

## **EXPLANATORY STATEMENT**

### **Minute No. 6 of 2018 – Minister for Regional Development, Territories and Local Government**

Subject - *Cocos (Keeling) Islands Act 1955*

*Cocos (Keeling) Islands (Courts) Regulations 2018*

The *Cocos (Keeling) Islands Act 1955* (the Act) provides for the government of the Territory of Cocos (Keeling) Islands, including allowing for Western Australian (WA) courts and tribunals to exercise jurisdiction in relation to Cocos (Keeling) Islands.

Section 20 of the Act provides that the Governor-General may make Regulations prescribing matters necessary or convenient to give effect to the Act.

The purpose of the *Cocos (Keeling) Islands (Courts) Regulations 2018* (the Regulations) is to repeal and replace the *Cocos (Keeling) Islands (Courts) Regulations 1993* (the existing Regulations). This provides certain WA courts and tribunals with this jurisdiction as if the Cocos (Keeling) Islands were a part of WA. The Regulations enable these WA courts to sit in the Cocos (Keeling) Islands or WA.

The courts and tribunals prescribed in the Regulations include those prescribed in the Regulations, as well as the WA Industrial Relations Commission. Giving the WA Industrial Relations Commission jurisdiction in relation to the Cocos (Keeling) Islands ensures the effective operation of the WA Industrial Relations Scheme in relation to WA Government employees undertaking work on the Cocos (Keeling) Islands.

Before the Regulations were drafted, the Minister with responsibility for Territories considered the general obligation to consult imposed by section 17 of the *Legislation Act 2003*. The Minister was satisfied that consultation was appropriate and reasonably practicable to be undertaken.

Government departments and agencies likely to be affected by the Regulations and affected areas within the Minister's Department were given an opportunity to comment on its content. Government departments and agencies likely to be affected by the Regulations and affected areas within the Minister's Department were given an opportunity to comment on its content. The WA Department of Justice was also consulted. All WA courts and tribunals that have jurisdiction as if the Cocos (Keeling) Islands were a part of WA, including the WA Industrial Relations Commission, will continue to be funded via an existing Service Delivery Arrangement between the Australian Government and the WA Government.

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 May 2018.

Authority: Section 20 of the *Cocos (Keeling) Islands Act 1955*

**Details of the Cocos (Keeling) Islands (Courts) Regulations 2018**

**Section 1 – Name**

This section provides that the title of the Regulations is the *Cocos (Keeling) Islands (Courts) Regulations 2018*.

**Section 2 - Commencement**

This section provides that the Regulations commence on 1 May 2018.

**Section 3 - Authority**

This section provides that the Regulations are made under the *Cocos (Keeling) Islands Act 1955*.

**Section 4 – Schedules**

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

**Section 5 – Definitions**

This section provides that in the Regulations ‘Act’ means the *Cocos (Keeling) Islands Act 1955*.

**Section 6 – Courts and tribunals of Western Australia**

This section provides that for the purposes of paragraph (i) of the definition of ***court of Western Australia*** in subsection 4(1) of the Act, the following Western Australian courts and tribunals are specified:

- the Magistrates Court;
- the State Administrative Tribunal;
- the Building Commissioner;
- the Chief Assessor of Criminal Injuries Compensation, or an Assessor of Criminal Injuries Compensation;
- the Industrial Relations Commission;
- the Industrial Appeal Court;
- an industrial magistrate’s court;
- the Director of Liquor Licensing;
- the Liquor Commission;
- a Court of Disputed Returns;
- a warden’s court; and
- a dispute resolution authority.

Paragraph (i) of the definition of court of Western Australia in section 4 (Interpretation) of the Act effectively provides that a court of Western Australia means any Western Australian court or tribunal specified in the regulations, not counting the following courts and tribunals below, which are provided for in the Act:

- the Supreme Court;
- the District Court;
- the Family Court;
- a Court of Petty Sessions;
- a Local Court;
- a coroners' court;
- the Children's Court; and
- the Workers' Compensation Board.

#### Section 7 – Offices of courts and tribunals of Western Australia

For the purposes of paragraph (d) of the definition of *court officer of Western Australia* in subsection 4(1) of the Act, the following Western Australian offices are specified:

- the offices of President, Deputy President, non-judicial member (ordinary member and senior member) and executive officer of the State Administrative Tribunal;
- the offices of President, Chief Commissioner, Senior Commissioner and commissioner of the Western Australian Industrial Relations Commission;
- the offices of chairperson and member of the Liquor Commission;
- the offices of State Coroner, Deputy State Coroner, coroner and coroner's investigator;
- the office of a Justice of the Peace; and
- the office of a warden of mines.

Paragraph (d) of the definition of court officer of Western Australia in section 4 (Interpretation) of the Act effectively provides that a court officer of Western Australia means a person holding, or performing the functions or duties of, any office in respect of a court of Western Australian specified in the regulations, not counting the following officers below, which are provided for in the Act:

- Judge;
- Magistrate (however described);
- Master;
- Registrar (however described);
- Clerk (however described);
- Sheriff (however described);
- Bailiff (however described);
- the Marshall, Director of Court Counselling, and the Collector of Maintenance of the Family Court; or
- the office of Chairman, Deputy Chairman or nominee member of the Worker's Compensation Board.

Schedule 1 – Repeals

***Cocos (Keeling) Islands (Courts) Regulations 1993***

**Item 1** repeals the *Cocos (Keeling) Islands (Courts) Regulations 1993*.

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

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

### **Cocos (Keeling) Islands (Courts) Regulations 2018**

This Legislative Instrument 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**

The purpose of the *Cocos (Keeling) Islands (Courts) Regulations 2018* (the Regulations) is to repeal and replace the *Cocos (Keeling) Islands (Courts) Regulations 1993*.

The *Cocos (Keeling) Islands Act 1955* allows for Western Australian (WA) courts and tribunals to exercise jurisdiction in relation to the Cocos (Keeling) Islands. The Regulations will provide certain WA courts and tribunals with this jurisdiction as if the Cocos (Keeling) Islands were a part of WA. The Regulations will enable these WA courts to sit in the Cocos (Keeling) Islands or WA.

The courts and tribunals prescribed in the Regulations will include those prescribed in the existing Regulations, as well as the WA Industrial Relations Commission. Giving the WA Industrial Relations Commission jurisdiction in relation to the Cocos (Keeling) Islands will ensure the effective operation of the WA Industrial Relations Scheme in relation to WA Government employees undertaking work on the Cocos (Keeling) Islands.

#### **Human Rights Implications**

The Regulations do not engage any human rights, as the amendments are minor or technical nature, and do not have significant impacts on the residents of the Cocos (Keeling) Islands.

#### **Conclusion**

The Legislative Instrument 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*.