



## **Norfolk Island Continued Laws Amendment (2017 Measures No. 3) Ordinance 2017**

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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 16 November 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Darren Chester  
Minister for Infrastructure and Transport

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
	<b>Schedule 1—Amendment of the Child Welfare Act 2009 (Norfolk Island)</b>	<b>2</b>
	<i>Norfolk Island Continued Laws Ordinance 2015</i>	2
	<b>Schedule 2—Amendment of the Criminal Code 2007 (Norfolk Island)</b>	<b>5</b>
	<i>Norfolk Island Continued Laws Ordinance 2015</i>	5
	<b>Schedule 3—Application of amendments</b>	<b>10</b>
	<i>Norfolk Island Continued Laws Ordinance 2015</i>	10



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## 1 Name

This Ordinance is the *Norfolk Island Continued Laws Amendment (2017 Measures No. 3) 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.

<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. The whole of this Ordinance	The day after this Ordinance is registered.	21 November 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Note: This table relates only to the provisions of this Ordinance as originally made.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Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.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—Amendment of the Child Welfare Act 2009 (Norfolk Island)**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **1 After item 29 of Schedule 1**

Insert:

#### **29AAA At the end of Chapter 3**

Add:

#### **23A General nature of proceedings under this Act**

- (1) Proceedings under this Act are not to be conducted in an adversarial manner.
- (2) Proceedings under this Act are to be conducted with as little formality and legal technicality as the circumstances of the case permit.
- (3) In proceedings under this Act, the court is not bound by the rules of evidence unless the court determines that the rules of evidence, or such of those rules as are specified by the court, are to apply to the proceedings or parts of the proceedings.
- (4) In proceedings under this Act, the standard of proof is proof on the balance of probabilities.
- (5) Without limiting subsection (4), any requirement under this Act that the court be satisfied as to a particular matter is a requirement that the court be satisfied on the balance of probabilities.
- (6) In this section:

*proceedings under this Act* does not include proceedings relating to an offence against this Act.

#### **2 After item 30 of Schedule 1**

Insert:

#### **30AA After subsection 27(9)**

Insert:

- (9A) If the child welfare officer furnishes information to a defined entity under this section, the defined entity is authorised, for the purposes of the *Privacy Act 1988* of the Commonwealth, to collect the information.

#### **30AB Subsection 27(10)**

After “give”, insert “or collect”.

#### **30AC Subsection 27(11) (paragraph (j) of the definition of *defined entity*)**

Repeal the paragraph, substitute:

- (j) a Department of State of the Commonwealth, or of a State or Territory;

- (k) a person contracted by a defined entity:
    - (i) to provide health care, welfare, education or residential services to children or young people; or
    - (ii) to assist the child welfare officer in exercising a function or power under this Act; or
    - (iii) to assist the defined entity in connection with the administration of this Act;
  - (l) a body determined by the Commonwealth Minister under subsection (12).
- A reference in this section to a defined entity includes a reference to any part (however described) of the defined entity.

### **30AD At the end of section 27**

Add:

- (12) The Commonwealth Minister may, by legislative instrument, determine a body (including an unincorporated body) for the purposes of paragraph (l) of the definition of *defined entity* in subsection (11).

### **3 Items 30B and 31 of Schedule 1**

Repeal the items, substitute:

#### **31 Section 32**

Repeal the section, substitute:

#### **32 Delegation by child welfare officer**

The child welfare officer may delegate the child welfare officer's functions or powers under this Act or an interstate law to:

- (a) an employee under the *Norfolk Island Health and Residential Aged Care Service Act 1985*; or
- (b) a person with expertise in the provision of child welfare services who is approved, in writing, by the Commonwealth Minister; or
- (c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note For the making of delegations and the exercise of delegated functions, see sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* of the Commonwealth applying because of section 8A of the *Interpretation Act 1979*.

### **4 Item 31E of Schedule 1**

Repeal the item, substitute:

#### **31E Subsections 85(4) and (5)**

Repeal the subsections.

#### **31EA After subsection 90(3)**

Insert:

- (3A) To avoid doubt, the premises and places in which a child or young person may be provided with care and protection under this section include premises and places outside Norfolk Island.

**31EB Subsections 92(4) and (5)**

Repeal the subsections.

**5 After item 32 of Schedule 1**

Insert:

**32A After section 193**

Insert:

**193A Notifying child welfare officer of certain convictions**

- (1) If a person is convicted in the court of Petty Sessions of an offence covered by subsection (3), the Clerk of the court must, as soon as practicable, notify the child welfare officer of the conviction.
- (2) If a person is convicted in the Supreme Court of an offence covered by subsection (3), the Registrar of the court must, as soon as practicable, notify the child welfare officer of the conviction.
- (3) An offence is covered by this subsection if it is an offence against any of the following provisions of the *Criminal Code 2007* that is committed against or with a child or young person:
  - (a) Part 3.6 (sexual offences);
  - (b) Part 3.7 (child pornography);
  - (c) Part 3.9 (female genital mutilation);
  - (d) Part 3.10 (sexual servitude).



## **Schedule 2—Amendment of the Criminal Code 2007 (Norfolk Island)**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **1 Item 53A of Schedule 1**

Repeal the item, substitute:

##### **53A Section 5**

Repeal the section.

##### **53AA Subsection 6(1)**

After “The”, insert “main”.

##### **53AB Subsection 6(1)**

Omit “Norfolk Island laws”, substitute “Norfolk Island legislation”.

##### **53AC Subsection 6(2)**

Omit “It contains all the general principles of criminal responsibility that apply to any offence”, substitute “This Chapter contains all the general principles of criminal responsibility that apply to any offence against Norfolk Island legislation”.

##### **53AD Section 7**

Omit “Norfolk Island laws”, substitute “Norfolk Island legislation”.

##### **53AE At the end of section 7**

Add:

Note: Part 2.7 also applies to offences against applied NSW laws.

#### **2 Item 53B of Schedule 1 (heading to section 8)**

Repeal the heading, substitute:

#### **8 Certain provisions of this Chapter do not apply to certain pre-2008 offences**

#### **3 Item 53B of Schedule 1 (subsection 8(1))**

Omit “from the commencement of this section until 30 June 2018,”.

#### **4 After item 53B of Schedule 1**

Insert:

##### **53BA Section 9**

Repeal the section.

#### **5 After item 53CA of Schedule 1**

Insert:

**53CB At the end of subsection 62(1)**

Add:

Note: The definition of *offence* (together with the definition of *law*) in the dictionary at the end of this Act means that this subsection applies this Part to offences against Norfolk Island legislation (but not to offences against applied NSW laws). Subsection (1A) extends the application of this Part to offences against applied NSW laws.

**53CC After subsection 62(1)**

Insert:

(1A) This Part also:

- (a) applies in relation to an offence against an applied NSW law in the same way as this Part applies in relation to an offence or an offence against a law; and
- (b) applies in relation to an applied NSW law in the same way as this Part applies in relation to a law.

Note: An offence against an applied NSW law is not covered by the definition of *offence* in the dictionary at the end of this Act. An applied NSW law is not covered by the definition of *law* in the dictionary at the end of this Act.

**53CD Before paragraph 87(2)(a)**

Insert:

- (aa) chokes, suffocates or strangles another person; or

**6 After item 53DA of Schedule 1**

Insert:

**53DB At the end of Part 3.6**

Add:

**121A Procuring a young person for a child sex offence**

- (1) A person (the *defendant*) commits an offence if:
  - (a) the defendant procures another person (the *young person*) for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and
  - (b) the young person is someone:
    - (i) who is under the age of 10 years; or
    - (ii) who the defendant believes to be under the age of 10 years; and
  - (c) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 15 years.

- (2) A person (the *defendant*) commits an offence if:
  - (a) the defendant procures another person (the *young person*) for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and
  - (b) the young person is someone:
    - (i) who is under the age of 16 years; or
    - (ii) who the defendant believes to be under the age of 16 years; and

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(c) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to subparagraph (1)(b)(i), paragraph (1)(c), subparagraph (2)(b)(i) and paragraph (2)(c).

Note: For absolute liability, see section 24.

- (4) A person may be found guilty of an offence against subsection (1) or (2) even if it is impossible for the act that constitutes or would constitute a child sex offence to take place.

- (5) For the purposes of subsections (1) and (2), it does not matter that the young person is a fictitious person represented to the defendant as a real person.

- (6) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence against subsection (2), he or she believed on reasonable grounds that the young person was of or above the age of 16 years.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

- (7) It is not an offence to attempt to commit, or to incite the commission of, an offence against subsection (1) or (2).

### **121B Grooming a person for a child sex offence**

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant engages in conduct in relation to a person (the *groomed person*); and
  - (b) the defendant does so with the intention of making it easier to procure a person (the *young person*), who need not be the groomed person, for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and
  - (c) the young person is someone:
    - (i) who is under the age of 10 years; or
    - (ii) who the defendant believes to be under the age of 10 years; and
  - (d) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 15 years.

- (2) A person (the *defendant*) commits an offence if:
- (a) the defendant engages in conduct in relation to a person (the *groomed person*); and
  - (b) the defendant does so with the intention of making it easier to procure a person (the *young person*), who need not be the groomed person, for an act that constitutes, or would if it occurred in Norfolk Island constitute, a child sex offence (whether or not involving the defendant); and
  - (c) the young person is someone:
    - (i) who is under the age of 16 years; or
    - (ii) who the defendant believes to be under the age of 16 years; and
  - (d) the defendant is of or above the age of 18 years.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to subparagraph (1)(c)(i), paragraph (1)(d), subparagraph (2)(c)(i) and paragraph (2)(d).

Note: For absolute liability, see section 24.

- (4) A person may be found guilty of an offence against subsection (1) or (2) even if it is impossible for the act that constitutes or would constitute a child sex offence to take place.
- (5) For the purposes of subsections (1) and (2), it does not matter that the groomed person or the young person is a fictitious person represented to the defendant as a real person.

- (6) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence against subsection (2), he or she believed on reasonable grounds that the young person was of or above the age of 16 years.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 59.

- (7) It is not an offence to attempt to commit, or to incite the commission of, an offence against subsection (1) or (2).

### 121C Definitions for procuring and grooming offences

In sections 121A and 121B:

*child sex offence* means an offence against:

- (a) this Part; or
- (b) Part 3.7 (child pornography); or
- (c) Part 3.10 (sexual servitude).

*procure* a person for an act that constitutes, or would constitute, a child sex offence includes:

- (a) encourage, entice or recruit the person in relation to such an act; or
- (b) induce the person (whether by threats, promises or otherwise) in relation to such an act.

### 53DC Subsection 129(5)

Omit “or 120(1)”, substitute “, 120(1), 121A(1) or 121B(1)”.

### 53DD Subsection 129(5)

Omit “or 120(2)” (wherever occurring), substitute “, 120(2), 121A(2) or 121B(2)”.

### 7 After item 54A of Schedule 1

Insert:

### 54B Subsection 375(1)

Omit “a territory law”, substitute “Norfolk Island legislation or an applied NSW law”.

**54C Section 377**

After “prosecution”, insert “of an offence against Norfolk Island legislation or an applied NSW law”.

**54D Section 378**

After “a trial”, insert “of an offence against Norfolk Island legislation or an applied NSW law”.

**8 After item 56 of Schedule 1**

Insert:

**56AA Dictionary**

Insert:

*applied NSW law* means a law in force in Norfolk Island in accordance with section 18A of the *Norfolk Island Act 1979* of the Commonwealth.

**9 After item 56A of Schedule 1**

Insert:

**56B Dictionary (definition of law)**

Repeal the definition, substitute:

*law* means Norfolk Island legislation or a provision of Norfolk Island legislation.

**56C Dictionary**

Insert:

*Norfolk Island legislation* means an enactment or legislation made under an enactment, except so far as the enactment:

- (a) is a section 19A Ordinance; and
- (b) has the effect (directly or indirectly) of:
  - (i) amending an applied NSW law so that the applied NSW law (as amended) provides for an offence; or
  - (ii) ending the suspension of the operation in Norfolk Island of an applied NSW law that provides for an offence.

Note: A section 19A Ordinance may indirectly have the effect of amending an applied NSW law by amending another section 19A Ordinance (e.g. the *Norfolk Island Applied Laws Ordinance 2016*) so it amends an applied NSW law. Likewise, a section 19A Ordinance may indirectly have the effect of ending the suspension of operation of an applied NSW law by amending another section 19A Ordinance so that it no longer suspends the operation of the applied NSW law.

## Schedule 3—Application of amendments

### *Norfolk Island Continued Laws Ordinance 2015*

#### 1 In the appropriate position in Part 2 of Schedule 1

Insert:

#### **Division 13—Application provisions relating to the Norfolk Island Continued Laws Amendment (2017 Measures No. 3) Ordinance 2017**

#### **374 Application of amendments of the Child Welfare Act 2009 (Norfolk Island)**

- (1) Section 23A of the *Child Welfare Act 2009* (Norfolk Island), as inserted by this Schedule, applies in relation to proceedings commenced on or after the commencement of Schedule 1 to the amending Ordinance.
- (2) Subsection 27(9A) of the *Child Welfare Act 2009* (Norfolk Island), as inserted by this Schedule, applies in relation to information that is furnished by the child welfare officer on or after commencement of Schedule 1 to the amending Ordinance, whether the information comes into the possession of the child welfare officer before, on or after that commencement.
- (3) Despite the repeal and substitution of section 32 of the *Child Welfare Act 2009* (Norfolk Island) by this Schedule, a delegation made under that section and in force immediately before the commencement of Schedule 1 to the amending Ordinance continues in effect, on and after that commencement, as if it had been made under that section as in force immediately after that commencement.
- (4) Section 193A of the *Child Welfare Act 2009* (Norfolk Island), as inserted by this Schedule, applies in relation to a person who is convicted of an offence on or after the commencement of Schedule 1 to the amending Ordinance, even if the offence was committed before that commencement.
- (5) In this item:  
***amending Ordinance*** means the *Norfolk Island Continued Laws Amendment (2017 Measures No. 3) Ordinance 2017*.