

Turks and Caicos Islands  
Constitutional and electoral reform project

# Revised recommendations for changes to constitutional and electoral arrangements in the Turks and Caicos Islands

November 2010

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## Introduction

In July 2010, I published a set of initial recommendations for constitutional and electoral reform in the Turks and Caicos Islands. These recommendations were made available for public comment and discussion. I held a series of meetings across the Islands in September and also received a number of written comments on my initial proposals.

Following this consultation period, I was required by my terms of reference to produce a revised set of recommendations; this document fulfils that requirement. The text in shaded boxes outlines the arrangements provided for by the 2006 Constitution. I have included in this document relevant explanatory material from my July report, where this is helpful; this text appears in the unshaded boxes. There follows discussion and revised recommendations. Not all recommendations have changed, but they are all referred to as 'revised recommendations' to allow for consecutive numbering.

The framing of these revised recommendations has been influenced by the views and suggestions made to me during the consultation period. However, my recommendations can not, and were never intended to, only reflect the views of those who participated in the consultation process. In order to fulfil my terms of reference I must address the areas of potential reform already identified by the United Kingdom Government, as well as other areas raised during consultation. Therefore there should be no surprise that my recommendations continue to address these areas.

This paper does not constitute the views of the United Kingdom Government or the Turks and Caicos Islands Government.

## Consultation

These proposals are provided to elicit the views of Turks and Caicos Islanders. Interested persons are welcome to make a written response to some or all of the recommendations. Such responses can be made via:

[tciconstitution@hotmail.com](mailto:tciconstitution@hotmail.com)

or

PO Box 68 Grand Turk

It would be appreciated if responses could be received by **14 January 2011**.

On 23 September the appointed members of the Advisory Council announced their intention to provide an opportunity for representatives of the Consultative Forum and the TCI's political parties to consider both these revised recommendations and the report of the bi-partisan commission on the constitution and electoral reform. Their intention is to provide the UK Government with a further input for their consideration of constitutional reform before the end of 2010.

Following any further comments received, UK Ministers will give consideration as to how the Constitution should be amended. To give effect to their decisions a draft Constitutional Order will be produced, and this will be made available for public consultation in TCI in early 2011. Following this third consultation period a final version will be presented to the Privy Council for The Queen's Assent.

Kate Sullivan  
November 2010

# 1 Background to this review

1. In 2008 an independent Commission of Inquiry was set up to look into possible corruption or other serious dishonesty by elected Members of the Turks and Caicos Islands (TCI) legislature. The final report made over 60 recommendations covering systemic weaknesses; criminal sanctions; civil recovery; integrity in public life and the management of Crown Land. Some of the Commission's recommendations focussed on deterring or preventing corruption and other serious dishonesty while others looked at the broader constitutional and statutory framework of government. The report of the Commissioner is long and detailed, but the following summary paragraph provides an indication of the Commissioner's concerns in relation to the existing arrangements for governance in the TCI:

5.7 The Constitution does not, it seems to me, assist as well as it might in balancing the countervailing interests and inputs in this tripartite system [of] decision-making. Perhaps such tensions are unavoidable. The 2006 Constitution, to a far greater extent than its 1988 predecessor, leaves individual Cabinet Ministers with a wealth of discretions, by way of grants, exemptions, concessions, discounts etc to override or side-step matters of principle or orderly and fair administration. Nor has there been for some time a culture of probity in governance at the highest level, or openness in the management and control of public finances, to engender what democracy should be there to deliver, an efficient system of governance and financial order that is honest and fair to all. Put at its narrowest, there is a dearth of effective checks and balances to prevent ministerial and other official abuse of the system of governance and its financial management<sup>1</sup>.

2. In August 2009, in response to the Commission's final report, United Kingdom (UK) Government Ministers instructed the Governor of TCI to bring into force an Order in Council suspending ministerial government and the House of Assembly. The UK Government also announced that during the period of suspension a review of the 2006 Constitution would be undertaken, as had been suggested in several of the Commission of Inquiry's recommendations.

3. I was appointed in early 2010 to undertake this review. My specific terms of reference required me to review current arrangements, and make proposals for constitutional and electoral reform in the Turks and Caicos Islands. In my work, while I was not limited in the scope of my considerations, I was requested to give specific consideration to:

- qualification for TCI belonging and residence, and the process by which this is acquired;
- the rights and duties of belonging and residents;
- an electoral system which meets the representational requirements of a small population; produces a viable legislature capable of fulfilling its oversight and scrutiny responsibilities; and minimises the risk of patronage and electoral abuse;
- qualification for political office;
- provision for ensuring transparency, accountability and integrity in public life;
- any provisions, including ones relating to financial management, which should be anchored in the Constitution to return financial stability and sustainable good governance to the territory.

4. I have taken as my starting point the 2006 Constitution. This Constitution follows a similar format to that in place of most of the UK's overseas territories, and was the subject of discussion and debate throughout the Islands before its commencement.

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<sup>1</sup> Turks and Caicos Islands Commission of Inquiry 2008-9 (2009) Report of the Commissioner The Right Honourable Sir Robin Auld.

5. The Review has also been guided by the UK Government's announced intentions in regard to new constitutional arrangements. These intentions have been made clear in the TCI by UK Ministers, FCO officials, and the Governor. A useful summary of this view was provided to the people of the TCI by the UK Minister responsible for overseas territories in the Foreign and Commonwealth Office, Henry Bellingham MP, during his recent visit:

The findings and recommendations of the Commission of Inquiry are well known to you all. I think it is sufficient for me to stress that the new UK Government still places the highest importance on ensuring the Report's recommendations continue to be taken forward by the Interim Government. In particular,

- that systems of governance and good public financial management are properly reformed; and,
- that they are properly implemented and embedded; and,
- that corruption is eradicated and weaknesses in political life are tackled, and can continue to be tackled, whenever and wherever they occur.

.....

We have now reached a time when the Constitution again needs to be revised - to enable important and necessary reforms to become embedded and to ensure that the actions which plunged the governance and finances of the TCI into their present dire situation cannot be repeated. A major factor underpinning all reforms, and indeed, one that will contribute to the international business community's perception of improved governance and that will encourage economic stability, is the UK's commitment to reforming the Turks and Caicos Islands' constitution as well as the electoral process.

.....

Inevitably, in light of the Commission of Inquiry recommendations, improvements must be made in a number of areas of the TCI constitution. Some of the issues under consideration are more sensitive than others. Examples include: enhanced levels of public financial discipline and more oversight by the Governor. But that is no reason to duck them. The future stability and good governance of the TCI is at stake. We must take advantage of this opportunity to get everything right now<sup>2</sup>.

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<sup>2</sup> Statement by Henry Bellingham MP, UK Parliamentary Under Secretary of State and Minister for the Overseas Territories, 20 September 2010

## *From the initial report*

### **Constitutional anchors**

There are some features of the 2006 Constitution that are not the subject of the current review; that is they are not under active consideration at this time. Providing an important base for understanding the structure of the constitution, these features are:

- That the executive authority – that is, the power to govern – is held by The Queen;
- That the Governor is appointed by The Queen on the advice of UK Ministers and that the Governor exercises the executive authority on behalf of The Queen;
- That the Queen retains the power to legislate for all matters of government in the Islands, including those that are the responsibility of elected TCI Ministers; and
- That certain responsibilities – defined in the current Constitution as the ‘special responsibilities’ – are retained by the Governor and are not subject to the control of elected TCI Ministers, but are subject to Constitutional limitation in their exercise, including through the fundamental rights provisions; and
- That the Governor will retain the power to legislate for some matters of government in the Islands, as long as these matters are specified in the Constitution.

In some instances, the Constitution will provide clear direction as to the action that the Governor must take in response to a given set of circumstances – for example, the Governor will appoint as Premier the elected Assembly Member who has the support of the majority of elected Members in the Assembly.

In many cases, however, the Constitution gives the Governor the power to take decisions in circumstances that can not be so closely defined. In these cases, the Constitution allows for four methods by which the Governor will reach a decision:

- (a) The Governor acting in his or her discretion**, which means the Governor making an independent decision, and not being required to seek advice or consult any other official or body;
- (b) The Governor acting on the advice of a specified official or body**, which means the Governor must seek the advice of that official or body, and must follow it unless to do so would be unlawful;
- (c) The Governor acting following consultation with a specified official or body**, which means the Governor must consult that official or body, but does not have to follow their advice; and
- (d) The Governor acting in accordance with an instruction of the Secretary of State**, which means the Governor must make the decision as directed by the Secretary of State (the UK Government).

The Constitution sets out which method the Governor must follow when exercising his or her functions and powers. As an example, following the order above:

- (a) The Governor appoints the Chair of the Public Service Commission *acting in his or her discretion*
- (b) The Governor appoints Cabinet Ministers *on the advice of the Premier*
- (c) The Governor appoints the Police Commissioner *having consulted the Premier*
- (d) The Governor appoints the Deputy Governor *in accordance with an instruction of the Secretary of State*

In setting out how the Governor exercises his responsibilities, and on whose advice, the constitution helps to regulate the relationship between the Governor and elected Ministers.

## 2 Fundamental rights and freedoms of the individual

The first chapter of the 2006 Constitution sets out the fundamental rights and freedoms of the individual. This chapter was updated in 2006 and reflects the key international human rights obligations that extend to TCI. The rights derive mainly from the United Nations International Covenant on Civil and Political Rights and the European Convention on Human Rights, both of which have been applicable in TCI for many years.

### *From the initial report*

As noted above, the rights are rooted in applicable international covenants, most especially the European Convention on Human Rights. In order to deepen the link between the Convention and this Part of the Constitution, and ensure that they are interpreted consistently, it would be useful to include in this Part a provision that explicitly requires a TCI court to take into account relevant decisions from both the Convention's own bodies and the UK courts themselves. While this is a practice that is already followed by TCI courts, it is useful to emphasise the link in the Constitution.

6. My first initial recommendation was to include in the Constitution a provision that explicitly requires a TCI court to take into account relevant decisions from both the Convention's own bodies and the UK courts themselves. While this is a practice that is already followed by TCI courts, it is useful to emphasise the link in the Constitution. This recommendation was not challenged by those at my public meetings.

**Revised recommendation 1: That the enforcement of fundamental rights be enhanced by including a provision explicitly requiring TCI courts to take account of relevant decisions on Convention Rights.**

### *From the initial report*

During consultation there was a clear wish that the Constitution should provide protection for the natural environment of the TCI. This could be accommodated in this Part by including a new provision that required the TCI Government to proactively protect the natural environment and consider environmental implications of their decisions and policies. Similar provisions are already to be found in the constitutions of the Cayman Islands and the British Virgin Islands.

7. During my initial consultation there was a clear wish that the Constitution should provide protection for the natural environment of the TCI. This can be accommodated in the Constitution by including a new provision that requires the TCI Government to proactively protect the natural environment and consider environmental implications of their decisions and policies. Further consultation shows a wish to also include the protection of the TCI's built heritage in the Constitution, and I agree that this is equally important. A similar provision can already be found in the constitution of the Cayman Islands.

**Revised recommendation 2: That a new provision be inserted in Part 1 to improve protection of the TCI's natural and built heritage.**

### *From the initial report*

The Auld Commission of Inquiry recommended that provision should be made in TCI for "trial by judge alone for cases where trial with a jury would risk impairment of the administration of justice".

Amending the constitution to not automatically require trial by jury in certain criminal cases is wholly consistent with the European Convention on Human Rights, which does not require trial by jury. Many countries have criminal trials without a jury, and not all overseas territories have the constitutional right to trial by jury in their constitutions - there is no such right under the constitutions of Anguilla or the Cayman Islands. The concept of trial without jury already exists in the TCI in the ordinary operation of the criminal justice system – for example trial without jury has always occurred in TCI magistrates' courts in less serious cases. There is no right to trial by jury in every case in the UK, and recent arrangements have been made for trials without jury, including in very serious cases.

8. The Auld Commission of Inquiry recommended that provision should be made in TCI for “trial by judge alone for cases where trial with a jury would risk impairment of the administration of justice”. This recommendation has already been implemented for the period of the interim administration and appropriate local laws have been drawn up for the operation of this interim change.

9. During public discussions of my initial recommendations there was a great deal of confusion and concern about my initial recommendation on holding criminal trials without a jury. Many impassioned speeches were delivered at public meetings, with support from the floor, calling for a rejection of this recommendation. I do not doubt the depth of feeling on this issue.

10. There were some suggestions that if the size of the jury pool in TCI was considered too small for effective juries to be formed, then additional jurors could be brought in from other Caribbean jurisdictions. I found that this suggestion would present great logistical and legal difficulties and have not pursued it.

11. There was also a suggestion to consider the use of 'special juries' as in Trinidad and Tobago and Barbados. In these jurisdictions, special juries are used under strict conditions, but only in civil trials where it is deemed advantageous to have jurors with specialist knowledge and qualifications. While some may see special juries in criminal cases as an extension of a jury of 'peers', others will disagree. In any event, the concerns expressed about the smallness of the overall TCI jury pool would be only magnified by the use of further qualifications for jury service.

12. What I did not hear was a workable solution to the problem as raised by Sir Robin - how a small and interconnected community can empanel a fully uninformed and impartial jury, and how the Government can protect those who serve on such juries. I therefore restate my initial recommendation in this area.

13. There was also a suggestion that the jury pool could be widened to take in more of the resident population. Although some will no doubt find this suggestion to be at odds with the protection of Belonger privilege, this does not require constitutional action and can be taken forward in any future ordinance making arrangements for criminal trials.

14. If my recommendation on trials without juries is taken forward, it is the clear view of my respondents that the necessary enabling ordinance should facilitate as many trials as possible taking place with a jury, and that clear criteria and processes, including for appeals, be mandated.

**Revised recommendation 3: Amend Section 6 of the 2006 Constitution so as to remove the automatic right to a trial by jury in criminal cases in the Supreme Court.**

### 3 The Governor and Executive Government

The Governor is Her Majesty The Queen’s representative in TCI, and is appointed by the Queen. The 2006 Constitution created the office of Deputy Governor. The Deputy Governor’s role is to assist the Governor and to be first in line to act when the Governor is absent. The Deputy Governor must be a Belonger and is appointed by the Governor in accordance with instructions from the Secretary of State on behalf of the Queen.

#### The role of the Governor

##### *From the initial report*

It is clear from both my consultation meetings and debates in the media that the role of the Governor under the 2006 Constitution is not well understood and is open to misinterpretation. There were consistent calls for more explanation of how the Governor’s functions were exercised, and under what circumstances they should be exercised.

The Governor is part of the Turks and Caicos Islands Government, and this will continue to be the case. The Governor acts subject to the provisions of the Constitution and local law. While the exercise of what can be seen as specified powers are clear in the Constitution, the Governor’s more overarching responsibilities – such as good governance – are just as important in the TCI context, and therefore I am suggesting a new mechanism for entrenching important principles of good governance into the Constitutional framework, for the benefit of the Governor, of elected members and ministers, and most importantly for the people of the TCI.

‘Good governance’ has become a popular term in constitutional and political reform; it is based on values of accountability, transparency, sustainability and the rule of law. During consultation, there was a clear sense of frustration that while most agreed that the Governor had a key role in ensuring good governance in the territory, the population as a whole wasn’t equipped to judge whether good governance principles were being followed in the TCI. This is also reflected in the confusion around the Governor’s role in relation to TCI ministers, and why some actions that did not appear to meet principles of good governance were able to be taken by previous administrations. In addition, the UK Government has made it clear that it wants to see governance reforms that can “avoid a repeat of the systemic failures identified by the Commission of Inquiry<sup>3</sup>.”

I therefore propose a new system of ‘governance principles’ to guide the actions of the entire TCI Government – Governor, Premier and ministers. Whenever a new Governor is appointed the Secretary of State would issue a Statement of Governance Principles and the Constitution will require the Governor, Premier and Ministers to work within these principles. The Principles could be amended by the Secretary of State at any time. The Governor will need clear powers to reject any advice to act – whether from the Premier, Assembly, Cabinet or independent bodies – if he or she believed that such action would be in contravention of the governance principles.

The Statement of Governance Principles would be published in the Gazette and widely available in the TCI. In addition to including principles relating to accountability, transparency, sustainability and the rule of law, the Statement can also reflect TCI specific concerns – so the principles could cover management of crown land, objective and documented government decision making, and prudent financial management. In themselves the Principles would provide more transparency in governance – the people would have clear expectations of how government was to function, and the Government itself would know what standards it was to be held to.

15. As I stated in my initial recommendations, the Governor will continue to be part of the Turks and Caicos Islands Government. The Governor will continue to be required to act subject to the provisions of the Constitution and local law.

16. I had suggested a new mechanism for entrenching important principles of good governance into the Constitutional framework, for the benefit of the Governor, of elected Members and ministers, and most importantly for the people of the TCI. This proposal met with some acceptance, and as I believe the concept continues to have merit I restate it here.

17. I had proposed a new system of ‘governance principles’ to guide the actions of the entire TCI Government – Governor, Premier and other Ministers. Consultation showed a clear wish for there to be TCI involvement in the drafting and consideration of the Principles, so I have amended the mechanism proposed so that the Secretary of State would consult the TCI Government before issuing a Statement of Governance Principles or any amendments to an existing Statement. The Principles

<sup>3</sup> Governor’s Second Quarterly Statement (January 2010)

could be amended by the Secretary of State at any time, including on the initiative of the TCI Government.

18. I continue to believe that for these principles to have any effect in improving the level of governance in the TCI, the Governor will need clear powers to reject any advice to act – whether from the Premier, Assembly, Cabinet or independent bodies – if he or she believed that such action would be in contravention of the Governance Principles. Therefore I continue to recommend that the Governor can reject cabinet's advice, and withhold assent from a Bill of the Assembly in pursuit of the Governance Principles. I also suggest that the Governor can use his reserve legislative powers to further the Governance Principles (see recommendation 25).

19. A popular theme during public discussion of this proposal was that it provided too much power to the Governor. In fact, this proposal merely sets out a new method for the exercise of existing powers of the Governor to enforce good governance. I believe it is an improved method for several reasons. Firstly it provides a more transparent framework for government decision making - an elected TCI Government will be fully aware of the Principles, assisting them to take appropriate actions. Indeed, I believe that the Governor's powers in relation to the Principles will be used sparingly, if at all, as there will be no reason for a TCI Government to act contrary to Principles they were part of forming and are fully aware of. Secondly it roots the discussion around upholding the Principles in the TCI, where the Governor will be fully informed of all the relevant context and environment, rather than splitting decisions between the TCI and London. Thirdly, it provides protection for the TCI Government who will have a clear and public statement of the UK Government's intentions to work within.

20. Finally, I am aware that many respondents will be dismayed to see this proposal continue into my revised recommendations. Some expressed views that the reserved powers of the Governor should be removed altogether from the Constitution; others prefer to leave it at the 2006 status quo, which as noted above did maintain some reserve powers for the Governor. However, I must work within my terms of reference, and as noted above the expectations of the UK Government, while endeavouring to incorporate local views. I believe that the Governance Principles concept can provide for more oversight of the governance of the TCI, as has been demanded by the UK Government, while providing more transparency and certainty in government decision making as wished for in TCI.

**Revised recommendation 4: Introduce a Statement of Governance Principles and empower the Governor to enforce compliance with the Principles in government policies and decision-making. The Principles are to be issued by the Secretary of State following consultation with the TCI Government. At a minimum, the Governor should be able to both reject the advice of Cabinet and exercise his or her reserve legislative powers to ensure TCI Government compliance with the Governance Principles.**

21. Among those interested in the concept of Governance Principles there was a wish to see what a possible statement could contain during this revised recommendation period. The following potential statement is provided for illustrative purposes only, as the text would not be included in a revised Constitution.

## ***Possible form of a Statement of Governance Principles***

The Government of the Turks and Caicos Islands must promote and abide by the following principles and give effect to these principles in the exercise of their powers:

1. All Government action shall be taken in a manner designed to safeguard the fundamental rights and freedoms of all people in the islands, as set out in the Constitution.
2. All residents of the Turks and Caicos Islands must be able to participate in the governance of the territory, whether directly or through legitimate intermediate institutions that represent their interests. In particular, where consultation is mandated by law, the Governor is required to be assured that the consultation process was accessible and meaningful before assenting to any outcome following consultation.
3. All ordinances and regulations must be fair, proportionate, and capable of being implemented impartially. In particular, decision making required by law should be able to be objective, and the granting of discretionary powers should be limited to those that are necessary for good government.
4. The Government shall maintain a broad and long-term perspective on the development of the Islands. The Governor may require the Cabinet to produce a development plan for the islands at regular intervals.
5. The Government will be supported by the TCI Public Service which will implement policy in accordance with the rule of law and internationally accepted standards. The Government shall respect the integrity and impartiality of the Public Service, and the Public Service will be protected from partisan interference.
6. The Government shall act in an open manner. All government bodies and officials should be accessible to the public and the media to build confidence in their operations and effectiveness.
7. The Government shall act in a transparent manner. Government processes, institutions and information should be directly accessible to those concerned with them, and enough information provided to understand and monitor them. Decision makers must provide written reasons for decisions and advise applicants of their procedural rights.
8. The Government shall act in an accountable manner, especially in relation to those who will be affected by its decisions and actions. Government must cooperate with and support the work of constitutional watchdog institutions.
9. The Government shall act in good faith and a fair manner, for the benefit of all residents of the TCI. Services and benefits will be made available on an equal basis, free of preference based on family ties, political allegiance or friendship.
10. The Government shall at all times respect the rule of law and the impartial administration of justice, and shall ensure compliance with international obligations applicable to the Turks and Caicos Islands.
11. All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.
12. The Government will administer Crown Land in a transparent and equitable manner
13. The Government shall manage public finances in the interests of securing the sustained long term prosperity of the people of the TCI. Revenue and expenditure decisions shall be made in an open, transparent way, and within the context of a medium term plan. The Government shall take action to mitigate risks to fiscal performance, and will ensure that liabilities, including debts, are sustainable.

## The Deputy Governor

### *From the initial report*

The 2006 Constitution also established an office of Deputy Governor. While the Governor was permitted to delegate functions to the Deputy Governor, there was little certainty among those in Government and those in the community as to the real role of the Deputy Governor. In the TCI's current circumstances such a senior role must be able to demonstrate a role in the governmental structure that is both necessary and comprehensible.

I therefore propose that the Deputy Governor's role be recast to make it plain that the Deputy Governor has two main functions – firstly to act as Head of the Public Service and secondly to act in support of the Governor. In order to fulfil these roles I think it essential that the Deputy Governor attends (but does not vote in) Cabinet. In order to ensure as wide a pool of applicants as possible when looking for a Deputy Governor, the role should no longer be reserved for a Belonger, although this does not of course preclude a Belonger from appointment following an open recruitment process.

22. There was broad support for my proposal that the Deputy Governor's role be formalised so as to provide the Deputy Governor with two main functions – firstly to act as Head of the Public Service and secondly to act in support of the Governor. There was also support for the Deputy Governor to attend (but not vote in) Cabinet.

23. There was concerted opposition to changing the status qualification for the Deputy Governor, so I have amended my recommendation so that the Deputy Governor's role would continue to be open only to a Belonger. There was support for an open recruitment process, and also a helpful suggestion that to be eligible for appointment as Deputy Governor any candidate should be capable of meeting the integrity based qualifications for election to the Assembly.

**Revised recommendation 5: Redefine role of Deputy Governor to specifically act (a) as Head of the TCI Public Service and (b) in support of the Governor. The Deputy Governor should attend but not be member of Cabinet, and will have no vote in Cabinet. The Deputy Governor's role should be subject to an open merit-based competition but should remain reserved for Belongers.**

## The Premier and the Cabinet

The 2006 Constitution provides for a Premier and Cabinet. The Cabinet consists of the Governor as Chairman, the Premier, six other Ministers and the Attorney General.

The Governor is obliged to appoint as Premier the elected member of the House of Assembly who proves to the Governor that he or she commands the support of a majority of the elected members of the House.

The number of Ministers can be increased by law if the number of elected members of the House is increased, but the total number of Ministers cannot be more than one third of the total number of members of the House.

### *From the initial report*

The number of Ministers is very large - a Premier plus six other Ministers - considering the size of the territory and the size of the electorate it is drawn from. As outlined in the box, the number is currently fixed as being no more than one third of the total number of members of the House of Assembly. In the next chapter, I am recommending an all-elected Assembly of fifteen members. Given this recommendation, and in the absence of a clear rationale for a ministry of seven ministers on efficiency grounds, I am recommending that the ratio of one third be retained, and thus the number of Ministers should return to the 1988 maximum of the Premier plus four additional ministers. I am not suggesting any change in the rules for appointment of the Premier or ministers – the Premier would still be the person who controlled a majority in the Assembly, and the Governor would appoint those members nominated by the Premier to serve as Ministers.

I also see no reason for a specified office of Deputy Premier in a cabinet of this size. The Constitution provides separately (in current section 31) for persons to be appointed to take on the Premier's functions in the event of illness or absence and these provisions should remain.

24. My initial recommendation to reduce the number of Ministers in the Cabinet was not supported by those at my public meetings. There was a continual theme that Ministers in previous administrations were very busy, and I accept that this was likely to have been the case.

25. There has been, however, little reflection on the concerns raised by the Commission of Inquiry and in subsequent reform work that the TCI has experienced an over-reliance on ministerial decision making in recent years. I fully accept that the Cabinet must be large enough to consider and set policy, and Ministers must have time to devote to this role. It is important however that the public service acts as the implementer of that policy, rather than assuming that every decision must be taken by a Minister.

26. Many of the meetings discussed the number of Ministers in relation to concerns with the allocation of portfolios in previous administrations - concerns around the overloading of individual Ministers with too many portfolios, or with a number of unrelated and complex portfolios. There were suggestions a Premier should be restricted to the coordination of government business and the setting of overall strategy and direction rather than managing a departmental portfolio, and that in such a case there was a call for six additional Ministers. It would be unwise to attempt to prescribe in a constitution how portfolios could be constructed, and difficult to prohibit a Premier from holding portfolio responsibilities - and to attempt either would contradict the Westminster convention allowing governments to make their own administrative arrangements.

27. Having considered the differing views on the size and structure of the Cabinet, I have amended my recommendation to provide for the Cabinet to contain the Premier and up to five additional Ministers. I believe that a cabinet of this size should encourage the appropriate delegation of routine decisions to the public service whilst providing space for the consideration of policy.

28. As before, I am not suggesting any change in the rules for appointment of the Premier or Ministers – the Premier would still be the person whose party or coalition controlled a majority in the Assembly, and the Governor would appoint those Members nominated by the Premier to serve as Ministers.

29. I had originally recommended that the specified office of Deputy Premier be abolished. Following consultation, I am changing this recommendation to be that the Constitution should specifically provide that a person appointed as Deputy Premier will take on the Premier's functions in the event of illness or absence of the Premier.

30. There were suggestions that explicit rules should be made in the Constitution to govern procedure in the absence of the Premier or other Ministers from the territory. Such rules were a feature of earlier constitutions, and I do not believe they need to be reinstated. Given my recommended retention and restating of the Deputy Premier role, it should be the natural expectation that the Premier and Deputy Premier will not normally be absent from the territory at the same time. It should also be expected that arrangements will be made for Ministers to cover the portfolio responsibilities of other Ministers during absence and illness, given the clear concerns raised about the need for speedy ministerial decision making. (In most cases meetings that appear to demand the attend of both the Premier and Deputy Premier, such as the Overseas Territories Consultative Council, are scheduled suitably far in advance to allow for administrative arrangements to be put in place.)

**Revised recommendation 6: That the number of Ministers to be appointed in addition to the Premier be no more than five. Quorum for cabinet meetings should be five, of whom at least three must be Ministers.**

**Revised recommendation 7: There should continue to be separate provision for an office of Deputy Premier, and the Deputy Premier should be the first to act in the office of Premier in the absence or**

## illness of the incumbent.

### *From the initial report*

There is a general wish for government to act both more efficiently and more transparently. In this regard, I suggest that the Cabinet be required to meet at least once a fortnight, to ensure that government business is not unduly delayed. I also suggest that the Governor should publish a summary of the business conducted at each meeting of the cabinet within two weeks of that meeting (once the cabinet has met again to confirm the minutes of the previous meeting).

31. There was support for the plan to require Cabinet to meet at least once a fortnight, while recognising that it would in most cases meet weekly. There was also support for the proposal to have a summary of the business conducted at each meeting of the cabinet published within two weeks of that meeting and so I affirm that recommendation here. I reiterate that this would be a summary, and not the full Cabinet minutes, which would remain confidential.

**Revised recommendation 8: That cabinet meetings be held at least once a fortnight, and that the Governor publish a summary of the business of each cabinet meeting within two weeks of each meeting.**

### *From the initial report*

In relation to the behaviour of ministers once appointed, there is a clear wish in the Islands for more accountability. The Commission of Inquiry raised the issue of non-compliance with the registration of interest provisions in the 2006 Constitution and gave prominence to issues of perceived conflict of interest. The new Integrity Commission is expected to improve the landscape somewhat, but there must also be strengthened provisions in the Constitution for enforcement. As can be seen in [initial] recommendation 43 I am suggesting that the Integrity Commission be required to formally adopt and promote a code of conduct for persons in public life (based on that previously issued in TCI). Failure to comply with the revised code should be able to result in forfeiture of ministerial office. In addition, the Integrity Commission will also need to continue to enforce the registration of interests by persons in public life. Failure to meet the requirements for the registration of interests on two occasions should also result in forfeiture of ministerial office.

32. I proposed some extended accountability measures to guide the behaviour of Ministers once appointed, and these received broad support. I therefore restate my recommendation that failure to comply with the code of conduct for persons in public life (see recommendation 41) should result in forfeiture of ministerial office. In addition, failure to meet the requirements for the registration of interests on two occasions during the term of the Assembly should also result in forfeiture of ministerial office.

**Revised recommendation 9: Provide that a Minister will be removed from the ministry if (a) the Integrity Commission finds that they have breached the code of conduct for persons in public life or (b) the Integrity Commission finds that a Minister has failed to comply with the registration of interests requirements on two separate occasions during a term of the Assembly.**

## Exercising the responsibilities of the Governor and the Cabinet

The 2006 Constitution sets out that ministers can hold portfolios across the range of government activity. The Governor retains responsibility for external affairs, defence, internal security including the police and certain public service matters. The Governor is also responsible for the regulation of international financial services. The Governor can delegate to Ministers responsibility for these matters should he or she decide to in their discretion.

The Governor is obliged, subject to limited exceptions, to consult the Cabinet about external affairs, defence, internal security and the regulation of international financial services. The Governor is able to act contrary to the Cabinet's advice on these matters if he or she thought it right to do so. There is also an Advisory National Security Council to make recommendations to the Governor on relevant matters, and on the exercise of emergency powers.

Outside the four areas that are the Governor's special responsibility, Ministers have responsibility. The Governor is obliged to act in accordance with the advice of the Cabinet in these areas of Ministerial responsibility unless instructed to do otherwise by the Secretary of State on behalf of the Queen.

There is a Cabinet Secretary who organises and records Cabinet meetings and coordinates Government business under the authority of the Governor and Premier.

*From the initial report*

The 2006 Constitution makes clear how the Governor should exercise his 'special responsibilities' of external affairs, defence, internal security including the police and certain public service matters – wherever possible he should consult the Cabinet, but he or she is able to act contrary to the advice of the Cabinet in these matters. As outlined above, I have not been asked to recommend changes to the Governor's role in relation to the special responsibilities as part of this review, and no avenue of consideration has led me to conclude that this is necessary at this point in time.

I am however recommending a change to the process by which the Governor takes advice from Cabinet in relation to ministerial responsibilities – all those areas of government that are not included in the special responsibilities. Under the 2006 Constitution, the Governor must follow the advice of the Cabinet in areas of ministerial responsibility. This includes decisions on areas such as health, education, immigration and Belongership, crown land, public finances and development applications. Given the widespread concern that many decisions in these areas were not taken in an appropriate fashion, it is right to provide new safeguards to avoid repetition.

The most extreme solution would be to reduce the areas under ministerial control and make many more policy areas a special responsibility of the Governor. This would, I believe, be a step back in the TCI's constitutional development, and deprive the elected government of policy control in areas that should rightly rest with them.

However, neither local demands for good governance or UK demands for oversight and prudence can be met by the current arrangements being continued. I therefore propose that the Governor would be empowered to act contrary to the advice on the Cabinet in an area of ministerial responsibility if he or she believed that the action recommended was contrary to the Governance Principles discussed above. In many cases, the Governor would simply send proposals back for further consideration by ministers or for further information from departments in light of any good governance concerns, but he would have the power to withhold his agreement if he deemed it necessary.

33. The 2006 Constitution makes clear how the Governor should exercise his 'special responsibilities' of external affairs, defence, internal security including the police and certain public service matters – wherever possible he should consult the Cabinet, but he or she is able to act contrary to the advice of the Cabinet in these matters. Under the 2006 Constitution, the Governor must follow the advice of the Cabinet in areas of ministerial responsibility. This includes decisions on areas such as health, education, immigration and Belongership, crown land, public finances and development applications.

34. There was a view at my public meetings that the Governor should no longer retain any special responsibilities, and that there should be no change to how ministerial responsibilities are able to be exercised. This view was often expressed with some vehemence. Again, however, given my mandate, there is no easy balance between these local views and the desire by the UK to provide more safeguards against arbitrary and unwise decision-making.

35. I continue to believe that there should be no reduction in the areas under ministerial control. However, the 2006 arrangements do require some amendment to provide more opportunities for good governance to be embedded in the TCI. I therefore continue to propose that the Governor would be empowered to act contrary to the advice of the Cabinet in an area of ministerial responsibility if he or she believed that the action recommended was contrary to the Governance Principles discussed above.

**Revised recommendation 10: Provide that the Governor may act contrary to the advice of Cabinet in an area of ministerial responsibility if to act in accordance with the Cabinet's advice would be contrary to the Statement of Governance Principles.**

36. The 2006 Constitution provided a National Security Council as a further advisory body. At public meetings different views were advanced in regard to the future of this body - some finding a sinister motive in the recommendation to abolish it, others fairly dismissive of the need for it. There was consistent surprise that the Council consisted only of existing members of Cabinet, and did not include such officials as the Commissioner of Police. I remain concerned that this body could duplicate, and potentially undermine, the role of the Cabinet. I restate my recommendation it be

abolished. If a future TCIG shares the concerns raised by some respondents, they would be free to establish a Cabinet sub-committee on national security.

### **Revised recommendation 11: Abolish the national security council**

37. The 2006 Constitution provided for a separate office of Cabinet Secretary. While there is no doubt that the Cabinet needs support for its functions – and indeed more than previously existed – there is no clear argument for the position being a separate constitutional office. As there was no overwhelming call for its retention, I restate my initial recommendation.

### **Revised recommendation 12: Remove the office of Cabinet Secretary from the Constitution**

#### **The Attorney General**

The 2006 Constitution also defines the role of the Attorney General. The Attorney General is to be a member of the House of the Assembly, the Cabinet and the Advisory National Security Council. He or she is also to be independently responsible for criminal proceedings (prosecutions). The Attorney General is appointed by the Governor in his or her discretion, but after consulting the Premier.

#### *From the initial report*

The Attorney General is a key role in the government, but the office is little understood and its functions open to misinterpretation. This is not surprising given that the Attorney is a member of the legislature and the executive, acts as the chief legal adviser to the Government (including the Governor and the Premier) as well as being responsible for criminal prosecutions.

The Commission of Inquiry raised the issue of the many hats worn by the Attorney General and the need to provide more clarity both inside and outside of Government as to the Attorney's role.

In many jurisdictions, including some of the overseas territories and the UK itself, the responsibility for instituting criminal proceedings is vested in a separate and independent Director of Public Prosecutions. These officers function similarly to how the TCI Attorney General does in relation to criminal proceedings, but focus exclusively on this important role. While being mindful to not create new offices for the sake of having them, I do believe that an independent Director of Public Prosecutions should be created for the TCI. This would provide the clarity the Commissioner sought in relation to prosecutions – always a difficult role in small jurisdictions – and also release the Attorney to focus on the key role of principal legal adviser to the Government. The new Director of Public Prosecutions should be required to publish a prosecution policy that sets out the principles that will be applied by the Director and his or her office in their approach to prosecutions. Such a policy will provide clarity for the public on how prosecution decisions are handled.

38. There was broad support for separating and defining the functions of the Attorney General, in a recognition of the key role played by the Attorney.

39. Accordingly, I restate my recommendation to define the Attorney General's role, and to remove the Attorney as a Member of the Assembly. The Attorney General should retain a right to attend and speak at sessions of the Assembly, and should be permitted to appoint a delegate to attend and speak on his or her behalf.

40. Some meetings did raise the issue of the Attorney being appointed by the Premier and/or Cabinet rather than by the Governor. This argument was not accompanied by a clear rationale, but rather with reference to the situation in some other territories and independent countries. Given the other changes in the Attorney's role recommended here, I do not think this is the time to further change the placement of the Attorney in the structure of the Government. I have no doubt this will be raised in future constitutional negotiations.

41. Given the widespread support for the proposal, I also restate my recommendation that an independent Director of Public Prosecutions should be created for the TCI. This would provide clarity responsibility for prosecutions and also release the Attorney to focus on the key role of legal adviser

to the Government and to the Assembly. The new Director of Public Prosecutions should be required to publish a prosecution policy that sets out the principles that will be applied by the Director and his or her office in their approach to prosecutions. Such a policy will provide clarity for the public on how prosecution decisions are handled.

**Revised recommendation 13: That the Attorney General be defined in the Constitution as follows:**

- a) **The Attorney General is the legal adviser to the TCI Government and the House of Assembly;**
- b) **The Attorney General is a member of the Cabinet; and**
- c) **The Attorney General, or their nominee, has the right to be present and to be heard at all sessions of the House of Assembly.**

**Revised recommendation 14: That a Director of Public Prosecutions for the TCI be established in the Constitution, and that all powers of the Attorney General relating to the bringing and undertaking of criminal proceedings be assigned to the Director of Public Prosecutions instead. The Director of Public Prosecutions will be required to publish and maintain a prosecution policy. The Director of Public Prosecutions should be classified as a 'watchdog institution' as discussed in chapter eight below.**

## 4 The House of Assembly

In the 2006 Constitution the House of Assembly consists of a Speaker, fifteen elected members, four appointed members and the Attorney General. The House has a four year term.

The fifteen elected members must be elected for single member electoral districts. An Electoral District Boundary Commission must meet every four years to make recommendations for the number of electoral districts and the boundaries of these districts. The Commission can recommend an increase in the number of districts from fifteen.

The four nominated members are nominated by the Governor (one), the Premier (two) and the Leader of the Opposition (one).

Only TCI Belongers can vote for elected members, be an appointed member and stand for election as an elected member.

### A unicameral or bicameral legislature?

#### *From the initial report*

Some participants in public meetings advocated the introduction of an upper house of the legislature. However there is no clear rationale for the introduction of such a house, nor consensus on its role. Upper houses are often found in federations – such as the USA and Australia – where some political arrangements pre-date the federation itself, and provide a method for the representation of these constituent states. In other instances – such as the UK House of Lords – the upper house reflects societal divisions and historical evolution. In most cases, upper houses have come to reflect and divide along the same ideological or partisan lines as lower houses of legislatures (whether elected or not), and in so doing have diminished their role of representing interests not represented in the lower house.

Some suggest that an upper house could act as a house of review. This is a common role for Senates but I do not believe that TCI needs – or can afford - a separate and costly house of review when the Governor should operate as a champion of good governance and territory wide policy making, as outlined above. I have not been convinced of the need for, or the role of, a second house of the legislature.

42. There continues to be discussion and advocacy of a second chamber of the legislature - usually referred to by its proponents as a Senate or Upper House. Its proponents suggest that an upper house would act as a review body, or would provide a non-partisan voice in public debate. However there was also support for retaining a single chamber (though not always in the form as I initially recommended - see paragraph 47 below).

43. Those who support an upper house, however, do not share consensus on how such a house would be constructed. If the house was to be appointed, there was acceptance that the obvious nominators - the Premier and the Leader of the Opposition - would be likely to nominate individuals of a partisan persuasion. While some suggested that the Governor could appoint the entire house, this was not widely supported.

44. If an upper house was to be elected, the clear and natural attachment of many Turks and Caicos Islanders to their political parties would likely see the election of a house along partisan lines, therefore not providing the independent view advocated as a role of the upper house. It is not suggested here (and indeed would be incompatible with the freedom of association protected by section 13 of the 2006 Constitution) that parties could be prohibited from running candidates in any upper house election.

45. I remain unconvinced that there is a demonstrated need for a second house of the legislature, particularly in the absence of a consensus view on its role and composition.

**Revised recommendation 15: That the legislature continues to consist of a single House of Assembly.**

## The size of the Assembly

### *From the initial report*

The 2006 Constitution provides for four appointed members of the Assembly, and also allows the Assembly to appoint a Speaker from outside the elected and appointed members.

The TCI Assembly is quite large in comparison to the size of the electorate that selects it and the population it serves, and at present also has four members who are appointed rather than elected. I received no strong suggestions that the appointed members serve any distinct purpose other than to entrench the numerical majority of the largest party. I also received no suggestion that there was a need to draw a Speaker from outside the Assembly itself, or that the Assembly was not large enough to find a Speaker from within its membership.

Given the small size of the TCI population, and the even smaller size of the electorate (even if [initial] recommendation 16 below is accepted), I am of the view that an Assembly of 19 is too big and that appointed members are no longer appropriate. I therefore suggest that the Assembly be reduced to 15 overall, with all members to be elected and the Speaker to be drawn from amongst the elected membership. This still provides an adequate number of backbenchers to serve on committees and improve accountability. However, if my proposals below to establish appropriations and public accounts committees are not accepted, the size of the Assembly should be reviewed again, to ensure that the size of the Assembly is proportionate to its functions, and is returning good value for money.

46. The 2006 Constitution provided for four appointed Members of the Assembly, and also allowed the Assembly to appoint a Speaker from outside the elected and appointed Members.

47. There was opposition to the removal of appointed Members of the Assembly. This surprised me, as my initial recommendation was designed to highlight the primacy of elected representatives by the removal of the four appointed Members. While all the meetings were clear in their wish to retain some appointed Members, I remain unconvinced that appointing members is appropriate or valuable. I am therefore restating my recommendation that they be removed. I have however (as can be seen in chapter ten) provided for the two financial committees of the legislatures to have members from outside the elected membership of the Assembly, which was one rationale advanced for appointed Members.

48. There was also strong support for retaining the 2006 rules for the selection of Speaker, which allow for the Speaker to be chosen from among the elected or appointed Members of the house, or co-opted in from outside. Given the concern raised about the difficulty of finding a Speaker from a fifteen Member house, especially if the election result was very close, I have revised my view on this and suggest retaining the 2006 procedure. There was no discussion of the role of the Deputy Speaker, but analogous to the situation for the Deputy Governor and the Deputy Premier, I think it would be useful if the Constitution made it clear that the Deputy Speaker will act as Speaker in the event of absence or illness. The Deputy Speaker should continue to be drawn from the existing membership of the Assembly.

49. In relation to elected Members, there was agreement that fifteen elected Members remained an appropriate number.

**Revised recommendation 16: That the legislature consist of fifteen elected Members and a Speaker drawn from among the elected Members or from outside the House.**

### Who votes?

#### *From the initial report*

The clearest consultation message I received is that the Belonger population is resistant to any expansion of the franchise, as suggested in the Commission of Inquiry report and several previous reports. At the same time, there has been a clear history of disenfranchisement of long term residents, many of whom would have become eligible for a new status and voting rights had they chosen to settle in many countries, including the UK. This issue has been known for some years, yet

there is still no objective and documented path to Belongership for many permanent residents who, understandably, would like more certainty about their future and in some cases, to participate in public life. I propose that this issue should be dealt with now, both to answer these concerns and also to support the introduction of wider electoral reform as discussed below. This should be done through two related recommendations. In [initial] recommendation 45, I recommend that the TCIG be required to establish an objective and transparent process for the acquisition of Belongership. When such a process is in place, the franchise should remain defined by Belongership. However, if no such process is in place at the commencement of the revised Constitution, special provision should be made to enfranchise all permanent residence certificate holders who have held these certificates for a period of ten years or more. These 'PRC electors' should be entitled to enrol and vote (provided they otherwise meet the age and electoral residency requirements) and would retain this right as long as they remained resident in TCI. This provision would stay in place until a Belongership process was established and/or be reintroduced should a Belongership process be disestablished.

I received various submissions on the issue of voting rights for Belongers abroad, along with the view that Belongers abroad should only be enfranchised for a defined period after their departure, rather than forever. In a mobile society such as TCI, I see merit in allowing for Belongers abroad to be enabled to register and vote for two TCI general elections after their departure.

50. It remains the fact that the clearest consultation message I received is that the Belonger population is resistant to any 'expansion' of the franchise, as has been suggested in the Commission of Inquiry report and several previous reports. At the same time, many accept that the lack of a clear and documented process for obtaining Belongership has led to these calls for revision of the franchise.

51. As I discuss in chapter nine, there is now wide support for the introduction of a system for acquiring Belongership based on clear criteria. This is in keeping with the recommendations of the 2004 Immigration Review Commission. I believe that the operation of such a scheme will answer many of the concerns around the franchise's definition. In recommendation 42 below, I recommend that the TCIG be required to establish an objective and transparent process for the acquisition of Belongership. If this recommendation is accepted, no change need be made to the status qualification in the franchise.

52. The wider participation in my second round of meetings demonstrated opposition to a suggestion from the first round, that Belongers abroad should be enfranchised for a specified period of time. Given the two sets of divergent views, I am amending my initial recommendation in this area. There was support for the enfranchisement of Belonger students abroad and so the existing residency provision in the Constitution will need to be redrawn to allow the elections ordinance to provide for this.

**Revised recommendation 17: That the franchise be retained as 18 year old Belongers, with special provision made to enable the enfranchisement of Belonger students abroad.**

## Electing the House of Assembly

### *From the initial report*

The election of the House of Assembly caused lively discussion during consultation and, as is so often the case, this topic leads to the emergence of firmly fixed positions on many aspects. Unfortunately, many of these fixed positions are incapable of being accommodated within one design for the Assembly.

The current voting system – of first past the post in single member constituencies – is well known and understood. It has been in place since 1993, when the 1988 Constitution was amended to allow for a return to single member districts following two elections using multi-member districts.

It is clear, however, that this system has always proven problematic in the TCI, whether in single or multi-member districts. It has been the subject of comment over many years from electoral observers, and was criticised by the Commission of Inquiry report. Some of the failings of the system are typical of the first past the post system, and not exclusive to the TCI – the most obvious of these is the magnification of margins that sees one party being able to dominate the composition of the Assembly despite a small majority in terms of overall votes cast.

There are however a range of factors in the implementation of first past the post in the TCI that further undermine its chances of success.

The first and most obvious is the small size of the electorate. Currently only Belongers are able to vote in elections for the Assembly, and this leads to an electorate of around 7,500 people. Under the 2006 Constitution, this delivers an Assembly member for every 500 electors. 500 electors is an incredibly small size for a legislative seat – it can undermine the guarantees of a secret ballot that are the cornerstone of democratic elections while also providing ample opportunity for influencing and intimidation. At an earlier stage of the electoral process, a small electorate can provide an incentive to artificially inflate the size of the electoral register by making it easier for such artificial inflation to effect election results. Unfortunately for the TCI, all of these consequences have been apparent.

The effects of the small electorate are felt even further, however, due to the geographical spread of the population. The very small size of the electorates in Salt Cay and Middle Caicos and the comparatively larger size of the electorate on Providenciales do not lend themselves to equal constituency sizes and therefore equal voting power and equal levels of representation.

All of these system effects are exaggerated by the political culture in the TCI. Electoral politics in the TCI can be seen as transactional in nature rather than the more representative concept that most voting systems attempt to support. By transactional I mean that the relationship between the electorate and their elected members is based on transactions, and electors expect that their elected members will act entirely in the interests of their individual districts (and individual electors for that matter), rather than in the interests of the TCI as a whole. Electors expect and demand that Assembly members act as service providers or service enablers – whether through the provision of public facilities, the securing of government jobs or the direction of public sector decisions. These expectations are realistic when Assembly members have a small number of electors to service.

Those seeking election have come to rely on meeting these transactional expectations to secure election, and this has also undermined the impartiality and professionalism of the public service, which in turn has provided encouragement for the transactional culture. The clear product of this culture can be seen in many of the views held in relation to the Assembly, such as the oft expressed need for smaller communities to have their 'own' Assembly member to avoid 'missing out' on the spoils of the system. A transactional culture could take a long time to move towards a more representative system. What is clear to me, however, is that no evolution is possible if the voting system is not changed, particularly as the electorate will remain small in absolute size.

53. The election of the House of Assembly continued to be a popular topic during consultation meetings. It is clear that many wish for a retention of the current first past the post system - so much so that at one meeting those present were not prepared to discuss alternatives. Other meetings discussed the topic in some detail.

54. As I noted in the initial recommendations, choosing a voting system is always a matter of balancing competing concerns. In the TCI, I still believe that the voting system should aim to:

- produce an Assembly that broadly reflects the political views of the electorate at the time of the election;
- allow for the formation of a stable and effective Government;
- provide more equal voting power across the territory than the current system; and
- reduce the potential for influencing and intimidation in the electoral process.

55. Having been specifically charged with making recommendations on this issue, I remain of the view that first past the post is not capable of delivering the four outcomes listed above. Having reached that conclusion I must recommend a new system.

#### *From the initial report*

Given the importance of this issue, both to the public and to the whole purpose of this review, I do not propose to recommend one voting system at this stage of the review. I present below two options for comment and reaction.

*Option A: Use a list proportional representation system to elect all 15 members of the Assembly on a territory-wide basis.*

A list proportional representation system is a fairly easy method for electing an Assembly that will be broadly proportional, and therefore broadly reflect the voting preferences of the electorate. The whole territory forms the district, with everyone voting on one ballot paper, providing a good measure of equal voting power. The system would be easy to explain, in that electors would make one mark on the ballot paper for the political party or independent candidate of their choice. Importantly, the size of the electorate would make it more difficult for transactional politics to retain its grip on the TCI. Under the current two party system it would be likely that one party will receive a larger share of the vote

and be able to form a government. If additional parties were to emerge or large numbers of independent candidates were to be elected I see no reason why a coalition arrangement would not be possible to form a government

*Option B: Use a mixed-member proportional system to elect 6 island members on a first past the post basis and 9 territory members on a compensating proportional basis.*

This system would still ensure a broad proportional outcome overall, and therefore reflect voting preferences. It would also provide for the representation of the existing geographic identities – Providenciales, North Caicos, Middle Caicos, South Caicos, Grand Turk and Salt Cay would all elect one ‘island member’ each. I have concerns that Salt Cay and Middle Caicos remain too small in terms of electorate to ensure a secret ballot in the election of these island members, and that the size of these two islands, along with North Caicos and South Caicos, could still encourage the use of transactional politics.

These disadvantages are partly overcome by the 9 territory members, who would be elected from the whole territory. The voting system to be used would include a ‘compensating’ mathematical formula which distributes these territory seats so as to ensure that the overall Assembly has a proportional outcome. By having the majority of Assembly seats elected this way, there is more equality of voting power than under the current system and as with the wholly proportional system, less opportunity for influencing and intimidation.

56. In discussion at public meetings, it is clear that there is interest in retaining some level of constituency representation while also achieving a more proportional outcome. The introduction of ‘at large’ or territory wide seats was also of interest to some attendees.

57. I have therefore concluded that the second of the two options I put forward in my initial recommendations - a mixed Member proportional election system - be adopted for the TCI and it be used to elect the fifteen elected Members of the Assembly. The system should provide for the election of six island Members on a first past the post basis and nine at large or territory Members elected on a compensating proportional basis.

58. This system would still ensure a broad proportional outcome overall, and therefore reflect political preferences. It would also provide for the representation of the existing geographic identities – Providenciales, North Caicos, Middle Caicos, South Caicos, Grand Turk and Salt Cay would all elect one ‘island Member’ each.

59. The nine ‘at large’ or territory Members would be elected from the whole territory. The voting system to be used would include a ‘compensating’ mathematical formula which distributes these territory seats so as to ensure that the overall Assembly has a proportional outcome. By having the majority of Assembly seats elected this way, there is more equality of voting power than under the current system and less opportunity for influencing and intimidation. I further suggest that the ‘at large’ seats use an ‘open list’ system allowing electors to indicate their favour for particular candidates within a party’s list, as was favoured during consultation. A full description of the system proposed can be found in appendix A.

**Revised recommendation 18: That the voting system for the Assembly be changed to be a mixed-Member proportional system, electing six island Members on a first past the post basis and nine ‘at-large’ or territory Members on a compensating proportional basis.**

60. This system requires no drawing of electoral districts, so the current provisions for a district boundary system would no longer be required. I have therefore made no recommendations as to the work of the Electoral District Boundaries Commission; this commission would be abolished if the system recommended above was implemented.

## Political party finances

### *From the initial report*

There have been suggestions since at least 2007 that the political party system in the Turks and Caicos Islands is in need of some form of regulation. This was highlighted both in an unpublished report to the Governor in relation to the 2007 general election and in the Commission of Inquiry report.

There are no provisions relating to the establishment or regulation of political parties in the 2006 Constitution. TCI has been electing the House of Assembly using a system of single and previously multi-member districts and no legislative scheme for the creation or registration of political parties was required as part of the voting system. Though there is no legislative basis for the creation of parties, political parties have been a feature of the TCI political scene since the mid-1970s

The 2007 elections assessment report concluded that the area of party finance in the TCI “raised serious concerns, most notably the fact there is no requirement to disclose the source of campaign finance, the amounts spent, or even how the money was spent. There is no way to compare party spending, which seemed to be extravagant and disproportionate to the size of the electorate in parts.” These recommendations were picked up in the report of the Commission of Inquiry, whose recommendation 57 suggested the introduction of legislation to regulate political party finances.

Section 13 of the current Constitution contains clear and explicit protections for individuals who wish to form and run political parties. This provision also allows for the regulation by law of such behaviour in certain specified circumstances.

It is appropriate, and not incompatible with these protections, for a political party regulation process to be introduced. In the discussion of the voting system above, both options in [initial] recommendation 18 incorporate political parties into the voting system, and so will require at least a scheme for the registration of political parties. However for a cultural shift in the political culture to be enabled, the role of money in the elected politics of the TCI must be diminished. I therefore recommend that a comprehensive system of political party regulation be established in the TCI. A full explanation can be found in appendix two. A political party regulation system could either be administered by the Integrity Commission or by the Supervisor of Elections. At this stage, I suggest that the Supervisor of Elections be given this task, along with the resources to manage the scheme.

61. During consultation there was broad support for the introduction of a system of registration for political parties, and I continue to recommend that such a system be established.

62. The area of regulating party finances revealed less consensus during discussion. While some continue to advocate the introduction of public funding for elections, there was no overwhelming support for such a change. Given the current state of the TCIG's finances, and the uncertainty in the community as to the wisdom of such a system, I do not recommend public funding at this time, although it would be possible to introduce public funding in the future through an ordinance.

63. I did not recommend limits on the expenditure of political parties or candidates in my initial recommendations. At present, there is no reliable information on how much political campaigns have cost in the past. In addition, the recommended introduction of at-large seats will see a shift towards territory-wide campaigning, and it may take two or more elections for the true costs of these campaigns. I recommend that the issue of expenditure limits be kept under review for potential legislative change in the future.

64. There was concern from members of both political parties that it was unfair to stop companies and foreign individuals from donating to political parties. Individual Turks and Caicos Islanders, however, continue to press for a reduction in the influence of money in elections and a 'return' of political power to Belongers. Given the strength of feeling on the related issues of the franchise and the granting of 'paper' Belongerships, I continue to believe that donations should be restricted to registered electors only.

65. There were some helpful discussions on the amount that limits should be set at and how loans should be treated within the scheme. I have taken the many suggestions into account in revising the proposed scheme - more detail is provided in Appendix B of this report.

66. While there was some unease at requiring the Supervisor of Elections to administer the scheme, there was support for the Supervisor to be considered a 'watchdog institution' (see chapter eight) and so I continue to place the scheme under their care.

**Revised recommendation 19: That a system of political party regulation be established in the TCI to provide for the following:**

- a) **The registration of political parties;**
- b) **A scheme of permissible donors to political parties, and a ban on donations from non-permissible sources;**
- c) **Public disclosure of income and expenditure of the party;**
- d) **A comprehensive scheme of offences; and**
- e) **The administration of the scheme by the Supervisor of Elections**

**as detailed in Appendix B of this report.**

## Electoral framework

### *From the initial report*

Serious concerns with the underlying integrity of the electoral process in the TCI have been raised after the last few general elections. Successive Supervisors of Elections have also highlighted deficiencies in the process that were worthy of review and amendment. In particular, widespread concern exists about the accuracy and completeness of the electoral register, which is an essential building block for a free and fair election. Many of the concerns relating to electoral registration and the polling process itself can be traced back to deficiencies in the underlying legislative framework, not the administration of the system.

The recommendations above for a new voting system and political party regulation will require careful implementation, but at the same time it is important not to miss the opportunity to improve the underlying electoral arrangements, especially in regard to electoral registration. Some of these improvements require amendment to the elections ordinance, rather than the Constitution.

67. There was broad support at public meetings for revision and reform of the electoral process - in particular there is much discontent with how the voter registration process has unfolded at previous elections, and a clear wish for the system to be modernised and made more accessible. There was also support for improving the powers of the Elections Supervisor in relation to voter registration.

68. I continue to recommend that the Elections Ordinance be wholly reviewed and revised before the next election, and that this review also takes into account the conclusion on other recommendations in this chapter to enable the Elections Ordinance to provide a cohesive basis for future elections.

## Who can run for election: qualifications and disqualifications

### *From the initial report*

There was a large amount of comment at my public meetings relating to how people should be defined as eligible for holding elected office. The sections of the 2006 Constitution dealing with these matters are quite complex, and use the technical terms 'qualification' and 'disqualification'. While some of these provisions – such as holding public office or being bankrupt – are both standard and non-controversial, there are other areas that were either the subject of concern by the public or are not as clear as they should be for such an important matter.

#### *Assessing candidate nominations*

The first possible change relates to the process itself. Elections are run by Returning Officers, who should not be expected to know whether any of the three qualifications or eight disqualifications apply to a given candidate before accepting a nomination. I believe it timely for a new framework for assessing nominations is essential. In many jurisdictions it is usual

that an intending candidate is required to make a binding declaration that they are both qualified and not disqualified at the time of nomination, and this would be a useful first step for the TCI.

At the present time, any questions raised as to the qualifications of a candidate must wait until after the election for a challenge – known as an election petition – to be filed with the courts. This can create a level of uncertainty if a candidate's credentials are questioned during the election period – and in some cases electors could be persuaded to withhold a vote from a candidate who is suggested to be disqualified but is later proved to be eligible. More certainty could be provided in instances where a candidate's qualifications come under question during the election period by allowing the Supreme Court to hear a question as to the validity of a nomination during a designated (and short) period set aside for challenges to nomination within the election timetable.

69. The proposals made for streamlining the qualifications and disqualifications provisions were broadly supported during consultation. Given the complexity of these issues, it would be advantageous for the Supervisor of Elections to collaborate with the Attorney General in producing an authoritative guide to qualifications and disqualifications.

70. There was support for the proposed requirement that intending candidates should make a written declaration of their status in regard to qualifications and disqualifications and that such a declaration would be challengeable in the Supreme Court. Some suggested that the challenge period should be extended, but it is my view that five days is sufficient given the small nature of the TCI political community.

**Revised recommendation 20: That the Constitution require intending candidates for election to the House of Assembly to make a written declaration that they are qualified for election and that no disqualification applies to them. The Supreme Court should be empowered to hear a challenge to such a declaration during a period of five days from the publication of nominations. Such a challenge could be lodged by an elector or by the Attorney General.**

*From the initial report*

*Disqualification for holding government contracts*

The 2006 Constitution contains a complicated set of disqualifications designed to ensure that members of the Assembly are not directly benefiting from holding a government contract, and that intending candidates should declare any government contract they benefit from before nominating for election. Given the establishment of the Integrity Commission as a constitutional body it would be sensible for these provisions to be streamlined, which could be achieved by providing a role for the Integrity Commission in the declaring and assessing of such interests. This would also provide more clarity for intending candidates and Assembly members as the Integrity Commission could be required to produce guidance on the matters.

71. There was also support for giving the Integrity Commission a role in assessing any interests in government contracts held by intending candidates.

**Revised recommendation 21: Recast the disqualifications relating to candidates and Members being beneficiaries of government contracts so that:**

- a) **An intending candidate would be required to disclose such an interest to the Integrity Commission during the nomination period, and the Integrity Commission will publish interests so disclosed at the close of nominations;**
- b) **The Integrity Commission should publish guidelines to define under what circumstances an already elected Member can become a beneficiary of a government contract without this becoming an unlawful interest;**
- c) **Elected Members would be required to disclose any new government contracts to the Integrity Commission who would assess the circumstances against the guidelines;**
- d) **If the Integrity Commission found that a Member of the Assembly had become party to an unlawful interest, then the Speaker would declare their seat vacant; and**

e) **A Member affected by such a declaration could appeal the decision to the Supreme Court.**

*From the initial report*

*Disqualification for being under sentence*

An intending candidate is disqualified if they served a sentence of twelve months or more within five years of the date of nomination. There were suggestions that the five year period of disqualification – which starts when the person was released from their sentence – was not long enough. There was no consensus on how long a period should elapse between the serving of a sentence and eligibility for nomination. I suggest that a period of ten years – which would normally disqualify the person from standing at two consecutive general elections – would be a proportionate increase.

72. Support was also in evidence for extending the period of disqualification following the imposition of a sentence of imprisonment from five to ten years – which would normally disqualify the person from standing at two consecutive general elections.

**Revised recommendation 22: That the period of disqualification due to sentence of imprisonment be increased from five to ten years.**

*From the initial report*

*Disqualification for specific convictions*

There are separate disqualifications that follow conviction for corruption or election offences. This should be expanded to include conviction of offences related to political party regulation (see recommendation 19) and misuse of public monies. There is also a penalty for sitting in the Assembly while disqualified of five hundred dollars a day, which is an inadequate amount for such a serious matter.

73. There was agreement that the specific disqualifications that follow conviction for corruption or election offences be expanded to include conviction of offences related to political party regulation (see recommendation 19) and misuse of public monies. There was support for increasing the penalty for sitting in the Assembly while disqualified to a more adequate amount, but given views that \$5,000 was too large an increase I have moved it to \$1000 instead.

**Revised recommendation 23: Include a disqualification for persons convicted of offences in relation to political party regulation and the misuse of public money. Increase penalty for sitting while disqualified to \$1,000 a day.**

## Functioning of the Assembly

*From the initial report*

There is concern that the Assembly does not meet often enough to carry out its oversight functions, and the electorate is not being adequately represented. I propose that the Constitution should require the Assembly to sit more often than currently provided.

In addition, the 2006 Constitution places the power to prorogue – postpone sittings of the Assembly – with the Governor in accordance with the advice of the Premier. My consultation suggested that this power has been misused to in effect ‘over-prorogue’ the Assembly in previous years, again decreasing the oversight of government actions by elected members and further alienating the people from their elected leaders. I suggest that the Governor be granted the discretion to prorogue the Assembly after consulting the Premier, rather than be required to follow the Premier’s advice, to ensure that the TCI was benefiting from public debate and oversight in relation to the functioning of government.

74. There was agreement that the Assembly should be required to meet more often to carry out its oversight functions, and ensure that the electorate is being adequately represented.

75. Concerns were raised that the proposal to place the power to prorogue the Assembly with the Governor in his discretion was too broad a reaction to concerns around the inappropriate proroguing

of the Assembly in recent years. I have amended my recommendation to suggest that the Governor be required to consult the Premier before taking a decision on whether to prorogue the Assembly.

**Revised recommendation 24: Require the House of Assembly to meet at least nine times in a calendar year, and within six weeks of the previous meeting. Also require the House to meet within two weeks of a general election. Make arrangements for the use of the power to prorogue so that the Governor will consult the Premier on whether to prorogue the Assembly and provide that the Governor should have no power to prorogue the Assembly if the Premier wished to keep the Assembly in session.**

## Governor's powers in relation to legislation

### *From the initial report*

Under the 2006 Constitution, the Governor has what are known as 'reserved legislative powers'. These powers allow the Governor to bring a law into effect without the agreement of the House of Assembly if he or she considers it urgent that the law be changed to ensure compliance with an international obligation. In order to entrench the Governance Principles discussed above, and provide the Governor with enough tools to embed these principles throughout the Government, I suggest that the Governor also be entitled to use these reserved legislative powers to secure compliance with the Governance Principles.

76. As discussed in chapter three, I believe it is essential that the Governor be able to use his reserve legislative powers to ensure compliance with the Governance Principles. This is analogous to the current reserved legislative power, which can be used to ensure compliance with an international obligation.

**Revised recommendation 25: That the Governor be entitled to use his or her reserved legislative powers to ensure compliance with the Governance Principles.**

## 5 The Judiciary

The 2006 Constitution guarantees the independence of the judiciary, which consists of magistrates courts, a Supreme Court, a Court of Appeal. Ultimate appeals can be made to the Privy Council. There is a Judicial Services Commission consisting of a Chairman appointed by the Governor, and two other members appointed by the Governor after consultation with the Premier and the Leader of the Opposition. This Commission recommends appointments to all judicial posts and the Governor must follow their advice unless instructed to do so by the Secretary of State on behalf of The Queen.

### *From the initial report*

No major changes to the arrangements for the judiciary have been suggested. However, like all parts of the Constitution, there are areas that have shown themselves worthy of review in the last four years. In particular, I believe it is useful to take this opportunity to reinforce the independence of the judiciary given this review's focus on improving good governance. It is also timely to provide for flexibility to enable the judiciary to meet the changing needs of the territory, for instance by putting no cap on the number of Supreme Court justices.

77. There was support during consultation for the suggested changes to the Judiciary chapter of the Constitution. The changes in my initial recommendations should help reinforce the independence of the judiciary, a concept supported at all of my public meetings.

**Revised recommendation 26: Remove the upper limit on the number of Supreme Court judges, and include that the Governor would consult the Chief Justice on the number of judges required.**

**Revised recommendation 27: Change appointment conditions of Supreme Court and Court of Appeal judges so that their individual terms and conditions are protected during their tenure.**

**Revised recommendation 28: Bring the protections for magistrates into line with those of judges by extending the protections for individual terms and conditions and removal from office to magistrates.**

**Revised recommendation 29: In regard to the Judicial Services Commission**

- a) **Include the power to appoint deputy registrars in the remit of the JSC, not the PSC**
- b) **Allow the JSC to make regulations for the operation of the JSC**
- c) **Require the JSC to make public their complaints policy and how complaints are to be investigated.**

## 6 The Public Service

The Governor is responsible for appointments, removal and discipline of public servants. The Governor can delegate these powers to a civil servant (including the Deputy Governor) or to a member of the Public Service Commission. The Governor must follow the advice of the Public Service Commission in respect of appointments, removal and discipline except in the cases of the Attorney General, Permanent Secretary Finance, Chief Auditor and Commissioner of Police or where he has been otherwise instructed by the Secretary of State on behalf of The Queen. The Governor must consult the Premier before he or she appoints an Attorney General. The Governor must appoint a Cabinet Secretary on the advice of the Premier, on the basis of a list of public servants drawn up by the Public Service Commission. The Public Service Commission consists of five members. The Governor appoints the Chairman in his or her discretion; the Governor appoints one member in accordance with the advice of the Premier and a further member after consultation with the Premier; and the Governor nominates one member in accordance with the advice of the Leader of the Opposition and a further member after consultation with the Leader of the Opposition.

### *From the initial report*

During consultation, many participants wanted a more impartial public service, and a stronger Public Service Commission. This echoes some of the conclusions of the Commission of Inquiry, which highlighted instances of inappropriate direction of public servants and the politicisation of public sector decision making.

The 2006 Constitution provides a strong base for an impartial and professional public service. As with the voting system, there are cultural factors that come into play in these areas as well as structural. Some recommendations below are designed to improve the efficiency and impartiality of the public service framework. There will need to be accompanying attitudinal change among both public servants and ministers before the wishes of the people for a professional and impartial public service can be met. Other structural changes recommended in this paper – designed to foster a move away from transactional politics – should also ease the pressure on public servants in their administration and decision making roles. As part of his role in assuring good governance, the Governor needs powers to ensure that public sector appointments are being managed in the best interests of the TCI.

78. I continue to believe that the 2006 Constitution provides a strong base for an impartial and professional public service, but discussion at my public meetings revealed a willingness to clarify the role of the Public Service Commission and a wish to see more decision-making occur within ministries when it is appropriate to do so.

## The Public Service Commission

### *From the initial report*

The Governor and the Deputy Governor need to be supported by a strong and responsive Public Service Commission. In general, an independent Public Service Commission is created to set a framework for an impartial and professional public service – a role that includes setting policy, providing advice on the implementation of policy, and monitoring the implementation of policy. However, the 2006 Constitution provides the TCI Public Service Commission with not only this policy role, but also with implementation of that policy through the delegated exercise of the Governor's powers of appointment and discipline. This confuses and dilutes the role that the Commission really needs to play – setting and enforcing standards that support an impartial and professional public service.

In part, this multiplicity of roles reflects the small size of the TCI. When the pool of potential public servants is so small, it is difficult to ensure that family and other allegiances are kept separate from decisions on recruitment, promotion and discipline. Letting the Public Service Commission take on these functions, rather than delegating them to Permanent Secretaries, was a compromise to deal with this. However, in the longer term, Permanent Secretaries must be equipped and supported to take these decisions so the Public Service Commission can resume its oversight role - a role that is supported by the TCI population.

I therefore suggest that the Public Service Commission's mandate be amended to explicitly provide that its main remit is to uphold the principles of merit, neutrality and integrity in the public service through the setting and monitoring of standards. To reflect this new tighter role, I also suggest that the Commission be reduced in size from five to three members, and that all appointments should be made by the Governor in his discretion, given the status of the public service as a special responsibility.

79. There was support for a shift, over time, in the role of the Public Service Commission away from implementation towards policy and standard setting, with a clear remit to monitor the implementation of policy and progress towards standards.

80. As was recognised at many of the meetings, leaving implementation functions with the Public Service Commission in the 2006 Constitution was a compromise to deal with the small and inter-connected nature of the community. There was clear support, however, for Permanent Secretaries to be empowered and supported to take decisions so that the Public Service Commission could resume its oversight role. There also remains a need for the Public Service Commission to act as an appeal body when such decisions are so delegated.

81. I therefore restate my recommendation that the Public Service Commission's mandate be amended to explicitly provide that its main remit is to uphold the principles of merit, neutrality and integrity in the public service through the setting and monitoring of standards.

82. There was concern that it would be hasty to move immediately to a smaller Public Service Commission, as I had initially recommended. I therefore suggest that the Constitution provide for a Chair and either two or four further members of the Public Service Commission. The Chair should continue to be appointed by the Governor acting in his discretion and the Governor would be required to consult the Premier and Leader of the Opposition on the appointment of the further members, having already determined the size of the Commission.

## Appointments

### *From the initial report*

In order to assure himself that good governance principles such as merit protection and procedural fairness are followed in public appointments I have concluded that the Governor should have more power over appointments than he or she currently does. At present the Governor (or his/her delegate) must follow the advice of the Public Service Commission on appointments unless he has a contrary direction from a Secretary of State. Instead of a blanket requirement to follow the Public Service Commission's recommendations I suggest that distinction is drawn based on the seniority and sensitivity of the post in question.

83. In regard to appointments I am recommending a two track system. For appointment of Permanent Secretaries and Heads of Departments, appointment should be made by the Governor, having consulted the Public Service Commission. The Governor should be empowered to delegate this appointment power to the Deputy Governor.

84. For all other positions, appointments should be made by the Governor on the advice of the Public Service Commission unless he has a contrary direction from a Secretary of State (which is the current provision). The Governor should be empowered to delegate this appointment power to the Deputy Governor or Permanent Secretaries.

## Disciplinary matters

### *From the initial report*

An important area of public service management are disciplinary procedures. At present there is widespread discontent with how discipline matters are handled from both a management and staff perspective. There is also confusion as where disciplinary decisions should be made and enforced.

Discipline is best enforced within departments and agencies themselves. But permanent secretaries and heads must be supported in these processes to ensure procedural fairness and equal enforcement across the service. If a disciplinary issue involves a permanent secretary or a head of department, it should be dealt with by the Deputy Governor. As with appointments, the role of the Public Service Commission in discipline should be to set standards and policy, to monitor implementation, and to provide advice to those involved in disciplinary matters. It should be the Governor's expectation that disciplinary matters will be dealt within departments and agencies, and not by the Public Service Commission.

85. The public meetings showed that there remains disquiet in regard to the public service disciplinary system. While the detail of the system is a matter for the relevant ordinance, the powers and delegations that underpin the system must be in the Constitution. There was agreement that discipline is best enforced within departments and agencies themselves, but also that processes must be in place to ensure procedural fairness and equal enforcement across the service

86. If a disciplinary issue involves a permanent secretary or a head of department, it should be dealt with by the Deputy Governor. As with appointments, the role of the Public Service Commission in discipline should be to set standards and policy, to monitor implementation, and to provide advice to those involved in disciplinary matters. It should be the Governor's expectation that disciplinary matters will be dealt with within departments and agencies, and not by the Public Service Commission.

**Revised recommendation 30: That the Public Service Commission's remit be reviewed to provide that its main roles are (a) to uphold the principles of merit, neutrality and integrity in the public service and (b) to be concerned with the setting and monitoring of standards. That the Commission's size be fixed at either three or five members. The Chair should continue to be appointed by the Governor acting in his or her discretion, and the two or four other members should be appointed by the Governor following consultation with the Premier and the Leader of the Opposition.**

**Revised recommendation 31: The Governor should make appointments to Permanent Secretary/Head of Department posts, and be required to consult the Public Service Commission but not be required to follow their advice in relation to these appointments. The Governor should be able to delegate this appointment power to the Deputy Governor.**

**Revised recommendation 32: The Governor should continue to make appointments on the advice of the Public Service Commission to posts below the level of Permanent Secretary/Head of Department. The Governor should be able to delegate this appointment power to either the Deputy Governor or to Permanent Secretaries.**

**Revised recommendation 33: That the Public Service Commission should have added to its functions a requirement to publish and keep under review a disciplinary policy, to monitor its implementation and to provide advice upon it.**

**Revised recommendation 34: That the Governor be empowered to delegate his disciplinary and removal powers to the Deputy Governor or permanent secretaries and heads of department. When these powers are so delegated, public servants can appeal any disciplinary or removal decision to the Public Service Commission.**

## 7 Crown land

87. Crown land continues to be a topic of much interest in the TCI. While many participants in the public meetings wished to see constitutional provisions set out how crown land would be managed, a small minority felt this was not a topic for constitutional inclusion and could be adequately addressed in an ordinance. However, I believe that crown land remains of such importance in the TCI that it merits more than an ordinance to ensure its management meets the expectations of the people.

88. Accordingly, while I am not suggesting that further safeguards be included in the Constitution in relation to Crown Land itself, the topic should be explicitly included in the Governance Principles that I continue to recommended above (see chapter three). Any Governance Principle relating to crown land should be based on those currently under consideration in the TCI.

**Revised recommendation 35: Include the core principles of crown land management in the Statement of Governance Principles.**

## 8 Watchdog Institutions

89. In both rounds of public meetings there was a clear wish for a range of constitutional safeguards and protections. While some of these are discussed above, many expectations of improved oversight and better public understanding of Government will be met through the establishment of institutions to support democracy. These institutions feature in many constitutions of both Overseas Territories and independent nations. They have some similarities to the judiciary in their independence of action, but in the common law tradition they do not form a separate branch of government; neither however are they properly placed entirely in the legislature or the executive.

### Establishment of watchdog institutions

#### *From the initial report*

The establishment and entrenching of a modern democracy requires more than the holding of democratic elections and the establishment of an independent judiciary. The modern government undertakes a range of tasks that continues to increase in volume and complexity. As a natural corollary, the population requires more developed tools with which to hold government to account.

Systems and institutions to provide additional accountability and transparency in government was a key demand in my consultation process. The TCI already has some institutions that act as watchdogs on the actions of government and on individuals in public office. I thereby suggest that a new Part of the Constitution be included to establish all these institutions - the institutions that support the democracy of the TCI - in one section of the Constitution.

The Constitution should also set out the main functions of each of the watchdog institutions to enhance clarity as to their remit. Some of these functions exist in the 2006 Constitution already and others can be found in the relevant establishing ordinance or in other recommendations of this paper.

90. There was support for the establishment and entrenchment of watchdog institutions in the Constitution and so I restate my original recommendation to do so. There was also agreement that the high level functions of each of the watchdog institutions should be included in the Constitution, based on either existing constitutional language or that of the relevant establishing ordinance or in other recommendations.

**Revised recommendation 36: Create a new Part of the Constitution establishing institutions to protect democracy. These institutions should be:**

- a) **Auditor General**
- b) **Complaints Commissioner**
- c) **Director of Public Prosecutions**
- d) **Supervisor of Elections**
- e) **Human Rights Commission**
- f) **Integrity Commission**

### Operation of watchdog institutions

#### *From the initial report*

The Constitution must also provide a framework for these institutions' operations that assures their independence and impartiality.

It is always easy to suggest that bodies should be 'independent' but rarely is much consideration given for what independence really means. In regard to these institutions, it is important firstly to ensure independence of action – that they will not be directed in the exercise of their functions by any part of the Government, a protection that exists already for the Complaints Commissioner in the 2006 Constitution. The environment for independent action must also ensure that watchdogs are protected from the potential for personal retribution for their actions or decisions.

91. There was also support for making express provision for the independence of action for all these bodies to ensure that watchdogs are protected from any potential for personal retribution for their actions or decisions.

**Revised recommendation 37: The Constitution should stipulate that in the exercise of functions given to them by the Constitution these watchdog institutions shall not be subject to the direction or control of any other person or authority.**

**Revised recommendation 38: The Constitution should stipulate that, similar to the existing provisions for judges, commissioners and watchdog officeholders cannot have their posts abolished during their tenure.**

*From the initial report*

To ensure the impartiality of these institutions, the appointment process should remain in the hands of the Governor, as part of his or her good governance responsibilities. This should also continue to apply to appointments to the offices of Attorney General, Commissioner of Police and Permanent Secretary, Finance, even though these are not watchdog institutions.

92. There was concern that there should be more consultation on appointments to watchdog institutions. I continue to believe that the appointment process should remain in the hands of the Governor, as part of his or her good governance responsibilities, but accept that the Constitution should require the Governor to consult with the Premier and Leader of the Opposition before making such appointments.

**Revised recommendation 39: Appointments to watchdog institutions will be made by the Governor following consultation with the Premier and Leader of the Opposition.**

*From the initial report*

To provide for effective action, these institutions will also need resources to carry out their work; the Constitution should provide a mechanism to ensure that sufficient resources are available to them. It is not appropriate that these institutions be financed through the executive government – such as through a departmental appropriation – as to do so would only undermine their operational independence. At the same time, it is important to ensure that these institutions are not outside the accountability framework that they form a part of and adhere to common standards of government financial management. This creates an important role for the Appropriations Committee of the Assembly, who should be required to receive and scrutinise the bids from each institution in public hearings. The Committee must assure itself that the bids conform to the Government's current budget policies. This public scrutiny allows the institutions to demonstrate their commitment to financial integrity.

93. There was also acceptance that to provide for effective and independent action, these institutions will also need resources to carry out their work and that the Constitution should provide a mechanism to ensure that sufficient resources are available to them. There was support for using the strengthened Appropriations Committee as the key vehicle for this mechanism.

**Revised recommendation 40: That a process for the funding of watchdog institutions be set out in the Constitution, and include:**

- a) That these bodies will submit their budget bids to the Appropriations Committee for scrutiny;
- b) That following scrutiny and any amendments, the Appropriations Committee must each year recommend a budget to the Assembly for each institution;
- c) That the Assembly can only pass or reject a Appropriations Committee submitted budget, not amend them; and

- d) That the Governor's reserved legislative power be extended to assuring that these institutions have an appropriation in place within four months of the commencement of the financial year.

## Code of conduct for persons in public life

### *From the initial report*

The recently established Integrity Commission has functions related to the registration of interests of persons in public life, and the Commission has commenced its work in relation to these powers. While this will provide much needed transparency in relation to the private interests of those in power, there are other functions that the Commission should be entrusted with to help restore faith in those in public life.

The Commission of Inquiry discussed the necessity of an enforceable code of conduct for those in public life. Such a code is a necessary accompaniment to the disclosure of financial interests that is already underway. While such a code was published before the suspension of ministerial government, it is my view that the responsibility for formulating and enforcing such a code should now be moved to the Integrity Commission.

94. There was support - but not unanimous support - for the recently established Integrity Commission's remit to be expanded to include formulating and enforcing a code of conduct for persons in public life as an accompaniment to the existing constitutional provision for the disclosure of financial assets.

**Revised recommendation 41: that the Integrity Commission be required to publish, following wide consultation in the islands, a Code of Conduct for Persons in Public Life; to keep the Code under review; and to investigate, either in response to a complaint or on their own initiative, any alleged failures to abide by the Code by those subject to it.**

*From the initial report*

As I noted above, the discussion of Belongership and its relation to the franchise is the most contentious issue I was asked to review. It also clear, however, that the issue of defining and regulating Belongership has been an issue for many years and was in fact a topic of intensive review by the 2004 Immigration Review Commission.

There are three ways that Belongership is acquired – by birth, by marriage and by grant. The first two are currently included in the Immigration Ordinance. There is no current provision that defines Belongership in the 2006 Constitution, and consultation suggests that this would be a welcome inclusion. It is also my view that Belongership should be the subject of a separate ordinance.

In regard to the third path of acquisition there is no clear and objective process for the granting of Belongership in TCI (as was well documented by the 2004 Immigration Review Commission). It was a finding of the Commission of Inquiry that the granting of Belongership was open to unacceptable levels of intervention by elected politicians and that the uncertainty surrounding the granting of Belongership was a deterrent to the full integration and settlement of long term permanent residents.

Consultation has revealed that there is support amongst the existing Belonger community for a more objective and codified approach to the granting of Belongership, and that this should be accompanied by a more transparent process for immigration and citizenship decision making. Steps to provide such a process would also enhance the good governance direction an amended Constitution will provide.

Such a process should set measurable and objective criteria for acquisition by grant. It is my view that the criteria also need to be achievable within a reasonable period of time. The current barriers to acquiring Belongership have led to uncertainty and suspicion among many long term residents of the territory.

Permanent residents have committed themselves to life in the TCI; in many cases have investments or businesses in the islands and participate in many aspects of islands life. It is reasonable that they have access to the acquisition of Belongership by a transparent and objective process. In the UK, a five year period of permanent residence is required before an applicant can apply for citizenship; this is also the case in Trinidad & Tobago and Jamaica (although other Caribbean nations require longer periods of permanent residency before naturalisation) . Five years appears to me a reasonable period to test that a person intends to settle in the TCI, given many permanent residents will have completed a long period of qualifying residency before being granted a permanent residency certificate. I welcome views on the time period proposed.

Under UK law, residents of the TCI who meet specified criteria are eligible to apply for a separate status known as British Overseas Territory Citizen (BOTC). At present, there are Belongers by grant who are not BOTCs, and BOTCs who are not Belongers. These two statuses should be brought together (as they are for most Belongers by birth) and this can be achieved by making the holding of BOTC status a pre-requisite for acquisition of Belongership by grant.

As with all matters of immigration and national status, it is also important to be assured that persons being granted Belongership are of good character.

95. Firm views on Belongership were shared at all public meetings, along with a recognition that the theme of defining and regulating Belongership has been an issue for many years.

96. There are three ways that Belongership is acquired – by birth, by marriage and by grant. The first two are currently included in the Immigration Ordinance. There is no current provision that defines Belongership in the 2006 Constitution, and consultation suggests that this would be a welcome inclusion.

97. There was widespread support at my meetings for the introduction of a clear and objective process for the granting of Belongership in TCI, which as many people noted was discussed by the 2004 Immigration Review Commission. The introduction of such a process should be accompanied by a removal of the current discretionary grant of Belongerships, the bestowal of which remains controversial in the community.

98. There was support for setting minimum conditions that would need to be met before an individual could apply for Belongership status. Of the three conditions suggested in my initial recommendations, there was consensus that applicants should have to be resident, should be required to have obtained British Overseas Territory Citizenship (BOTC) with regard to the TCI, and be

of good character.

99. There was less support for the time period suggested - the initial recommendation was that an applicant should have held a permanent residency certificate for five years, but there was more support for a longer period, and I seek views of whether ten years is really the appropriate time period, given that that an individual would have likely been resident in the TCI for a number of years before being granted a permanent residency certificate.

**Revised recommendation 42: That Belongership should be defined in the Constitution, with supporting details provided in an Ordinance. The Constitution should prescribe that Belongership can be obtained by birth, by marriage and can also be acquired by grant. It should require that the conditions for acquisition by grant should be prescribed in an ordinance, subject to the following minimum pre-conditions:**

- **That an applicant is legally resident in the TCI, and has held a permanent residence certificate for a period of between five and ten years; and**
- **That an applicant holds BOTC status with regard to TCI; and**
- **That an applicant is of good character and is neither under sentence or bankrupt.**

100. Supporting provisions in the ordinance should also provide for appeals against adverse decisions in relation to Belongership by marriage and Belongership by grant, as well as removing the power to grant discretionary Belongerships that has been problematic in the past. There was also support for provisions to allow for the deprivation of Belongership from those who obtained it, whether by marriage or by grant, through fraud or deception.

*From the initial report*

It is not for this review to make detailed recommendations on the entire immigration system – this was done by the 2004 review commission and the Immigration Department is currently working through many policy and operational issues with the assistance of an external adviser. However, it is not possible to discuss a process for acquiring Belongership without reference to permanent residency status, which is a clear stepping stone on the path to Belongership.

101. As noted in my initial recommendations, it is not for this review to make detailed recommendations on the entire immigration system – this was done by the 2004 review commission and the Immigration Department is currently working through many policy and operational issues with the assistance of an external adviser. A clear consensus at my meetings, however, was that an overhaul of the policy for work permits and permanent residency certificates would be welcomed. Many suggested the findings of the 2004 commission as the relevant starting point, and will welcome an improvement in the transparency of the system.

## 10 Public financial management

### *From the initial report*

The importance of this topic needs no explanation, given the current circumstances in the TCI. While work is going on to restore the state of the public finances, there also needs to be a clear legal framework for the management of public finances.

At present the legal framework for financial administration currently consists almost entirely of the Finance and Audit Ordinance and its subsidiary legislation; the topic is almost absent in the Constitution. Constitutional entrenchment is important in two respects – it will provide valuable clarity and transparency for all concerned, and also provide Constitutional mechanisms to enforce compliance with fundamental principles of financial probity. In addition to the provisions discussed here, I would also expect to include the values of transparency, accountability, responsibility and long term financial stability in relation to public finances included in the Statement of Governance Principles.

The first area that should be covered in the Constitution is a clear statement that requires the macro-economic and fiscal policies of the government to be conducted for the sustained long term prosperity of the people of the TCI. These should be set in a medium term framework which is prudent and manages financial risk accordingly.

To be effective and ensure transparency and control, there must be mechanisms for approval of the framework and the policies by the House of Assembly. Given the role of the UK Government in relation to financial stabilisation, there should also be a clear role for the Secretary of State. The policies must include information on the level of debt and reserves that are deemed to be prudent and the expectation is that until these levels are achieved TCIG should run a surplus.

There should also be an explicit requirement for all taxation to have the prior approval of the House of Assembly and require all concessions from such taxation to be made public. The Constitution should also detail the establishment of a Consolidated Fund and the means of access to it, including that the prior approval of the House of Assembly is required for such access.

The House of Assembly has a key role in the monitoring of public financial management. It should be assisted in this task by two committees, one on Appropriations and one on Public Accounts. The need to have these two committees, and for them to be capable of acting separately from ministers, is a key rationale for retaining the size of the Assembly at 15 elected members. The Appropriations Committee should have clear roles in the consideration of government financial targets and scrutinizing the government's proposed budget estimates. The committee will need access to capacity to evaluate the government's proposed budgets and to propose responsible alternatives. The Public Accounts Committee should receive and consider audit reports from the Auditor-General, with powers to compel evidence from departments, ministers and individual public servants. The Public Accounts Committee should be chaired by a member of the Opposition in the Assembly and be supported in its work by the Auditor-General. Both the Appropriations and Public Accounts Committees should be able to co-opt up to two external expert members, either on an ongoing basis or in relation to a specific committee enquiry.

I am also proposing the establishment of an independent Auditor General, which will be a protected watchdog institution. A separate Auditor-General must have as his or her main task to examine whether public funds are spent economically, efficiently and effectively in compliance with existing rules and regulations. To perform this task properly it is recognized that a jurisdiction's supreme audit institution must be independent from the departments and agencies they audit and must be protected against any form of outside influence.

102. As discussed in my initial recommendations, the current legal framework for financial administration currently consists almost entirely of the Finance and Audit Ordinance and its subsidiary legislation; the topic is almost absent in the 2006 Constitution. Concerns were raised at public meetings about the level of detail on the topic required in a constitution, while other participants were concerned that the lack of constitutional detail had perhaps contributed to the current state of the TCI's public finances.

103. I continue to believe that constitutional entrenchment of a new financial framework is important in two respects – it will provide valuable clarity and transparency for all concerned, and also provide Constitutional mechanisms to enforce compliance with fundamental principles of financial probity.

### General financial framework

104. The first area that should be covered in the Constitution is a clear statement that sets out that the macro-economic and fiscal policies of the government are to be conducted for the sustained long

term prosperity of the people of the TCI. Accompanying provisions should require the formulation of public frameworks and targets to assist the public in understanding the goals of government financial policy.

105. As part of these frameworks I suggest that the Constitution encourage the TCI Government to aim to be able to plan for surplus budget outcomes; both for the desirability of a government planning to live within available revenue, but also - as was suggested at some of my public meetings - to create a buffer for lean times. Based on consultation responses, many would like this to be an aspirational rather than restrictive clause, and I have amended my initial recommendation accordingly.

**Revised recommendation 43: That the Constitution include, in a new part on Public Financial Management:**

- a) **Provision requiring the macro-economic and fiscal policies of the government to be conducted for the sustained long term prosperity of the people of the TCI. Government finances are to be managed according to widely held principles of value for money, affordability and regularity and in the interests of long term financial stability;**
- b) **Provision requiring the TCIG to formulate a framework document stating its principles of public financial management that must be (i) subject to public consultation (ii) agreed by Assembly (iii) agreed with the Secretary of State and (iv) published. The framework is to set limits on debt levels relative to revenue, debt service costs as a proportion of total expenditure, and levels of reserves relative to expenditure. The TCIG will report on performance against this framework every six months. The Secretary of State will have to agree to any decision, policy or ordinance that would take TCIG outside the framework document;**
- c) **Provision requiring the TCIG to aim towards achieving and maintaining a surplus budget, and that any appropriation bills that are not planned to return a surplus result be accompanied by a statement to the legislature explaining the rationale for not achieving a surplus; and**
- d) **Allow for borrowing, subject to borrowing guidelines from HMG, only if authorised by or under an Ordinance which includes approval of the terms and conditions of the loan. Require six monthly reports to the Assembly on the status of loans including the total amount of indebtedness.**

## Role of the legislature

106. It was broadly accepted that there should be more explicit processes for the key role that most respondents wanted the House of Assembly to play in setting and monitoring government finances. I continue to believe that given the role of the UK Government in relation to financial stabilisation, there should also be a clear role for the Secretary of State.

107. There was no opposition to the suggestion that more information should be provided to the Assembly, and through the Assembly to the public, on the state of the economy and on government plans for public finances.

108. There was also support for an explicit requirement for all taxation to have authorisation through an Ordinance and require all concessions from such taxation to be made public. Many also agreed that the Constitution should also detail the establishment of a Consolidated Fund and the means of access to it, including that the prior approval of the House of Assembly is required for such access.

**Revised recommendation 44: That the Constitution include, in a new part on Public Financial Management:**

- a) **Provision to require a six monthly report to the Assembly on the state of the public finances and the state of the economy of the Turks and Caicos Islands;**
- b) **Provision to make explicit the requirement for all taxation to have the prior approval of the House of Assembly and require all concessions from such taxation to be published every six months;**
- c) **Provision requiring contingent liabilities including pensions and healthcare to undergo a periodic independent actuarial assessment and for this assessment to be submitted to the House of Assembly; and**
- d) **Entrench the establishment of a Consolidated Fund and the means of access to it, requiring the prior approval of the House of Assembly for such access. Prohibit the withdrawal of monies from any public fund of Turks and Caicos Islands other than the Consolidated Fund, unless the issue of those moneys has been pre-authorized by law.**

109. The House of Assembly also has a key role in the monitoring of public financial management. It should be assisted in this task by two committees, one on Appropriations and one on Public Accounts. The need to have these two committees, and for them to be capable of acting separately from Ministers, was the topic of some discussion at public meetings.

110. I recommend that an Appropriations Committee be established by the Constitution, and given a clear role in the consideration of government financial targets and scrutinizing the government's proposed budget estimates. The committee will need capacity to evaluate the government's proposed budgets and to propose responsible alternatives. I recommend that the Appropriations Committee should consist of at least three Members of the Assembly, none of whom can be Ministers, and that the committee has the power to co-opt in additional members from outside the Assembly. The Committee in its work should be supported by the Permanent Secretary, Finance (or their delegate) as well as regular committee staff.

111. Finally, I recommend clear provision for a contingencies fund to meet extraordinary needs for funds, such as in the event of a natural disaster, with appropriate safeguards.

**Revised recommendation 45: That the Constitution establish an Appropriations Committee to consist of at least three Members of the Assembly who are not Ministers, and empower the Committee to co-opt in external members to assist it in its work. The Committee should have powers to compel documents and evidence from departments, Ministers and individual public servants and be expected to meet in public.**

**Revised recommendation 46: That the Constitution require the designation of an Accounting Officer in each Ministry, Department or watchdog institution to be responsible for the regularity and propriety of the expenditure, receipts and resources of that Ministry, Department or watchdog institution and to be accountable to the House of Assembly. Require the designation of an Accountant General for the TCI Government to be responsible for the compilation and management of the accounts of Government; and the custody and safety of public money and other resources of the Government.**

**Revised recommendation 47: That the Constitution include, in a new part on Public Financial Management, a budget process that:**

- a) **Has a requirement that the House of Assembly must have approved an Appropriations Bill before the commencement of financial year;**
- b) **Sets out the role of the Appropriations Committee in the budget process, which includes an opportunity to scrutinise the draft Appropriations Bill before it is considered by the House of Assembly;**
- c) **Allows for continuing access to finance for the Government if the Appropriation Ordinance has not come into operation by the beginning of the relevant financial year for up to four months from the beginning of that financial year or the coming into operation of the Appropriation Ordinance, whichever is the earlier. Limit the percentage amount that can be spent in this way;**
- d) **Allows for supplementary appropriations, including for excess expenditure, through the passage of a further Ordinance;**
- e) **Publication of budget documents and the reports of the Appropriations Committee in a timely fashion;**
- f) **Requires the annual setting by TCIG of three year targets for revenue and expenditure, and assessing of performance against the debt sustainability limits as set out in the principles of public financial management, and the submission of the targets and the assessment to the Assembly by TCIG at the same time as the main estimate;**
- g) **Provision for the Governor, acting in his discretion, to withhold assent from an appropriations bill if he considers it to be acting against the sustained long term prosperity of the people of the TCI; and**
- h) **Allow for a Contingencies Fund that can be accessed by the Minister responsible for finance if there is an urgent and unforeseen need for expenditure and the Governor, acting in his discretion, agrees.**

## Accountability

112. There was also support for entrenching the role of a Public Accounts Committee that would receive and consider audit reports from the Auditor General and have powers to compel evidence from departments, Ministers and individual public servants. The Public Accounts Committee should consist of at least three Members of the Assembly and be chaired by a Member of the Opposition in the Assembly. In addition, the Committee should have two members who are not Members of the Assembly - one appointed by the Speaker and one by the Governor - to assist them in their scrutinising role. The Committee should also be empowered to co-opt additional external expert members in relation to a specific committee enquiry.

113. I am also proposing the establishment of an independent Auditor General, which will be a protected watchdog institution (see recommendation 36). A separate Auditor General must have as his or her main task to examine whether public funds are spent economically, efficiently and effectively in compliance with existing rules and regulations. To perform this task properly it is recognized that a jurisdiction's supreme audit institution must be independent from the departments and agencies they audit and must be protected against any form of outside influence.

**Revised recommendation 48: That the Constitution establish an Auditor General and a National Audit Office as a 'watchdog institution'. The Auditor General is to be required to audit all public institutions, including courts and watchdog institutions. The Auditor General must have powers of access to relevant documents, persons and premises and other powers commensurate with a supreme audit institution.**

**Revised recommendation 49: Establish a Public Accounts Committee consisting of at least three Members of the Assembly, with the chair to be a Member of the Opposition in the Assembly and**

**two additional expert members who are not Members of the Assembly - one appointed by the Speaker and one by the Governor. The Committee should have powers to compel documents and evidence from departments, Ministers and individual public servants and be expected to meet in public. The Auditor General shall act as an adviser to the Public Accounts Committee and the Public Accounts Committee can not meet without presence of the Auditor General or nominee.**

**Revised recommendation 50: Requires government accounts to be provided to Auditor General within four months of end of accounting period. Auditor General should provide audit report to Public Accounts Committee in accordance with a timetable agreed by them. The audited accounts and accompanying report will be published.**

114. Finally the entire new system of public financial management should be underpinned by the establishment of an independent economics and statistics office to provide authoritative, timely and accessible statistics and analysis, including on population, economic growth, employment, and inflation. The body should also be responsible for providing Cabinet with an independent appraisal of any proposed capital project or PFI arrangement with a value above a level to be set by the Governor

**Revised recommendation 51: That the Constitution establish an independent economics and statistics office.**

## Appendix A Proposed new voting system

***Revised recommendation 18: That the voting system for the Assembly be changed to be a mixed-Member proportional system, electing six island Members on a first past the post basis and nine 'at-large' or territory Members on a compensating proportional basis.***

### **How mixed-Member proportional would work in TCI**

Electors would receive two ballot papers – or the two ballot papers could be printed on one piece of paper, with the two contests clearly defined.

The island seat ballot paper would be exactly the same as the ballot papers used under the current system as these island seats are elected using a first past the post system. These ballot papers can be counted as at present and the results notified to the Supervisor of Elections. The Supervisor of Elections would compile and publish a list of island members, along with what party (if any) these members represent.

The at-large ballot paper would contain the list of any independent candidates running in this part of the election, as well as the political parties who have nominated lists of candidates. The parties are required to lodge their list at the time of nomination, and the names of all party candidates appear on the ballot paper. Electors can choose from among the party's candidates (to show that they prefer Grape Party candidate C, for example).

The Supervisor will tally the total number of at-large votes received for each party or independent candidate on the at large ballot papers. They then use the d'Hondt formula to allocate the at-large seats so that overall each party has a number of seats in proportion to their vote total, having taken into account the number of island seats already won. Independent candidates who stand in the at-large seats also enter this allocation, and the calculation for them reflects that they have not won an island seat. This would not be a lengthy procedure and could be performed in an open and transparent manner. The fully worked example on the next page shows an electorate of 8501, and two competing parties who had already won island seats.

<b>Worked example of Mixed Member Proportional</b>				
		<b>Apple Party</b>	<b>Grape Party</b>	<b>Ind Cand Pear</b>
	<b>Total at-large votes received</b>	<b>3500</b>	<b>4500</b>	<b>501</b>
	<b>Number of island seats won</b>	<b>2</b>	<b>4</b>	<b>0</b>
<b>Allocation 1</b>	Divide vote total by (seats won +1) which equals	1167	900	501
	Seat awarded to highest total	1		
	<b>Seats won so far</b>	<b>3</b>	<b>4</b>	<b>0</b>
<b>Allocation 2</b>	Divide vote total by (seats won +1) which equals	875	900	501
	Seat awarded to highest total		1	
	<b>Seats won so far</b>	<b>3</b>	<b>5</b>	<b>0</b>
<b>Allocation 3</b>	Divide vote total by (seats won +1) which equals	875	750	501
	Seat awarded to highest total	1		
	<b>Seats won so far</b>	<b>4</b>	<b>5</b>	<b>0</b>
<b>Allocation 4</b>	Divide vote total by (seats won +1) which equals	700	750	501
	Seat awarded to highest total		1	
	<b>Seats won so far</b>	<b>4</b>	<b>6</b>	<b>0</b>
<b>Allocation 5</b>	Divide vote total by (seats won +1) which equals	700	643	501
	Seat awarded to highest total	1		
	<b>Seats won so far</b>	<b>5</b>	<b>6</b>	<b>0</b>
<b>Allocation 6</b>	Divide vote total by (seats won +1) which equals	583	643	501
	Seat awarded to highest total		1	
	<b>Seats won so far</b>	<b>5</b>	<b>7</b>	<b>0</b>
<b>Allocation 7</b>	Divide vote total by (seats won +1) which equals	583	563	501
	Seat awarded to highest total	1		
	<b>Seats won so far</b>	<b>6</b>	<b>7</b>	<b>0</b>
<b>Allocation 8</b>	Divide vote total by (seats won +1) which equals	500	563	501
	Seat awarded to highest total		1	
	<b>Seats won so far</b>	<b>6</b>	<b>8</b>	<b>0</b>
<b>Allocation 9</b>	Divide vote total by (seats won +1) which equals	500	500	501
	Seat awarded to highest total			1
	<b>TOTAL SEATS WON</b>	<b>6</b>	<b>8</b>	<b>1</b>

As the recommendation is for an 'open list' system, once the party's total seat allocation is decided, a second allocation is performed to see which candidates of the party have the highest personal vote tallies, and the party's allocation of seats is then distributed down the list in that order. In the example provided, the Grape Party win 4500 at-large votes and is allocated four at-large seats. If the Grape Party candidates' personal vote tallies were as in the table below, the eight seats would be allocated among their candidates as shown.

<b>Grape Party Candidates</b>	<b>Number of personal votes</b>
Candidate A	245
Candidate B	420
Candidate C	900
Candidate D	598
Candidate E	58
Candidate F	790
Candidate G	395
Candidate H	318
Candidate I	776



<b>Elected (in order)</b>
Grape candidate C
Grape candidate F
Grape candidate I
Grape candidate D

## Appendix B Proposed system of political party regulation

I suggest the following be included in a scheme for political party regulation; most of this detail will be included in an ordinance, and not in the text of the Constitution.

### Registration of political parties

- The Supervisor of Elections should be designated as Registrar of Political Parties, responsible for maintaining and publicising a register of political parties, adjudicating applications for registration and providing information and advice on the requirements of registration. The Registrar should submit a report to the Governor on the operation of the scheme each year, and the Governor should arrange to have it laid in the Assembly.
- That political parties must nominate a registered officer, who can not be an elected member of the legislature, but may be an employee of the party. The registered officer is to be responsible for the party's finances and for complying with the requirements of the ordinance.
- The party should also disclose the names of its leadership, and must provide full contact details for the party and the registered officer.
- Parties must lodge a financial structure with the Registrar, including details of all bank accounts in use for party income and expenditure and detailing whether income is received at different levels of the party (such as the branch or candidate level) and how party expenditure is authorised. The use of any non-disclosed bank accounts should be an offence.
- A party must have signed declaration of support from 50 registered electors to be registered, using a form to be supplied by the Registrar. Provisions should allow the Registrar to test the membership level of any party at any time to ensure that at least 50 electors support its registration. Supporters can not support the registration of more than one political party during the term of the legislature.
- Parties must have a written constitution, and at least one of the aims of the party should be securing the election of members to the legislature.
- Parties and their officials should be subject to the standards of conduct in public life prescribed by the Integrity Commission, and the leader of the party (however described) and the registered officer will be subject to the disclosure of interests system.
- Parties can request the use of a party name, a party abbreviation and a party symbol. The registrar can not register a name, abbreviation or symbol that is or is likely to confuse electors as to the identity of the party.
- A small fee for registration and for changing any registered details (office holders, bank details, registered name, abbreviation or symbol).
- A requirement for the Registrar to review the register two years after each general election and power for the Registrar to de-register parties that do not meet the requirements of the ordinance.
- Provisions for parties to merge and to apply for voluntary deregistration.
- An appeal process for unsuccessful applicants.
- An offences of making false statements in registration applications, and for such offences to be illegal practices in term of the elections ordinance.
- Parties should be required to engage an external auditor to sign off their accounts.

### Donations to political parties

- Donations should only be able to be made to candidates in the twelve month period before polling day in a general election, or in the case of a by-election during the period from the notice of vacancy to polling day. Outside these times donations can continue to be made to registered political parties.
- Only registered electors can donate to political parties or candidates. There should be a donation limit of \$7,500pa to an island seat candidate and \$20,000pa to an at-large seat

candidate. Donations to a political party should be capped at \$20,000pa and the annual limit of total donations from an elector remain at \$50,000pa (Amended from initial proposal of a limit on individual donations of \$5,000 to a candidate or \$10,000 to a party, and a total annual limit of \$50,000 of donations per financial year.) There should be a further consultation on the amount of these limits.

- Candidates can contribute no more than \$50,000 to their own campaign.
- All donations above \$50 must be identified – ie not anonymous – and a receipt issued by the party. All donations over \$50 to be disclosed.
- It should be an offence to channel a donation from an impermissible donor through a permissible donor, with penalties for the planned recipient party/candidate, the ‘channeller’ and the actual donor.
  
- No donations allowed from organisations, companies etc.
- No donations from any individual who holds a government contract worth \$100,000 or more, or who is a beneficiary of such a contract
- In-kind and non-cash contributions, as well as sponsorships, are subject to the donation rules
- Goods or services provided at less than market rates will attract donation rules in regard to the difference between the favourable and market rate
- Party membership fees are not donations as long as they are less than \$100pa

### Loans and other income

- Loans are allowable from registered electors up to a limit of \$100,000. If less than market rate is charged then the difference between the interest payable and the market interest payable is to be considered a donation and subject to the donation rules. Loans can not be taken for a period longer than four years. All loans and their terms to be disclosed. A loan can not be forgiven by the lender if to do so would infringe the donation limits.
- Loans from commercial institutions can only be made on market terms. If any loan is made on terms more favourable than those available in the market, or is forgiven,<sup>4</sup> the loan is impermissible. All commercial loans and their terms to be disclosed. (This is a new provision to allow for commercial loans which were not permitted in the original scheme.)
  
- Political parties and candidates can earn other income to be used for political purposes if the source of the income is either (a) disclosed at time of registration (ie ownership of a building) or (b) acquired with permissible donations under the scheme. All income generating activities to be disclosed.

### Reporting and disclosure

- All registered officers must file a statement of income and expenditure every six months. A power will be needed to make regulations specifying the categories of expenditure the return should be broken down into.
- During an election additional reports should be submitted every week detailing income and expenditure in that week. A power will be needed to make regulations specifying the categories of expenditure the return should be broken down into.
- All reports and disclosure returns should be submitted electronically
- The Registrar should be required to make public, using the TCIG website, the six-monthly and election period reports within one month and 24 hours respectively.

### Offences and penalties

- A comprehensive scheme of offences should be created to enforce all these rules
- An additional offence of using public resources for election purposes should be created
- Offences should be cross-referenced to the illegal practices provisions of the Elections Ordinance and the qualifications and disqualifications for membership of the legislature in the Constitution
- Consideration will need to be given to the nature of penalties that should be prescribed, in particular whether it is appropriate for there to be penalties of imprisonment.