

Explanatory Statement

Emergency Management Ordinance 2012 (Cocos (Keeling) Islands)

Overview and Background

The purpose of this Ordinance is to establish the necessary overarching emergency management arrangements for Cocos (Keeling) Islands' emergency services, including local governments and emergency management agencies.

Cocos (Keeling) Islands is a territory acquired by the Commonwealth under section 122 of the Australian Constitution. The Commonwealth accepted this territory through the *Cocos (Keeling) Islands Act 1955*. The current legal framework in Cocos (Keeling) Islands was established by the *Territories Law Reform Act 1992* which provided a body of modern state laws to replace the colonial laws which operated prior to 1992. This was achieved by inserting section 8A into the *Cocos (Keeling) Islands Act 1955*. Section 8A applies the laws in force in Western Australia from time to time to Cocos (Keeling) Islands, which in turn provides a body of applied law for the territory with the status of subordinate Commonwealth law.

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

Previously, the *Emergency Management Act 2005 (WA) (CKI)* provided the legislative basis for emergency management arrangements relevant to the Cocos (Keeling) Islands. This legislation established the overarching arrangements for Western Australia's emergency services, including; local governments and support organisations, framework and infrastructure, policy, planning and coordination, and additional powers in the event of a higher-level emergency. As most of the arrangements supporting the now repealed *Emergency Management Act 2005 (WA) (CKI)* are specific to the State of Western Australia, it did not hold much practical application in relation to the Cocos (Keeling) Islands.

The *Emergency Management Ordinance 2012 (CKI)* provides the legislative basis for emergency management activities in the Territory of the Cocos (Keeling) Islands. Many of the sections within this Ordinance mirror or contain similar provisions to the *Emergency Management Act 2005 (WA) (CKI)*. For this reason, it is not expected that the Ordinance will create any additional burden in terms of compliance with the provisions of the Ordinance.

This Ordinance establishes the circumstances comprising a state of emergency and the accompanying administrative arrangements. This includes; co-ordination arrangements amongst Territory emergency management agencies and officials including the Emergency Management Committee and Territory Controller, and the relationship with federal emergency management authorities. The Ordinance also provides for extra capability in the form of authorised officers to undertake specific activities during a state of emergency, under the direction of the Territory Controller, and provides additional powers to the Shire Council of the relevant Territory in relation to vegetation or premises becoming hazardous or dangerous as a result of an emergency. Lastly, the Ordinances outline the recovery aspect of the emergency management framework, including the establishment of a number of offences.

The Ordinances also repeal the *Emergency Management Act 2005 (WA) (CKI)* and *Emergency Management Regulations 2006 (WA) (CKI)*.

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

Statement of Compatibility with Human Rights

This has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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*.

Consultation

In preparing this Ordinance, officers of the responsible department undertook extensive consultation with a number of Federal and Western Australian Government agencies as well as with members of the Cocos (Keeling) Islands community who are involved with and/or affected by the Ordinance.

A discussion paper was initially presented for internal consultation within the responsible department. Following comments received from this paper, preliminary discussions were held with the Administrator of the Cocos (Keeling) Islands, Cocos (Keeling) Islands Emergency Management Committee, the Australian Federal Police, Western Australian Fire and Emergency Services Authority and Emergency Management Australia to provide initial comment on the content and layout of the Ordinance.

The consultation process included the instructing officer of the responsible department visiting Cocos (Keeling) Islands earlier this year for four days to meet in person with representatives from key government agencies and members of the Cocos (Keeling) Islands Emergency Management Committee about the Ordinance. The committee comprises a representative from each of the following organisations:

- Administrator, Territory of the Cocos (Keeling) Islands
- Air Services Australia
- Australian Customs and Border Protection
- Australian Defence Force Liaison Officer
- Australian Federal Police
- Australian Quarantine and Inspection Service
- Bureau of Meteorology
- Cocos (Keeling) Islands Co-operative
- Cocos (Keeling) Islands Airport
- Cocos (Keeling) Islands District High School
- Cocos (Keeling) Islands Fire and Emergency Services Unit
- Cocos (Keeling) Islands Ports

- Indian Ocean Territories Administration
- Indian Ocean Territories Health Services
- Indian Ocean Territories Power Authority
- Parks Australia North
- Royal Australian Air Force
- Shire of Cocos (Keeling) Islands
- Shell
- Volunteer Marine Rescue Service
- Water Corporation

Meetings were held on a one on one basis, as well as in larger groups, such as the general meeting of the Cocos (Keeling) Islands Emergency Management Committee. This enabled the opportunity for follow up on any issues that were raised.

The instructing officer of the responsible department also visited Perth earlier this year, in order to meet in person with the Department of Premier and Cabinet and Western Australian Fire and Emergency Services Authority regarding the Ordinance.

Throughout the drafting process with the Office of Legislative Drafting and Publishing, all drafts of the Ordinance were provided by e-mail and/or hardcopy to the Administrator of the Cocos (Keeling) Islands, representatives of the Cocos (Keeling) Islands Emergency Management Committee, Federal Government agencies including the Attorney-General's Department, Australian Federal Police and the Department of Immigration and Citizenship and relevant Western Australian agencies, for the opportunity to comment.

Following circulation of the final draft, all agencies consulted with indicated their agreement to the contents of the Ordinance.

Detailed provision by provision description of the Ordinance

Part 1 – Preliminary

Section 1 Explanation - Name of Ordinance

This is the formal section titling the Ordinance.

Section 2 Explanation – Commencement

The date of commencement will occur on the day after the Ordinance is registered on the Federal Register of Legislative Instruments.

Section 3 Explanation – Repeal

In accordance with s 8A (2) of the *Cocos (Keeling) Islands Act 1955*, the *Emergency Management Act 2005* (WA) (*CKI*) and the *Emergency Management Regulations 2006* (WA) (*CKI*) are repealed and have no effect in the Cocos (Keeling) Islands.

Section 4 Explanation – Definitions

This section provides the definitions required for the purposes of the Ordinance.

Part 2 – Emergency management coordination arrangements

Division 1 – Emergency Management Committee

Section 5 Explanation – Establishment of Emergency Management Committee

This section establishes the Emergency Management Committee. This body is responsible for the development of the Cocos (Keeling) Islands' emergency management arrangements and plans, risk identification and mitigation, and the co-ordination of responses to incidents and emergencies. Further detail on their function is provided in section 8.

Section 6 Explanation – Chair of Committee

The Administrator of the Cocos (Keeling) Islands is the Chair of the Emergency Management Committee.

Where the Administrator, (including the Deputy Administrator and Acting Administrator), is absent from the Territory or unable to perform the functions of the office, provision is made for the Territory Controller to act as Chair of the Committee. (The position of Territory Controller is defined in section 11.) While acting as the chair, this section also allows the Territory Controller to exercise all of the powers and functions of the Administrator under this Ordinance.

Section 7 Explanation – Membership of Committee

Membership of the Cocos (Keeling) Islands Emergency Management Committee is inclusive of key service and resource providers. It is structured around two levels of responsibility and contribution:

- A broad based committee, chaired by the Administrator, whose members contribute skills, resources, services and community links to the development of effective preparedness, response and recovery strategies for emergencies; and
- An executive committee, also chaired by the Administrator, whose members are responsible for the overall administrative management of the emergency management plan. The executive committee is derived from the Emergency Management Committee membership and includes the Administrator, the Territory Controller, a member of the Indian Ocean Territories Administration and a member of the Shire Council.

Section 8 Explanation – Functions of Committee

The Committee undertakes a number of functions in relation to emergency management on the Cocos (Keeling) Islands that are outlined in this section. One of their key functions includes the overall management and administration of the emergency management plan and emergency recovery plan for the Cocos (Keeling) Islands. The Committee is responsible for determining how often these plans are reviewed.

Section 9 Explanation – Minister may give directions

The Minister is empowered to give written directions to the Emergency Management Committee concerning its functions, either generally or in relation to a specific matter. The Emergency Management Committee is to comply with such directions in so far as they are practicable and safe.

Section 10 Explanation – Subcommittees

This section empowers the Emergency Management Committee to establish sub-committees to advise on, or assist with, any matters relevant to its functions or the performance of its functions.

Subcommittees must include at least 4 members of the Committee and can include other community members.

The Emergency Management Committee is empowered to:

- Issue directions to subcommittees in relation to the performance of its functions and its procedures (and such directions are to be complied with as far as it is practicable and safe to do so);
- Reconstitute or discharge a subcommittee; and
- Add or remove a person from membership of a subcommittee.

A subcommittee is required to report in writing to the Committee on each matter referred to it by the Committee.

Division 2 – Territory Controller

Section 11 Explanation – Territory Controller

The senior officer of the Australian Federal Police assigned to community policing duties in the Territory is to hold the office of Territory Controller. This is the current situation and has been agreed with the Australian Federal Police.

Section 12 Explanation – Functions of Territory Controller

The Territory Controller's functions include the following:

- Being responsible for coordinating the response to an emergency on the Cocos (Keeling) Islands;
- Providing advice to the Administrator in relation to the emergency; and
- Requesting an on island emergency management agency to assist in responding to the emergency.

The Territory Controller is also able to request assistance in managing an emergency from a Western Australian agency that has an agreement with the Commonwealth regarding the provision of services to the Cocos (Keeling) Islands. (Note that the Commonwealth is represented by the Department responsible for Territories in this regard). The Territory Controller must ensure that any request for assistance is made through the Department, and also that the Administrator is notified of the request. This captures Western Australian agencies such as the Fire and Emergency Services Authority, Department of Child Protection, Department of Premier and Cabinet and the Department of Health.

The functions of the Territory Controller can be delegated to any person where needed. Delegations must be made in consultation with the Administrator and the delegate cannot delegate any of the Territory Controller's functions to another person. The ability to delegate under this section allows for a situation where the Territory Controller might not be available or there is a specific sort of emergency where another agency might have greater expertise in relation to that type of emergency.

Section 13 Explanation – Powers of Territory Controller during state of emergency

The Territory Controller is able to exercise certain powers when a state of emergency is declared.

A state of emergency is defined in Section 4 as ‘any period during which a state of emergency declaration is in force’. The Administrator of the Cocos (Keeling) Islands is the only person who can make a state of emergency declaration (subject to section 6 (3) which provides the Territory Controller with the powers and functions of the Administrator under the Ordinance when acting as the Chair of the Emergency Management Committee). A state of emergency declaration can only be made by the Administrator in line with the conditions outlined in section 17 (1). This includes being satisfied that:

- a) An emergency has occurred, is occurring or is imminent; and
- b) Extraordinary measures are required to prevent or minimize any of the following:
 - a. Loss of life of humans or animals;
 - b. Illness of, or injury to, humans or animals;
 - c. Property loss or damage;
 - d. Damage to the environment.

The powers of the Territory Controller during a state of emergency include:

- a) Exercising a power of an authorized officer mentioned in Division 2 of Part 3;
- b) Directing the closure of businesses or public areas within an emergency area for a specific period; and
- c) Directing a public authority to do or refrain from doing any act or function.

The above powers allow the Territory Controller to effectively carry out the function of coordinating the response to an emergency on the Cocos (Keeling) Islands.

Division 3 – Emergency management plans

Section 14 Explanation – *Emergency management and emergency recovery plans consistent with emergency management policy*

This section ensures that there is consistency between the content of the emergency management plan and emergency recovery plan developed by the Cocos (Keeling) Islands Emergency Management Committee, and the policy position of the Department responsible for the administration of Cocos (Keeling) Islands Territory.

Section 15 Explanation – *Commencement, activation and inspection of plans*

This section enables the Administrator, following approval by the Emergency Management Committee, to authorise the commencement of the Cocos (Keeling) Islands emergency management plan and emergency recovery plan.

This section also acknowledges that activation of the emergency management plan and emergency recovery plan can occur independently to a state of emergency declaration. This allows for a graduated response to an emergency depending upon the individual circumstances of each event. The emergency management plan can be activated independent of a state of emergency declaration, in response to an incident or emergency that demands a coordinated community response. This situation captures the majority of emergencies that would be expected to occur within the Territory.

The Emergency Management Committee is responsible for ensuring that the public is able to inspect the emergency management plan and the emergency recovery plan for the Cocos (Keeling) Islands.

Division 4 – Request for assistance

Section 16 – Requesting assistance from Emergency Management Australia

The Territory Controller is empowered to liaise with the Australian Government to request assistance in the management of emergencies under the Commonwealth Government Disaster Response Plan. This is in situations where the Territory Controller is of the opinion that local resources are or are likely to be, inadequate, or overwhelmed.

Emergency Management Australia, a division of the Commonwealth Attorney-General's Department, manages the Commonwealth Government Disaster Response Plan. The Territory Controller can liaise directly with Emergency Management Australia to obtain assistance, however, is required to advise the Administrator and the Department of the request.

Part 3 – State of emergency

Division 1 – State of emergency declaration

Section 17 Explanation – Administrator may make state of emergency declaration

This section covers matters relating to the declaration of a 'state of emergency'.

The Administrator may declare that a state of emergency exists in the Cocos (Keeling) Islands Territory or part of the Territory. The declaration may be given orally or in writing and must include the time and date of its making, the area of the Cocos (Keeling) Islands to which it applies and the period for which the declaration has effect, being no longer than 3 days. If initially made orally, the declaration must be recorded in writing, and signed by the Administrator, as soon as practicable after commencement. Before making the declaration, the Administrator must be satisfied that:

- (a) An emergency has occurred, is occurring or is imminent; and
- (b) Extraordinary measures are required to prevent or minimize any of the following:
 - 1. Loss of life of humans or animals;
 - 2. Illness of, or injury to, humans or animals;
 - 3. Property loss or damage;
 - 4. Damage to the environment.

The Administrator should take reasonable steps to consult the Emergency Management Committee prior to making a declaration, however, a failure to consult does not affect the validity of a declaration.

A declaration is not a legislative instrument.

Section 18 Explanation – Extension of state of emergency declaration

The Administrator may, in writing or orally, extend the duration of a state of emergency declaration. If initially made orally, the declaration must be put in writing and signed by the Administrator as soon as practicable after commencement.

An extension must include the time and date on which it commences and the period for which the extension has effect. An extension remains in force for the period of extension unless revoked earlier.

The combined period of a declaration and any extensions must not be more than 7 days, unless Ministerial approval is given for further extensions beyond this period.

This section allows for local decision making with regards to emergency response, whilst recognising that state of emergency declarations are used in only the most serious of events that require extraordinary measures in the response.

An extension of a declaration is not a legislative instrument.

Section 19 Explanation – Revocation of state of emergency declaration or extension

The Administrator may in writing or orally, revoke a state of emergency declaration or extension to the declaration at any time. If initially made orally, the revocation must be put in writing and signed by the Administrator as soon as practicable after commencement.

The revocation must record the time and date of commencement.

Regardless of any other written law, the revocation of a state of emergency declaration or extension does not affect:

- Penalties or punishments relevant to the period that the declaration was in force; or
- Any investigation or legal proceedings in respect of such a penalty or punishment.

A revocation of a declaration or extension is not a legislative instrument.

Section 20 Explanation – Publication of state of emergency declaration, extension and revocation

Any state of emergency declaration, extension of that declaration or revocation of that declaration should be:

- published in a community bulletin and distributed electronically and in hard copy (there are established distribution lists); and
- broadcast over community radio; and
- published on the community blackboard (this is a specific location well known to the Cocos (Keeling) Islands community); and
- published on the Administrator's website; and
- broadcast via SMS to the Emergency Management Committee, if SMS is available.

A failure to publish the state of emergency declaration, extension or revocation by any of those methods does not affect the validity of the declaration.

Division 2 – Authorised officers

Section 21 Explanation – Authorised officers

This section empowers the Administrator or the Territory Controller to authorise any person as an 'authorised officer' during a state of emergency where a state of emergency declaration is in force. A declaration will not be in force where it has been revoked, or where the period of the declaration has ended under sections 17 and 18, and has not been extended.

The authorisation can only apply to a particular emergency. It cannot apply to any or every potential emergency situation. The authorisation must specify:

- the person, or class of persons, to whom it applies; and
- the terms and conditions on which it is given; and
- a description of the emergency to which it applies.

The authorisation of an ‘authorised officer’ may be given in writing or orally – if the latter, it must be put in writing as soon as practicable. However, a failure to record an authorisation in writing does not make the authorisation, or anything done under it, invalid.

Section 22 Explanation – Powers of authorised officers

An authorised officer may exercise any of the following powers during a declared state of emergency, if reasonably required for the purposes of emergency management. In exercising any of these powers an authorised officer is required to comply with any directions given by the Territory Controller. As the most senior officer of the Australian Federal Police assigned to community policing duties in the Territory, the Territory Controller will direct all activities of the authorised officers.

All of the powers identified below are powers that authorised officers can only exercise as part of a declared state of emergency. A state of emergency declaration will define the emergency area within which these powers can be exercised, whether that is part or the whole of the Cocos (Keeling) Islands Territory. It is envisaged that the likelihood of a state of emergency declaration being made will comprise an extremely small percentage of the total number of emergencies within the Territory of the Cocos (Keeling) Islands, due to the declaration only being made under extreme emergency circumstances that necessitate extraordinary measures.

The powers that may be exercised by authorised officers comprise the following:

- request a person to provide their name, address and date of birth;
 - Emergency management agencies require information about persons affected by emergencies and sometimes there can be a reluctance to provide this information. By including a specific provision to empower authorised officers to obtain such information it is hoped that it will improve the situation during an emergency.
- direct or prohibit the movement of persons within, into, out of, or around an emergency area;
- direct the evacuation and removal of persons from an emergency area;
- close any road, access route or area of water in an emergency area;
- take control of or make use of any place, vehicle or other thing;
- enter or, if necessary, break into and enter, a place or vehicle in an emergency area;
- remove or destroy an animal, vegetation or substance in an emergency area;
- remove, dismantle, demolish or destroy a vehicle, or any premises, in an emergency area;
- disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in an emergency area;
- take and use electricity, gas, water or fuel, or use any other service, in an emergency area;
- excavate land or form tunnels in an emergency area;
- build earthworks or temporary structures, or erect barriers, in an emergency area;

- turn off, disconnect or shut down any motor or equipment in an emergency area;
- remove to any place that the authorised officer thinks proper any person who obstructs or threatens to obstruct emergency management activities;
- enter a place or vehicle in the emergency area without a warrant or the consent of the occupier of the place or the owner of the vehicle.
 - It would be preferable that entry to a place or vehicle takes place with a warrant obtained to authorise that entry. Entry without consent has been agreed to in a limited range of circumstances. Under this Ordinance, the purpose of this power is that within an emergency of the kind necessitating a state of emergency declaration, it is foreseeable that the inherent urgency of the situation could mean that it would be impractical or there may not be time, to obtain a warrant (in a situation where consent has not been obtained). For the purpose of emergency management, and where reasonable, an authorised officer can obtain access to a place or vehicle, without that consent.

The powers listed above are identical to those that were provided to hazard management officers or authorised officers under the repealed *Emergency Management Act 2005 (WA) (CI)*.

The powers of an authorised officer under this section are in addition to, and do not limit, the powers the person may have under another law. An authorised officer may exercise a power under this section using reasonable force considering the circumstances. This includes a situation where a person given a direction by an authorised officer under this section does not comply with that direction. This section recognises that authorised officers, as appointed by the Administrator or Territory Controller will likely be pulled from those with existing knowledge of and training in emergency management, predominantly members of the police force.

Section 23 Explanation – Territory Controller may give directions

As the most senior member of the Australian Federal Police assigned to community policing duties, the Territory Controller is able to direct authorised officers in relation to exercising powers under this Division, either generally or in relation to a particular matter.

The authorised officer must comply, as far as practicable, with any directions issued by the Territory Controller. A direction can be given in writing or orally, although if the latter should be put in writing as soon as practicable. Notwithstanding, a failure to put a direction in writing does not make the direction or anything done under it invalid.

Part 4 – Powers of Shire Council

Section 24 Explanation – Shire Council may require owner or occupier of land to take action

This section empowers the local government of the Cocos (Keeling) Islands to issue a written direction requiring an owner or occupier to take measures (specified in the direction) to prevent or minimize the loss, prejudice, harm, destruction or damage, provided that the local government is satisfied that, as a result of an emergency, the vegetation or premises may cause loss or harm to the safety or health of persons or animals, or destroy or damage property or any part of the environment.

The owner or occupier of the land is to comply with the direction regardless of the terms on which the land is held.

This section includes further provisions that allow action via the courts for an owner to seek reimbursement from an occupier, or an occupier to seek reimbursement from an owner for:

- expenses incurred in complying with the direction; or
- any conviction, fine or reimbursement of costs made to a local government.

Section 25 Explanation – Shire Council may destroy dangerous vegetation or premises

This section empowers the local government of the Cocos (Keeling) Islands to remove or destroy vegetation, or remove, dismantle or destroy premises on land in the Territory, provided that the local government is satisfied that, as a result of an emergency, the vegetation or premises may:

- cause loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
- destroy or damage property or any part of the environment.

These powers are essential to facilitate ‘clean-up’ activities to remove loose materials which could cause damage during an emergency.

The local government is empowered to undertake this action regardless of whether a direction has been issued under section 24.

Section 26 Explanation – Recovery of costs

If a direction given under section 24 is not complied with, the local government of the Cocos (Keeling) Islands may:

- do anything that it considers necessary to achieve what was intended by the direction; and
- then recover the cost of anything it does as a debt due from the person who failed to comply with the direction.

Section 24 contains the provisions allowing debt recovery action via the courts for owners and occupiers regarding:

- expenses incurred in complying with the direction; or
- any conviction, fine or reimbursement of costs made to a local government.

Section 27 Explanation – Exercise of powers under this Part

The powers available to the local government of the Cocos (Keeling) Islands under this Part (sections 24 to 27) are only to be exercised by a person expressly so authorised by the local government.

Part 5 – Recovery

Section 28 Explanation – Function of Administrator to manage recovery

The section empowers the Administrator of the Cocos (Keeling) Islands to undertake certain functions during the recovery phase from the effects of an emergency. These include:

- oversight with regards to the Cocos (Keeling) Islands Emergency Management Committee’s emergency recovery plan and managing recovery using that plan;

- requesting local organizations to take action under the auspices of the emergency recovery plan; and
- submitting long term recovery proposals for the Cocos (Keeling) Islands to the Minister for consideration.

Section 29 Explanation – Appointment of recovery coordinator

This section empowers the Cocos (Keeling) Islands Emergency Management Committee to appoint a recovery coordinator to carry out the Administrator’s functions in managing recovery (i.e. those under section 28) after an emergency.

Part 6 – Offences

Section 30 Explanation – Obstruction of Territory Controller or authorised officer

This section provides that it is an offence to obstruct or hinder the Territory Controller or an authorised officer in the exercise of a power under this Ordinance.

This offence attracts a maximum of 500 penalty units. As per section 4AA and section 4AB of the *Crimes Act 1914* (Cth) a penalty unit under a Territory Ordinance equates to \$110. This means that a maximum penalty of \$55,000 would apply for individuals and a maximum penalty of not more than five times this amount for bodies corporate. A court would determine the actual amount of any penalty imposed.

Section 31 Explanation – Failure to comply with direction

This section provides that it is an offence to fail to comply with a direction given by the Territory Controller or an authorised officer under this Ordinance.

This offence attracts a maximum of 500 penalty units for the first offence or a maximum of 50 penalty units for each separate and further offence committed. As per section 4AA and section 4AB of the *Crimes Act 1914* (Cth) a penalty unit under a Territory Ordinance equates to \$110. This means that a maximum penalty of \$55,000 would apply for individuals and a maximum penalty of not more than five times this amount for bodies corporate, both in relation to a first offence. In relation to each separate and further offence of failing to comply with direction, a maximum penalty of \$5,500 would apply for an individual and a maximum penalty of not more than five times this amount for bodies corporate. A court would determine the actual amount of any penalty imposed.

Section 32 Explanation – Impersonation of Territory Controller or authorised officer

This section provides that it is an offence to impersonate the Territory Controller or an authorised officer.

This offence attracts a maximum of 500 penalty units. As per section 4AA and section 4AB of the *Crimes Act 1914* (Cth) a penalty unit under a Territory Ordinance equates to \$110. This means that a maximum penalty of \$55,000 would apply for individuals and a maximum penalty of not more than five times this amount for bodies corporate. A court would determine the actual amount of any penalty imposed.

Section 33 Explanation – False or misleading information

This section provides that it is an offence for a person to give information (knowing it to be false or misleading) to the Territory Controller or an authorised officer exercising a power under this Ordinance.

This offence attracts a maximum of 500 penalty units. As per section 4AA and section 4AB of the *Crimes Act 1914* (Cth) a penalty unit under a Territory Ordinance equates to \$110. This means that a maximum penalty of \$55,000 would apply for individuals and a maximum penalty of not more than five times this amount for bodies corporate. A court would determine the actual amount of any penalty imposed.

Part 7 – Miscellaneous

Section 34 Explanation – Protection from civil liability

This section provides immunity from liability for any loss or damage, to named persons performing functions or exercising powers in good faith and without reckless disregard:

- under this Ordinance;
- under the Cocos (Keeling) Islands Emergency Management Plan; or
- under the Cocos (Keeling) Islands Emergency Recovery Plan.

This section applies to:

- the Territory Controller and his or her delegate; and
- the Administrator, an Acting Administrator, a Deputy Administrator, or a recovery coordinator; and
- an authorised officer; and
- a member of the Cocos (Keeling) Islands Emergency Management Committee or a subcommittee of the Cocos (Keeling) Islands Emergency Management Committee; and
- a person authorised to exercise a power under this Ordinance on behalf of the Shire Council.

In this section, a reference to doing anything includes a reference to not doing anything.

Section 35 Explanation – Regulations

This section empowers the Minister to make regulations prescribing matters to give effect to the Ordinance.

Extensive consultation will be required with stakeholders in the drafting of any regulations.