

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Regional Development, Local Government and Territories

Local Government Act 1995 (WA) as in force in the Territory of Cocos (Keeling) Islands

Cocos (Keeling) Islands Local Government (Population Estimate) Order 2025

Authority

Subsection 8A(1) of the *Cocos (Keeling) Islands Act 1955* (Cth) (the **CKI Act**) provides that, subject to certain exceptions, Western Australian (**WA**) laws are in force in Cocos (Keeling) Islands. WA laws in force in Cocos (Keeling) Islands by virtue of this subsection are referred to as applied WA laws. Subsection 8A(2) of the CKI Act provides that an applied WA law may be incorporated, amended or repealed by an Ordinance or a law made under an Ordinance. Subsection 8G(1) of the CKI Act provides that if, under an applied WA law, a power is vested in a Minister or the Governor of Western Australia, the power is, in relation to Cocos (Keeling) Islands, vested in the Commonwealth Minister administering the CKI Act instead.

The *Cocos (Keeling) Islands Local Government (Population Estimate) Order 2025* (the **Order**) is made under section 2.16B of the *Local Government Act 1995* (WA) as in force in the Territory of Cocos (Keeling) Islands (the **applied LG Act**). This section permits 'the Governor', by order, to specify an estimate of a district's population and provide that the specified estimate is taken to be the district's population for the purposes of sections 2.17 and 2.17A of the applied LG Act.

Purpose for Tabling and of Explanatory Statement

The Order is a notifiable instrument for the purposes of the *Legislation Act 2003* (Cth) (the **Legislation Act**). Generally, notifiable instruments are not required to be tabled in Parliament, are not subject to disallowance and are not required to be accompanied by an explanatory statement for those instruments.

However, in accordance with applicable legislation and policy, the Order is required to be:

- laid before each House of the Commonwealth Parliament within 15 sitting days after the Order is made as if the Order was an Ordinance within the meaning of the CKI Act (see subsection 13(1))
- subject to disallowance in pursuance of a notice of motion given within 15 sitting days after the Order was laid before each House of the Commonwealth Parliament as if the Order was an Ordinance within the meaning of that Act (see subsection 13(2)), and
- accompanied by an explanatory statement for the Order because the Order is a 'deemed document' in the House of Representatives and a 'Clerk's document' in the Senate.

Subsection 9.65(1) of the applied LG Act requires orders made by 'the Governor' under that Act to be published in the *Gazette* (the **WA Gazette**). Subsection 74A(1) of the *Interpretation Act 1984* (WA)(CKI) (the **applied Interpretation Act**) (as amended by the *Interpretation Act 1984* (W.A.)(C.K.I.) (Amendment) Ordinance 1992 (Cth) (the **Interpretation Act Ordinance**)) provides that, if an applied WA law requires a person to publish an instrument in the *WA Gazette*, the requirement must be met by registration of the instrument as a notifiable instrument on the Federal Register of Legislation. The term 'notifiable instrument'

is defined in section 5 of the applied Interpretation Act (as amended by the Interpretation Act Ordinance) as having the same meaning as in the Legislation Act.

Section 42 of the applied Interpretation Act applies to an order made under section 2.16B of the applied LG Act as if the order were regulations made under the applied LG Act (see subsection 2.16B(9)). Subsections 42(1) and (2) of the applied Interpretation Act provide that all regulations must be laid before each House of the WA Parliament within 6 sitting days of the House following the publication of the regulations in the WA *Gazette* or on the WA legislation website and that such regulations may be disallowed by either House.

Section 74H of the applied Interpretation Act (as amended by the Interpretation Act Ordinance) provides that:

- if an applied law requires a document to be laid before the WA Parliament, the document must be laid before each House of the Commonwealth Parliament instead, and
- if an applied law permits the WA Parliament to disallow an instrument laid before that Parliament, sections 13, 13A, 13B and 13C of the CKI Act apply to the instrument as if the instrument was an Ordinance within the meaning of that Act.

Relevantly, section 13 of the CKI Act provides that Ordinances must be laid before each House of the Commonwealth Parliament within 15 sitting days after the Ordinance is made and may be disallowed by either House.

Unlike legislative instruments, the Legislation Act does not require the rule-maker for a notifiable instrument to lodge an explanatory statement for the instrument that conforms to the requirements set out in subsection 15J(2) (compare subsection 15G(4)). However, the tabling of a non-legislative instrument that is subject to disallowance is required to be accompanied by an explanatory statement prepared for the instrument (see Chapter 5 of the Department of the Prime Minister and Cabinet's *Tabling Guidelines*, which is accessible at: www.pmc.gov.au/resources/tabling-guidelines). Documents that are required by law to be presented to the Houses of the Commonwealth Parliament are often referred to as 'deemed documents' in the House of Representatives and 'Clerk's documents' in the Senate.

Purpose and Operation of Order

The Order specifies, for the purposes of sections 2.17 and 2.17A of the applied LG Act, the estimate of the population of the district of Cocos (Keeling) Islands.

The Order also provides that the estimate of the population of the district of Cocos (Keeling) Islands has effect on and from the next ordinary election day, in accordance with paragraph 2.16B(2)(a) of the applied LG Act.

The Order commences on the start of the day after the instrument is registered.

Consultation

Subsection 2.16B(4) provides that before making a recommendation (to 'the Governor') of the making of a population estimate under subsection 2.16B(1), 'the Minister' must consult the 'Government Statistician'. Subsections 8G(1) and 8G(2) of the CKI Act have the effect that a power vested in 'the [WA] Minister', 'the Governor' and 'Government Statistician' in the applied LG Act are vested in the Commonwealth Minister instead of those persons in respect of Cocos (Keeling) Islands. Notwithstanding that the Minister need not consult with their self in each of the vested capacities, the Minister has sought, and based the population estimate on, the Australian Bureau of Statistics regional population estimates for 2022 to 2023.

Following registration of the Order on the Federal Register of Legislation, the Cocos (Keeling) Islands community will be informed of the Order through a Community Bulletin issued by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Impact Analysis

The Office of Impact Analysis (**OIA**) has determined that detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework (OIA reference number OIA24-08255).

Statement of compatibility with human rights

A statement of compatibility with human rights in respect of the Order is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because the Order is not a legislative instrument to which section 42 of the Legislation Act applies.