

EXPLANATORY STATEMENT

Ordinance No. , 2018

Issued by the authority of the Minister for Regional Development, Territories and Local Government

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (Child Welfare Officer) Ordinance 2018

Authority

The *Norfolk Island Act 1979* (the Act) provides for the government of the Territory of Norfolk Island.

Section 19A of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Continued Laws Amendment (Child Welfare Officer) Ordinance 2018* (the Ordinance) is made under section 19A of the Act. The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance) with the effect of amending the *Child Welfare Act 2009* (NI) (the Child Welfare Act).

Purpose and operation

The Ordinance amends a number of provisions in the Child Welfare Act to improve the governance arrangements for the delivery of child welfare services. This includes amending the powers of appointment to broaden the range of people or entities that can be appointed to the office of the Child Welfare Officer (CWO) and raising the seniority of the role, consistent with the importance of the powers and functions exercised by the office. This broadening of the categories of potential appointees provides greater flexibility in how the CWO role can be delivered, ensuring that child welfare arrangements can evolve and adapt to meet changing circumstances.

The Ordinance allows the Commonwealth Minister to determine the terms and conditions of an appointment of a CWO and to terminate, by written notice, the appointment of the CWO at any time. Given the importance of the CWO role, and the functions it provides, it is imperative that the Minister be able to appoint a person or entity to the role with the expertise and other resources to effectively carry out the statutory functions. The new provisions also ensure that the Minister is able to take swift action to replace the CWO if necessary to ensure the ongoing protection of children and young people on Norfolk Island.

The Ordinance allows the CWO to delegate their powers and functions under the Act to a broader range of people or entities who are appropriately qualified or experienced, including certain employees or contractors of, for example, a non-government organisation (NGO) or the Department of Infrastructure, Regional Development and Cities, to provide for a competent child protection service.

The Ordinance also enables the CWO to both share information with (for example, advice and documents), and request information from, a broader range of people, including employees and contractors of an NGO specialising in the delivery of child welfare services

(including in the case where the CWO is a Commonwealth employee). This allows the CWO to access information needed to effectively discharge their child welfare responsibilities.

Consultation

From September 2017, officers from the Department of Infrastructure, Regional Development and Cities and the Department of the Prime Minister and Cabinet consulted broadly on Norfolk Island in relation to child welfare arrangements. The Department of Infrastructure, Regional Development and Cities worked with the Norfolk Island Response Taskforce Expert Panel, the Department of the Prime Minister and Cabinet, the Australian Public Service Commission, the Department of Finance, and the Attorney-General's Department to develop the Ordinance.

Details of the Ordinance are set out in the Attachment.

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Ordinance will commence the day after registration.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Norfolk Island Continued Laws Amendment (Child Welfare Officer) Ordinance 2018

This Ordinance 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*.

Overview of the Ordinance

The purpose of the Ordinance is to amend the *Child Welfare Act 2009* (NI) (Child Welfare Act) to improve the governance arrangements for the delivery of child welfare services on Norfolk Island. This includes amending the powers of appointment to broaden the range of people or entities that can be appointed to the office of the Child Welfare Officer (CWO) and raising the level of seniority required in relation to the role, consistent with the powers and functions exercised by the office. For example, the Ordinance will allow for the appointment of an appropriately qualified and experienced senior officer in a Non-Government Organisation (NGO) as the CWO, as well as an employee or contractor of the Commonwealth, State or Territory governments. This broadening of the categories of potential appointees provides greater flexibility in how the CWO role can be delivered, ensuring that child welfare arrangements can evolve and adapt to meet changing circumstances.

The Ordinance will allow the Commonwealth Minister to determine the terms and conditions of an appointment of a CWO and to terminate, by written notice, the appointment of the CWO at any time. Given the importance of the CWO role, it is imperative that the Minister be able to appoint a person or entity to the role with the expertise and other resources to effectively carry out the statutory functions. This amendment will ensure that the Minister is able to take swift action to replace the CWO if necessary to ensure the protection of children and young people on Norfolk Island. Termination of the CWO appointment under this proposed provision would be subject to the usual procedural fairness requirements and judicial review processes.

The Ordinance will allow the CWO to delegate their powers and functions under the Act to a broader range of people or entities, but who must be appropriately qualified or experienced, including employees or contractors of, for example, an NGO or the Department of Infrastructure, Regional Development and Cities (in or acting in at least an Executive Level 2 position).

The Ordinance will also enable the CWO to both share information with (for example, advice and documents), and request information from, a broader range of people, including employees and contractors of an NGO specialising in the delivery of child welfare services (including in the case where the CWO is a Commonwealth employee). This will allow the CWO to access information needed to effectively discharge their child welfare responsibilities.

Human rights implications

This Ordinance engages the following rights:

- The rights of the child
- The right to privacy
- The right to work

The rights of the child

Article 3 of the Convention on the Rights of the Child (CROC) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. As a signatory to the CROC, Australia has undertaken to ensure children have the protection and care necessary for their wellbeing, and to ensure that the institutions, services and facilities responsible for the care or protection of children conform with relevant standards, particularly in the areas of safety, health, the number and suitability of their staff, and competent supervision.

The CWO of Norfolk Island, appointed by the Minister under the Child Welfare Act, performs a key role in protecting the interests of children on Norfolk Island. The CWO's functions include providing services to strengthen and support families in relation to the care and protection of their children, providing information to members of the community about developmental, social and safety issues affecting children and young people, and providing information to people who are required to report suspected abuse of children.

Given the importance of the CWO's role in protecting the interests of children, it is crucial that the Minister be given the authority to appoint a CWO who has the expertise and other resources to effectively carry out his or her statutory functions. Currently, the Minister is required to appoint an employee of the Norfolk Island public sector, or of the Norfolk Island Health and Residential Aged Care Service (NIHRACS), to be the CWO. However, the Norfolk Island public sector's functions are limited in scope (dealing primarily with local government matters), and neither the Norfolk Island public sector nor NIHRACS, as a health and aged care service, is properly equipped to support the CWO role.

This Ordinance proposes to amend the Child Welfare Act to broaden the options in relation to who the Minister may appoint to the position of CWO. Those who can be appointed to the role include an individual who the Minister is satisfied has suitable qualifications and experience to perform the CWO functions, a senior staff member or office holder in a body that specialises in providing child welfare services, or a senior staff member or office holder in a Commonwealth, State or Territory government department or authority.

These amendments ensure that the Minister can appoint a person to the role who has access to the support and resources of either the Commonwealth or a State or Territory-level government department or an NGO specialising in the delivery of child welfare services. Where the CWO is a government officer, he or she will be able to delegate functions and powers to executive level employees. Where the CWO is a senior staff member or office holder of an NGO, he or she will be able to delegate functions and powers to NGO employees and individuals engaged by the NGO to provide child welfare services.

By bolstering the level of organisational support available to the CWO, the Ordinance promotes the successful administration of child welfare services on Norfolk Island and thereby promotes the best interests of Norfolk Island children.

The right to privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, and that everyone has the right to the protection of the law against such interference. Article 16 of the CROC reiterates this right as it relates to children. The right to privacy comprises freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The Ordinance engages the right to privacy because it deals with matters pertaining to the family, and provides for the disclosure of personal information in certain circumstances. In particular, the Ordinance amends the classes of people who may be appointed to be the CWO, to whom the CWO may delegate functions and powers, and with whom the CWO may share information relating to the safety, welfare and wellbeing of a child or young person (child welfare information). Even if an interference with privacy is lawful, it will still be inconsistent with the right to privacy if the interference is 'arbitrary'.

The CWO's functions necessarily require the CWO to interfere in family matters where children or young people are considered at risk. For example, the CWO must consider reports about children or young persons who are suspected of being in need of care and protection, and to take whatever action is necessary to protect and promote the welfare of such children and young people. This might entail conducting appraisals of children and young people, providing support services for families, or developing, in consultation with parents, plans to meet the needs of children and young people and their families.

As outlined above, the Ordinance will allow the Minister to appoint, as the CWO, an individual with suitable qualifications and experience, or a senior officer or staff member in a government department, or an NGO specialising in the delivery of child welfare services. Where the CWO is a government officer, he or she will be able to delegate functions and powers to executive level employees. Where the CWO is a senior staff member or office holder of an NGO, he or she will be able to delegate functions and powers to NGO employees and individuals engaged by the NGO to provide child welfare services.

The purpose of the amendments to the classes of people who may perform the functions and powers of the CWO is to ensure the CWO has access to the expertise, resources and support required to effectively carry out his or her functions under the Child Welfare Act. The kinds of decisions that the CWO is required to make under that Act often carry significant consequences for children, young people and their families, and it is therefore appropriate that the CWO is able to consult and act with the assistance of others rather than operating in isolation.

Appropriate safeguards are in place in order to ensure that the CWO is accountable in the performance of his or her functions. For example, in making a decision or taking action under the Child Welfare Act, the CWO must act in the best interests of the child or young person. This principle is expressly articulated in section 12 of that Act. Section 13 of the Child Welfare Act provides guidance about how to exercise the best interests of the child principle in the context of that Act. For example, by taking into account the need to protect the child

concerned from harm, the importance of responding to the child's needs if he or she has been abused or neglected, and the attitudes to the child and to parental responsibilities demonstrated by the child's parents. In addition, the Minister has the power to issue directions to the CWO about the exercise of his or her functions (see paragraph 24(1)(b) of the Child Welfare Act). In the event that there are concerns about the CWO's conduct or performance, the Minister is able to take swift action to remove the CWO from office (see new paragraph 24(1)(c) of the Child Welfare Act).

Under the Child Welfare Act, the CWO may disclose information to, and seek information from, defined entities (see section 27). The Ordinance affects who may disclose information by amending the definition of 'defined entity' in subsection 27(11) of that Act. However, the substantive effect of the amendments is minimal. The definition of 'defined entity' already included Commonwealth, State and Territory government departments. The Ordinance expands the definition to include bodies that are not government departments but perform similar public and government functions.

The objective of the provisions allowing the CWO to share child welfare information with certain persons and bodies is to facilitate well-informed decisions by the CWO and other people who have a role in protecting the safety and wellbeing of children and young people, and to facilitate a coordinated response to risks of harm to children and young people. Consultation between service-providers is fundamental to best-practice administration of the child protection system on Norfolk Island and is in the best interests of the children concerned. For this reason, the exchange of child welfare information under the Child Welfare Act serves a legitimate purpose.

Again, safeguards have been put in place to protect personal information. Aside from being subject to the best interests of the child principle in section 12 of the Child Welfare Act, defined entities are also limited by section 186 of that Act in how they handle any information disclosed to them. Section 186 provides that any recording or on-disclosure of the information must be for the purposes of the Child Welfare Act or as required by law. The amendment to section 187 ensures that delegates of the CWO are subject to the same offence provision as the CWO if they make a record of, or divulge or communicate, certain information for a purpose other than to exercise a function under that Act. Restrictions under the *Privacy Act 1988* also apply to the handling of the information.

For the reasons outlined above, to the extent that the Ordinance interferes with privacy it does so only as necessary to support legitimate objectives promoting the best interests of children and young people, and contains safeguards to ensure that the impact on privacy is reasonable and proportionate to those objectives. In light of these factors, the interference with privacy is not 'arbitrary', and is therefore consistent with the right to privacy.

The right to work

Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to work, which encompasses the right not to be unjustly deprived of work, requiring security against unfair dismissal.

This Ordinance may be construed as engaging the right to work because it amends the Child Welfare Act to allow the Minister to terminate the appointment of the CWO at any time by written notice. This provision has been included to ensure that the Minister is able to take swift action to replace the CWO if necessary to ensure the protection of children and young people on Norfolk Island.

However, under the terms of section 24 of that Act, as amended, it is envisaged that the individual appointed to the position of CWO would likely be a senior employee or officer in a government department, or an NGO. As such, their position as CWO is unlikely to be their sole function, similarly to the way in which the Director-General of the ACT Community Services Directorate performs statutory functions under the *Children and Young People Act 2008* (ACT) while also performing a range of other functions. The CWO is unlikely to be relying upon income derived from their appointment as CWO as their sole source of income.

In addition, the terms and conditions of the CWO's engagement would be dealt with in the CWO's contract of engagement. That contract would deal with matters such as termination payments that may be payable if the CWO's employment is terminated without cause. It is expected that the CWO will be an experienced and relatively sophisticated professional with the capacity to effectively negotiate appropriate terms of engagement for the role. Moreover, the termination of an appointment under this provision would be subject to procedural fairness requirements and judicial review.

For these reasons, the Ordinance is consistent with the right to work.

Conclusion

In conclusion, the Ordinance is compatible with human rights in that it promotes the rights of the child and is consistent with the right to privacy and the right to work.

**Norfolk Island Continued Laws Amendment (Child Welfare Officer)
Ordinance 2018**

Section 1—Name

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (Child Welfare Officer) Ordinance 2018*.

Section 2—Commencement

This section provides that the Ordinance commences on the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

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

Section 4—Schedules

This section gives effect to the items contained in the Schedule to the Ordinance.

Schedule 1—Amendments

Schedule 1 amends the *Norfolk Island Continued Laws Ordinance 2015* in order to amend the *Child Welfare Act 2009* (NI) (the Act).

Item 1

Item 1 repeals old paragraph 24(1)(a) of the Act and replaces it with new paragraphs 24(1)(a), 24(1)(aa) and 24(1)(ab).

This amendment affects who the Minister may appoint to be the Child Welfare Officer (CWO) of Norfolk Island, and the terms and conditions of that appointment.

Under paragraph 24(1)(a), the Minister can appoint a Norfolk Island public sector employee, or an employee under the *Norfolk Island Hospital Act 1985* (NI) (now known as the *Norfolk Island Health and Residential Aged Care Service Act 1985* (NI)), to be the CWO.

Under paragraph 24(1)(a) as amended, the Minister can appoint, to be the CWO, someone who the Minister is satisfied has suitable qualifications and experience to perform the functions of the CWO, or an individual holding a senior position in a body that specialises in providing child welfare services, or a senior employee or office holder in a Commonwealth, State or Territory department or authority. Paragraph 24(1)(aa) provides that the Minister may only appoint a senior employee or office holder in a State or Territory department or authority if that department or authority has child welfare functions and also agrees to the appointment. Under paragraph 24(1)(ab), the Minister can determine the terms and conditions of the CWO's appointment, including remuneration and allowances.

The CWO plays a central role in protecting the interests of children on Norfolk Island. Given the importance of the role, it is imperative that the Minister be given the authority to appoint a CWO who has the expertise and other resources to effectively carry out his or her statutory functions. Previous appointment provisions required the CWO to be a Norfolk Island public sector employee, or an employee of the Norfolk Island Health and Residential Aged Care Service (NIHRACS). However, the Norfolk Island public sector's functions are limited in

scope (dealing primarily with local government matters), and NIHRACS' focus is on providing health and aged care services. Neither is properly equipped to support the CWO role.

The Ordinance ensures that the Minister can appoint a person to the role of CWO who has the support and resources of either the Commonwealth or a State or Territory-level government department or non-government organisation (NGO) specialising in the delivery of child welfare services. By bolstering the level of organisational support available to the CWO, the Ordinance supports improved child welfare outcomes for Norfolk Island.

Item 2

Item 2 repeals paragraph 24(1)(c) of the Act and replaces it with a new paragraph 24(1)(c). Paragraph 24(1)(d) was repealed by a previous Ordinance, and the repeal of that paragraph is reproduced in item 2 for the purposes of clear presentation only.

Item 2 affects the circumstances in which the Minister may terminate the appointment of the CWO.

Under previous paragraph 24(1)(c), the Minister could terminate the appointment of the CWO on the grounds of misbehaviour, or on the grounds that the CWO had failed to properly carry out the functions and responsibilities of the Act, or had been criticized or rebuked by the court in respect of decisions made or purported to have been made in accordance with that Act.

Under the new paragraph 24(1)(c), the Minister can terminate the appointment of the CWO by written notice at any time for any reason.

This Ordinance ensures that the Minister is able to take swift action to replace the CWO if necessary to ensure the protection of children and young people on Norfolk Island. However, termination of an appointment under this provision is subject to the usual procedural fairness requirements and judicial review processes. In addition, it is envisaged that the CWO's employment contract would deal with matters such as termination payments.

Item 3

Item 3 amends section 26 of the Act.

This amendment affects who the CWO can get assistance from in performing his or her duties under the Act.

Under previous subsection 26(1), the CWO could request a Norfolk Island public sector agency to provide information, advice, guidance, assistance, documents, facilities or services relevant to the physical or emotional welfare of children and young people. Subsection 26(2) required the public sector agency to promptly comply with any request.

Under subsection 26(1) as amended, the CWO can request any defined entity, within the meaning of subsection 27(11) of the Act, for information, advice, guidance, assistance, documents, facilities or services relevant to the physical or emotional welfare of children and young people. Under subsection 26(2) as amended, certain defined entities are required to comply with a request by the CWO, whereas other defined entities have discretion whether to comply.

Defined entities who are required to comply with a request by the CWO include:

- a Norfolk Island public body or office-holder
- NIHRACS
- the Norfolk Island Police Force
- the Norfolk Island Central School
- a Commonwealth, State or Territory statutory body or statutory office holder, and
- a Commonwealth department or authority, or a person contracted by any of those entities to provide health care, welfare, education or residential services to children or young people, or to assist the CWO or otherwise assist with the administration of the Act.

Defined entities who have discretion whether to comply with a request by the CWO include:

- a person with parental responsibility for, or a carer of, a child or young person
- a Minister, or a State or Territory department or authority
- a person contracted to a State or Territory department or authority, or
- any body that the Minister determines to be a defined entity under subsection 27(12).

Subsections 26(3) and (4) exempt State or Territory departments and authorities, and persons acting on behalf of such departments and authorities, from laws limiting the disclosure of information if those laws state that the limitation is subject to an exemption in a Norfolk Island law. That is to say, if a state or territory law generally prohibits the disclosure of certain information, but provides an exception for situations in which the disclosure is permitted by a State or Territory law, then a State or Territory department or authority may disclose information in response to a request by the CWO.

The purpose of these provisions is to facilitate consultation and co-ordination between persons and bodies involved in providing services to children and young persons. Providing a unified response to the needs of children and young people is in the best interests of the children and young people concerned.

Item 4

Item 4 amends the definition of ‘defined entity’ in subsection 27(11) of the Act by repealing previous paragraph (c) of the definition and replacing it with new paragraphs (c) to (cb).

This clarifies the existing reference to the Norfolk Island public sector.

Previous paragraph (c) of the definition referred to ‘a public sector agency’. That term was previously defined in the *Public Sector Management Act 2000* (NI), which is now repealed. The former definition in the *Public Sector Management Act 2000* (NI) provided that ‘public sector agency’ meant the public service, a territory instrumentality, or a statutory office holder. New paragraphs (c) to (cb) therefore replace the reference to ‘a public sector agency’ with similar references to ‘the public service’, ‘a territory instrumentality’ and ‘a holder of an office established by an enactment’. The terms ‘public service’, ‘territory instrumentality’ and ‘enactment’ are defined in section 12 of the *Interpretation Act 1979* (NI). Taking into consideration those definitions, new paragraphs (c) to (cb) of the definition of ‘defined entity’ refer to employees of the Norfolk Island Regional Council, persons occupying offices established by Norfolk Island laws, certain body corporates established under Norfolk Island laws, and employees of those body corporates.

Item 5

Item 5 amends the definition of ‘defined entity’ in subsection 27(11) of the Act by repealing previous paragraph (j) of the definition and replacing it with new paragraphs (j) and (ja).

This affects the description of Commonwealth and State and Territory public sectors.

Previous paragraph (j) of the definition referred to ‘a Department of State of the Commonwealth, or of a State or Territory’. New paragraphs (j) and (ja) replace the reference to ‘a Department of State of the Commonwealth, or of a State or Territory’ with a reference to ‘a Department of State or other body that is a part, or authority, of the Commonwealth’ and ‘Department of State or other body that is a part, or authority, of a State or Territory’.

These provisions serve two main purposes. First, to expand the definition of ‘defined entity’ to include bodies that are not Commonwealth, State or Territory departments but have similar kinds of public functions to those departments. Secondly, to separate out Commonwealth bodies from State and Territory bodies so that they can be dealt with separately for the purposes of section 26. This is necessary because Commonwealth bodies may be compelled to assist the CWO under subsection 26(2), whereas State and Territory bodies may not.

The objective of the provisions allowing the CWO to share child welfare information with certain persons and bodies is to facilitate well-informed decisions by the CWO and other people who have a role in protecting the wellbeing of children and young people, and to facilitate a coordinated response to risks of harm to children and young people. Consultation between service-providers is fundamental to best-practice administration of the child protection system on Norfolk Island and is in the best interests of the children concerned.

Item 6

Item 6 renumbers section 32 as subsection 32(1). This is consequential on the addition of subsection 32(2) by item 8. It has no substantive effect.

Item 7

Item 7 amends section 32 of the Act by repealing existing paragraph 32(c) and replacing it with new paragraphs 32(1)(c) and (d).

This affects the power of the CWO to delegate his or her functions and powers under the Act.

Existing paragraph 32(c) provided that the CWO could delegate his or her functions or powers to an APS employee who held, or was acting in, an Executive Level 2, or equivalent, position in the Department.

New paragraph 32(c) provides that the CWO may delegate his or her functions or powers to an individual who holds or performs the duties of a senior position or office of a Commonwealth, State or Territory department or authority and has suitable qualifications and experience to perform the functions or exercise the powers under the Act or the interstate law. The term ‘interstate law’ is defined in the Dictionary to the Act. It refers to a law that is declared to be an interstate law for Chapter 6 (Transfer of child care and protection orders and proceedings), or a law of a State that corresponds to Chapter 6. New paragraph 32(d) also provides that, if the CWO is an individual who holds a senior position in a body specialising in the provision of child welfare services, he or she may also delegate powers and functions to an employee or contractor of that body.

The purpose of these delegation provisions is to ensure that the CWO is not required to act in isolation, but is able to rely on a team of suitably qualified people in order to administer the child welfare system on Norfolk Island. The delegation powers also provide flexibility to accommodate different child welfare service delivery models, and provide options for dealing with temporary staff vacancies to ensure continuity of services on Norfolk Island. The provisions are drafted to ensure that people performing functions hold suitable qualifications and experience by either requiring that directly, or in the case of a delegation within an organisation, requiring that the organisation is one that specialises in providing or facilitating the provision of child welfare services.

Item 8

Item 8 amends section 32 by adding new subsection 32(2).

This provision clarifies the arrangements relating to the delegation of functions and powers by the CWO.

New subsection 32(2) provides that, if the CWO purports to delegate a function or power to a senior officer or staff member of a Commonwealth, State or Territory department or authority, that officer or staff member would not need to accept the function or power delegated.

Item 9

Item 9 amends sections 186 and 187 of the Act.

These provisions affect disclosures of confidential information under the Act.

Item 9 authorises a person who acquires information or a document under the Act to make a record of the information or document, or divulge or communicate the information or document to any person, if the recording, divulging or communication is for the purposes of the Act or as required by law.

This amendment ensures that the *Privacy Act 1988* does not operate to prohibit the disclosure of information for legitimate purposes pursuant to the administration of the Act. Current subsection 186(1) ensures that a person is liable for an offence if they divulge information otherwise than for the purposes of the Act or as required by another law.

Item 9 also amends section 187 to insert a reference to a delegate of the CWO. Section 187 prohibits current and former CWOs, and other officers or authorised persons, from divulging certain information obtained under the Act. New section 187 ensures that the prohibition applies to a delegate of the CWO in the same way as it applies to the CWO.