



# **Norfolk Island Continued Laws Amendment (2015 Measures No. 1) Ordinance 2015**

## **Ordinance No. 10, 2015**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),  
Governor-General of the Commonwealth of Australia, acting with the  
advice of the Federal Executive Council, make the following Ordinance.

Dated 10 December 2015

Peter Cosgrove  
Governor-General

By His Excellency's Command

Paul Fletcher  
Minister for Territories, Local Government and Major Projects

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*OPC61562 - A*







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## 1 Name

This is the *Norfolk Island Continued Laws Amendment (2015 Measures No. 1) Ordinance 2015*.

## 2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Ordinance not elsewhere covered by this table	The day after this Ordinance is registered.	
2. Schedules 1 to 4	The day after this Ordinance is registered.	
3. Schedule 5, Part 1	The day after this Ordinance is registered.	
4. Schedule 5, Part 2	1 December 2016.	1 December 2016

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

## 3 Authority

This Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

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## **Schedule 1—Amendments relating to the administration of enactments**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **1 Item 190 of Schedule 1 (heading to clause 5 of Schedule 1)**

Repeal the heading, substitute:

#### **5 Roles belonging to a Minister, an executive member or the Administrator before the interim transition time**

#### **2 Item 190 of Schedule 1 (paragraph 5(1)(a) of Schedule 1)**

After “Minister”, insert “or an executive member”.

#### **3 Item 190 of Schedule 1 (note at the end of subclause 5(1) of Schedule 1)**

Repeal the note.

#### **4 Item 190 of Schedule 1 (at the end of subclause 10(1) of Schedule 1)**

Add:

; (f) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department.

#### **5 Item 190 of Schedule 1 (subclause 10(2) of Schedule 1)**

Omit “or (e)”, substitute “, (e) or (f)”.

## Schedule 2—Amendments relating to the Criminal Code

### *Norfolk Island Continued Laws Ordinance 2015*

#### 1 After item 53 of Schedule 1

Insert:

#### 53A Subsections 5(2) and (3)

Repeal the subsections, substitute:

- (2) From the commencement of this subsection until 30 June 2018, subsection (1) has no effect.

#### 53B Section 8

Repeal the section, substitute:

#### 8 Delayed application of Chapter 2 to certain offences

- (1) Despite section 7, from the commencement of this section until 30 June 2018, the provisions of this Chapter (other than the applied provisions) do not apply to a pre-2008 offence unless:
  - (a) the offence has been omitted and remade (with or without changes) on or after 1 January 2008; or
  - (b) an enactment, or a law made under an enactment, whether made before or after the commencement of this section, expressly provides for the provisions of this Chapter to apply to the offence.
- (2) In interpreting the applied provisions in relation to an offence, the other provisions of this Act may be considered.
- (3) In this section:

***omitted and remade***: an offence has not been omitted and remade if it has been amended without being omitted and remade.

***pre-2008 offence*** means an offence that was in force before 1 January 2008.



**53C Section 10**

Repeal the section, substitute:

**10 Definition of *applied provisions***

In this Act:

*applied provisions* means the following provisions of this Chapter:

- (a) subsection 15(5) (Evidence of self-induced intoxication);
- (b) Division 2.3.1 (Lack of capacity—children);
- (c) Division 2.3.2 (Lack of capacity—mental impairment);
- (d) Division 2.3.3 (Intoxication);
- (e) Part 2.4 (Extensions of criminal responsibility);
- (f) Part 2.5 (Corporate criminal responsibility);
- (g) Part 2.6 (Proof of criminal responsibility);
- (h) Part 2.7 (Geographical application).

**53D Subsection 105(6) (definition of *applied provisions*)**

Repeal the definition.

**2 Item 2 of Schedule 2**

Insert:

***Criminal Code Regulations 2013***

## **Schedule 3—Amendments relating to gaming**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **1 Item 100 of Schedule 1**

Repeal the item, substitute:

#### **100 Section 18**

Repeal the section.

#### **2 After item 101 of Schedule 1**

Insert:

#### **101A After section 24**

Insert:

#### **25 Commonwealth Minister may give directions to the Authority**

- (1) The Commonwealth Minister may, by legislative instrument, give written directions of a general or specific nature to the Authority about the performance of any of the Authority's functions or duties, or the performance of any of the Director's functions or duties.
- (2) Without limiting subsection (1), a direction under that subsection may require the Authority to arrange for an external audit of the operations of the Authority or Director.
- (3) The Authority must comply with a direction under subsection (1).

## **Schedule 4—Amendments relating to the Norfolk Island Government Tourist Bureau**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **1 After item 148 of Schedule 1**

Insert:

#### **148A Schedule 1 (Form 8A)**

Omit “NORFOLK ISLAND GOVERNMENT TOURIST BUREAU”,  
substitute “ADMINISTRATION OF NORFOLK ISLAND”.

#### **2 After item 290 of Schedule 1**

Insert:

#### **290A Item 2 of the Schedule (paragraph (b) of the definition of *public sector employee*)**

Repeal the paragraph.

#### **290B Item 2 of the Schedule (paragraph (a) of the definition of *Territory authority*)**

Repeal the paragraph.

#### **3 Item 1 of Schedule 2**

Insert:

### *Norfolk Island Government Tourist Bureau Act 1980*

#### **4 Item 2 of Schedule 2**

Insert:

### *Norfolk Island Government Tourist Bureau Regulations*

#### **5 At the end of Schedule 2**

Add:

## Part 3—Transitional provisions relating to repeal of the Norfolk Island Government Tourist Bureau Act 1980

### Division 1—Introduction

#### 3 Definitions

In this Part:

**Advisory Board** has the same meaning as in the *Norfolk Island Government Tourist Bureau Act 1980* (Norfolk Island) as in force immediately before the repeal time.

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**assets official**, in relation to an asset other than land, means the person or authority who:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

**Bureau** has the same meaning as in the *Norfolk Island Government Tourist Bureau Act 1980* (Norfolk Island) as in force immediately before the repeal time.

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**repeal time** means the commencement of Schedule 4 to the *Norfolk Island Continued Laws Amendment (2015 Measures No. 1) Ordinance 2015*.

## **Division 2—Transfer of assets and liabilities of Bureau**

### **4 Vesting of assets of the Bureau**

- (1) This item applies to an asset of the Bureau immediately before the repeal time.
- (2) The following provisions have effect:
  - (a) at the repeal time, the asset ceases to be an asset of the Bureau and becomes an asset of the Administration without any conveyance, transfer or assignment;
  - (b) the Administration becomes the successor in law in relation to the asset.

### **5 Vesting of liabilities of the Bureau**

- (1) This item applies to a liability of the Bureau immediately before the repeal time.
- (2) The following provisions have effect:
  - (a) at the repeal time, the liability ceases to be a liability of the Bureau and becomes a liability of the Administration without any conveyance, transfer or assignment;
  - (b) the Administration becomes the successor in law in relation to the liability.

### **6 Transfers of land to the Administration may be registered**

- (1) This item applies if:
  - (a) any land vests in the Administration under item 4; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the responsible Commonwealth Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in the Administration under this Part.
- (2) The land registration official may:

- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

## **7 Certificates relating to vesting of assets (other than land) in the Administration**

- (1) This item applies if:
  - (a) any asset other than land vests in the Administration under item 4; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the responsible Commonwealth Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the Administration under this Part.
- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary having regard to the effect of this Part.

## **Division 3—Transfer of other matters relating to the Bureau**

### **8 Acts of the Bureau to be attributed to the Administration**

Anything done by, or in relation to, the Bureau before the repeal time has effect, at and after that time, as if it had been done by, or in relation to, the Administration.

### **9 Substitution of the Administration as a party to certain pending proceedings**

If, immediately before the repeal time, the Bureau was a party to proceedings pending in any court or tribunal, the Administration is substituted for the Bureau as a party to the proceedings at and after that time.

## **10 Transfer of records to the Administration**

Any records or documents that were in possession of the Bureau or the Advisory Board immediately before the repeal time are to be transferred to the Administration after the repeal time.

## **11 References in certain instruments to the Bureau**

(1) If:

- (a) an instrument was in force immediately before the repeal time; and
- (b) a reference is made in the instrument to the Bureau; and
- (c) the instrument is an instrument covered by one or more of the following subparagraphs:
  - (i) an instrument that was made by the Bureau;
  - (ii) an instrument to which the Bureau was a party;
  - (iii) an instrument that was given to, or in favour of, the Bureau;
  - (iv) an instrument under which any right or liability accrues or may accrue to the Bureau;
  - (v) any other instrument in which a reference is made to the Bureau;

then the reference has effect after the repeal time as if the reference to the Bureau were a reference to the Administration.

(2) In this item:

***exempt instrument*** means:

- (a) an Act; or
- (b) an instrument made under the *Norfolk Island Act 1979*; or
- (c) an enactment (within the meaning of that Act).

***instrument***:

- (a) includes:
  - (i) a contract, deed, undertaking or agreement; and
  - (ii) a notice, authority, order or instruction; and
  - (iii) an instrument made under an Act or under regulations; but
- (b) does not include an exempt instrument.

## Division 4—Employees of the Bureau

### 12 Transfer of employees

- (1) For the purposes of this item, a person is a *transferring employee* if the person was employed by the Bureau immediately before the repeal time.
- (2) At the repeal time, the transferring employee:
  - (a) ceases to be an employee of the Bureau; and
  - (b) becomes an employee of the Administration.
- (3) A transferring employee who becomes an employee of the Administration under subitem (2) is taken to have been engaged by the Administration on the same terms and conditions as those that applied to the transferring employee, immediately before the repeal time, as an employee of the Bureau.
- (4) This item does not prevent the terms and conditions of a transferring employee's employment after the repeal time from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, award, determination or agreement.
- (5) A transferring employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the Bureau as a result of this item.
- (6) In this item:

*vary*, in relation to terms and conditions, includes:

  - (a) omit any of those terms and conditions; or
  - (b) add to those terms and conditions; or
  - (c) substitute new terms or conditions for any of those terms and conditions.

### 13 Accrued entitlements

- (1) This item applies to a person if:
  - (a) the person was employed by the Bureau immediately before the repeal time; and
  - (b) at the repeal time, the person becomes an employee of the Administration.



- (2) The person is taken to have accrued an entitlement to benefits, in connection with the person's employment with the Administration, as the case may be, that is equivalent to the entitlement that the person had as an employee of the Bureau immediately before the repeal time.
- (3) The service of the person as an employee of the Bureau is taken, for all purposes, to have been continuous with his or her service as an employee of the Administration.

## **Division 5—Other matters**

### **14 Constitutional safety net**

- (1) If the operation of a provision of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **15 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

## **Schedule 5—Amendments relating to random breath testing and blood alcohol content**

### **Part 1—Amendments commencing day after registration**

#### *Norfolk Island Continued Laws Ordinance 2015*

##### **1 After item 341 of Schedule 1**

Insert:

#### *Traffic Act 2010 (Norfolk Island)*

##### **341A Subsection 3(1)**

Insert:

*breath test* means a test for the purpose of indicating the concentration of alcohol present in a person's breath or blood, carried out on that person's breath by means of one of the following devices:

- (a) Alcolizer LE;
- (b) lion alcolmeter SD-400;
- (c) Alcolizer 5 Series.

##### **341B At the end of section 3**

Add:

- (8) For the purposes of this Act, an amount of alcohol in grams present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grams present in blood when measured by reference to 100 millilitres of blood.

##### **341C Subsection 32(7A)**

Repeal the subsection.

##### **341D After section 32**

Insert:

### **32A Power to conduct random breath testing**

- (1) A member of the police force may require a person to submit to a breath test in accordance with the member's directions if the member has reasonable cause to believe that:
  - (a) the person is or was driving a motor vehicle on a road; or
  - (b) the person is or was occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion; or
  - (c) the person (being the holder of a drivers licence or a recognised licence) is or was occupying the seat in a motor vehicle next to a driver who holds a learner's licence while the driver is or was driving the vehicle on a road.
- (2) Before requiring a person to submit to a breath test under subsection (1), and for the purpose of determining whether to conduct such a test, a member of the police force may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.
- (3) Without limiting any other power or authority, a member of the police force may, for the purposes of this section, request or signal the driver of a motor vehicle to stop the vehicle.
- (4) If a request is made, or a signal is given, to a person under subsection (3), the person must comply with the request or signal.

Penalty: 10 penalty units.

### **32B Arrest following failed breath test etc.**

- (1) A member of the police force may exercise the powers mentioned in subsection (2) in respect of a person if:
  - (a) both of the following apply:
    - (i) it appears to the member that the device used by the member to conduct a breath test under subsection 32A(1) indicates that there may be present in the person's breath or blood a concentration of alcohol of more than zero grams in 210 litres of breath or 100 millilitres of blood;

- (ii) the member has reasonable cause to believe that the person is a novice driver or is driving a commercial vehicle; or
  - (b) it appears to the member that the device used by the member to conduct a breath test under subsection 32A(1) indicates that there may be present in the person's breath or blood a concentration of alcohol of more than 0.08 grams in 210 litres of breath or 100 millilitres of blood; or
  - (c) the person refuses to submit to a breath test required by a member of the police force under subsection 32A(1) or fails to submit to the breath test in accordance with the directions of the member.
- (2) The powers that the member of the police force may exercise in respect of the person are as follows:
  - (a) the power to arrest the person, without warrant;
  - (b) the power to take the person (or cause the person to be taken), using such force as is necessary and reasonable in the circumstances, to a police station or such other place as the member considers desirable;
  - (c) the power to detain the person (or cause the person to be detained) at a police station or other place for the purposes of submitting to a breath analysis under subsection 32(7).

### ***Traffic (General) Regulations (Norfolk Island)***

#### **341E Subregulation 9N(1)**

Repeal the subregulation, substitute:

- (1) The following devices are prescribed for the purpose of carrying out a breath analysis under section 32 of the Act:
  - (a) Dräger Alcotest 7110 MKV, also known as the Draeger Alcotest 7110 MKV;
  - (b) Dräger Alcotest 9510 AUS, also known as the Draeger Alcotest 9510 AUS.

#### **341F Subregulation 9N(2)**

Omit "The device ", substitute "A device"

**341G Subregulation 9N(3)**

Omit “the device”, substitute “a device”.

## Part 2—Amendments commencing 1 December 2016

### *Norfolk Island Continued Laws Ordinance 2015*

#### **2 Before item 203**

Insert:

#### **202A Paragraphs 20(a) and (b)**

Omit “0.08”, substitute “0.05”.

#### **3 After item 341A of Schedule 1**

Insert:

#### **341AA Subsection 3(1) (definition of *prescribed concentration of alcohol*)**

Omit “0.08” (wherever occurring), substitute “0.05”.

#### **4 After item 341B of Schedule 1**

Insert:

#### **341BA Paragraph 32(6)(b)**

Omit “0.08”, substitute “0.05”.

#### **5 Item 341D of Schedule 1 (paragraph 32B(1)(b))**

Omit “0.08”, substitute “0.05”.