance arrangements on the island. Ultimately, some form of meaningful consultation with Christmas Islanders and potentially a referendum on the island may be required to realise any proposed change. This thesis has emphasised the need for residents to be informed of their options and for decision-makers to be guided by their feedback. To consider potential options, this thesis has sought to examine the historical, cultural and political aspects of the island, with a view to examining how the past and the present translate currently into the political aspirations of the island’s residents.

The design of the thesis has been intended to ensure that the process flows logically, coherently and succinctly within a framework that examines the democratic concepts of representative democracy, responsible government, self-determination and federalism as applied to Christmas Island. Where current (and past) applied governance arrangements are unaccountable through a lack of consultation with the community, this has led to demands for self-determination or at the very least being heard in regard to how they are governed, which reinforces the thesis question. The approach of the thesis is to outline various arguments that identify the problem and
provide viable and realistic alternative governance options for the community to consider.

A democratic deficit exists on Christmas Island since islanders are denied the right to vote in the WA parliamentary system for the representatives that apply the legislation through the existing legislation regime arrangement between the Commonwealth and the WA Government. Not only does this manifest itself in the implicit absence of voting in the WA parliamentary process for islanders, but also in the various ways in which the Commonwealth and WA Government deliver the functions. That is, there is a lack of transparency and accountability, bureaucratic decision-making and inadequate participation by the community in specific island policy-making affecting them.

These issues and concerns have been highlighted throughout the study, from examples where the transfer of sovereignty in 1958 was undertaken to recent examples where the Commonwealth immigration refugee policies and decisions were enacted, without any reference or consultation with the community. However, the most prominent example of such instances is the application of SDAs, which were applied as a result of the recommendations of the 1992 Islands in the Sun report, with minimal consultation. This example is significant not only since the SDA regime was applied as noted in recommendation 5 of the Report, which also noted that the community be involved in the reviewing process, but also because it continues despite the community (and local government) raising the requirement for such involvement in several JSCNET Inquiries and/or directly with the Commonwealth. These arrangements deliver WA State-type services to Christmas Island through SDAs in accordance with the applied delegated legislation that democratically disenfranchises the Christmas Island community. In particular, the fundamental procedural aspects of democracy reflected in the mechanisms of representation and decision-making are absent in the SDA arrangements. The SDA
process is an expensive arrangement as noted in earlier chapters of this study and also does not properly consult with the community of Christmas Island in regard to the terms (and conditions) of the SDAs that apply. As reiterated throughout this study, democracy is fundamental to Australia’s political system and is underpinned by the notions of representative democracy and responsible government, as reinforced by Saunders, where in a democracy most of the governing is by representatives of the people and the right to vote for those representatives is the most obvious and democratic way of expressing this notion.518

Christmas Island is unique, not only geographically but also demographically (as noted in Chapter Three), since the majority of the permanent population descend from Chinese and Malay origins in South-East Asia. This uniqueness makes it important that the community be afforded the opportunity to determine their own affairs and manage their governance future. Hence, the notion of self-determination for Christmas Islanders is critical to the principle of managing their own (governance) affairs. Christmas Islanders can demonstrate they conform to the United Nations key criteria regarding self-determination, namely, that they are geographically separated from mainland Australia and have no community of interest with the mainland, have an identifiable ethnic and/or cultural distinctiveness and most importantly, have been subjected to colonialism. In this regard, the history of Christmas Island is one of colonisation and the minimal changes to governance arrangements since the transfer in sovereignty in 1958 have not led to any meaningful input by the community regarding the control of their own affairs, which is a fundamental democratic right in Australian society. The only minor exception in the changes to governance arrangements has been the establishment of the local government in 1992 as result of the Islands in the Sun report. It was established in accordance with the applied delegated legislation regime where the

518 Saunders, 81.
local government was/is constituted under the WA *Local Government Act (CI) 1995* as part of the SDA process thereby rendering the local government legislatively subservient to the WA governance process. This then is the essence of the problem, where the applied delegated legislative regime on Christmas Island has created a democratic deficit that disenfranchises the community of Christmas Island and denies them the right to determine their own governance future.

Accordingly, this final chapter will serve to outline how we have arrived at a position of recommending new options for the community to discuss and consider in the future governance arrangements for Christmas Island. These options are necessary because Australia’s Commonwealth Government has not provided islanders an opportunity at any stage to determine their (governance) future. As discussed in Chapter Four, these options are put forward in a manner consistent with the recommendations contained in the *Islands in the Sun* report. In particular, Recommendation 12 of the Report stated that the Commonwealth should ensure that in its administration of Christmas Island, the Territory will ‘not assume’ the characteristics of a non-self-governing external Territory within the terms of Chapter X1 of the United Nations Treaty.\(^{519}\) Chapter Four of this study outlined the details of this recommendation and discussed other recommendations, including the possibility, following consultation with each resident of the Territory, of its inclusion within the boundaries of WA.\(^{520}\) This specific consultation with the residents (community) of the Island regarding the recommendations of the *Islands in the Sun* report has not occurred. These options include retaining the status quo, incorporating the existing geographical and political boundaries into WA, incorporating the existing geographical and political boundaries into the NT and

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\(^{519}\) *Islands in the Sun*, 59.

\(^{520}\) *Islands in the Sun*, 204.
enhancing the powers of the Shire of Christmas Island by giving it greater powers and responsibility for specified domestic laws.\textsuperscript{521}

The \textit{Islands of the Sun} report did not identify options that considered Christmas Island applying to the United Nations under clause 2 of Resolution 1514 (XV) of 1960 for some form of limited self-government. This option has arisen subsequent to the \textit{Islands in the Sun} report because of recommendation 13 in the JSCNET Report of 2006. This recommendation, along with the original recommendations of the \textit{Islands in the Sun} report (noted above), have been included in this study as a viable option for the community to consider. The Shire of Christmas Island has also been instrumental since the \textit{Islands in the Sun} report was first released, in agitating for greater self-determination and subsequent consideration by the United Nations. Also included for discussion and consideration is a hybrid alternative mixed delivery model of governance from one or all of the above options as well as from some of the submission responses that are included from several previous JSCNET Inquiry Reports.

\textbf{The self-determination options}

\textbf{United Nations Free Association}

As noted in the Introduction and Chapter One of this study, several studies, reports and inquiries have been conducted on the Island for many years and a recurring theme of these has been repetitive assessment of the legal regime operating on Christmas Island with no definitive change having occurred. In this regard, a particular territory’s status as a non-self-governing Territory is as declared by the United Nations General Assembly Resolution 1514 (XV) of 1960 in clause 2, where all peoples have the right to self-determination; by virtue of that right, they freely

\textsuperscript{521} Islands in the Sun, 193.
determine their political status and freely pursue their economic, social and cultural development.\textsuperscript{522} Thus, Australia is obligated to follow United Nations Conventions, treaties and resolutions regarding non-self-governing territories as a member of the United Nations. As Sterio notes, the United Nations defines non-self-governing territories by their geographical separateness, ethnic and/or cultural distinctiveness and political subordination owing to historical, administrative, political and/or economic elements.\textsuperscript{523} The United Nations monitors a ‘decolonisation’ process until the self-government process is decided and/or achieved. The Cocos (Keeling) Islands underwent a ‘plebiscite referenda’ process in 1984 that was subject to United Nations scrutiny. The result, although initially questionable according to the United Nations, was that Cocos Islanders voted for integration with Australia. On 6 April 1984, the smallest act of self-determination ever conducted took place under auspices of the Australian Electoral Commission and observed by the United Nations mission, with electors voting overwhelmingly for integration with Australia.\textsuperscript{524} As noted in Chapter Four, Christmas Island has never attracted this status, which prompted to some degree the ‘unofficial’ referendum the Shire of Christmas Island held on the 6\textsuperscript{th} of November 1999 in conjunction with their ordinary council elections. The results were an overwhelming vote by islanders (63\%) in favour of a form of limited self-government similar to that enjoyed by Norfolk Islanders (at the time) with their own Legislative Assembly.\textsuperscript{525}

The ‘integration’ of Christmas Island with Australia, although it occurred unasked and with no consultation with the community, would seem to have gone some way towards reducing the possibility of United Nations involvement in the Territory.


\textsuperscript{523} Sterio, 22.

\textsuperscript{524} Tahmindjis, 192.

Further, with the cessation of the Australian Government schemes to encourage Christmas Islanders to leave the Territory (either through repatriation or resettlement on the mainland), a permanently settled population with a distinct ethnic and cultural identity was likely to develop that still had some identifiable cultural historical links to the early population of the island. This was particularly demonstrated in Chapter Three, and therefore, Christmas Island might arguably have the status of a non-self-governing territory. As noted in the submission by the Centre for Comparative Constitutional Studies to the House of Representatives Standing Committee on Legal and Constitutional Affairs in 1989, if Australia does not wish to accept the international obligations that go with this status, then further measures would seem to be called for to ensure that the residents of the Territory enjoy a meaningful form of self-government.\textsuperscript{526}

Conversely, the (then) Commonwealth Attorney-General’s Department and the Department of Foreign Affairs and Trade did not accept the conclusions in the Centre for Comparative Studies submission and the former’s disagreement was primarily based on its view that ‘Christmas Island has no indigenous population and therefore cannot be regarded as being distinct ethnically and/or culturally from Australia’\textsuperscript{527}. This was one of the reasons why the Shire of Christmas Island commissioned the University of WA (UWA) to undertake the Report on Christmas Island’s Ethnic and Cultural Distinctiveness in June and July 2016. Importantly, the findings of the UWA study noted that the historic accounts and archaeological investigations contend that no extant indigenous population lived on Christmas Island prior to the establishment of permanent settlement in 1888 and that (as a

\textsuperscript{526} The Centre for Comparative Constitutional Studies, ‘Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs’, (Melbourne: University of Melbourne Law School, 1989), 45.

\textsuperscript{527} The Centre for Comparative Constitutional Studies, 46.
result) Christmas Islanders have developed a common culture that is distinguishable from that of mainland Australia. Further, Christmas Island has a diverse language base as well as a diverse range of religions.\textsuperscript{528} In this regard, the Commonwealth’s (Attorney-General’s Department) contention would appear to have been (recently) disproved, given that the UWA Report aligns with the criteria as defined by the United Nations and these comply with the criteria in regard to their geographical separateness and ethnic and/or cultural distinctiveness. The question of political subordination owing to historical, administrative, political and/or economic elements can also be substantiated in the UWA Report (as well as numerous other reports over a long period), which noted that currently some significant differences were still evident through the governance structures that applied, with the resultant limitation on Christmas Islanders’ democratic rights.\textsuperscript{529} The Centre for Comparative Constitutional Studies submission to the \textit{Islands in the Sun} Inquiry also noted that Christmas Island had certainly not attained a full measure of self-government and was quite definitely in a position of subordination owing to historical, administrative and economic elements.\textsuperscript{530} Thus, this study contends that the situation for Christmas Islanders remains the same.

As previously noted, the Attorney-General’s Department also placed significant weight on the assumption that Christmas Island had not at any time been the subject of a report to the United Nations, an assumption at odds with the previous British practice in relation to Christmas Island prior to its transfer to Australia, as reported by the Centre for Constitutional Studies in its 1991 submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry.

\begin{footnotes}
\item[528] University of Western Australia, \textit{‘Report on Christmas Island’s Ethnic and Cultural Distinctiveness’}, (Crawley: School of Social Sciences, UWA Press, 2016), ii.
\item[529] University of Western Australia, ii.
\item[530] The Centre for Comparative Constitutional Studies, 23.
\end{footnotes}
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Into the Legal Regimes of Australia’s External Territories. Christmas Island, along with the Cocos (Keeling) Islands, was reported on prior to 1958 as part of the Colony of Singapore, which was accepted by Britain to be a non-self-governing territory. When the Cocos (Keeling) Islands were transferred to Australia in 1955, the Australian Government assumed reporting obligations. However, when Christmas Island was transferred in 1958, Australia did not continue the British practice of reporting.

The Australian Government’s position was that Christmas Island could not be considered a non-self-governing territory since it did not have a permanent indigenous population. While the Cocos (Keeling) Islands did not have an indigenous population either, it did have a permanently settled and relatively cohesive population consisting of the descendants of the original Malaysian, Indonesian, Chinese, African and other workers brought to the Islands in the 1820s and 1850s. Conversely, the Christmas Island population was largely composed of phosphate mine employees recruited from China, Malaysia, Singapore and the Cocos (Keeling) Islands, some of whom resided there permanently, but many of whom were there for the duration of their (renewable) contracts and still had families in Singapore or Malaysia. The Department of Foreign Affairs and Trade also responded to the Centre for Constitutional Studies Report, noting that their suggestion (the Centre’s) raises a number of difficulties, principally in determining whether a distinctive ethnic and cultural identity exists or is likely to develop on Christmas Island that has the status of ‘political subordination’. Further, the Department advised that the suggestion contained in the Centre for Comparative Constitutional Studies submission also raises legal considerations. The question arises, for instance, how much weight may be given to the criteria contained in the

531 The Centre for Comparative Constitutional Studies, 22.
532 The Centre for Comparative Constitutional Studies, 23.
Annexure to the United Nations General Assembly’s Resolution 1541 (XV) where Australia’s traditional view has been that resolutions of the General Assembly are not binding under international law. Moreover, Australia and all other administering powers abstained or voted against this particular resolution.

However, as the submission further notes, there can be no guarantees that inscription of Christmas Island on the United Nations list of non-self-governing territories will not be sought, if there is a political will on the part of other members of the United Nations to do so.\textsuperscript{533} This, of course, brings the debate full circle where the community of Christmas Island must also have the political will to pursue this option with the United Nations through the process described in this study, particularly in the context of the free association model. The Centre for Comparative Constitutional Studies submission also noted in contrast to the Attorney-General’s and Department of Foreign Affairs and Trade’s contention that it is clear that merely because Australia believes it has no obligation to report on Christmas Island to the United Nations, since it considers there is no indigenous population on the island, it is not dependent on either the initiative of the administering power (Australia) or its consent. That is, if a particular territory falls within the definition of non-self-governing territories developed under international law, and if the question of that Territory is brought before the United Nations General Assembly by any member state, then the General Assembly may refer it to the Special Committee of 24 and the administering State (Australia) would then be expected to comply with the undertakings set out in Article 73 of the United Nations Charter.\textsuperscript{534} This again has been the consistent approach by the Shire of Christmas Island on behalf of its community in the numerous submissions it has made to Commonwealth Standing Committee Inquiries and (as noted above) the reason for the informal on-

\textsuperscript{533} The Centre for Comparative Constitutional Studies, 44.
\textsuperscript{534} The Centre for Comparative Constitutional Studies, 22.
Chapter 7

island referendum held in November 1999. Obviously, it is to be expected that the Commonwealth would vigorously argue against any such position, given the historical approach it has consistently taken since Christmas Island was transferred to Australia in 1958, and that it opposes any form of self-determination by islanders to determine their governance future as expressed in the March 2016 JSCNET Final Report.

In this regard, several Commonwealth Inquiries have considered the arguments about whether or not the circumstances on Christmas Island warranted non-self-governing status, as noted above and in Chapter Four. However, these Inquiries did not make any recommendation(s) directly on this question, noting that the case was arguable, and, as noted above, that Britain had reported to the United Nations about Christmas Island when it was a non-self-governing territory as part of the Colony of Singapore. Rather, the Commonwealth concluded that legal, administrative and political reform were crucial to ensuring that Christmas Island did not attract formal United Nations listing as a non-self-governing territory. This could be or may be interpreted as an admission by the Commonwealth that they have abrogated their responsibilities in allowing Christmas Islanders to determine their (political) future. As the recent 2015 JSCNET Inquiry Report released in March 2016 reveals, the Committee has clearly stated that it does not support a self-governance model operating in any external territory, including the IOTs. Minor as the recommendation may appear in the Report, especially given that Christmas Islanders have historically raised the matter over decades and the JSCNET Report devoted only one short sentence (recommendation) to the matter, the implications for Christmas Islanders are major. This sentence also appears contradictory to the recommendation contained in the 2006 JSCNET Report where it was recommended

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that the Australian Government undertake to develop options for future governance for the IOTs in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands by the end of June 2009. However, this contradiction does substantiate to some degree that any recommendation(s) from JSCNET Inquiry Reports are not necessarily binding on the Government to implement. This would certainly appear to be the case where the recommendation from the 2006 JSCNET Inquiry was not implemented by 2009 and the 2015 JSCNET Inquiry made a recommendation in its 2016 Final Report not to support any referendum for Christmas Islanders to determine their governance future.

However, the 2016 JSCNET Report does support some of the original recommendations of the 2006 JSCNET Report where possible options could include, but should not be limited to, maintaining current governance arrangements with some refinement and incorporation into the State of Western Australia. In this regard, some discussions appear to have occurred between the Commonwealth and the WA State Government in January 2017 as media reports reveal that the (then) Premier of WA had discussions with the Commonwealth with a view to incorporating the Cocos (Keeling) Islands with WA; however, no such reference was made to include Christmas Island. This discussion did not develop any further following the election of the Labor Government in WA in March 2017, and the new Premier (Mark McGowan) made it quite clear that WA was not interested in assuming any territorial responsibility for the Cocos (Keeling) Islands. It appears


then that the Commonwealth are not only reluctant to support any referendum on self-determination for Christmas Islanders in accordance with the 2006 JSCNET Report recommendation, and are content to allow the status quo to continue with regard to denying Christmas Islanders any say into what governance and political future they may have. Hence, the community must consider the options outlined in this study themselves since the Commonwealth appear to have no intention of supporting such a move or even facilitating dialogue relating to Christmas Islanders pursuing such options.

Chapters Two and Three of the study discussed the historical background and cultural composition of Christmas Island and inform the study of the reason that the population developed on Christmas Island with its origins from Asia. The chapters also confirmed the various demographics and cultures of the Island that were/are built upon the historical facts and experiences, which are still evident in the Christmas Island community. Related to the criteria that Sterio and other authors referenced in the study that were discussed, the notion of self-determination can be clarified in a context that applies to Christmas Islanders. That is, the final outcome of this clarification applies to the definition provided by the United Nations Resolution 1514(XV) that all peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Further, Chapter Four reinforced the discussion regarding the historical and cultural development of the island’s community by discussing its colonial subjugation, first under Great Britain (and the Singapore Straits Colony) and then under the Australian Government. While Chapter Two discussed the historical background of Christmas Island and the manner in which the island was settled, one of the main criteria when considering applying the

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concept of colonisation to Christmas Island is that there were no recorded inhabitants of the Island prior to Great Britain declaring sovereignty of the Island for establishing phosphate mining. The Report on Christmas Island’s Ethnic and Cultural Distinctiveness undertaken by the University of Western Australia in June and July 2016, as commissioned by the Shire of Christmas Island and released in September 2016, notes that historic accounts and archaeological investigations contend that no extant indigenous population was living on Christmas Island prior to the establishment of permanent settlement in 1888.\textsuperscript{540}

Further, on the basis of the historic accounts and archaeological investigations, there is no evidence to suggest that the island was permanently inhabited prior to settlement from 1888 onwards by the labour workforce required for the mining of phosphate, who were ‘imported’ from neighbouring Asian countries under the subjugation and control of the (then) British colonial administration to the extent that the majority of the Asian population now living permanently on Christmas Island are (mostly) direct descendants of these early ‘imported’ inhabitants.\textsuperscript{541} Hence, it can be argued that colonisation on Christmas Island occurred progressively (as described in Chapter Two) to the extent where there was an orchestrated migration pattern to Christmas Island arranged by the colonisers. They (the British) kept their strong links with the (then) British Empire for the purpose of retaining their status and privileges by subjugating the other peoples also living on the Island (the Asian population) that were bought to the Island for the purpose of providing economic services to the colonisers. As Weller notes, while there is no formal definition of what constitutes a colonial territory, as a rule of thumb it only includes those territories that one would intuitively recognise as such. These are territories forcibly acquired by a racially distinct metropolitan power, divided by an ocean during the

\textsuperscript{540} University of Western Australia, ii.
\textsuperscript{541} University of Western Australia 7.
time of imperialism and subjected to a colonial regime for the purposes of economic exploitation. The long list of qualifications contained in this sentence indicates the lengths to which governments have gone to ensure that self-determination cannot ever be invoked against them.\textsuperscript{542} This interpretation appears applicable to Christmas Island and is certainly how the Christmas Island community perceive themselves (as expressed in various reports and studies as well as in numerous JSCNET Inquiry submission responses) as being colonised, which further underpins their continued desire for some form of self-determination tangibly distinct from colonial subjugation.

Chapter Three also discussed the meaning of peoples and minority groups and the importance of this meaning for determining the classification of the community of Christmas Island. Sterio supports and elaborates on the definition applied by Scharf that under the principle of self-determination, a group with a common identity and a link to a defined territory is, and should be, allowed to decide its political future in a democratic fashion. For a group to be entitled to exercise its collective right to self-determination, it must qualify as a people, which is traditionally determined using a two-part test. The first part of the test is ‘objective’ and seeks to evaluate the group to determine the extent to which extent its members ‘share a common racial background, ethnicity, language, religion, history, and cultural heritage’, as well as ‘territorial integrity of the area the group is claiming’. The second part of the test is ‘subjective’ and examines ‘the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct people’, and ‘the degree to which the group can form a viable political entity’.\textsuperscript{543} Further, it necessitates that a community explicitly express a shared sense of values and a common goal for its future. This analogy could be equally applied to Australia in general terms, where

\textsuperscript{542} Weller, 34.
\textsuperscript{543} Sterio, 16.
Thesis Summary

Australia is described as a sovereign nation and where the people express themselves as having a shared sense of values and a common interest as Australians, irrespective of their ethnic origins. Accordingly, under the principle of self-determination, all self-identified groups with a coherent identity and connection to a defined territory are entitled to collectively determine their political destiny in a democratic fashion and to be free from systematic persecution. For such groups, the principle of self-determination may be brought about through a variety of means, including self-government, substantial autonomy, free association or arguably, in certain circumstances, outright independence/full sovereignty. For a group to be entitled to a right to collectively determine its political destiny, it must possess a focus of identity sufficient for it to attain distinctiveness as a people.544

Chapter Three also discussed and demonstrated the reasons that the community of Christmas Island would, in part, meet the objective test as described above by Sterio and Scharf. Namely, even though separately distinct cultural minority groups exist on the Island, such as the Chinese and Malay communities, they appear to partly meet the first part of the test by sharing a common racial background, ethnicity, language, religion (partly), history and cultural heritage as well as territorial integrity of the area they may claim. While only partly meeting the aforementioned ‘objective’ test, undoubtedly, the Christmas Island community would completely meet the ‘subjective’ test. That is, Christmas Islanders do perceive themselves as a collective distinctive group (from mainland Australia) given the long historical connection they have with the Island, and importantly, with each other. Further, the collective group has already demonstrated they can form a viable political entity by exercising their democratic right to elect, and be elected to, the local government authority on the Island where the cultural and ethnic groups are equally represented.

544 Scharf, 379.
In addition, the UWA study supports this position by definition that an ethnic group can be defined as a ‘named human population with myths of common ancestry, shared historical memories, one or more elements of a common culture, a link with homeland, and a sense of solidarity’ along with shared core cultural values. Using this definition, the UWA Report argues that Christmas Islanders are: (a) an identifiable ethnic group; and (b) distinct from Australians in the key dimensions of ethnicity, including ancestry, culture, links to homeland, group solidarity, group identity and core cultural values.\textsuperscript{545} Further, and in support of Sterio’s classification of distinct identity, the UWA Report states that the Christmas Islander identity is further reinforced by feelings of difference from mainland Australia and while Christmas Island is considered legally part of Australia, the long-lasting effects of segregation, perceptions of weak and dispersed institutions, maltreatment and unequal participation in Australian social and political life make Christmas Islanders feel as though they are not part of the Australian nation. Thus, the Christmas Islander identity is preferred and takes precedence.\textsuperscript{546}

The final discussion regarding the notion of self-determination concerns the concept of ‘internal and external’ self-determination and the ways in which the meaning of either can be applied to Christmas Island as a model of self-determination to consider. Co-existence of a people within a larger central state, where the people have rights to self-government, political autonomy and cultural, religious and linguistic freedoms, is an example of internal self-determination.\textsuperscript{547} Scharf also supports this view where the right to self-determination can take different forms that

\textsuperscript{545} University of Western Australia, 12.

\textsuperscript{546} University of Western Australia, 13.

\textsuperscript{547} Sterio, 18.
are less intrusive on state sovereignty than is secession.\textsuperscript{548} Conversely, Weller argues against the broad application of the right to self-determination based solely on the old model of independence for colonial entities and conflates self-determination with secession and independence. While recognising and analysing other options of self-determination in his articles, Weller appears to prefer the external model of secession as the only realistic means to achieve self-determination and hence the need to escape the self-determination trap.\textsuperscript{549}

Agreeing solely with this definition of self-determination limits its scope and usage to independence or secession only, and this narrow application of the definition would not be palatable to, or even accepted by, the Christmas Island community, and presumably also by the Commonwealth of Australia. This view was also supported in several submissions to the various JSCNET Inquiries where there was a general consensus among these submissions that self-government created concerns. Submission 4 of the 2015 JSCNET Inquiry notes that self-government along the lines of Norfolk Island is unlikely to succeed. The IOTs, like Norfolk Island, have small populations and very limited own source financial capacity. Given the Government’s announcements about changes to Norfolk Island, this option seems to have limited value in considering further along the lines of Norfolk Island and is unlikely to succeed.\textsuperscript{550}

Accordingly, the meaning of self-determination should retain its original connotation wherein all peoples freely determine their political, economic, social or

\textsuperscript{548} Scharf, 379.

\textsuperscript{549} Weller, 27.

other status without a prescription of what form it takes. In this regard, applying the
notion of self-determination to the Christmas Island community is, and should be,
based on confirming the meaning(s) provided above (as extrapolated from the
various literature sources) that: (1) the community perceive themselves as being
colonised, (2) they qualify as a people and (3) the concept of internal self-
determination is applicable, given that the community qualify as a people and see
themselves as being colonised. Given the above, this study therefore recommends
that the option for Christmas Islanders to pursue self-determination through the
United Nations process of Resolution 1514 (XV) clause 2 be confined to choosing Free
Association with the mother State (Australia) and not any of the other forms of self-
determination as prescribed by the United Nations. That is, it would not only be
impracticable for Christmas Islanders to pursue independence, secession or full
sovereignty but also not politically, economically and financially viable. Putting this
in the context of the ‘free association’ option for Christmas Islanders, the most
appropriate examples can be found in the arrangements that the Cook Islands and
Niue have with the (mother) country of New Zealand, as explained in Chapter Four.
The community of Christmas Island should have this option fully explained to them
for them to understand and consider it seriously, especially given that the
arrangement between Niue and New Zealand is so permissive (and therefore
arguably successful) that Niue retains the unilateral right to terminate its
relationship of free association with New Zealand at any time, assuming that a two-
thirds affirmative vote of the Niue Assembly and a two-thirds vote in a popular
referendum can be obtained.\footnote{Samuel Spector, ‘Western Sahara and the Self Determination Debate’, The Middle East Quarterly 16,
no. 3, (2009), page 117.}

Hence, the Cook Islands and Niue are prime examples of the attainment of a full
measure of self-government by formerly colonised territories. Under the model of
free association, the Islands have achieved virtually unlimited executive, legislative, and judicial competence over their own affairs and easily satisfy Hannum’s rough criteria for what constitutes a ‘fully autonomous’ territory. In both cases, and in spite of the failure to hold a direct referendum in the Cook Islands, the United Nations General Assembly approval was obtained for their respective outcomes. The process by which the principal state sought popular consent to a new political status vis-a-vis New Zealand was successful, at least in part, because at least one of the options available had been seriously worked out in advance with the meaningful participation of opposing sides, and the United Nations remained actively involved.552

These two models are then contemporary and successful examples for the community of Christmas Island to discuss and consider for application as the United Nations Free Association option for Christmas Island. Included in this consideration by Christmas Islanders should be which of the United Nations Decolonisation Special Committee of 24 member countries should be approached for support and sponsorship, noting that the United Nations have some previous knowledge of the IOTs where prior to 1984, it regularly scrutinised the affairs of the Cocos (Keeling) Islands under Chapter XI of the United Nations Charter. In fact, as noted earlier, Australia continued to report on the status of the Cocos (Keeling) Islands to the United Nations prior to the referendum conducted by the Australian Government and observed by the United Nations in 1984. After Australia assumed sovereignty over the Cocos Islands in 1955, it submitted regular reports as required under Article 73(e) of the United Nations Charter, and the information was subject to the scrutiny of the United Nations Committee on Decolonisation.553 This reporting process was

553 Islands in the Sun, 270.
not granted to Christmas Island, which therefore further supports the argument in this study that the Commonwealth has, in part, abrogated its responsibility to the community of Christmas Island under the provisions of the United Nations process. As Spector also notes, ‘free association’ denotes a very high level of autonomy, and for a non-self-governing territory (such as Christmas Island), it can be seen as a self-governing alternative to emergence as a sovereign independent state or full integration with a sovereign State.\footnote{Samuel Spector, ‘Western Sahara and the Self Determination Debate’, \textit{The Middle East Quarterly} 16, no. 3, (2009), page 115.} This then seems the most practical (and acceptable) course of action for Christmas Islanders should they decide that ‘free association’ is the most appropriate means by which to express their optional preference for self-determination through the United Nations process.

The first phase of the process, as outlined in Chapter Four, is gaining support/sponsorship through the United Nations Special Decolonization Committee of 24 and approaching some of these committee member countries. The Special Committee 24 annually reviews the list of Territories to which the Declaration is applicable and makes recommendations as to its implementation. In this regard, the Commonwealth (as the mother state) has an obligation to Christmas Islanders to develop self-government, to take due account of the political aspirations of the peoples (Christmas Islanders) and to assist them in the progressive development of their free political institutions according to the particular circumstances of the territory and its peoples and their varying stages of advancement.\footnote{United Nations, \textit{Declaration Regarding Non Self-Governing Territories’}, (New York: United Nations University Press, 1945), Chapter X1, Article 73 clause b United Nations Charter.} Hence, this study recommends that the option of seeking free association be discussed and considered by the Christmas Island community.
Incorporation with Western Australia

The discussion in Chapter Four also referred to the options originally detailed in the *Islands in the Sun* report for incorporation into WA or the NT, which require summary discussion and clarification. That is, Option Six related to the question of political integration rather than the applied laws system and therefore did not explicitly discuss law reform but incorporation of the Territory (Christmas Island) within the geographic and political boundaries of either WA or the NT. The recent 2015 JSCNET Inquiry Report has dismissed this notion, given the complexities of section 123 of the Australian Constitution concerning incorporation with WA, although it has favoured the possibility of incorporation with the NT. As noted in Chapter One, the framers of the Australian Constitution gave the Commonwealth wide powers to determine how it would deal with territories as and when they became part of Australia. Section 123 of the Australian Constitution prescribes:

‘the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected’.

Accordingly, in the context of section 123 of the Australian Constitution regarding the incorporation of a Territory (Christmas Island) within a State (WA), the Parliament may with the consent of the Parliament of a State (WA) and the approval of the majority of electors of the State (WA) increase the limits of that State.

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556 *Islands in the Sun*, 313.

557 *The Australian Constitution*, 45.
Therefore, it is possible for an external Territory (such as Christmas Island) to be incorporated within a State.

While Recommendation Eight of the *Islands in the Sun* report originally recommended that the Commonwealth initiate discussion with the WA Government regarding possible incorporation within the State of Western Australia, there is no conclusive evidence that this option has been pursued to the extent of considering its feasibility since the *Islands in the Sun* report. Having said this, the 2016 JSCNET Inquiry Report noted in clause 7.121 that in its interim report of 2015, the Committee had approached the WA Government to make a written submission to the Inquiry and appear before it in Perth but that both invitations were declined.\(^558\) It appears the Commonwealth and the WA Government did have some preliminary discussions as a result of the 2016 JSCNET Final Report; the WA State Government noted that discussions between the Commonwealth and the WA State had recently commenced in regard to the possibility of incorporating the Cocos (Keeling) Islands into WA.

While addressing the citizenship ceremony Premier Barnett stated:

‘There may well be some people who have visited those islands and many Malays from there live now in Western Australia. Mr Barnett said the measure would do a lot for the economy of the islands, currently an Australian Territory. There have been discussions between the state and the Commonwealth over the past year. I am certainly enthusiastic about the prospect of Cocos and Keeling Islands become part of Western Australia. It’ll do a lot for the economy of the Cocos Islands, at the moment there is a mixture of Commonwealth and state laws that apply, West Australian laws. The local government there is set up as a state local government. The state also has

\(^{558}\) Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 149.
responsibility for education, health, policing and other services, but for the
people of the Cocos Islands to become part of Australia would be terrific’. 559

However, the (then) Premier did recognise (in one small paragraph) the complexities
of section 123 of the Australian Constitution when he noted that should the
discussions progress positively over the next year, then it would be the intention of
the Commonwealth and the WA State Government to hold the required referendum
in conjunction with the 2021 WA State election. 560

From this statement, it would appear that the (then) Premier of WA was receptive to
the prospect of incorporation, at least to the extent of Cocos (Keeling) Islands, which
therefore raises the question: What about Christmas Island? With the WA State
election in March of 2017 and a change in government, the new WA Premier (Mark
McGowan) subsequently stated that his government would not pursue the
discussions that the former Premier (Barnett) had with the Commonwealth
regarding the incorporation of the Cocos (Keeling) Islands with WA. Accordingly,
the recommendations of the 2016 JSCNET Final Report appear to be just that,
recommendations only.

Notwithstanding the position of the new Labor Government in WA, the
Commonwealth should continue to pursue this option on behalf of the Christmas
Island community. Representation from the community of Christmas Island could
also be made to the WA Parliament to initiate the possibility of incorporation aimed
at soliciting support for the process. In doing so, the Commonwealth would be
expected to financially support the cost of conducting a referendum, as well as the

cost of advertising and marketing the process to the electors of WA, with the WA Electoral Commission or the Australian Electoral Commission conducting the process. For this reason, as well as for the ongoing financial cost noted in Chapter Five, perhaps the Commonwealth has been reluctant to pursue this process. However, regardless of the option of self-determination that eventuates (even retaining the status quo), there is (and will be) an inherent responsibility and ongoing cost to the Commonwealth to maintain the viability of the IOTs, and under the incorporation with WA option, it could be reasonably expected that more fiscal responsibility for the IOTs would be (progressively) transferred to WA. Certainly, the overwhelming preference by Christmas Islanders is for incorporation with the State of WA, given the well-established community of interest that islanders have had with WA since introduction of the applied laws regime in 1992. This was emphasised by several submissions to the 2015 JSCNET Inquiry and summarised in the 2016 Final Report, which stated:

‘We would like to see the Shire of Christmas Island with a Mayor under Western Australia and the communities of interest that exist between WA and IOT are powerful arguments in favour of this option’.\(^{561}\)

As noted in Chapter Four, clause 8 (c) of Schedule 2.2 of the *Local Government Act 1995 (CI)* describes the factors for consideration regarding local government wards and representation and prescribes that the community of interest factor must betaken into account. In this regard, even though the interpretation of the community of interest factor can be broadly applied to the review of established local government wards and boundaries as well as physical topographic features,

demographic trends and economic factors, it is reasonable to expect that a community and the area/region they reside in has a relationship with the laws that apply to them, being either local, state or Commonwealth. Further, the community interest factor can be specifically applied to the everyday interaction the community have with information and services they access, such as flight schedules, shipping or motor vehicle registration, all of which are WA-oriented. Importantly, the community have established extended family, education, housing, aged care and health relationships with WA (and particularly the Perth metropolitan area), which have developed progressively since the introduction of the WA applied laws regime in the early 1990s. Thus, it can be reasonably expected that the community would be reluctant to consider any other incorporation options (such as the NT), given the establishment of these relationships.

The support for the establishment of the IOTs within WA is substantiated by the recent (and past) submissions to JSCNET Inquiries where the best possible outcome would be for WA to take responsibility for the IOTs, and for the IOT to be part of WA in the long-term. A majority of the submissions made to the 2015 JSCNET Inquiry and reflected in the final 2016 report substantiate this position. For example, clause 7.113 notes that WA has long been considered the logical choice for incorporation because the laws of WA apply as state-type laws and there are well-established links, including accessing health and education services. Critically, the air service operates out of Perth. Many IOT residents have ties in WA, with family members seeking work and educational opportunities there, and property and business interests.

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Another important aspect about incorporation with WA is that it would provide Christmas Islanders the direct right to vote in the (WA) State election process, irrespective of the WA electorate in which the island would be placed. This then overcomes the current ‘democratic deficit’ as highlighted in Chapters One and Four, where the right to vote is a fundamental principle of representative democracy underlying our democratic system in Australia that makes our government responsible to us. Further, one of the most important elements within any liberal democracy (such as Australia) is the mechanisms that hold the government to account and within Australia’s political system, Parliament is the traditional body that does this. This principle is clearly absent in the IOTs because of the application of the WA legislation to the IOTs that not only is undemocratic but also is confusing and not understood by the Island’s community. This issue was raised and acknowledged by the members of the JSCNET 2015 Inquiry together with submissions made and reflected in the 2016 JSCNET Inquiry Final Report where the Committee identified that a democracy deficit exists in the IOTs and there needs to be state representation in the IOTs.

While the community can vote in federal elections by virtue of being in the NT Federal Seat of Lingiari (as noted in Chapter Four), they have no right to vote in WA elections even though the laws of WA are applied. The anomaly then is quite clear, and certainly, the community are quite aware of the democratic deficit that exists and desire that the situation be rectified. The example provided in Chapter Four regarding the adoption by the Shire of Christmas Island of its Cemeteries Local Law in 2013 (and gazetted in the WA State Law Publisher, early 2015) substantiates the

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564 Drum and Tate, 134.
565 Drum and Tate, 124.
notion that a democratic deficit exists. That is, the WA Parliamentary Joint Standing Committee on Delegated Legislation insisted upon reviewing the Local Law made by the local government authority (in 2013) in accordance with the legislation (WA Local Government Act 1995 (CI)), which may have eventuated in rendering the Local Law (and process) inoperable should the Committee so decide. The WA Parliamentary Joint Standing Committee on Delegated Legislation comprises WA parliamentarians whom Christmas Islanders do not vote for and who are elected by the WA electors, and not by Christmas Islanders.

Apart from any disallowance provisions in Commonwealth legislation, such as contained in the *Territories Law Reform Act(s)* of 1992 and 2010 and the *Christmas Island Act* 1958 (as amended), and notwithstanding the fact that these provisions have never been used, the Commonwealth has still substantially delegated its law-making power to the State of WA without any democratic representation. As noted in Chapter Four, the Commonwealth recently introduced the mechanism of ‘Notifiable Instruments to the Register of Legislation’ for the purpose of applying adopted local laws to the IOTs, which replaces the process by which the IOT local governments are compelled to refer their adopted local laws to the WA Parliamentary Joint Standing Committee on Delegated Legislation. However, this merely alleviates the problem for the Commonwealth regarding the process of registering the local laws and does not entirely address the underlying issue where the process is still subject to the WA applied laws regime. That is, the process still requires scrutiny (and amendment) in accordance with the provisions of the *WA Local Government Act (CI)* 1995 by the WA Department of Local Government in the same way that applies to other WA mainland local governments. The issue, of course, is that the IOT local governments are required to adhere to the WA legislative process and provides an example of the inconsistency of the WA applied legislation regime to Christmas Island. As Drum and Tate note, responsible government means that all governments must be responsible for their actions to the
people who have elected them and the traditional means by which they are held accountable is through Parliament, which is the link between government and the people. Without our collective consent, the government would not be legitimate.\textsuperscript{567}

Therefore, by applying this analogy to Christmas Island, it could be argued that the WA applied legislation regime has no legitimacy, given that the arrangement between the Commonwealth and the WA State excludes the notion and fundamental principle of responsible government and representative democracy. Clause 7.38 of the JSCNET 2016 Inquiry Final report reinforces this point, noting that the IOTs effectively have no state-level representation. The IOT’s federal member and Senators are located in the NT, but the territories do not have an NT Legislative Assembly representative. IOT residents are subject to applied legislation from WA, yet they have no representative in the WA Parliament either.\textsuperscript{568} Submission number 19, 22 and 39 of the Final JSCNET 2016 Report noted:

‘The difficulty that most residents are unable to reconcile is that, decisions are made in Canberra/WA regarding which services/projects are to be implemented in the IOT with very little input requested from the local communities. The problem is further exacerbated in the fact we are unable to voice our frustration through the ballot box, as there is no state type election for the residents’.

with other submissions reinforcing this point by stating that:

‘we believe this fails the basic test of representative democracy in that Christmas Islanders are not giving their consent to laws which bind them and the right to directly elect representatives who make laws which apply to you

\textsuperscript{567} Drum and Tate, 112.

\textsuperscript{568} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 134.
is one of the few rights which are explicit in the Australian Constitution, the right to vote'.

In this regard, the accountability of the WA Parliament and the elected members who comprise the WA Parliament is to the WA electors who voted for them at the relevant election cycle, and not to Christmas Islanders who are presently denied the right to vote for them.

WA is electorally divided into 59 Legislative Assembly districts and six Legislative Council regions. The boundaries of the districts and regions are determined by the conduct of an electoral distribution, which occurs approximately 18 months after a State election. That is, in accordance with section 16E of the WA Electoral Act 1907, a review of the 2013 WA State election was undertaken and concluded by the end of 2014 in preparation for the 2017 WA State election. A distribution review of electorate boundaries following the 2017 WA State election is scheduled for completion by the end of 2018, which is intended to ensure the number of electors in districts or regions is maintained as the population moves and changes over time, and is carried out by the Office of the Electoral Distribution Commissioners. This would then be the process that applies should the IOTs be accepted into the State of WA in terms of determining the WA electorate that would be applicable. The most probable of the two WA electorates for consideration by the Christmas Island community (and the IOTs) concerning the electorate they could be placed in would be either the Pilbara or Kimberley electorates, given the proximity of the two electorates to the IOTs. The Pilbara Legislative Assembly electorate is 404,244 km² and within the Mining and Pastoral Region (Upper House) with an electorate voting

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570 State Government of Western Australia, ‘West Australian Electoral Act 1907’, (Perth: State Law Publisher, updated version of amendments August 2016), section 16E.
population of 17,292 that comprises 1.22% of the total WA State voting population. The Kimberley Legislative Assembly electorate is 419,452 km\(^2\) and also within the Mining and Pastoral Region (Upper House) with an electorate registered voting population of 16,387 that comprises 1.16% of 0.69% of the WA State voting population.\(^{571}\)

In this regard, the Legislative Assembly electorate of North West Central could be considered a feasible option, given its low electorate voter base and that the combined population of the IOTs of approximately 2,200, in accordance with the ABS census data and as noted in Chapter Three, would increase this figure closer to the electorate of Kimberley. The ABS data in 2016 indicated that of this total IOT population, there were currently 1,843 people living only on Christmas Island on census collection night and that this figure has decreased from the 2011 ABS data owing to the decreased activities of the IDC on the Island.\(^{572}\) Notwithstanding this and in accordance with the ABS 2016 data for Christmas Island, the total combined population of the IOTs could still be included in a WA State electorate, which would increase the voting population of that electorate and, more importantly, provide Christmas Islanders with representation in the WA Parliament and the right to vote. Having said this, there is still the dilemma of community of interest where it is quite clear there is little in common between the IOTs and any of the WA electorates of Kimberley, Pilbara or North West Central. The exception is perhaps the Kimberley electorate with its similarity to the demographic populations of the IOTs and in particular Broome with a background of historical Asian migration owing to the pearling industry. However, this anomaly is not specific to only these three

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electorates since the community of interest factor would equally apply to any WA electorate.

As noted in Chapters One and Four and the beginning of this chapter, the key issue to consider in any change to governance arrangements that involves incorporation with the State of WA is the Australian Constitution where section 123 of the Australian Constitution is the basis for any potential change to the current arrangements. Despite the complexities of the required referendum process in accordance with the Australian Constitution, incorporation into the State of WA has the support of the community as reflected in the numerous JSCNET Inquiry submissions together with the strongly established links between the Island community and WA. Further, the informal referendum on the Island in 1999 saw 62% of voters supporting greater self-government, including the possibility of incorporation with WA. However, the Commonwealth have been historically reluctant to progress any form of self-government for Christmas Island (noting the referendum for Cocos Keeling Islands in 1984 as the exception) despite the numerous reports, inquiries and recommendations made for this to occur. Therefore, it can be reasonably assumed that any realistic chance of the matter progressing at the instigation of the Commonwealth is extremely low. Notwithstanding this, should a referendum proceed, it would be the people of WA who would have a say in such incorporation via a referendum in accordance with the Constitution requirements, which would (ironically) not include the community of Christmas Island.

The Commonwealth could, of course, give Christmas Island residents the right to have a say, although the question of the power of such a say (as contrasted to a constitutional right) would need to be established in similarly unequivocal terms. This is reinforced by the unofficial referendum on the island conducted in 1999.

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where the result was quite explicit as noted earlier. Unfortunately, it can be reasonably assumed that the chances of a positive referendum in WA on the question (as required by the Australian Constitution) are low, given that overall, Australia does not have a strong record of saying yes in referenda, irrespective of the issue. The other perplexing issue is that the WA Government would need to accept any referendum proposition, and while they are currently being paid by the Commonwealth to provide services to the Island under applied laws regime (SDAs) as noted in Chapter Five, the question could be raised as to why the WA Government would want to change a cost-neutral (and possible cost-beneficial) arrangement to that of a possible cost burden.

In this regard, discussions between the WA Government and the Commonwealth could still seek the views of the community with the local government authority (Shire of Christmas Island) representing the community to pursue the matter, which may enable further progress of a referendum. It would also be reasonable to expect that should the possibility of a referendum become realistic, then the Commonwealth (and not WA or the Shire of Christmas Island) would be similarly expected to pay for the referendum process and associated cost as any such referendum could be included simultaneously with a Commonwealth election that would defray the costs.

Despite the complexities, clearly this option is potentially available, which warrants further investigation and dialogue between the State of WA, the Commonwealth and the Shire of Christmas Island representing the community with the fundamental principle being the level of political representation the Island would have in the WA State Parliament. In this regard, and as early as the Islands in the Sun report, planning for the future administration of Christmas Island should not exclude the possibility, following consultation with the community, of its inclusion into the boundaries of
WA. As noted earlier, some preliminary discussions have occurred with the WA Government as a result of the recent 2016 JSCNET Report in accordance with recommendation 19 where the Committee recommended that the Australian Government seek formal advice from the WA and NT Governments to determine whether they are receptive to the proposal for incorporation of the IOTs into their State or Territory.

While the media article by Premier Barnett did not make any reference to Christmas Island, and this in itself is inconsistent with the JSCNET Inquiry recommendation that clearly included the IOTs and not just Cocos (Keeling) Islands, it did initially offer the opportunity for Christmas Island to be included in the discussions at some point, either at the preliminary discussion stage of the process or at the conclusion after the outcome of discussions are known. Either way, it would have provided valuable information to the community of Christmas Island concerning the opportunity of incorporation with WA. Unfortunately, no further action appears to be realistic in regard to WA, given the new WA State Government’s position, and in any event, these preliminary discussions did not include Christmas Island. Accordingly, should the prospect of incorporation with WA not progress any further, as evident in the WA Government’s recent position, the Christmas Island community can revert to the option of approaching the United Nations regarding ‘free association’ on the basis that they have the right to self-determination in accordance with the principles of the United Nations Charter. This study therefore recommends as a viable option that the Shire of Christmas Island instigate discussions with the community about incorporation with WA that will overcome

574 Islands in the Sun, 204.
the current democratic deficit situation and lack of political representation at State level.

**Incorporation with the Northern Territory**

The issue of political representation has long vexed the Commonwealth as well as the Christmas Island community. Placement of the IOTs and Christmas Island in the NT in 1984 for ‘electoral purposes only’ was considered the best arrangement available at the time, although not ideal. This arrangement is unsatisfactory because of the lack of any community of interest factor, as noted in Chapter Four. The electorate of Lingiari based in Alice Springs is approximately 3,300 km from Christmas Island.576

The discussion in Chapter Four also referred to the options originally detailed in the *Islands in the Sun* report for incorporation into the NT, which require some further discussion and clarification. That is, Option Six related to the question of political integration rather than the applied laws system and therefore did not explicitly discuss law reform but incorporation of the Territory (Christmas Island) within the geographic and political boundaries of the NT.577 The recent 2016 JSCNET Inquiry Report favoured the possibility of incorporation with the NT, as noted in clause 7.122 of the Report. This was pursued because the option to incorporate the IOTs into WA required a referendum, and hence was potentially unviable. Therefore, an alternative is to incorporate the IOTs into the NT.578 Further, Recommendation 19 of the JSCNET 2016 Final Report notes:

577 *Islands in the Sun*, 313.
‘that the Committee recommends that the Australian Government seek formal advice from the Governments of Western Australia and the Northern Territory to determine whether they are receptive to the proposal for incorporation of the Indian Ocean Territories into their State or Territory’.

In April 2016, this recommendation progressed to the point where the (then) NT Senator (Nigel Scullion) representing the Commonwealth visited Christmas Island to meet with the community, the Shire of Christmas Island and the Administrator to inform and discuss with the community that it was the Government’s intention to commence formal discussions with the NT Chief Minister regarding possible incorporation. This process was subsequently suspended owing to the NT elections in August 2016 and the subsequent change of Government. The change of government in the NT in 2016 may be the reason that no further developments have occurred to date and that the Commonwealth have (reportedly) commenced discussions with the WA State Government. However, it seems likely the Commonwealth will retain its focus on incorporation of the IOTs (including Christmas Island) with the NT since it is the easiest to achieve procedurally.

Incorporation of a territory (Christmas Island) into a mainland Australian territory, be it the ACT or the NT, does not fall within the parameters of section 123 of the Australian Constitution (requiring a referendum), and the IOTs are already federally represented through the seat of Lingiari and have been since 1984, which would not change. However, while incorporation does not require a territory referendum it would be a matter of sound policy practice to ideally consult with, and consider, the views of the people both in the IOT and in the potential recipient territory. As noted earlier, it appears unlikely that the Commonwealth and WA State


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Government will proceed with their discussions, albeit initially confined to Cocos (Keeling) Islands, regarding the incorporation of the Cocos (Keeling) Islands with WA even if only for discounting the constitutional viability of the process. Hence, it would be reasonable to expect the Commonwealth to simultaneously continue its discussions with the NT regarding the possible incorporation with the latter, which, of course, does not provide any constitutional impediment.

The community of interest factor becomes critical to any proposal to incorporate Christmas Island (and the IOTs) with the NT. This was an underlying factor in the numerous submissions received by the JSCNET 2015 Inquiry. The following is the response by Mr Jon Stanhope, former Administrator of the IOTs, who noted in his submission:

‘that the overwhelming majority of residents, from my observation and discussions with them, have serious reservations about the Federal electoral arrangements. A primary issue is the obvious absence of any connection or community of interest between the IOTs and the Northern Territory let alone Alice Springs and the electorate of Lingiari’.

In his submission directly to the JSCNET 2015 Inquiry, Mr Steve Clay also noted that incorporation into the NT or ACT would be less desirable for legislative, administrative and social reasons and that changing the airline service from Perth to Darwin could prove costly. The 2016 JSCNET Final Report also acknowledged that IOT residents have longstanding family, education, work and investment links with WA, which have arisen because of the governance and administration arrangements

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in place for the past three decades. Similar submissions by Hansard to the JSCNET Committee directly from senior departmental bureaucrats noted further problems and complications regarding incorporation with the NT. While Christmas Island’s distance from Darwin is almost the same as that from Perth, the flights are out of Perth for reasonably good operational reasons. Changing the flights to go from Darwin would be considerably more expensive because the Cocos (Keeling) Islands are substantially further from Darwin than they are from Perth. Other practical problems include the cost of change associated with incorporation, the question of the ability of the NT Government to deliver the services and disruption to the reasonably significant expatriate IOT communities that exist in WA. The Islands are used to operating under the applied WA law scheme and changing it would not be a simple task. A very wide range of delegations would need to be changed. The local government acts are not the same. The people of the communities would need to understand how NT law worked, because these are not identical to WA law. Should services and flights be from the NT, those people, both on the Islands and expatriates in/from WA, would find maintaining links very difficult. Both of the above submissions directly to the Committee and recorded in Hansard are from former senior Commonwealth Department officials who appear to be of the view that incorporation into the NT would be more regime challenging than into the WA. The submissions also assume that the community are content with the current WA applied laws, whereas the many submissions from the community demonstrate this is not necessarily the case. In this regard, clause 7.44 of the JSCNET Inquiry 2016

Final Report notes that while acknowledging there is representation through the electorate of Lingiari in the NT, Mr Matthews questioned the extent to which ‘community interest’ could be represented through this means and must be questioned.586

Thus, a clear anomaly seems to exist given that the Commonwealth proposal to discuss possible incorporation with the NT Government in the first instance is detrimental to the interests of the community and the Commonwealth intend to progress the proposal irrespective of the community of interest factor. This proposal appears to have Commonwealth bipartisan political support, including from NT Senator Nigel Scullion, who visited Christmas Island in 2016 to meet the community, and also from the Labor Member for Lingiari, the Hon Warren Snowdon, who has noted his support for incorporation of the IOTs into the NT in numerous JSCNET Inquiry Reports. For example, the Hon Warren Snowdon stated, as a member of the 2015 JSCNET Inquiry, that prior to the 1980s, the IOT was incorporated with the NT and he would obviously support a return of the IOT incorporation with the NT.587

Some support from the Commonwealth bureaucracy exists, noting submissions by former public servants Mr Julian Yates and Mr Steve Clay that there is an inherent advantage in having the state services and federal representative aligned in the same territory (ie, NT) and options for closer alignment with the NT could include full incorporation, or be achieved through a SDA with the NT Government and NT law.

being applied.\textsuperscript{588} In this regard, the community should be consulted in the first instance as to specific details of the proposal and not merely be advised. Therefore, as a matter of transparency the Commonwealth should develop an incorporation model for consultation and review by the community as noted in Recommendation 19 of the JSCNET 2016 Final Report.

In addition, crucial to any NT incorporation proposal is the electoral distribution of the IOTs. Similar to the WA incorporation proposal is the question of which electorate they would be inserted into and the broader question of how would the IOTs be represented in the NT Parliament. The NT is electorally divided into 25 Legislative Assembly districts.\textsuperscript{589} In its 2016 Final Report, the JSCNET Committee recognises that there are only about 2,000 people presently living in the IOTs and notes that the recent review of the redistribution of the NT Legislative Assembly electoral boundaries determined that the quota of electors for each division in the NT is 5,140 people. Therefore, consideration of IOT representation in the NT Legislative Assembly would need to be subject to a review by the NT Electoral Commission.\textsuperscript{590} Notwithstanding the data provided in the JSCNET 2016 Final Report, the Northern Territory Electoral Commission Redistribution Report of February 2015 provides statistical data that the average division representation of enrolled electors is 5107.\textsuperscript{591} The electoral representation ranges from a maximum number of enrolled

\textsuperscript{588} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 151.


\textsuperscript{590} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 155.

electors of 6110 in the seat of Blain to the minimum number of enrolled electors of 4140 in the seat of Greatorex.\textsuperscript{992} Again, the community of interest factor needs to be considered, given that there is no community of interest now with the IOTs being in the federal seat of Lingiari, and therefore, electoral representation in any of the NT Legislative Assembly seats would presumably result in the same situation.

Given the submissions and Hansard comments made in the JSCNET 2016 Final Report and the electoral boundary redistribution requirements, it is quite clear that incorporation of the IOTs with the NT is not a palatable option without further qualified information being provided to the community prior to any agreement or arrangement being made and decided upon between the Commonwealth and the NT Government. The Christmas Island community should be consulted in the first instance as to the specific details of any proposal, and therefore, as a matter of transparency the Commonwealth should develop an incorporation model for consultation and review by the community. This was reflected in part in submissions made to the 2015 JSCNET Inquiry and noted in clause 7.134 of the JSCNET 2016 Final Report where the IOT communities will need to know the meaning, in a practical sense, of being part of WA or the NT, with possible consultative mechanisms following incorporation being canvassed, such as the Advisory Board model in the (NT) Tiwi Islands.\textsuperscript{993} However, contrary to this suggestion, this process should be undertaken first, before the Commonwealth and NT Governments discuss and negotiate the specific details of any such proposal of incorporation with the NT. The Commonwealth should be upfront with the WA and NT Governments as well as the IOT community about this being an information-gathering exercise, prior to a joint decision by the Commonwealth and preferred jurisdiction. It should canvass

\textsuperscript{992} Northern Territory Electoral Commission, 8 - 9.

\textsuperscript{993} Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 152.
options and opinions before any serious consideration is given to relinquishing the IOTs. Accordingly, this study recommends as a viable option that in the first instance, the Shire of Christmas Island instigate discussions with the community concerning incorporation with the NT, which includes the Commonwealth’s endorsement that the local government represent the community in discussions with the Commonwealth and the NT Governments. This should be based on the principle that the community will ultimately decide on any proposal the Commonwealth has in regard to incorporation of Christmas Island (and the IOTs) with the NT. The underlying principle in these discussions is that an outcome suitable and acceptable to the community of Christmas Island needs to be based on overcoming the current democratic deficit situation and the lack of political representation to avoid further disadvantaging the community.

**Other Governance Models**

As noted in the Introduction and subsequent relevant chapters, the option of developing a ‘hybrid’ or combination of the above governance models is also a possibility for the community to consider. Several submissions to the recent JSCNET Inquiry made reference to this possibility, which included considering an ‘internal territory’ model, such as the NT or the ACT, or a Regional Statutory Authority model similar to the (NSW) Lord Howe Island Board (LHIB) or the (WA) Rottnest Island Authority Board. For example, submission 41 to the 2016 JSCNET Inquiry noted that while the option of creating a Statutory Authority was less desirable than incorporation, it has the advantage of providing more say to the IOT community on many of the State responsibilities being rolled out in the IOTs. The model would constitute a formal IOT Administration with an elected Advisory Board chaired by the Administrator and comprise a number of Directorates, such as health, education,

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state services (SDAs), municipal services, community/economic development and corporate services functions. The Board could be serviced by the Department and receive advice, research, capacity building and Government liaison support. A Commonwealth entity such as this would be subject to the relevant provisions of the *Public Governance, Performance and Accountability Act 2013* and would need its own enabling legislation noting that a number of these entities already exist. However, the Authority (IOTs) would be a closer model to the WA Rottnest Island Authority. Municipal services and the management of SDAs would come under the Board’s control while simultaneously enhancing the role of the Administrator. Nevertheless, any possible establishment of a Rottnest Island Authority or LHIB would require concurrent approval by the concerned State relevant to accepting the IOTs as a Statutory Authority and therefore the Statutory Authority Board concept has some merit as regards its composition and application to the IOTs.

Fundamentally inherent to this study has been the issue of democratic deficit that even the JSCNET Inquiry Final Report 2016 acknowledges. In this regard, submission number 41 by Mr Steve Clay advocates that a Statutory Authority Board model under the jurisdiction of a mainland State would be a realistic option where it has the advantage of providing more say to the IOT community than they currently have on many of the State responsibilities being rolled out in the IOTs. However, the only impediment to considering this model is that the community are unlikely to accept a Statutory Board if it means replacing the current local government structure and enhancing or even retaining the IOT Administrator’s role. Several submissions to the 2016 JSCNET Inquiry advocated for the abolition of the Administrator role on

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the basis that the role is anachronistic and undemocratic. For example, submission number 8 by the Christmas Island Women’s Association argued that the Administrator role became obsolete when local government was introduced to the IOT. It asserted that the responsibilities and decision-making powers of the Administrator should be reassigned to democratically elected local government representatives.\(^\text{597}\)

Further, the Malay Association of Christmas Island questioned the fairness of empowering an unelected government official to direct the administration of the territories’ communities noting that if this person were to be given more decision-making powers that would give a single unelected Commonwealth official power, as opposed to assumedly several faceless Department public servants. While it might speed up decision-making, it poses some questions on democracy and fairness.\(^\text{598}\) The 2016 JSCNET Report Committee Comment 7.97 noted that the Committee recognises the vital functions that local governments perform in small communities, such as the IOTs, providing municipal services and serving the community in a range of ways. This fact is also supported by submission number 4 by Mr Julian Yates to the Inquiry where he does not think the Statutory Authority Board model is worth further consideration because of the very limited chance of it being accepted by the community.\(^\text{599}\) Primarily for these reasons, this study does not recommend the Statutory Authority Board model for the IOTs as a realistic governance option to be considered by the community.


\(^{598}\) Joint Standing Committee on National Capital and External Territories Inquiry Final Report: Economic Development and Governance, 121.

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There are two internal self-governing territories in Australia, the NT and the ACT, which have some degree of self-government although less than that of the states. Within these (internal) self-governing territories, the Australian Parliament retains the full power to legislate and can override laws made by the territorial institutions, which it has done on rare occasions. The inauguration of the NT Legislative Assembly involved a torturous process. After years of pressure from the Territory, the Liberal and Country Party government in Canberra in 1972 was moving to grant a small reform, including full executive authority over some local functions and revenue areas.\footnote{Drum and Tate, 95.} This was the starting point for the NT having its own form of self-government, and even though a change of Federal Government occurred in late 1972 that slowed progress, a unicameral legislative chamber was eventually achieved although to date it does not have full independent legislative powers.

In a comparative context with the IOTs regarding the role of the appointed Administrator, the \textit{Northern Territory (Self Government) Act 1978} prescribes the role and function of the Administrator of the Northern Territory where the Legislative Assembly has power, with the assent of the Administrator that every proposed law passed by the Legislative Assembly shall be presented to the Administrator for assent.\footnote{Commonwealth of Australia, \textit{‘Northern Territory (Self Government) Act 1978’}, (Canberra, Commonwealth Government Publishing Service, 1978), sections 6 to 10 inclusive.} This is an interesting difference between the function and role of the Administrator of the Northern Territory to that of the Administrator of the Indian Ocean Territories where no such devolution is relevant to the IOTs because of their status as non-self-governing external territories. In short, the non-self-governing external IOTs have no capacity to make and/or propose any laws since they are subject to the applied legislation of WA through the SDA process in accordance with the arrangements between the Commonwealth and the WA State. This point was
made by the former Administrator of the Indian Ocean Territories Mr Brian Lacy in his submission number 39 to the JSCNET 2015 Inquiry where he advocated strengthening the role of the Administrator. Further, the 2016 JSCNET Final Report referred to the myriad frustrations experienced by former and current Administrators regarding their perceived and actual executive powers, which were less functional than those of the NT. However, this point was also made in the context of retaining the current applied laws regime with more direct authority given to the role of the appointed Administrator, which is contrary to the expressed views of many community JSCNET Inquiry submission responses, such as those from Christmas Island Women’s Association, Malay Association of Christmas Island, the local government and individuals.

Conversely, the ACT was created as the seat of national government and following its establishment in 1913, it was administered federally with self-government not granted until 1988. Unlike the NT, the ACT does not have an Administrator and the Crown is represented by the Australian Governor-General in the government of the ACT. Further, the ACT was created specifically as the location of the Commonwealth Government, and hence, it would be less likely to become a State. Given the fundamental constitutional reasons for the creation of the ACT as an internal self-government together with the absence of an Administrator, the ACT

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605 Drum and Tate, 95.
606 Drum and Tate, 96.
model cannot be applied to the IOTs. Hence, the option of considering the NT internal self-government system for Christmas Island seems more appealing to the Commonwealth, and certainly less constrictive than the ACT. It can also be assumed that the ACT is an unacceptable incorporation option, especially given the recent decision by the Commonwealth to incorporate Norfolk Island federally into the ACT with applied laws from NSW being implemented effective July 2016.607 However, it appears unlikely that IOTs can realistically proceed along the same path of internal self-government as that of the NT, given the long process involved and the alternative governance options outlined in this study being more palatable and realistically achievable within a shorter timeframe. Further, and as noted in the ABS 2016 data, the (combined) populations of the IOTs are relatively small in comparison with either of the other internal territories.608 Therefore, and for the reasons outlined above, this study does not recommend that the Christmas Island community consider internal self-government as an option.

As noted in Chapter Four, some discussion and consideration should be given to legislatively transferring the ‘right to vote’ for Christmas Islanders in the WA electoral system, especially given the expressed desire by Christmas Islanders (as noted in several JSCNET Inquiry submissions) for incorporation with WA. The complexities and obstacles presented by section 123 of the Australian Constitution regarding the requirement for parliamentary support and the required referendum could be overcome with an ‘electoral legislative arrangement’ that allows Christmas Islanders to vote in WA. This arrangement would then support the applied legislation regime that currently applies together with the Commonwealth’s SDA


process in place with the WA State Government. Moreover, the ‘democratic deficit’ issue would be overcome with Christmas Islanders being able to vote for WA parliamentarians who (from time to time) make the laws that affect the former’s daily lives.

Electoral reform in Australia is possible as noted by Dr Economou from Monash University in the *Australia Parliamentary Review Journal* 2016 article, who argues that in 1983 the *Commonwealth Electoral Act (1918)* was overhauled by the newly elected Hawke Australian Labor Party government where the process had commenced with a Joint Standing Committee on Electoral Affairs (JSCEWM) Inquiry. 609 While this article primarily explores the relationship between the reform of Australia’s Senate voting system and the diversification of party representation in the upper house, it does provide an opportunity to (further) investigate the possibility of amending (and reforming) the *Commonwealth Electoral Act (1918)* and the *Electoral Act 1907 (WA)* to include the possibility of Christmas Islanders voting in the WA election process. Reform of State based legislation is, of course, possible through amendments to the *WA Local Government Act 1995*. An important question that should be subject to further investigation and research during a proposed reform process may well be whether any ‘electoral legislative arrangement’ would allow section 123 of the Australian Constitution to be avoided. It may be that a court would consider the substance of the arrangement and decide that it is not possible to move the people without also—in substance—moving the territory, and any arrangement that attempts to separate the two runs the risk of being seen as a legal fiction designed to circumvent section 123 of the Australian Constitution, which could therefore be

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problematic. As summarised by Economou, changes to electoral systems will always have the potential to affect representational outcomes.610

Representatives of the community through the Shire of Christmas Island could petition the relevant WA Parliamentary Committee through the Speaker and Members of the WA Legislative Assembly of the Parliament of Western Australia in accordance with the Standing Orders where they must request a Member to present the petition to the House on their behalf.611 An obvious difficulty in this process is for the petition to be presented through a Member of the Legislative Assembly where Christmas Island has no WA parliamentary representation. Presuming the petition is accepted, it may be referred by motion to the Standing Legislation Committee of the WA Legislative Council. Simultaneously, a petition can be presented to the Commonwealth requesting a review and amendment to the Commonwealth Electoral Act (1918) that would support the petition to the WA Parliament to amend the WA Electoral Act (1907) and allow Christmas Islanders to vote in the WA election process. The terms of the petition must include the reasons for petitioning the Commonwealth and a request for action to repeal or change existing legislation. For example, the petition could request that section 56A of the Commonwealth Electoral Act (1918) regarding inclusion of the Territories in the NT Divisions be amended to include the Territories (IOTs) into a Western Australian Division and that this Division be determined by the Electoral Commissioner in consultation with residents of the IOTs.612

610 Economou, 128.
612 Commonwealth Attorney General’s Department, ‘Commonwealth Electoral Act 1918’, (Canberra: Commonwealth Government Publishing Service, updated version of amendments October 2016), section 56A.
Presuming the petition process is successful to the extent where the *Commonwealth Electoral Act 1918* and the *WA Electoral Act 1907* are both amended then the question arises as to which WA Electoral Division IOTs residents would qualify to be enrolled in. The *WA Electoral Act 1907* prescribes the manner in which electors qualify to be enrolled to vote in WA elections. In short, clause 17(1) of the *WA Electoral Act 1907* prescribes that subject to the provisions of this Act, any person, ‘who is –

(i) an Australian citizen; or

(ii) a person (other than an Australian citizen) who would, if the relevant citizenship law had continued in force, be a British subject within the meaning of that relevant citizenship law and who was at some time within 3 months, immediately preceding 26 January 1984, an elector of the Assembly or an elector, under a Commonwealth Act, of the Commonwealth Parliament;

and

(a) who has attained 18 years of age; and

(b) who has lived in the same district or sub-district for at least one month immediately before the enrolment,

is entitled –

(c) to be enrolled as an elector for the Council and the Assembly; and

(d) when so enrolled and while they continue to live in that district or sub-district, to vote at any election in the region of which the district or sub-district forms part; and any election in the district or the district of which the sub-district forms part’. 613

Clause 17 of the Act was amended in 2009 when clause 17B was inserted which prescribes the following:

613 Western Australia Electoral Commission, ‘*WA Electoral Act 1907*’, (Perth: State Law Publishers, updated version of amendments August 2016), part III, division 1, clause 17(1).
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‘Elector with no fixed address on a Commonwealth Roll to allow for the enrolment on the WA Roll –

(1) If

(a) a person fulfils the requirements of section 17(1)(a) and (b) but does not live in any particular district or sub-district in the State; and

(b) the person’s name appears on a Roll maintained under the Commonwealth Electoral Act 1918 in respect of an address in a Commonwealth subdivision in the State with which the person has established a connection under section 96 of that Act; and

(c) the Commonwealth roll referred to in paragraph (b) is annotated to indicate that the person is an itinerant elector under the Commonwealth Electoral Act 1918 section 96,

then the person is to be enrolled on the roll for the district or sub-district in which the address referred to in paragraph (b) is situated’. 614

Section 96 of the Commonwealth Electoral Act 1918 refers to an ‘itinerant elector who is;

(1) A person who:

(a) is in Australia; and

(b) is not entitled to be enrolled for any Subdivision because:

(i) the person does not reside in any Subdivision;

(ii) or the person is a homeless person;

614 Western Australia Electoral Commission, clause 17B.
may apply to the Electoral Commissioner for enrolment under this section for a Subdivision’. 615

The purpose of providing the above legislative extracts from the *WA Electoral Act 1907* and the *Commonwealth Electoral Act 1918* is to highlight by example the possibility of amending both legislative Acts to reflect the insertion of these amendments to allow Christmas Islanders to be enrolled and therefore vote in an existing or newly identified WA electoral district. Understandably, a legislative process must be undertaken to propose any amendment to the Act(s), which must also be based on the support of both the Commonwealth and the WA Governments. As noted earlier, the mechanism for undertaking any legislative amendments is by introducing the proposed amendment into the (WA) Parliament by way of petition mirroring the process of introducing a Bill for assent. The difference is that the amendment would be in the form of an ‘insertion’ into the existing *WA Electoral Act 1907*. For example, clause 17C could be inserted into the existing *WA Electoral Act 1907* allowing for ‘an elector residing on Christmas Island who appears on the Commonwealth Roll to be enrolled on the WA Electoral Roll’.

The current impediment to this wording is that the person is to be enrolled on the WA Roll for the district or sub-district in which the address referred must be on the Commonwealth Roll. As noted in Chapter Four, Christmas Islanders are currently on the Commonwealth Roll of Lingiari, which is situated in the NT, and therefore, consideration must be given to the transfer of Christmas Island from the federal seat of Lingiari to that of a WA (federal seat) Commonwealth Roll. For example, the federal seat of Durack. This would then allow for a choice of several WA State

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districts that fall within the boundaries of the federal seat of Durack to be available, such as Kimberley, Pilbara or North West Central. Notwithstanding these identified obstacles, the primary focus and intent of considering this proposal is to avoid the arduous process of incorporation into WA, which involves complex constitutional issues, and to also overcome the democratic deficit factor that will allow for Christmas Islanders to be enrolled and vote in WA State elections that simultaneously allow for the continuation of WA applied legislation. Of course, the matter of incorporation into the NT does not require any consideration of section 123 of the Australian Constitution but simultaneously does not consider the community of interest factor where several JSCNET Inquiry submissions clearly noted that the community did not favour incorporation into the NT and preferred incorporation with WA. Therefore, the notion of ‘responsible government and representative democracy’, both of which are absent from Christmas Island as a result of the WA applied legislation regime between the Commonwealth and the WA State Government, should be of paramount importance. The right to vote is a fundamental principle of representative democracy that underlies our democratic system in Australia, which makes our government responsible to us.616 Further, the principle of representative government places primary political authority in the Parliament on the basis that it is the body that represents the will of the people through elections and that the principle of responsible government requires the executive to be responsible to the people through Parliament.617

Finally, and as stated in Chapter Four of this study, the current delegated applied legislation regime of WA laws on Christmas Island is undemocratic and creates a democratic deficit where Christmas Islanders cannot vote in the WA electoral system

616 Drum and Tate, 134.

from where the WA laws are applied. The concept and principle of democratic representation, that is, the notion that communities elect individuals that represent them and help make decisions that bind them has been cemented in the liberal democratic tradition for centuries. The definition of representative democracy must include the notion that citizens have genuine choices among alternative candidates at the time of relevant election cycles. Christmas Islanders are denied this principle, a fact which is acknowledged by Commonwealth parliamentarians through various JSCNET Inquiry Reports. In this regard, the system that applies the WA legislation by ‘delegation’ from the Commonwealth to the WA State Government can be questionable in itself, which was also discussed in Chapter Four. The term delegated legislation in its broad sense is the term usually referred to as those laws made by persons or bodies to whom parliament has delegated law-making authority. Further, where Acts are made by parliament, each principal Act makes provision for subsidiary legislation (such as Regulations) to be made and will normally specify who has the power to do so under that Act. Therefore, delegated legislation can only exist in this context in relation to an enabling or principal Act that allows for the delegated process.

According to Hotop, the expression delegated legislation (or subordinate legislation) is the name given to legislative instruments made by a body (usually within the administration) expressly authorised so to do by an Act of Parliament.\(^{618}\) Part Three, Division One of the Christmas Island Act 1958 (amendment number 41 December 2010) refers to the Laws of the Territory and the application of the WA laws.\(^{619}\) In particular, section 8A of the Act also allows for the delegation by the

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(Commonwealth) Minister for the application of WA laws. That is, subject to this section of the Act, section 8G and Part IVA, the provisions of the law of WA (whether made before or after this section’s commencement) as in force in WA from time to time are in force in the Territory. This could subsequently be interpreted as the process by which the Commonwealth has delegated its legislative power to the WA State Government for them (WA Government) to apply the WA legislation to the community of Christmas Island. While this process does not imply that the Commonwealth has delegated its entire law-making process for the island to the WA Government (noting the provisions in the Act that differentiate where Commonwealth law shall prevail especially in regard to any inconsistency), it does nonetheless mean that the process does not carry any democratic legitimacy in its application because Christmas Islanders are excluded from the democratic process of voting for parliamentarians in the WA State Government from where the legislation is applied. In addition, the principle of representative democracy tells us that legislative norms achieve validation and legitimacy through the expression of consent in the legislature itself, and the right to vote accordingly.

As Saunders notes, in a democracy, representatives of the people perform most of the governing, democratic rights are the rights that each community considers necessary to make its democratic arrangements work and the most obvious rights are the rights to vote. Further, Drum and Tate note the concept of responsible government implies that the government only has the right to make decisions that affect us because we elected them to undertake that role. Christmas Islanders do not vote in the WA State electoral system and therefore the WA State Government

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621 Saunders, 81.
622 Drum and Tate, 112.
cannot/should not apply any of its legislation that it has amended and/or inserted of its own accord to its own WA legislation. As noted in Chapter Four and earlier in this chapter, where such amendments were made to its subsidiary legislation that compelled local governments in WA to refer their local laws to the relevant WA Parliamentary Committee and where the WA Joint Standing Committee on Delegated Legislation assumed that this applied to Christmas Island, the situation for Christmas Island (and the IOTs) was overcome with the Commonwealth directly referring any IOT local laws to the Commonwealth Register of Legislation Notifiable Instruments.

Presuming that the process by which the Commonwealth has delegated its legislative power to the WA State Government through section 8 of the enabling Act (Christmas Island Act 1958 amended) is upheld as not being ‘ultra vires’, then Hotop notes that delegated legislation could still be invalid on grounds such as uncertainty, improper purpose or unreasonableness.\(^{623}\) Similarly, the test of unreasonableness cannot be established, given that the Commonwealth has no capacity to directly administer (legislatively) the Territories of Christmas and the Cocos (Keeling) Islands, which would then allow for the process of unreasonableness to be negated.\(^{624}\) Finally, uncertainty will invalidate delegated legislation only where it is such that the delegated legislation does not constitute a proper exercise of the power conferred by the enabling Act, and in this regard, the enabling Act is quite explicit in its intention to apply the WA legislative laws to the Territory of Christmas Island.\(^{625}\)

Notwithstanding that, delegated legislation may be invalid if it is inconsistent with the ‘general law’ where the general law comprises fundamental constitutional

\(^{623}\) Hotop, 153.

\(^{624}\) Hotop, 158.

\(^{625}\) Hotop, 159.
principles embodied in the common law—for example, principles conferring fundamental rights and freedoms. This in turn can imply that the fundamental principle of having the right to vote as enshrined in the Australian Constitution is denied to Christmas Islanders where simultaneously the WA delegated legislation applies by virtue of the enabling Act that provides for this delegation. Effectively, Hotop is referring to the principle of legality, which provides that the Courts will interpret legislation consistently with fundamental common law rights and freedoms and will only interpret legislation in a way that infringes those rights if the legislation does so in clear and unambiguous language. Moreover, it is a rule that accepts Parliament can infringe common law rights but requires that if it is going to do so, it bears the political cost by doing so unambiguously. In terms of delegated legislation, the consequence is that delegated legislation can only infringe common law rights and freedoms if the empowering statute provides that power unambiguously. According to the traditional view, there is a major problem in trying to find a test that will define and separate legislative, executive and judicial powers. This is also supported in the article written by Dan Meagher and Matthew Groves, The Common Law Principle of Legality and Secondary Legislation, where they note that secondary (delegated) legislation must be read down to protect the rights, freedom or principle in play or it is ultra vires as law-making if that is not interpretively possible. Further, governments have long used secondary or delegated legislation but the concept of legislation made by a body other than parliament does not sit easily with the notions of parliamentary sovereignty or democratic accountability.

626 Hotop, 146.
As early as the mid nineteenth century, the desire for representative and responsible government permeated the Australian community and gradually this was achieved by the time of Federation in 1901. Australia is a democratic nation where governments are elected by popular vote. A healthy democracy ensures that all members of the community have equal access to the political process that governs their lives. Yet, in 2018, the community of Christmas Island do not enjoy this equal access, have still not achieved this level of representative and responsible government and are being denied the right to vote in a jurisdiction (WA State) where delegated legislation has been applied that disenfranchises them and affects their daily lives. In this regard, the delegated applied legislative regime of WA laws on Christmas Island is a central discussion point for the purpose of this study, and therefore, it is recommended that the local government authority (Shire of Christmas Island), make a strong representation to the Commonwealth in addressing this governance and democratic inequality as part of an overall review of the delegated applied legislation regime and, indeed, as being inclusive of discussions with the community when considering the options available to them regarding their self-determination future.
Chapter 7: Part Two – Thesis Summary

The thesis has sought to answer the research question regarding the governance arrangements on Christmas Island being democratic and, in particular, where the current model of limited self-governance has been in operation since the major governance arrangements changed in 1992 because of the *Island in the Sun* report. The chapters of this thesis were methodically arranged to provide a contextual framework to the governance situation on Christmas Island and the self-determination debate. The purpose of Chapter One was to discuss the notion of democratic governance that is central to the subject regarding any consideration (by the community) of self-determination and the subsequent models of self-autonomy that would/could be implemented where the key principles of democratic governance, such as responsible government and representative democracy, in the context of federalism and the Australian Constitution are important aspects of the thesis discussion. To fully understand as much as possible the notion of self-determination that Christmas Islanders have long harboured, Chapter Two discussed the historical habitation and settlement of the island where the geographical and economic importance of Christmas Island has played a significant role in shaping its social history. This includes an examination of how the cultural development of the inhabitants historically evolved and how it’s economic and industrial conditions and the community played an integral part in the Island’s historical development.

Chapter Three built upon Chapter Two by further exploring and discussing the demographic cultural and social nature of the island’s people not only a sociological perspective but also how industrial conditions shaped the demographic environment of the island. Most importantly, it was intended to consider how any proposed changes to the governance and legislative arrangement for Christmas Islanders would affect the social fabric of the community. A key element of this is
how the archaic industrial social conditions, such as cost of living and wage parity, eventually shaped the cultural attitude of the islanders, given the historical ‘colonial’ conditions they endured since colonisation of the island in the late nineteenth century.

Chapter Four is crucial to the study because it explored in more detail the governance and legislative arrangements relevant to the current situation on Christmas Island as well as discussing the various models for consideration and application to its future governance. In particular, it focused on the current WA applied legislation arrangements to the island through the ‘Service Delivery Agreements’ between the Commonwealth and the WA State Government that occurred without direct consultation with the community and how this governance arrangement disenfranchises the Christmas Island population from voting in the WA electoral process. Discussion and consideration was also given to the option of free association in accordance with clause 2 of the United Nations General Assembly Resolution 1514 (XV) of 1960 and, in particular, the choice of ‘free association’ as the preferred model in contrast to either total integration or secession. Chapter Four also reviewed numerous JSCNET enquiries, which featured submissions by the community that which were in turn reflected in subsequent JSCNET Final Report recommendations to the Commonwealth Government.

Chapter Five was an important component of the study, given the current financial dependency of the Territory of Christmas Island on the Commonwealth and the Island’s own means of raising enough revenue to meet its expenditure requirements and obligations. The chapter discussion included the financial arrangements and funding dependency for the administration of Christmas Island that is currently the responsibility of the Commonwealth DIRDC. The Department administers its operations financially from offices on Christmas Island (that also serve Cocos Keeling Islands) as the ‘Indian Ocean Territories Administration’ and also has an
office located in Perth WA with the head office being located in Canberra. The Shire of Christmas Island receives operational financial grants (known as Federal Assistance Grants) from the Commonwealth by way of the WA administered Grants Commission process that applies normally to all WA State based local government authorities. Funding for capital grant projects that are normally directly available to mainland state-based local government authorities are considered under the ‘state-type grant’ process that requires assessment approval by the Commonwealth. Previously, this assessment process also included the relevant WA State Government agency; however, this arrangement was changed in 2014 and now the Commonwealth makes any such consideration directly.

Chapter Six discussed the current land tenure and asset ownership arrangements on the island, especially as regards defining the ownership and responsibility of various government agencies. In this regard, there are clear synergies with other chapters in the study where, for example, the vesting of religious sites and its infrastructure on the island require ownership identification and funding maintenance. The current ‘Land Disposal Policy’ of the Commonwealth is both cumbersome and erratically implemented, dependent on influencing circumstances, such as financial availability and commitment by the Commonwealth to projects intended for the use of the land and/or the political will and commitment by Canberra to any project requiring land availability. A comprehensive review of the Commonwealth’s CLMP was undertaken in 2016 with the final report released by the (then) Commonwealth Minister for Local Government and Territories, the Hon Fiona Nash MP, in March 2017. In doing so, the Minister called for investors to register their interest in land on Christmas Island, noting that the CLMP will free up land for new businesses in the
central business district as well as new sites for houses and industrial use.\textsuperscript{630} The newly released and revised CLMP is intended to provide a framework to guide uses of Crown land on Christmas Island and will support the release of land for development over the short term and long term with a dedicated ‘Registration of Interest’ process being mandatory for the purchase or lease of Crown land on the island. However, it remains to be seen if the newly revised Plan will remove some of the cumbersome regulations and processes that have previously impeded the disposal of Commonwealth Crown Land on Christmas Island.

The self-determination options - summary

In its 1973 report on United Nations Involvement with Australia’s Territories, a Senate Select Committee on Foreign Affairs and Defence agreed with the Australian Government’s assessment that Christmas Island was not a non-self-governing territory but considered it possible that the United Nations Special Committee of 24 on Decolonization might become interested in the Territory. To minimise the risk of this occurring, it recommended that appropriate steps be taken to consolidate the relationship between Australia and Christmas Island.\textsuperscript{631} Further, the submission by the Centre for Comparative Constitutional Studies noted that in 1981, the Australia-New Zealand Christmas Island Phosphate Commission was replaced by the wholly Australian Government-owned Phosphate Mining Company of Christmas Island. In 1984, the Company was divested of its non-mining functions, which were split between Commonwealth Departments or the Administration and the newly established Christmas Island Services Corporation (CISC). Several Commonwealth Acts that were extended to the Cocos (Keeling) Islands as part of that Territory’s


\textsuperscript{631} The Centre for Comparative Constitutional Studies, 44.
integration package were also extended to Christmas Island. The representative
Christmas Island Assembly, which was empowered to direct the Christmas Island
Services Corporation in the performance of its functions, was established in 1985.
These, and other measures, were designed to ‘bring the Island and its community into
the mainstream of Australian life’.

The Shire of Christmas Island, as the only level of democratic representation
available to the community on the Island, has been a strong advocate for a change in
governance arrangements and has supported this position in the many submissions
it has made to Commonwealth-related Inquiries. Therefore, it is logical that they take
charge of the process, or at the very least play an active role in the process in regard
to providing information and guiding the community in discussions to determine
the best option of self-determination for the community to consider and pursue. As
early as November 1999, the Shire held an unofficial referendum in conjunction with
the Australian republic referendum questions where voters (on Christmas Island)
were asked in general terms if they supported greater self-government or the
retention of the status quo. In all, 63% of voters were in favour of ‘greater self-
government’.632 Notwithstanding this option of greater self-government,
incorporating Christmas Island into WA or the NT would still allow for the
continuation of the Shire of Christmas Island in conjunction with a State or Territory
type level of government. Therefore, in accordance with the intent and purpose of
this thesis study, it is strongly recommended that the following options be
thoroughly discussed with the community of Christmas Island so that a thoughtful
process of consideration and engaging debate can be undertaken. It is only through
this process where the community can fully digest and understand the implications
of each option that a meaningful direction can be proposed for the future direction of

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the Island’s governance. These options, as noted in the Introduction of this study and that have now been fully explored and discussed are:

a) **Becoming an autonomous self-governing region.** For the reasons outlined in Chapters One, Four and Seven of this study, the only realistic and viable option of being autonomous is that of the *free association* model in accordance with the principles of the United Nations Charter. Hence, the examples of the ‘free association’ arrangements that the Cook Islands and Niue have with New Zealand in the Pacific Ocean should be studied in more detail, to the extent where a delegation from Christmas Island visits both Islands to specifically observe how these arrangements practically operate. The option of considering a current Norfolk Island Assembly model of self-government is no longer viable, given that the Commonwealth abolished the Norfolk Island Assembly in 2016 and replaced this with an arrangement similar to that of the IOTs where the applied legislation of NSW has been imposed together with relevant SDAs.

b) **Incorporating into the West Australian or Northern Territory legislative arrangements.** Incorporation into the State of Western Australia is constitutionally complicated. It relies on agreement between the Commonwealth and the State of Western Australia (and bipartisan WA parliamentary support), and more importantly, on a referendum being held in accordance with section 123 of the Australian Constitution where the approval of the majority of the electors of the State of Western Australia voting upon the question to accept Christmas Island as part of WA is required. Incorporation with the NT is less complicated, certainly from the Commonwealth’s and NT’s perspectives and does not involve section 123 of the Australian Constitution since the NT is not a State. The only impediment to this option is the community of interest factor where the community of Christmas Island has little in common with that of the NT. The community
has had, and continue to have, a strong community of interest with the State of Western Australia as outlined in this study and the numerous JSCNET Inquiry submission responses, and therefore favour incorporation with the State of Western Australia as their preferred option.

c) **Developing an alternative mixed delivery model of governance as one of the above or as identified from the thesis study, such as an ‘internal territory arrangement’ or Regional Statutory Authority Board.** This study discussed the option of an internal territory arrangement that has subsequently been dismissed for the reasons outlined in Chapters Four and Seven. A Regional Statutory Authority Board arrangement, such as that of Lord Howe Island (NSW) or Rottnest Island (WA) is feasible. However, both these examples include being a part of the respective state government legislation. Therefore, the Regional Statutory Authority Board arrangement either would be under the jurisdiction of the Commonwealth similar to the current arrangement of Jervis Bay, or would be constituted as a Statutory Authority Board under the jurisdiction of the relevant State, such as for Lord Howe Island. While this is less desirable than incorporation, it has the advantage of providing more say to the community on many of the state-type services and responsibilities being provided on Christmas Island. This model would constitute a formal Christmas Island Territory administration with an elected Advisory Board, although possibly chaired by the Administrator, which may not necessarily be palatable to the community.

d) **Remaining with the status quo.** This option should include discussions about the current delegated legislative applied laws regime and in particular, that some consideration be given to exploring the notion that Christmas Islanders can vote in the WA State election cycle. This was discussed in Chapters Four and Seven of this study where amendments to the *Commonwealth Electoral Act 1918* and the *WA Electoral Act 1907* were possible considerations that would address the ‘democratic deficit’ issue regarding voting and the imposition of
the WA applied laws regime. Another hybrid option in retaining the status quo involves delegation of certain powers to an established Regional Council together with consultation to ensure community approval for both the SDAs and any legislative changes required. As a minimum, there needs to be restoration of funding for services, such as the Community Consultative Committee which provides a structure for an ongoing consultative process. Access to the WA Lottery West program also needs to be restored; this would enable applications from the community, which were removed by cancellation of the relevant SDA without community consultation and replaced by the ‘on-island’ Administrators Regional Development Program that was of significantly less value and is apportioned between both IOT communities.

The creation of Australia in 1901 was through the vote. While the road to Federation was long and hard in the latter part of the nineteenth century, it was ultimately achieved deliberately and consciously by the Australian people at the ballot box. The movement towards Federation gathered pace in the late nineteenth century, and the Federation cause was debated and dissected at public meetings and gatherings all around Australia. In other words, information was constantly provided to the people so that when the time came to exercise their vote, they were reasonably well informed. In town and shire halls, schools, trade halls and on street corners—from pub balconies and parks in the cities to shearing sheds and mining camps in the outback—the people of Australia argued about this new Constitution. Most importantly, the movement towards Federation came from referenda’s in each colony (state) to approve the document that ensured the people were informed. This was democracy in action, which created the nation. It put an Australian stamp on the way we were to govern ourselves in the future. Christmas Islanders should be afforded the same process and fundamental right to choose how they wish to govern themselves. In other words, it is for the people to
determine the destiny of the Territory and not the Territory the destiny of the people. Therefore, whatever outcome transpires for Christmas Islanders it should be because of them having had the opportunity to consider the options outlined in this study that will ensure they can make a fully informed decision. Only through this process can the choice of self-determination for Christmas Islanders be interpreted as a truly democratic process.

END

633 Weller, 30.
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**Glossary**


ACT – Australian Capital Territory: a federal territory of Australia with its capital city being Canberra.

ACTU – Australian Council of Trade Unions: the largest Australian peak body representing all unions and workers on Australia.

AEC – Australian Electoral Commission: Commonwealth public service organization responsible for maintaining the federal electoral roll, conducting elections and promoting community awareness of the electoral process.

ANZACATT – Australian and New Zealand Association of Clerks at the Table formed in 2001 that comprises members from each House of Parliament in Australia, Norfolk Island and New Zealand.

BPC – British Phosphate Company: company board structure comprising representation from Australia, New Zealand and United Kingdom which has managed extraction of phosphate from Christmas Island, Nauru and Ocean Island.

CCC - Community Consultative Committee: committee established by the Commonwealth following the implementation of the Islands in the Sun Report 1992 for the purpose of monitoring the Service Delivery Agreements as a consultative function. It was disbanded by the Commonwealth in 2012/13.
CINP – Christmas Island National Parks: Commonwealth organization that manages the national park on Christmas Island.

CIP Co – Christmas Island Phosphate Company: the company was founded in 1990 by the workforce living on Christmas Island following the departure of BPC.

CISC – Christmas Island Services Corporation: created as a result of the findings of the Islands in the Sun Report; it later became the Shire of Christmas Island.

CITA – Christmas Island Tourism Association: organization established to promote and manage tourism on Christmas Island.

CLGGC – Commonwealth Local Government Grants Commission: Commonwealth organization responsible for the determination and allocation of funding grants to local governments via the States and Territories.

CLMP – Crown Land Management Plan: Commonwealth established Plan that outlines the strategic directions and actions for land use planning on Christmas Island that includes identifying crown land for development.

DIBP – Department Immigration and Border Protection: Commonwealth department responsible for the management and operation of the Christmas Island Detention Centre as well as general immigration border control around the island.

DIRD – Department Infrastructure and Regional Development: Commonwealth Department responsible for the administration of the Territory of Christmas Island until its name change in 2016.
Glossary

DIRDC – Department Infrastructure, Regional Development & Cities: Commonwealth Department responsible for the administration of the Territory of Christmas Island; it was created in 2016, formerly the Department Infrastructure and Regional Development.

FAGs – Financial Assistance Grants: annual financial funding grants provided to local governments by the Commonwealth and distributed by the State on a horizontal equalisation basis.

HACC - Home and Community Care: Commonwealth funded program to provide aged care assistance that is managed on Christmas Island by the Indian Ocean Health Service.

IDC – Immigration Detention Centre: Commonwealth detention facility housing suspected illegal entry persons located at North West Point Christmas Island.

IOTs – Indian Ocean Territories: Commonwealth non-self-governing territories comprising of Christmas Island and the Cocos (Keeling) Islands located in the Indian Ocean.

IOTHS – Indian Ocean Territories Health Service: Commonwealth organization that provides health services to the populations of Christmas Island and the Cocos (Keeling) Islands.

IOTPA - Indian Ocean Territories Power Authority: Commonwealth organization that is directly responsible for the management and supply of electricity on Christmas Island.
IOTRDO – Indian Ocean Territories Regional Development Organization: Commonwealth organization that is an incorporated body established for the purpose of supporting economic development on Christmas Island.

JSCDL – Joint Standing Committee on Delegated Legislation: the WA parliament committee that scrutinizes local government local laws to ensure compliance.


JSCEM 2010 - Joint Standing Committee on the National Capital and External Territories Report 2010: this committee examined matters regarding the changing economic environment of the Indian Ocean Territories, including Christmas Island. It reported in 2010.

JSCEM 2015 - Joint Standing Committee on the National Capital and External Territories Inquiry 2015: this committee examined matters regarding governance in the Indian Ocean Territories, including Christmas Island. It reported in 2015/16.

JSCEM 2016 - Joint Standing Committee on the National Capital and External Territories Report 2016: the final report of the committee’s 2015 Inquiry regarding governance in the Indian Ocean Territories, including Christmas Island, was finalized in March 2016.

JSCNET – Joint Standing Committee on the National Capital and External Territories: Commonwealth parliament committee that conduct inquiries into matters referred to it by the House of Representatives or a Minister of the Commonwealth Government.
Glossary

LHIB - Lord Howe Island Board: A statutory authority established under the provisions of the Lord Howe Act 1953.

MRWA – Main Roads WA: Responsible for delivering and managing of WA’s principal road network.

NT – Northern Territory: The Australian territory located in the central and central northern region of Australia and shares a border with Western Australia, Queensland and South Australia.

PRL - Phosphate Resources Limited: the company that was founded in 1990 by the workforce living on Christmas Island.

SDAs – Service Delivery Agreements: Formal agreements established under a Memorandum of Understanding between the Commonwealth and WA State Government for the provision of state-type services to the communities of Christmas Island and the Cocos (Keeling) Islands.

SCKI – Shire Cocos Keeling Islands: Local government area which manages municipal type services to the community that was established under the Territories Law Reform Act 1992 (see above).

SOCI – Shire of Christmas Island: Local government area which manages municipal type services to the community that was established under the Territories Law Reform Act 1992 with WA laws applied under SDAs (refer above).
UCIW – Union of Christmas Island Workers: Trade union organization that represents workers on Christmas Island and is affiliated with the ACTU (refer above).

UN – United Nations: International organization formed in 1945 that is member country based and committed to maintaining international peace and security.

UWA – University of WA: Academic tertiary institution located in Perth WA, established in 1911.

WA – Western Australia: A state of the Commonwealth of Australia occupying approximately one third of the Australian land mass with the city of Perth as its capital.

WAEC – Western Australian Electoral Commission: WA state public service organization responsible for maintaining the WA electoral roll, conducting elections and promoting community awareness of the electoral process.

WALGA – WA Local Government Association: The peak industry body representing all WA local governments that is member based and has a primary role of advocating on behalf of its members to the State and Commonwealth government.


WAPC – WA Planning Commission: WA State government organization responsible for land use, planning and land development matters.