



**TERRITORY OF COCOS (KEELING) ISLANDS**

# **Emergency Management Ordinance 2012<sup>1</sup>**

## **Ordinance 2012 No. 2**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance under the *Cocos (Keeling) Islands Act 1955*.

Dated 11 October 2012

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

SIMON CREAN  
Minister for Regional Australia, Regional Development and  
Local Government

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**Section 1**

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**An Ordinance to provide for emergency management in the Territory****Part 1 Preliminary****1 Name of Ordinance**

This Ordinance is the *Emergency Management Ordinance 2012*.

**2 Commencement**

This Ordinance commences on the day after it is registered.

**3 Repeal**

For subsection 8A (2) of the Act, the following Act and regulations are repealed, so far as they are in force in the Territory:

- (a) *Emergency Management Act 2005* (Western Australia);
- (b) *Emergency Management Regulations 2006* (Western Australia).

**4 Definitions**

In this Ordinance:

**Act** means the *Cocos (Keeling) Islands Act 1955*.

**Acting Administrator** means a person appointed under section 6 of the *Administration Ordinance 1975* to act as Administrator.

**Administrator** means the Administrator of the Territory appointed under section 5 of the *Administration Ordinance 1975*.

**authorised officer** means a person mentioned in subsection 21 (1).

**Committee** means the Emergency Management Committee established by section 5.

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***Commonwealth Disaster Response Plan*** means the plan that describes the coordination arrangements for the provision of Australian Government physical assistance to states or territories or offshore territories in the event of a disaster.

***Deputy Administrator*** means the person appointed under section 7 of the *Administration Ordinance 1975* to be the deputy of the Administrator.

***emergency*** means the occurrence or imminent occurrence of a hazard which is of such a nature or magnitude that it requires a significant and coordinated response.

***emergency area*** means the area to which a state of emergency declaration applies.

***emergency management*** means a range of measures to manage risks to communities and the environment, and involves the development and maintenance of arrangements to prevent or mitigate, prepare for, respond to, and recover from, the effects of emergencies.

***emergency management agency*** means a response agency, a warning agency or a welfare agency.

***emergency management plan*** means the Cocos (Keeling) Islands Emergency Management Plan, established and maintained by the Committee under subsection 8 (1).

***emergency recovery plan*** means the Cocos (Keeling) Islands Emergency Recovery Plan, established and maintained by the Committee under subsection 8 (1).

***hazard*** means a potential or existing condition that may cause harm to people or animals, or damage to property or the environment.

***hazardous substance*** means a substance, including a chemical, biological, radiological or nuclear substance, that is capable of causing loss of life, injury to a person or damage to the health of a person or to the environment.

***occupier***, in relation to any premises or a part of any premises, means the person in occupation, charge or control of the premises or the part of the premises.

***place*** includes land, an area of water or premises.

***premises*** includes a building or structure, or a part of a building or structure, of any type.

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**property** means real or personal property of any description.

**public authority** means a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth or a State and includes:

- (a) any local government body; and
- (b) an officer or member of the public authority, when exercising the functions of the authority.

**recovery** means the support of emergency affected communities in the reconstruction and restoration of physical infrastructure, the environment and community.

**response agency** means an agency identified in the emergency management plan as the agency responsible for combating a particular threat, or supporting another agency in combating a particular threat.

**Shire Council** means the Council of the Shire of Cocos (Keeling) Islands.

**state of emergency** means any period during which a state of emergency declaration is in force.

**state of emergency declaration** means a declaration made by the Administrator under section 17.

**Territory Controller** has the meaning given by section 11.

**vehicle** includes any means of transport, including a vessel, an aircraft or a hovercraft.

**warning agency** means an agency that has the initial information on an emergency or potential emergency and responsibility to advise other agencies about the emergency or potential emergency.

**welfare agency** means an agency that is available to provide support for the Cocos (Keeling) Islands community and other personnel as required during or after an incident, accident or emergency.

## **Part 2                      Emergency management                                  coordination arrangements**

### **Division 1                Emergency Management                                  Committee**

#### **5                      Establishment of Emergency Management                                  Committee**

The Emergency Management Committee is established.

#### **6                      Chair of Committee**

- (1) The Chair of the Committee is the Administrator.
- (2) The Territory Controller is to act as the Chair during a period when the Administrator, Deputy Administrator and Acting Administrator are absent from duty or the Territory or are for any reason, unable to perform the duties and functions of the office.
- (3) While acting as the Chair, the Territory Controller has all the powers and functions of the Administrator under this Ordinance.

#### **7                      Membership of Committee**

- (1) The Committee consists of:
  - (a) the Administrator; and
  - (b) the Territory Controller; and
  - (c) each person, (including a member or representative of an agency) appointed by the Administrator by instrument in writing.
- (2) The executive of the Committee is made up of:
  - (a) the Administrator; and
  - (b) the Territory Controller; and

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- (c) a member of the Indian Ocean Territories Administration;  
and
  - (d) a member of the Shire Council.
- (3) The executive of the Committee is chaired by the Administrator.

**8                      Functions of Committee**

- (1) The Committee has the following functions:
- (a) to establish, maintain and review an emergency management plan for responding to an emergency;
  - (b) to establish, maintain and review an emergency recovery plan for recovering from an emergency;
  - (c) to assist emergency management agencies to fulfil their obligations under an emergency management plan;
  - (d) to coordinate emergency management activities, including:
    - (i) risk assessments; and
    - (ii) prevention and mitigation of the effects of emergencies; and
    - (iii) planning activities; and
    - (iv) emergency management exercises;
  - (e) to promote efficient and effective emergency management practices in the Territory;
  - (f) to provide a forum for discussing emergency management issues and facilitating communication between the Committee and the community;
  - (g) to provide advice to the Australian Government and Shire Council on emergency management issues.
- (2) The Committee may decide how often the emergency management and emergency recovery plans are reviewed.
- (3) The executive of the Committee is responsible for the overall management and administration of the emergency management plan.



**9 Minister may give directions**

- (1) The Minister may give directions in writing to the Committee in relation to the performance of its functions, either generally or in relation to a particular matter.
- (2) The Committee must comply, as far as practicable and safe, with any direction given to the Committee by the Minister.

**10 Subcommittees**

- (1) The Committee, at the discretion of the executive of the Committee, may do any of the following:
  - (a) establish one or more subcommittees to:
    - (i) inquire into, and report to the Committee on, any matter referred to a subcommittee that is within the functions of the Committee; and
    - (ii) assist the Committee with any matters relevant to performing the functions of the Committee;
  - (b) discharge a subcommittee;
  - (c) reconstitute a subcommittee;
  - (d) remove a member from, or add a member to, a subcommittee;
  - (e) give directions to a subcommittee with respect to its procedures and the performance of its functions.
- (2) A subcommittee must consist of at least 4 members of the Committee, and may include other community members.
- (3) A subcommittee must comply, as far as practicable and safe, with a direction given to the subcommittee by the Committee.
- (4) A subcommittee must report, in writing, to the Committee, in accordance with the emergency management plan, on each matter referred to the subcommittee by the Committee.

## **Division 2                      Territory Controller**

### **11                      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.

### **12                      Functions of Territory Controller**

- (1) The Territory Controller is responsible for coordinating the response to an emergency in the Territory, including:
  - (a) providing advice to the Administrator in relation to the emergency; and
  - (b) requesting an emergency management agency to assist in responding to the emergency; and
  - (c) requesting assistance from a Western Australian agency which has an agreement with the Commonwealth of Australia, as represented by the Department, to assist the Territory Controller to manage emergencies.
- (2) The Territory Controller must make any request for assistance mentioned in paragraph (1) (c) through the Department and ensure that the Administrator is notified of the request.
- (3) The Territory Controller may, by instrument in writing, delegate his or her functions to any person (the *delegate*).
- (4) Delegations must be made in consultation with the Administrator.
- (5) The delegate may not delegate any of the Territory Controller's functions to another person.

### **13                      Powers of Territory Controller during state of emergency**

During a state of emergency, the Territory Controller may, for the purpose of emergency management:

- (a) exercise a power of an authorised officer mentioned in Division 2 of Part 3; and

- (b) direct the owner, occupier or the person apparently in charge of any place of business or public area in the emergency area to close the place to the public for the period specified in the direction; and
- (c) direct a public authority to do or refrain from doing any act, or to perform or refrain from performing any function.

## **Division 3                      Emergency management plans**

### **14                      Emergency management and emergency recovery plans consistent with emergency management policy**

- (1) An emergency management plan must be consistent with the emergency management policy published by the Department.
- (2) An emergency recovery plan must be consistent with the emergency recovery policy published by the Department.

### **15                      Commencement, activation and inspection of plans**

- (1) An emergency management plan, and any amendment made to the plan, commences on the day that it is authorised for operation by the Administrator, following approval by the Committee.
- (2) An emergency recovery plan, and any amendment made to the plan, commences on the day that it is authorised for operation by the Administrator, following approval by the Committee.
- (3) An emergency management plan and an emergency recovery plan can be acted upon independently of a state of emergency declaration.
- (4) The Committee must ensure that an emergency management plan and an emergency recovery plan are available for inspection by the public.

## **Division 4                      Request for assistance**

### **16                      Requesting assistance from Emergency Management Australia**

- (1) The Territory Controller may ask for Australian Government physical assistance under the Commonwealth Government Disaster Response Plan, if the Territory Controller is of the opinion that:
  - (a) local resources are, or are likely to be, inadequate; or
  - (b) local resources are, or are likely to be, overwhelmed.
- (2) The Territory Controller may liaise directly with Emergency Management Australia to facilitate the provision of assistance.

*Note* Emergency Management Australia is a division of the Commonwealth Attorney-General's Department.
- (3) The Territory Controller must advise the Administrator and the Department of the request for assistance.

## **Part 3                      State of emergency**

### **Division 1                      State of emergency declaration**

#### **17                      Administrator may make state of emergency declaration**

- (1) The Administrator may declare that a state of emergency exists in the Territory or part of the Territory if he or she is satisfied that:
  - (a) an emergency has occurred, is occurring or is imminent; and
  - (b) extraordinary measures are required to prevent or minimise any of the following:
    - (i) loss of life of humans or animals;
    - (ii) illness of, or injury to, humans or animals;
    - (iii) property loss or damage;
    - (iv) damage to the environment.
- (2) Before making a declaration, the Administrator must take reasonable steps to consult the Committee.
- (3) However, a failure to consult the Committee does not affect the validity of a declaration.
- (4) A declaration may be given orally or in writing, and must state:
  - (a) the time and date the declaration commences; and
  - (b) the period for which the declaration has effect, being a period of not more than 3 days, commencing on the date the declaration commences.
- (5) An oral declaration must be recorded in writing, and signed by the Administrator, as soon as practicable after it commences.
- (6) A declaration is not a legislative instrument.

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**18            Extension of state of emergency declaration**

- (1) The Administrator may extend the duration of a state of emergency declaration.
- (2) An extension of a state of emergency declaration may be given orally or in writing, and must state:
  - (a) the time and date the extension commences; and
  - (b) the period for which the extension has effect, being a period of not more than 3 days, commencing on the date the extension commences.
- (3) 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.
- (4) An oral extension must be recorded in writing, and signed by the Administrator, as soon as practicable after it commences.
- (5) An extension of a declaration is not a legislative instrument.

**19            Revocation of state of emergency declaration or extension**

- (1) The Administrator may revoke a state of emergency declaration or extension to a state of emergency declaration.
- (2) A revocation of a declaration or extension may be given orally or in writing and must state the time and date the revocation commences.
- (3) An oral revocation must be recorded in writing, and signed by the Administrator, as soon as practicable after it commences.
- (4) Despite any other written law, a revocation does not affect:
  - (a) any penalty or punishment incurred, imposed or liable to be incurred or imposed, before the revocation; or
  - (b) any investigation or legal proceedings in respect of a penalty or punishment.
- (5) A revocation of a declaration or extension is not a legislative instrument.

**20 Publication of state of emergency declaration, extension and revocation**

- (1) A state of emergency declaration, an extension of a state of emergency declaration or a revocation of a declaration or extension must, as soon as possible after it commences, be:
  - (a) published in a community bulletin, and distributed in accordance with the bulletin distribution list by email and hard copy; and
  - (b) broadcast over community radio; and
  - (c) published on the community blackboard; and
  - (d) published on the Administrator's website; and
  - (e) broadcast via SMS to the Committee, if SMS is available.
- (2) However, a failure to comply with subsection (1) does not affect the validity of a declaration, extension or revocation.

**Division 2 Authorised officers**

**21 Authorised officers**

- (1) The Administrator or Territory Controller may, during a state of emergency, authorise any person to be an authorised officer for the purposes of this Division.
- (2) An authorisation applies to a particular emergency only, and must specify:
  - (a) the person, or class of persons, to whom it applies; and
  - (b) the terms and conditions on which it is given; and
  - (c) a description of the emergency to which it applies.
- (3) An authorisation may be given orally or in writing, but if given orally must be recorded in writing as soon as practicable.
- (4) However, failure to record an authorisation in writing does not make the authorisation, or anything done under it, invalid.

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**22           Powers of authorised officers**

- (1) If reasonably required for the purposes of emergency management during a state of emergency, an authorised officer may exercise any of the following powers during the state of emergency:
  - (a) request a person to give the officer the person's name, address and date of birth;
  - (b) direct or prohibit the movement of persons within, into, out of, or around an emergency area;
  - (c) direct the evacuation and removal of persons from an emergency area;
  - (d) close any road, access route or area of water in an emergency area;
  - (e) take control of or make use of any place, vehicle or other thing;
  - (f) enter or, if necessary, break into and enter, a place or vehicle in an emergency area;
  - (g) remove or destroy an animal, vegetation or substance in an emergency area;
  - (h) remove, dismantle, demolish or destroy a vehicle, or any premises, in an emergency area;
  - (i) disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in an emergency area;
  - (j) take and use electricity, gas, water or fuel, or use any other service, in an emergency area;
  - (k) excavate land or form tunnels in an emergency area;
  - (l) build earthworks or temporary structures, or erect barriers, in an emergency area;
  - (m) turn off, disconnect or shut down any motor or equipment in an emergency area;
  - (n) remove to any place that the authorised officer thinks proper any person who obstructs or threatens to obstruct emergency management activities.
- (2) An authorised officer may 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.



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- (3) If a person does not comply with a direction given by an authorised officer under this section, the authorised officer may do all things reasonably necessary to ensure compliance with the direction, using force as is reasonable in the circumstances.
- (4) An authorised officer may exercise a power under this section with the help, and using the force, that is reasonable in the circumstances.
- (5) 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.
- (6) In exercising a power under this section, an authorised officer must comply with any directions given by the Territory Controller.

**23 Territory Controller may give directions**

- (1) The Territory Controller may give directions to an authorised officer in relation to exercising powers under this Division, either generally or in relation to a particular matter.
- (2) An authorised officer must comply, as far as practicable, with any directions given to the authorised officer by the Territory Controller.
- (3) A direction may be given orally or in writing, but if given orally must be put in writing as soon as practicable.
- (4) However, failure to put a direction in writing does not make the direction or anything done under it invalid.

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**Part 4 Powers of Shire Council****24 Shire Council may require owner or occupier of land to take action**

- (1) This section applies if the Shire Council is of the opinion that any vegetation or premises on land in the Territory may, as a result of an emergency:
  - (a) cause loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
  - (b) destroy or damage property or any part of the environment.
- (2) The Shire Council may give a person, who is the owner or occupier of land in the Territory, a direction in writing requiring the person to take measures specified in the direction to prevent or minimise the loss, prejudice, harm, destruction or damage.
- (3) A person, who is given a direction under subsection (2) (the ***directed person***), is not prevented from complying with it because of the terms on which the land is held.
- (4) A directed person may apply to a court for an order under subsection (5) if the directed person:
  - (a) incurs expense in complying with the direction; or
  - (b) fails to comply with the direction, and is convicted and fined or has to pay to a local government the cost the local government incurs in doing anything under section 26.
- (5) On an application under subsection (4), the court may order:
  - (a) if the directed person is the owner—the occupier; or
  - (b) if the directed person is the occupier—the owner;to pay to the directed person so much of that expense, fine or cost as the court considers fair and reasonable in the circumstances.

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- (6) In determining what is fair and reasonable, the court must have regard to the following:
  - (a) the type of land involved;
  - (b) the terms on which the occupier is occupying the land;
  - (c) any other matter the court considers relevant.
- (7) In this section:  
*court* means a court that would have jurisdiction to hear an action to recover a debt of the amount of the expense, fine or cost sought to be recovered under subsection (4).

## **25 Shire Council may destroy dangerous vegetation or premises**

- (1) The Shire Council may remove or destroy vegetation, or remove, dismantle or destroy premises on land in the Territory, if it is of the opinion that the vegetation or premises may, as a result of an emergency:
  - (a) cause loss of life, prejudice to the safety, or harm to the health, of persons or animals; or
  - (b) destroy or damage property or any part of the environment.
- (2) Subsection (1) applies whether or not the Shire Council has given a person, who is the owner or occupier of the land, a direction under section 24.

## **26 Recovery of costs**

- (1) If a person fails to comply with a direction given under section 24, the Shire Council may do anything that it considers necessary to achieve, as far as practicable and safe, the purposes for which the direction was given.
- (2) The Shire Council may recover the cost of anything it does under subsection (1) as a debt due from the person who failed to comply with the direction.

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**27 Exercise of powers under this Part**

- (1) The Shire Council may authorise, in writing, any of the following to exercise powers on behalf of the Shire Council:
  - (a) a person;
  - (b) the holder of a particular position on the Shire Council.
- (2) The powers given to the Shire Council under this Part can only be exercised on behalf of the Shire Council by a person mentioned in subsection (1).

## Part 5 Recovery

### 28 Function of Administrator to manage recovery

The Administrator has the following functions in relation to recovery from the effects of an emergency in the Territory:

- (a) having regard to the emergency recovery plan, managing recovery from the effects of the emergency;
- (b) requesting local organisations to take action under the emergency recovery plan;
- (c) submitting long term recovery proposals to the Minister for consideration.

### 29 Appointment of recovery coordinator

The Committee may appoint a recovery coordinator to carry out the Administrator's functions in managing recovery after an emergency.

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**Part 6                      Offences****30                      Obstruction of Territory Controller or authorised officer**

A person commits an offence if the person obstructs or hinders the Territory Controller or an authorised officer in the exercise of a power under this Ordinance.

Penalty: 500 penalty units.

**31                      Failure to comply with direction**

A person commits an offence if the person fails to comply with a direction given by the Territory Controller or an authorised officer under this Ordinance.

Penalty:

- (a) for the first offence—500 penalty units; or
- (b) for each separate and further offence committed by the person—50 penalty units.

**32                      Impersonation of Territory Controller or authorised officer**

A person commits an offence if the person falsely represents, by words or conduct, that the person is the Territory Controller or an authorised officer.

Penalty: 500 penalty units.

**33                      False or misleading information**

A person commits an offence if the person gives information that the person knows to be false or misleading to the Territory Controller or an authorised officer exercising a power under the ordinance.

Penalty: 500 penalty units.

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## **Part 7                      Miscellaneous**

### **34                      Protection from civil liability**

- (1) A person, mentioned in subsection (2), is not liable for anything done, in good faith and without reckless disregard, in the performance of a function or exercise of a power under:
  - (a) this ordinance; or
  - (b) an emergency management plan; or
  - (c) an emergency recovery plan.
- (2) Subsection (1) applies to:
  - (a) the Territory Controller or his or her delegate; and
  - (b) the Administrator, an Acting Administrator, a Deputy Administrator, or a recovery coordinator; and
  - (c) an authorised officer; and
  - (d) a member of the Committee or a subcommittee of the Committee; and
  - (e) a person authorised to exercise a power under this ordinance on behalf of the Shire Council.
- (3) In this section, a reference to doing anything includes a reference to not doing anything.

### **35                      Regulations**

The Minister may make regulations prescribing all matters:

- (a) required or permitted by this ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this ordinance.

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#### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.comlaw.gov.au](http://www.comlaw.gov.au).