

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Major Projects, Territories and Local Government

*Cocos (Keeling) Islands Act 1955*

*Cocos (Keeling) Islands Utilities and Services Ordinance 2016*

### Authority

The Governor-General of the Commonwealth of Australia has made this Ordinance in accordance with the power granted to him under subsection 12(1) of the *Cocos Keeling Islands Act 1955* (the Cocos (Keeling) Islands Act), to make Ordinances for the peace, order and good government of the Territory of the Cocos (Keeling) Islands (the Cocos (Keeling) Islands).

This Ordinance is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

### Background

The Cocos (Keeling) Islands were acquired by the Commonwealth of Australia under section 122 of the *Commonwealth of Australia Constitution Act 1900*.

The current legal framework of the Cocos (Keeling) Islands was established by the Cocos (Keeling) Islands Act, the purpose of which is to provide for the administration and governance of the Cocos (Keeling) Islands. Ordinances created under the Cocos (Keeling) Islands Act allow for the laws of the Cocos (Keeling) Islands to reflect Commonwealth policy, governance and legislative arrangements.

Subsection 8A(2) of the Cocos (Keeling) Islands Act provides that the laws of WA, which are applied law on the Cocos (Keeling) Islands, can be amended or repealed by Ordinance.

### Purpose and Operation

The Ordinance repeals the Utilities and Services Ordinance 1996 (CKI) and replaces it so that it complies with the Office of Parliamentary Counsel's current language and drafting practices.

The Ordinance also:

- a) ensures the consistent use of the term 'fees and charges' across the Ordinance;
- b) clarifies the scope of powers of the Administrator in relation to making determinations of fees and charges for the supply of utilities and/or services on Christmas Island;
- c) ensures that an unpaid fee for a utility or service is a debt to the Commonwealth; and
- d) provides that a fee for a utility or service must not be such as to amount to taxation.

### Consultation

In preparing this Ordinance, officers of the Department consulted with WA Government agencies that assist in the administration of applied laws amended by this Ordinance, and the Cocos (Keeling) Islands community by way of a Community Bulletin that included a period of 14 days within which a community member could provide comments/feedback in relation to the proposed Ordinance, to the Department.

## Detailed Description of the Ordinance

### Part 1 – Preliminary

#### Section 1- Name of Ordinance

This section provides that the name of this Ordinance is the *Cocos (Keeling) Islands Utilities and Services Ordinance 2016*.

#### Section 2 – Commencement

This section provides that this Ordinance is to commence on the day after it is registered on the Federal Register of Legislative Instruments.

#### Section 3 – Authority

This section provides that this Ordinance is made under the *Cocos (Keeling) Islands Act 1955*.

#### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

#### Section 5 – Definitions

This section provides definitions of ‘fee’, and ‘utility or service’, for the purposes of this Ordinance.

#### Section 6 – Administrator may arrange supply

This section provides that the Administrator may arrange for the supply of a utility or service, for the purposes of this Ordinance.

#### Section 7 – Fees for supply

This section provides that the Administrator may charge a fee for the supply of a utility or service.

This fee must be the fee determined by the Administrator by legislative instrument, or if the Administrator has not determined a fee for the supply by way of legislative instrument, then the fee will be the fee payable for the supply under an applied law.

Also, where a fee has been determined by the Administrator by legislative instrument, this determination must set out the date from which the fee applies, and may set out either or both of the following: (a) how the fee is to be paid; and (b) the time by which the fee is to be paid.

#### Section 8 – Fees must be notified in the Gazette

This section provides that the Administrator must not charge a fee unless the fee has been notified in the Gazette.

Relevantly, this notice must specify the amount of the fee, or the method for calculating the fee (including any amounts on which the calculation is based).

#### Section 9 – Unpaid fee is a debt due to Commonwealth

This section provides that an unpaid fee is a debt due to the Commonwealth, for the purposes of this Ordinance.

#### Section 10 – Fee must not amount to taxation

This section provides that for the purposes of this Ordinance, a fee must not amount to taxation.

#### Schedule 1- Repeals

#### ***Utilities and Services Ordinance 1996***

#### **Item [1] – The whole of the Ordinance**

Item 1 repeals the whole of the Utilities and Services Ordinance 1996.

## **Statement of Compatibility with Human Rights**

*Prepared in Accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Cocos (Keeling) Islands Utilities and Services Ordinance 2016***

This Ordinance is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Ordinance repeals the Utilities and Services Ordinance 1996 (CKI) and substitutes it with a new Utilities and Services Ordinance so that it complies with the Office of Parliamentary Counsel's language and drafting practises.

This Ordinance also:

- a) ensures the consistent use of the term 'fees and charges' across the Ordinance;
- b) clarifies the scope of powers of the Administrator in relation to making determinations of fees and charges for the supply of utilities and/or services on Christmas Island;
- c) ensures that an unpaid fee for a utility or service is a debt to the Commonwealth; and
- d) provides that a fee for a utility or service must not be such as to amount to taxation.

#### **Human Rights Implications**

Repeal and substitution:

*Utilities and Services Ordinance 1996 (CKI).*

The repeal of the Utilities and Services Ordinance 1996 (CKI) and substituting it with a new Utilities and Services Ordinance does not engage any other human rights, and does not have significant impacts on the residents of CKI or their rights.

#### **Conclusion**

As this Instrument promotes the rights of people with disabilities, it is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Paul Fletcher MP, Minister for Major Projects, Territories and Local Government**