



Norfolk Island Continued Laws Amendment (Chief Magistrate) Ordinance 2017

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 13 July 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Fiona Nash
Minister for Local Government and Territories

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1 Name

This Ordinance is the *Norfolk Island Continued Laws Amendment (Chief Magistrate) Ordinance 2017*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	15 July 2017

Note: This table relates only to the provisions of this Ordinance as originally made.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*.

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1—Amendments

Norfolk Island Continued Laws Ordinance 2015

1 Before item 43B of Schedule 1

Insert:

43AL Subsection 4(1)

Insert:

applied law means a law of New South Wales as in force in the Territory under section 18A of the *Norfolk Island Act 1979* of the Commonwealth.

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

continued law means:

- (a) a law continued in force in the Territory by section 16 of the *Norfolk Island Act 1979* of the Commonwealth; or
- (b) a Legislative Assembly law, or a law made under a Legislative Assembly law, continued in force in the Territory by section 16A of that Act.

video link means facilities that enable audio and visual communication between persons in different places.

43AM After section 28

Insert:

28A Exercise of powers etc. by Magistrate anywhere in Australia

- (1) A Magistrate may, anywhere in Australia (whether in the Territory or not), exercise a power, or perform a function, that is conferred on him or her by or under a law in force in the Territory. It does not matter whether the power or function is conferred on the Magistrate as a judicial officer or in a personal capacity.

Note: Section 15 of the *Norfolk Island Act 1979* of the Commonwealth describes laws in force in the Territory.
- (2) If the power or function may be exercised or performed on application, the application may be made to the Magistrate when he or she is anywhere in Australia.
- (3) If the application is made to the Magistrate when either or both of the Magistrate and the applicant are outside the Territory, the application may be made by audio link, video link or any other means of communication (whether electronic or not).
- (4) If the exercise of the power, or the performance of the function, described in subsection (1) involves the Magistrate giving (however described) a document, the Magistrate may do so by post, fax or any other means of communication (whether electronic or not).
- (5) This section has effect despite:

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- (a) a continued law; and
 - (b) an applied law.

43AN At the end of section 33

Add:

- (4) This section does not limit section 33B (about sittings outside Norfolk Island).

43AO Subsections 33B(1) to (7)

Repeal the subsections, substitute:

- (1) For the purposes of hearing or determining a matter or conducting a proceeding, the Court may sit at a place in Australia outside the Territory, and at a time, that the Chief Magistrate thinks fit, if he or she is satisfied that the sitting of the Court at that place at that time is expedient and not contrary to the interests of justice.
- (2) At any time when a matter or proceeding is before the Court for hearing, determination or conduct at a sitting of the Court, the Chief Magistrate may order that the hearing, determination or conduct of the matter or proceeding be adjourned and continued at a sitting of the Court to be held at a specified place in Australia outside the Territory.

Note: The Court may sit in Australia outside the Territory only if the Chief Magistrate is satisfied as described in subsection (1).

- (3) At any time when a matter or proceeding is not before the Court for hearing, determination or conduct, the Chief Magistrate may:
 - (a) order:
 - (i) in any case—that the matter or proceeding be heard, determined, conducted or continued at a sitting of the Court to be held at a place that is in Australia outside the Territory and is specified in the order; or
 - (ii) if the Chief Magistrate had previously ordered that the matter or proceeding be heard, determined, conducted or continued at a sitting of the Court to be held at a place in Australia outside the Territory—that the matter or proceeding be heard, determined, conducted or continued at a sitting of the Court to be held in the Territory; and
 - (b) revoke any order previously made by the Chief Magistrate about the place of a sitting of the Court to be held for hearing, determining, conducting or continuing the matter or proceeding.

Note: The Court may sit in Australia outside the Territory only if the Chief Magistrate is satisfied as described in subsection (1).

- (4) If the Chief Magistrate makes an order under this section at the instance of a party to the matter or proceeding, the Chief Magistrate may give directions about serving a copy of the order on the other parties to the matter or proceeding.
- (5) The Court may allow a person to appear before it by audio link or video link if:
 - (a) the Court is sitting in the Territory and the person is outside the Territory; or
 - (b) the Court is sitting outside the Territory (whether the person is in the Territory or not).
- (6) If an order is made under this section affecting the place of a sitting of the Court, the Court's power to discharge a person upon entry into a recognisance to appear

at a time and place specified in the recognisance extends to imposing a condition that the person appear at the place the Court is to sit (whether that place is in or outside the Territory).

43AP Subsection 33B(9)

Repeal the subsection, substitute:

- (9) This section has effect despite:
- (a) a continued law; and
 - (b) an applied law.

2 In the appropriate position in Part 2 of Schedule 1

Insert:

Division 10—Application provisions relating to the Norfolk Island Continued Laws Amendment (Chief Magistrate) Ordinance 2017

366 Application of amendments of the *Court of Petty Sessions Act 1960* (Norfolk Island) by the *Norfolk Island Continued Laws Amendment (Chief Magistrate) Ordinance 2017*

- (1) Section 28A of the *Court of Petty Sessions Act 1960* (Norfolk Island) applies in relation to the exercise of a power, or the performance of a function, on or after the commencement of that section. This subitem has effect:
- (a) whether the power or function was conferred before, on or after that commencement; and
 - (b) if the exercise or performance is a result of an application—whether the application was made before, on or after that commencement.
- (2) The amendments of sections 33 and 33B of the *Court of Petty Sessions Act 1960* (Norfolk Island) made by the *Norfolk Island Continued Laws Amendment (Chief Magistrate) Ordinance 2017* apply in relation to sittings to be held on or after the commencement of those amendments (whether the matters or proceedings to which the sittings relate started before, on or after that commencement).