



Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018

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 27 September 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Sussan Ley
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

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1 Name

This Ordinance is the *Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018*.

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.	29 September 2018

Note: This table relates only to the provisions of this Ordinance as originally made.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 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Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.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—Applying NSW domestic violence laws

Part 1—Application and amendment of NSW domestic violence laws

Norfolk Island Applied Laws Ordinance 2016

1 Subitem 1(3) of Schedule 1 (table)

Insert:

<i>Crimes (Domestic and Personal Violence) Act 2007</i>	The day the <i>Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018</i> commences.
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2 Subitem 1(3) of Schedule 1 (table)

Insert:

<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	The day the <i>Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018</i> commences.
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3 After Schedule 1A

Insert:

Schedule 1AAA—Amendment of the Crimes (Domestic and Personal Violence) Act 2007 (NSW) and the Crimes (Domestic and Personal Violence) Regulation 2014 (NSW)

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

1 Subsection 3(1)

Insert:

Australian legal practitioner means:

- (a) a barrister; or
- (b) a solicitor; or
- (c) a barrister and solicitor.

2 Subsection 3(1) (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means a Magistrate.

3 Subsection 3(1) (definition of *Children’s Magistrate*)

Repeal the definition.

4 Subsection 3(1)

Insert:

Commissioner of Police means the police officer in charge in Norfolk Island.

5 Subsection 3(1) (definition of court)

Repeal the definition, substitute:

court means the Court of Petty Sessions exercising jurisdiction under section 91.

Note 1: To exercise jurisdiction, the court must be constituted by the Chief Magistrate or 3 Magistrates: see section 8 of the *Court of Petty Sessions Act 1960* of Norfolk Island.

Note 2: In some sections, *court* is given a different meaning.

6 Subsection 3(1)

Insert:

Court of Petty Sessions means the Court of Petty Sessions of Norfolk Island.

Magistrate means a Magistrate of the Court of Petty Sessions.

Norfolk Island means the Territory of Norfolk Island.

7 Subsection 3(1) (definition of Registrar)

Repeal the definition, substitute:

Registrar means a Magistrate.

Note: In some sections, *Registrar* is given a different meaning.

8 Subsection 3(1)

Insert:

Secretary of the Department of Family and Community Services means the child welfare officer appointed under section 24 of the *Child Welfare Act 2009* of Norfolk Island.

Supreme Court means the Supreme Court of Norfolk Island.

9 Subsection 3(4)

Omit “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”, substitute “section 10 or 11 of the *Sentencing Act 2007* of Norfolk Island”.

10 Paragraph 4(a)

Repeal the paragraph, substitute:

- (a) an offence against any of the following provisions of the *Criminal Code 2007* of Norfolk Island:
- (i) Part 3.1 (unlawful killing) or 3.3 (endangering life and health), other than section 88 (culpable driving);
 - (ii) Part 3.4 (offences concerning children), other than section 103 (concealment of birth);
 - (iii) Part 3.6 (sexual offences);

- (iv) section 122 (using child for production of child pornography) or 125 (using the internet, etc. to deprave young people);
- (v) Part 3.9 (female genital mutilation);
- (vi) section 138 (sexual servitude);
- (vii) Division 3.11.2 (criminal damage to property) or 3.11.4 (causing public alarm);
- (viii) section 186, 187, 188 or 189 (robbery and burglary offences);
- (ix) Part 4.5 (blackmail) or 5.1 (property damage), other than section 261 (causing bushfires);
- (x) section 271 (unauthorised access, modification or impairment of computer data with intent to commit serious offence), to the extent that the serious offence referred to in that section is an offence against any of the other provisions covered by this paragraph or against section 13 of this Act;
- (xi) section 358 or 359 (possession of offensive weapons and disabling substances) or 360 (possession of knife in public place or school); or

11 Paragraph 4(b1)

Repeal the paragraph.

12 Paragraph 4(c)

Omit “, (b) or (b1)”, substitute “or (b)”.

13 Subsection 9(3)

Omit “Parliament recognises”, substitute “the following are recognised”.

14 Paragraphs 9(3)(a) to (f1)

Omit “and” (last occurring).

15 Sections 21 and 24A

Repeal the sections.

16 Subsection 28(2)

Repeal the subsection.

17 Subsection 28A(3)

Omit “Local Area Commander of Police at which the defendant may serve an application”, substitute “court to which the defendant may apply”.

18 Paragraph 29(3)(a)

Omit “on a domestic violence list at”, substitute “for hearing by”.

19 Subsection 33A(4)

Omit “Local Area Commander of Police”, substitute “Commissioner of Police”.

20 Subsection 39(3) (definition of court)

Repeal the definition, substitute:

court includes the Supreme Court.

21 Subsection 40(4)

Omit “District Court or the Supreme Court in respect of a serious offence is admissible in the Local Court or Children’s Court”, substitute “Supreme Court in respect of a serious offence is admissible in the Court of Petty Sessions”.

22 Subsection 40(4A)

Omit “the District Court and”.

23 Paragraph 40(5)(b)

Omit “, manslaughter or an offence under section 25A of the *Crimes Act 1900*”, substitute “or manslaughter”.

24 Paragraph 40(5)(c)

Repeal the paragraph, substitute:

(c) an offence against section 77, 78, 79, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118 or 119 of the *Criminal Code 2007* of Norfolk Island; or

25 Paragraph 40(5)(f)

Omit “another State or a Territory”, substitute “a State or another Territory”.

26 Subsections 40A(1) and (2)

Omit “Children’s Court”, substitute “court”.

27 Subsection 40A(2)

Omit “the Court”, substitute “the court”.

28 Subsection 40A(3)

Omit “Children’s Court”, substitute “court”.

29 Subsection 40A(3)

Omit “the Court”, substitute “the court”.

30 Subsection 40A(4)

Omit “Children’s Court”, substitute “court”.

31 Subsection 40A(5)

Omit “Children’s Court”, substitute “court”.

32 Subsection 40A(8)

Repeal the subsection, substitute:

(8) Chapter 7 of the *Child Welfare Act 2009* of Norfolk Island (about appeals) applies in relation to an apprehended violence order made under this section as if the order had been made under Chapter 5 of that Act.

33 Subsection 40A(9) (definition of care proceedings)

Repeal the definition, substitute:

care proceedings means proceedings relating to an application for a care and protection order as defined in section 59 of the *Child Welfare Act 2009* of Norfolk Island.

34 Subsection 40A(9) (definition of *relative*)

Repeal the definition, substitute:

relative of a child means a person who would be the relative of the child under the *Children and Young Persons (Care and Protection) Act 1998* if paragraph (d) of the definition of *relative* in subsection 3(1) of that Act referred to the *Adoption of Children Act 1932* of Norfolk Island (instead of the *Adoption Act 2000*).

35 Subsection 41(5)

Omit “Divisions 3 and 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”, substitute “Chapter 6 of the *Criminal Procedure Act 2007* of Norfolk Island”.

36 Subsection 41(6)

Omit “Division 3 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”, substitute “Chapter 6 of the *Criminal Procedure Act 2007* of Norfolk Island”.

37 Subsection 41(6)

Omit “criminal proceedings”, substitute “proceedings mentioned in that Chapter”.

38 Subsection 45(7)

Omit “District Court” (wherever occurring), substitute “Supreme Court”.

39 Subsection 45(8) (definition of *court*)

Repeal the definition, substitute:

court includes the Supreme Court.

40 Section 47

Repeal the following definitions:

- (a) definition of *authorised officer*;
- (b) definition of *court*;
- (c) definition of *Magistrate*.

41 Section 47 (definition of *rules*)

Repeal the definition, substitute:

rules means rules of court relating to the Court of Petty Sessions made under the *Court of Petty Sessions Act 1960* of Norfolk Island or the *Court Procedures Act 2007* of Norfolk Island.

42 Paragraph 48(2)(a1)

Omit “, in the case of a person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force”.

43 Subsection 48(7)

Omit “, 78(1) and 84(6)”, substitute “and 78(1)”.

44 Subsection 53(8)

Repeal the subsection.

45 Section 55

After “the rules” (wherever occurring), insert “(if any)”.

46 Sections 70 and 71

Repeal the sections, substitute:

71 Warrants of arrest and warrants of commitment

Division 5 of Chapter 3 of the *Criminal Procedure Act 2007* of Norfolk Island applies, with any necessary modifications, in relation to a warrant of arrest, or warrant of commitment, issued under this Act.

47 Section 72

Insert:

court means:

- (a) in relation to:
 - (i) an application involving a final apprehended violence order made by the Supreme Court; or
 - (ii) a final apprehended violence order made by the Supreme Court; the Supreme Court; or
- (b) in relation to:
 - (i) an application involving an order made by the Court of Petty Sessions or a Magistrate; or
 - (ii) a final apprehended violence order made by the Court of Petty Sessions; or
 - (iii) an interim court order made by the Court of Petty Sessions or a Magistrate; the Court of Petty Sessions.

48 Section 72 (paragraph (b) of the definition of *interested party*)

Omit “, in the case of a protected person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force”.

49 Paragraph 72B(2)(b)

Omit “*Children and Young Persons (Care and Protection) Act 1998*”, substitute “*Child Welfare Act 2009* of Norfolk Island”.

50 Subsection 75(2) (definition of *court*)

Omit “District Court”, substitute “Supreme Court”.

51 Before section 76

Insert:

75A Definition of court

In this Division:

court, in relation to the making, variation or revocation of an order, means a court that is empowered by a provision of this Act outside this Division to make, vary or revoke (as appropriate) the order.

Note: Provisions outside this Division empower the Court of Petty Sessions to make, vary or revoke orders of all kinds mentioned in this Division. Provisions outside this Division empower the Supreme Court, in limited circumstances involving serious offences, to make or vary a final apprehended violence order or an interim court order.

52 At the end of section 77

Add:

(9) Despite section 3, in this section:

Registrar means:

- (a) in relation to the Supreme Court—the Registrar of the Supreme Court; or
- (b) in relation to the Court of Petty Sessions—the Clerk of the Court of Petty Sessions.

53 Subsection 78(4)

Repeal the subsection.

54 Section 83

Repeal the section, substitute:

83 Application of the *Bail Act 2005* of Norfolk Island

If:

- (a) an application for a final apprehended violence order or interim court order is made; and
- (b) the defendant:
 - (i) is arrested under a warrant issued under this Act; or
 - (ii) first appears before a court in answer to a direction to appear given under this Act;

the *Bail Act 2005* of Norfolk Island applies to the defendant as if the defendant were an accused person charged with an offence.

55 Section 84

Repeal the section, substitute:

84 Appeals relating to apprehended violence orders

- (1) An appeal may be made to the Supreme Court:
 - (a) by the defendant against the making of a final apprehended violence order by the Court of Petty Sessions; or
 - (b) by the applicant for a final apprehended violence order (or, if the applicant was a police officer, by either the applicant or the person for whose protection the order would have been made) against the dismissal of the application by the Court of Petty Sessions; or

- (c) by the applicant for an apprehended violence order or a defendant against the awarding of costs under section 99; or
- (d) by a party to an apprehended violence order against the variation or revocation of the order by the Court of Petty Sessions; or
- (e) by a party to an apprehended violence order against a refusal by the Court of Petty Sessions to vary or revoke the order; or
- (f) by a party to a non-local domestic violence order against the variation or revocation of the order by the Court of Petty Sessions or against a refusal of the Court of Petty Sessions to vary or revoke the order.

(2) Sections 231, 232 and 234 of the *Court of Petty Sessions Act 1960* of Norfolk Island apply in relation to an appeal under this section in the same way as they apply in relation to an appeal under section 229 of that Act.

56 Subsection 85(2)

Omit “original court”, substitute “Court of Petty Sessions”.

57 Subsection 85(3)

Omit “District Court”, substitute “Supreme Court”.

58 Subsection 85(4)

Omit “of this Act and section 63 of the *Crimes (Appeal and Review) Act 2001*”.

59 Subsection 85(5)

Omit “section 14 of the *Bail Act 2013*”, substitute “the *Bail Act 2005* of Norfolk Island”.

60 Subsection 85(5)

Omit “*Bail Act 2013*” (second occurring), substitute “*Bail Act 2005* of Norfolk Island”.

61 Subsection 85(6)

Repeal the subsection.

62 Subsection 86(2)

Omit “*Civil Procedure Act 2005*”, substitute “*Court Procedures Act 2007* of Norfolk Island or the *Court of Petty Sessions Act 1960* of Norfolk Island”.

63 Subsection 86(3)

Omit “legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*)”, substitute “*Legal Profession Act 1993* of Norfolk Island”.

64 Subsection 87(1)

Omit “Local Court or the President of the Children’s Court”, substitute “Court of Petty Sessions”.

65 Paragraph 87(1)(b)

Omit “by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*”, substitute “electronically”.

66 Subsection 87(2)

Omit “court’s internet website”, substitute “internet”.

67 Subsections 91(1) to (4)

Repeal the subsections, substitute:

- (1) To the extent permitted by the Commonwealth Constitution, jurisdiction is conferred on the Court of Petty Sessions in the matters of making, varying and revoking orders and determining applications under this Act.

68 Sections 92 and 93

Repeal the sections, substitute:

92 Jurisdiction of Supreme Court under this Act

- (1) To the extent permitted by the Commonwealth Constitution, jurisdiction is conferred on the Supreme Court in any matter in relation to which this Act expressly or impliedly:
 - (a) permits proceedings to be instituted in that court; or
 - (b) provides for that court to make, vary or revoke an order (however described).
- (2) The jurisdiction conferred is to be exercised as criminal jurisdiction of the Supreme Court.

69 Section 94 (definition of *appropriate court*)

Repeal the definition, substitute:

appropriate court, in relation to an external protection order, means the Court of Petty Sessions.

70 Section 94 (paragraphs (b) and (c) of the definition of *external protection order*)

Omit “another State or Territory”, substitute “a State, another Territory”.

71 Section 94

Insert:

Registrar means the Clerk of the Court of Petty Sessions.

72 Paragraph 96(1)(b)

Omit “(or a Children’s Magistrate if the appropriate court is the Children’s Court)”.

73 Subsection 96(2)

Repeal the subsection, substitute:

- (2) On the referral of an external protection order, the Magistrate may do either or both of the following:

- (a) vary the period during which the order has effect in its operation in Norfolk Island;
- (b) make such other adaptations or modifications to the order as the Magistrate considers necessary or desirable for its effective operation in Norfolk Island.

74 Subsections 97(2) and (2A)

Omit “New South Wales”, substitute “Norfolk Island”.

75 Paragraphs 98(2)(a) and (b) and (3)(a) and (b)

Omit “New South Wales”, substitute “Norfolk Island”.

76 Subsection 98(7)

Omit “New South Wales”, substitute “Norfolk Island”.

77 Section 98A (at the end of the definition of *agency*)

Add:

- ; or (c) an agency within the meaning of the *Privacy Act 1988* of the Commonwealth; or
- (d) an organisation within the meaning of the *Privacy Act 1988* of the Commonwealth.

78 Section 98A

Repeal the following definitions:

- (a) definition of *central referral point*;
- (b) definition of *local co-ordination point*.

79 Section 98A

Insert:

nominated non-government support service means a non-government support service nominated by the Norfolk Island Minister.

80 Section 98A (definition of *privacy legislation*)

Repeal the definition.

81 Section 98A (definition of *support agency*)

Omit “and includes the central referral point and each local co-ordination point”.

82 Subsection 98C(1)

Omit “(1)”.

83 Subsection 98C(2)

Repeal the subsection.

84 Subsection 98D(2)

Omit “the central referral point or a local co-ordination point”, substitute “a support agency or nominated non-government support service”.

85 Section 98E (heading)

Repeal the heading, substitute:

98E Disclosure by Court of Petty Sessions

86 Subsections 98E(1) and (2)

Omit “Local Court”, substitute “Court of Petty Sessions”.

87 Subsection 98E(2)

Omit “the central referral point”, substitute “a support agency or a nominated non-government support service”.

88 Sections 98F and 98G

Repeal the sections.

89 Section 98H (heading)

Repeal the heading, substitute:

98H Support agencies and nominated non-government support services

90 At the end of section 98H

Add:

- (4) This section applies to a nominated non-government support service in the same way as it applies to a support agency.

91 Subsection 98K(1)

Repeal the subsection.

92 Subsection 98K(2)

Omit “(2)”.

93 Subsection 98K(2)

Omit “, including the privacy legislation or the *Government Information (Public Access) Act 2009*”.

94 Subsection 98L(1)

Omit “(1)”.

95 Subsection 98L(1)

Omit “, despite the privacy legislation,”.

96 Subsection 98L(2)

Repeal the subsection.

97 Subsection 98M(2)

Omit “, despite the privacy legislation,”.

98 Subsection 98O(4)

Repeal the subsection.

99 Sections 98P and 98Q

Repeal the sections.

100 Section 98S

Before “In this Part:”, insert “(1)”.

101 Section 98S (paragraph (a) of the definition of *participating jurisdiction*)

Repeal the paragraph, substitute:

(a) Norfolk Island;

102 At the end of section 98S

Add:

(2) To avoid doubt, a reference in this Part to a law of Norfolk Island includes a reference to an applied law.

103 After paragraph 98U(1)(a)

Insert:

(aa) an apprehended domestic violence order, or an interim apprehended domestic violence order, under the *Crimes (Domestic and Personal Violence) Act 2007* of New South Wales;

104 After paragraph 98V(a)

Insert:

(aa) a registered external protection order under Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007* of New South Wales that has been made to prevent a person acting in a manner specified in section 16 of that Act; or

105 Sections 98Y, 98Z, 98ZA, 98ZB, 98ZD, 98ZE, 98ZF, 98ZG and 98ZH

Omit “New South Wales” (wherever occurring), substitute “Norfolk Island”.

106 Subsection 98ZI(2)

Omit “Commissioner of Police”, substitute “issuing officer (within the meaning of the *Firearms and Prohibited Weapons Act 1997* of Norfolk Island)”.

107 Subsection 98ZI(4) (definition of *local firearms licence*)

Omit “*Firearms Act 1996*”, substitute “*Firearms and Prohibited Weapons Act 1997* of Norfolk Island”.

108 Subsection 98ZI(4) (definition of *non-local firearms licence*)

Omit “*Firearms Act 1996*”, substitute “*Firearms and Prohibited Weapons Act 1997* of Norfolk Island”.

109 At the end of subsection 98ZJ(1)

Add:

Note: Section 45D of the *Firearms and Prohibited Weapons Act 1997* of Norfolk Island requires the Administrator of Norfolk Island to refuse to issue a local weapons permit to, and revoke a local weapons permit previously issued to, a person disqualified by this subsection from holding a local weapons permit.

110 Subsection 98ZJ(2)

Repeal the subsection.

111 Subsection 98ZJ(4) (definition of *local weapons permit*)

Omit “the *Weapons Prohibition Act 1998*”, substitute “section 45D of the *Firearms and Prohibited Weapons Act 1997* of Norfolk Island”.

112 Subsection 98ZJ(4) (definition of *non-local weapons permit*)

Omit “*Weapons Prohibition Act 1998*”, substitute “*Firearms and Prohibited Weapons Act 1997* of Norfolk Island”.

113 Sections 98ZK, 98ZL, 98ZM, 98ZP, 98ZQ and 98ZR

Omit “New South Wales” (wherever occurring), substitute “Norfolk Island”.

114 Subsection 98ZT(1)

Omit “New South Wales” (wherever occurring), substitute “Norfolk Island”.

115 Subsection 98ZT(5) (definition of *authorised officer* of New South Wales)

Repeal the definition.

116 Subsection 98ZT(5)

Insert:

authorised officer of Norfolk Island means:

- (a) a Magistrate; or
- (b) the Registrar, or a Deputy Registrar, of the Supreme Court; or
- (c) the Clerk, or Deputy Clerk, of the Court of Petty Sessions; or
- (d) a member or special member of the Australian Federal Police of or above the rank of sergeant.

Note: This definition of *authorised officer* differs from that used in the rest of this Act and from the definition of *authorised officer* in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (NI).

117 Section 98ZTA

Omit “New South Wales” (wherever occurring), substitute “Norfolk Island”.

118 Division 6 of Part 13B (heading)

Repeal the heading, substitute:

Division 6—Application and transitional provisions

119 Section 98ZU

Omit “commences”, substitute “comes into force in Norfolk Island”.

120 Section 98ZV

Repeal the section.

121 Section 98ZW

Repeal the section.

122 Subsection 98ZX(4)

Omit “New South Wales”, substitute “Norfolk Island”.

123 Paragraph 98ZY(1)(a)

Omit “registrar of a court of New South Wales to be a recognised DVO in New South Wales”, substitute “Magistrate to be a recognised DVO in Norfolk Island”.

124 Subsections 98ZY(2) and 98ZZ(3)

Omit “New South Wales”, substitute “Norfolk Island”.

125 Section 98ZZA (definition of *registrar*)

Omit “registrar of a court of New South Wales that has power to make a local DVO”, substitute “Magistrate”.

126 Subsections 98ZZB(1), (2) and (6) and 98ZZC(1)

Omit “New South Wales”, substitute “Norfolk Island”.

127 Subdivision 5 of Division 6 of Part 13B

Repeal the Subdivision.

128 Subsection 99(9)

Omit “State”, substitute “Commonwealth”.

129 Section 104

Repeal the section.

Crimes (Domestic and Personal Violence) Regulation 2014 (NSW)

130 Form 1 in Schedule 1

Omit “Local Court or Children’s Court of NSW”, substitute “Court of Petty Sessions of Norfolk Island”.

131 Form 2 in Schedule 1

Omit “Local Court or Children’s Court of NSW”, substitute “Court of Petty Sessions of Norfolk Island”.

132 Form 2 in Schedule 1 (paragraph 6(b) under the heading “Orders about family law and parenting”)

Omit “or court-approved”.

4 After Schedule 3

Insert:

Schedule 3A—Amendment of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) and the Law Enforcement (Powers and Responsibilities) Regulation 2016 (NSW)

Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)

1 Subsection 3(1) (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means a Magistrate of the Court of Petty Sessions of Norfolk Island.

2 Subsection 3(1) (definition of *Commissioner*)

Repeal the definition, substitute:

Commissioner means the police officer in charge in Norfolk Island.

3 Subsection 3(1)

Insert:

Local Area Commander of Police means the police officer in charge in Norfolk Island.

Local Court means the Court of Petty Sessions of Norfolk Island.

4 Subsection 3(1) (definition of *police officer*)

Repeal the definition.

5 Section 8

Omit “right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other”, substitute “each of its”.

6 At the end of Part 1

Add:

8A Application of this Act in Norfolk Island

- (1) This Act applies in relation to the Territory of Norfolk Island only to the following extent:
 - (a) this Part;
 - (b) Division 1A of Part 3 (power to require identity of suspected AVO defendant to be disclosed);

- (c) Part 6 (search, entry and seizure powers relating to domestic violence offences);
- (d) Part 15 (safeguards relating to powers);
- (e) Division 1 of Part 17 (confiscated knives and other dangerous articles and implements);
- (f) the other provisions of this Act so far as they relate to a provision mentioned in paragraph (a), (b), (c), (d) or (e), except sections 235, 242, 242A and 243.

(2) Regulations under this Act apply in relation to the Territory of Norfolk Island only to the extent that they are relevant to:

- (a) a provision of this Act mentioned in paragraph (1)(a), (b), (c), (d) or (e); or
- (b) another provision of this Act so far as it relates to a provision of this Act mentioned in paragraph (1)(a), (b), (c), (d) or (e).

7 Subsection 211(2)

Omit “Act”, substitute “law”.

8 Paragraph 212(4)(b)

Omit “the *Firearms Act 1996*”, substitute “Part 5 of the *Firearms and Prohibited Weapons Act 1997* of Norfolk Island”.

9 Subsection 214(4)

Repeal the subsection.

Law Enforcement (Powers and Responsibilities) Regulation 2016 ***(NSW)***

10 Subclause 3(1) (at the end of the note)

Add “For example, section 8A of the Act limits the application of this Regulation so that it applies only to the extent that it is relevant to a provision of the Act described in that section.”.

11 Part 1 of Form 4 in Schedule 1

Omit “in the State of New South Wales” (wherever occurring).

12 Part 2 of Form 4 in Schedule 1 (note)

Omit “Local Court” (wherever occurring), substitute “Court of Petty Sessions”.

13 Part 1 of Form 5 in Schedule 1

Omit “in the State of New South Wales” (wherever occurring).

14 Part 2 of Form 5 in Schedule 1 (note)

Omit “Local Court”, substitute “Court of Petty Sessions”.

Part 2—Repealing the Domestic Violence Act 1995 (Norfolk Island)

Division 1—Repeals

Norfolk Island Continued Laws Ordinance 2015

5 Item 1 of Schedule 2

Insert:

Domestic Violence Act 1995

6 Item 2 of Schedule 2

Insert:

Domestic Violence Regulations 1995

Division 2—Repeals of amendments of repealed laws

Norfolk Island Continued Laws Ordinance 2015

7 Part 1 of Schedule 1 (heading specifying *Domestic Violence Act 1995 (Norfolk Island)*)

Repeal the heading.

8 Items 72A, 72B and 72C of Schedule 1

Repeal the items.

Schedule 2—Bail

Norfolk Island Continued Laws Ordinance 2015

1 Before item 22AA of Schedule 1

Insert:

22AAA Subsection 3(1) (definition of *Crimes Act*)

Repeal the definition.

2 After item 22AA of Schedule 1

Insert:

22AAAA Paragraph 6(1)(d)

Repeal the paragraph, substitute:

- (d) the period between:
 - (i) the making of an order under section 18 of the *Criminal Procedure Act 2007* relating to the accused person; and
 - (ii) the Tribunal (within the meaning of that section) determining whether or not the person is fit to plead to the charge;

22AAAB Paragraph 9(1)(b)

Omit “section 54 of the *Crimes Act*”, substitute “section 77 or 78 of the *Criminal Code 2007*”.

22AAAC Paragraph 9(1)(c)

Omit “part 3A of the *Crimes Act*”, substitute “Part 3.6 of the *Criminal Code 2007*”.

22AAD Paragraph 9(1)(d)

Repeal the paragraph, substitute:

- (d) against section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI);

22AAAE Subsection 9(1)

Omit “section 54, 59, 61 93D, or 93E, of the *Crimes Act*”, substitute “section 77, 78, 80, 81, 82, 83, 84, 109, 110, 111, 112, 113 or 114 of the *Criminal Code 2007*”.

22AAAF Paragraph 9(2)(a)

Omit “23”, substitute “25”.

22AAAG Section 9 (note)

Repeal the note.

22AAAH After section 16

Insert:

16A Bail for domestic violence offence

- (1) This section applies to a person accused of a domestic violence offence.
- (2) An authorised member must not grant bail to the person unless satisfied that the person poses no danger to a protected person while released on bail.
- (3) However, even if the authorised member is satisfied as described in subsection (2), the member must refuse bail if satisfied that the refusal is justified after considering the matters mentioned in section 25 (criteria to be considered in bail applications).
- (4) If an authorised member grants bail to the person, the member must include, with the entry in the book, or the information stored on a computer, under section 18, a statement about why the member is satisfied that the person poses no danger to any protected person.
- (5) In this section:

domestic violence offence has the meaning given by section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

protected person, in relation to a person accused of a domestic violence offence, means:

- (a) a person against whom the alleged conduct constituting the offence was directed; or
- (b) a person with whom the accused person has a domestic relationship as defined in section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

22AAAI Paragraph 25(1)(d)

Omit “*Domestic Violence Act 1995*”, substitute “*Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)”.

3 After item 22BB of Schedule 1

Insert:

22BC Subsection 54(1) (definition of *accused person*)

Repeal the definition, substitute:

accused person means an accused person who is the subject of an order under Chapter 2 of the *Criminal Procedure Act 2007*.

Schedule 3—Criminal procedure

Norfolk Island Continued Laws Ordinance 2015

1 Item 57A of Schedule 1

Repeal the item, substitute:

57A Subsection 7(4)

Repeal the subsection.

57AA Subsection 7(5)

Insert:

audiovisual link means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

57AC Subsection 7(5) (definitions of *Chief Executive Officer* and *Crown law officer*)

Repeal the definitions.

57AE Subsection 7(5)

Insert:

external place, for a proceeding, means a place other than the courtroom where the proceeding is heard.

57AG Subsection 7(5)

Repeal the following definitions:

- (a) definition of *public office*;
- (b) definition of *public sector* and *public sector agency*;
- (c) definition of *public service*.

57AK Paragraph 53(4)(b)

Omit “a protection order that is a domestic violence order under the *Domestic Violence Act 1995* has not been made”, substitute “an apprehended violence order has not been made under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)”.

57AL Section 54 (heading)

Repeal the heading, substitute:

54 Seizure of firearms—apprehended violence orders

57AM Subsection 54(1)

Omit “In enforcing an order under the *Domestic Violence Act 1995*, section 15 (Protection orders-firearms)”, substitute “If a court has made an apprehended violence order against a person that prohibits, or restricts, under paragraph 35(2)(d) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI), the possession by the person of one or more firearms”.

57AN Paragraph 54(1)(a)

Omit “respondent named in the order”, substitute “person”.

57AO Paragraph 54(1)(b)

After “licence”, insert “or permit”.

57AP Subsections 54(2), (3) and (4)

Omit “or licence” (wherever occurring), substitute “, licence or permit”.

57AQ Paragraph 54(5)(a)

Omit “or licence”, substitute “, licence or permit”.

57AR Paragraph 54(5)(a)

Omit “for the purpose of enforcing an order mentioned in that subsection”.

57AS Paragraph 54(5)(b)

Omit “has not been cancelled or suspended under the *Domestic Violence Act 1995*, section 15”, substitute “or permit is not suspended or cancelled”.

57AT Subsection 54(5)

Omit “the firearm, ammunition or licence shall be returned to the licensee”, substitute “the firearm, ammunition, licence or permit must be returned to the licensee or permittee”.

57AU Paragraph 54(5)(c)

Repeal the paragraph, substitute:

- (c) the licensee or permittee satisfies the registrar of firearms that the licensee or permittee may lawfully possess the firearm, ammunition, licence or permit; and

57AV Paragraph 54(5)(d)

Omit “or licence”, substitute “, licence or permit”.

57AW Paragraph 54(5)(e)

Omit “*Firearms Act 1997* to be in possession of the firearm, ammunition or licence”, substitute “*Firearms and Prohibited Weapons Act 1997* to possess the firearm, ammunition, licence or permit”.

57AX Subsections 54(6) and (7)

Omit “*Firearms Act 1997*”, substitute “*Firearms and Prohibited Weapons Act 1997*”.

57AY Subsection 74(5) (definition of *domestic violence offence*)

Repeal the definition, substitute:

domestic violence offence has the meaning given by section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

2 Item 59 of Schedule 1

Repeal the item, substitute:

59 Subsection 112(2)

Repeal the subsection.

59D Chapter 6

Repeal the Chapter, substitute:

Chapter 6—Evidence of children**155 Definitions for this Chapter**

In this Chapter:

court means:

- (a) the Supreme Court; or
- (b) the Court of Petty Sessions; or
- (c) the Coroner's Court.

proceeding means a proceeding to which this Chapter applies.

155A Meaning of *give evidence in a proceeding by audiovisual link* for this Chapter

In this Chapter:

give evidence in a proceeding by audiovisual link means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

155B Sworn or unsworn evidence

For the purposes of this Chapter, it does not matter whether evidence is to be, or is being, given on oath or otherwise.

155C Proceedings to which this Chapter applies

This Chapter applies to:

- (a) a proceeding in the Supreme Court:
 - (i) for a trial on indictment in relation to the alleged commission of an offence against a law in force in Norfolk Island; or
 - (ii) for the passing of sentence in relation to the commission of an offence against a law in force in Norfolk Island; or

- (iii) by way of an appeal from a conviction, order, sentence or other decision of the Court of Petty Sessions in a proceeding in relation to which this Chapter applies; or
- (b) a proceeding in the Court of Petty Sessions on an information in relation to the alleged commission, or commission, of an offence against a law in force in Norfolk Island; or
- (c) a proceeding under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI); or
- (d) a proceeding under Chapter 5 or 6 of the *Child Welfare Act 2009*; or
- (e) a proceeding by way of an inquest or inquiry in the Coroner's Court.

155D Child giving evidence by audiovisual link

- (1) This section applies if:
 - (a) a child is to give evidence in a proceeding; and
 - (b) the proceeding is to be heard in a courtroom; and
 - (c) the courtroom and an external place are linked by an audiovisual link.
- (2) The child's evidence must be given by audiovisual link unless the court otherwise orders.
- (3) However, the evidence of a child who is an accused person in a proceeding is not to be given by audiovisual link.
- (4) The court may make an order under subsection (2) only if satisfied that:
 - (a) the child prefers to give evidence in the courtroom; or
 - (b) if the order is not made:
 - (i) the proceeding may be unreasonably delayed; or
 - (ii) there is a substantial risk that the court will not be able to ensure that the proceeding is conducted fairly.
- (5) While the child is at the external place to give evidence, the place is taken to be part of the courtroom.

155E Representation of child

- (1) This section applies if:
 - (a) a child is to give evidence in a proceeding by audiovisual link; and
 - (b) the child is not separately represented by someone else; and
 - (c) the court considers that the child should be separately represented by someone else.
- (2) The court may:
 - (a) order that the child be separately represented by someone else; and
 - (b) make any other order it considers necessary to arrange the separate representation.

155F Consequential orders

- (1) This section applies if a child is to give evidence in a proceeding by audiovisual link.
- (2) The court may make any order it considers appropriate:

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- (a) to ensure that the proceeding is conducted fairly; or
 - (b) to allow the child to identify a person or thing; or
 - (c) to allow the child to take part in a view or to watch a demonstration or experiment; or
 - (d) to allow part of the proceeding to be heard somewhere other than in the courtroom.
- (3) The court may make any other order it considers appropriate, including, for example, an order stating:
- (a) who may be with the child at the external place; or
 - (b) who must not be with the child at the external place; or
 - (c) who, in the courtroom, is to be able, or must not be able, to be heard, or seen and heard, by the child and people in the external place with the child; or
 - (d) who, in the courtroom, is to be able to see and hear the child and anyone else in the external place with the child; or
 - (e) how the audiovisual link is to operate.
- (4) The court may order that a person be excluded from the external place while the child is giving evidence.
- (5) The court may direct that an order under this section apply only to a particular part of the proceeding.

155G Making of orders

- (1) The court may make an order under this Chapter in a proceeding on its own initiative or on the application of:
- (a) a party to the proceeding; or
 - (b) the child or a person acting on the child's behalf; or
 - (c) the child's parent or guardian.
- (2) For the purpose of making an order under this Chapter, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

155H Jury warning about inferences from child giving evidence by audiovisual link

- (1) This section applies if:
- (a) a child gives evidence in a proceeding by audiovisual link; and
 - (b) the proceeding is before a jury.
- (2) The judge must warn the jury to the effect that the jury should not draw any inference against an accused person in the proceeding from the fact that the child's evidence is given by audiovisual link.

155J Failure to comply with this Chapter

- (1) If the evidence of a child is not given in accordance with this Chapter, the evidence is not inadmissible for that reason only.

- (2) Failure to comply with this Chapter in relation to a proceeding does not affect the validity of the proceeding.

155K Child turns 18 during proceeding

If a child is to give evidence in a proceeding and the child turns 18 years old before the proceeding is finally disposed of, this Chapter continues to apply to the person for the proceeding.

Chapter 6A—Evidence of witnesses with disabilities or vulnerabilities

160 Meaning of *proceeding* for this Chapter

In this Chapter:

proceeding means a proceeding to which this Chapter applies.

160A Meaning of *witness with a disability* for this Chapter

For this Chapter, a *witness with a disability* is a person who gives evidence in a proceeding and has a mental or physical disability that affects the person's ability to give evidence.

160B Proceedings to which this Chapter applies

This Chapter applies to:

- (a) a proceeding in the Supreme Court:
 - (i) for a trial on indictment in relation to the alleged commission of an offence against a law in force in Norfolk Island; or
 - (ii) for the passing of sentence in relation to the commission of an offence against a law in force in Norfolk Island; or
 - (iii) by way of an appeal from a conviction, order, sentence or other decision of the Court of Petty Sessions in a proceeding in relation to which this Chapter applies; or
- (b) a proceeding in the Court of Petty Sessions on an information in relation to the alleged commission, or commission, of an offence against a law in force in Norfolk Island; or
- (c) a proceeding under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI); or
- (d) a proceeding under Chapter 5 or 6 of the *Child Welfare Act 2009*; or
- (e) a proceeding by way of an inquest or inquiry in the Coroner's Court.

160C Child or witness with disability may have support person in court

- (1) This section applies to any of the following people (a *witness*) giving evidence in a proceeding:
- (a) a child;
 - (b) a witness with a disability.

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- (2) The court must, on application by a party that intends to call a witness, order that, while the witness gives evidence, the witness have a person (a **support person**) in the court who is:
 - (a) for a witness with a vision impairment—close enough to the witness for the court to be satisfied that the witness is aware of the person’s presence; or
 - (b) for any other witness—close to the witness and within the witness’s sight.
 - (3) The court may order that a witness have more than one support person if it considers it is in the interests of justice.
 - (4) The support person must not:
 - (a) speak for the witness during the proceeding; or
 - (b) otherwise interfere in the proceeding.
 - (5) Unless the court otherwise orders, the support person must not be, or be likely to be, a witness or party in the proceeding.
 - (6) If the proceeding is a trial by jury, the court must tell the jury that:
 - (a) a witness having a support person in the court while giving evidence is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the support person is present.

160D Witness with vulnerability may give evidence in closed court

- (1) This section applies to a person (the **witness**) giving evidence in a proceeding if the court considers that the person has a vulnerability that affects the person’s ability to give evidence because of:
 - (a) the circumstances of the proceeding; or
 - (b) the person’s circumstances.

Note: The following are examples for subsection (1):

- (a) the person is likely to suffer severe emotional trauma because of the nature of the alleged offence;
- (b) the person is intimidated or distressed because of the person’s relationship to the accused person.

- (2) The court may order that the court be closed to the public while all or part of the witness’s evidence (including evidence under cross-examination) is given.
- (3) In deciding whether to order that the court be closed to the public, the court must consider whether:
 - (a) the witness wants to give evidence in open court; and
 - (b) it is in the interests of justice that the witness give evidence in open court.
- (4) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
 - (a) a person nominated by the witness;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person’s employer.

Note: Publishing certain information in relation to sexual offence proceedings is an offence (see section 167F).

- (5) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of an audiovisual recording of the evidence at a hearing under Subdivision C (sexual and violent offence proceedings: audiovisual recording of police interview admissible as evidence) of Division 2 of Chapter 7.

160E Making of orders under this Chapter—court not bound by rules of evidence

For the purpose of making an order under section 160C or 160D, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

59E Chapter 7 (heading)

Repeal the heading, substitute:

Chapter 7—Evidence in sexual, violent and domestic violence proceedings

59F Divisions 1, 2 and 3 of Chapter 7

Repeal the Divisions, substitute:

Division 1—Preliminary

165 Failure to comply with this Chapter

- (1) If the evidence of the complainant or a similar act witness is not given in accordance with this Chapter, the evidence is not inadmissible for that reason only.
- (2) Failure to comply with this chapter in relation to a proceeding does not affect the validity of the proceeding.

165A Meaning of *relevant person* for this Chapter

- (1) In this Chapter:

relevant person, in relation to a person (the *original person*) means:

- (a) a spouse, de facto partner, or intimate partner, of the original person; or
- (b) a former spouse, former de facto partner, or former intimate partner, of the original person; or
- (c) a relative of the original person; or
- (d) a child of a spouse or de facto partner, or of a former spouse or former de facto partner, of the original person; or
- (e) a parent of a child of the original person.

- (2) In this section:

intimate partner of a person means someone with whom the person has an intimate relationship (whether they are members of the same household or not), but does not include:

- (a) a spouse or de facto partner of the person; or
- (b) another person with whom the person has a relationship only because a service is provided between them:

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- (i) for fee or reward; or
 - (ii) on behalf of another person (including a government or corporation);
or
 - (iii) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.
- (3) For the purposes of the definition of *intimate partner* in subsection (2), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:
- (a) the extent to which each is personally dependent on the other;
 - (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
 - (c) the length of the relationship;
 - (d) the frequency of contact between each other;
 - (e) if there is, or has been, a sexual relationship;
 - (f) the extent to which each is involved in, or knows about, the other's personal life;
 - (g) the degree of mutual commitment to a shared life;
 - (h) if the 2 people share care or support for children or other dependents.

165B Meaning of *relative* for this Chapter

- (1) In this Chapter:

relative of a person (the ***original person***):

- (a) means the original person's:
 - (i) parent, grandparent, step-parent, father-in-law or mother-in-law; or
 - (ii) child, grandchild, stepchild, son-in-law or daughter-in-law; or
 - (iii) sibling, half-sibling or step-sibling or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and
- (b) if the original person has or had a de facto partner—includes someone who would have been a relative mentioned in paragraph (a) if the original person had been married to the de facto partner; and
- (c) includes:
 - (i) someone who has been a relative mentioned in paragraph (a) or (b) of the original person; and
 - (ii) if the original person is an Indigenous person—the persons mentioned in subsection (3); and
 - (iii) someone regarded and treated by the original person as a relative; and
 - (iv) anyone else who could reasonably be considered to be, or have been, a relative of the original person.

- (2) In this section:

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

- (3) For the purposes of subparagraph (c)(ii) of the definition of *relative* in subsection (1), the persons are as follows:
- (a) someone the original person has responsibility for, or an interest in, in accordance with the traditional laws and customs of the community of Indigenous persons to which the original person belongs;
 - (b) someone who has responsibility for, or an interest in, the original person in accordance with the traditional laws and customs of the community of Indigenous persons to which the original person belongs.

165C Meaning of other family relationship expressions for this Chapter

- (1) In this Chapter:

child: without limiting who is a child of a person for the purposes of this Chapter, a person is the *child* of another person if the person is a child of the other person within the meaning of the *Family Law Act 1975* of the Commonwealth.

de facto partner has the meaning given by the *Acts Interpretation Act 1901* of the Commonwealth.

parent: without limiting who is a parent of another person for the purposes of this Chapter, a person is the *parent* of another person who is the person's child because of the definition of *child* in this subsection.

stepchild: without limiting who is a stepchild of another person for the purposes of this Chapter, a child of a de facto partner of the other person is the *stepchild* of the other person if the child would be the other person's stepchild except that the other person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Chapter, a de facto partner of a parent of the person is the *step-parent* of the person if the de facto partner would be the person's step-parent except that the de facto partner is not legally married to the person's parent.

- (2) For the purposes of this Chapter, if one person is the child of another person because of the definition of *child* in subsection (1), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

165D Meaning of *found guilty* for this Chapter

In this Chapter:

found guilty of an offence includes having an offence taken into account under section 143 of the *Sentencing Act 2007*.

165E Meaning of *intellectually impaired* for this Chapter

In this Chapter:

intellectually impaired: a person is *intellectually impaired* if the person has:

- (a) an appreciably below average general intellectual function; or
- (b) a cognitive impairment (including dementia or autism) arising from an acquired brain injury, neurological disorder or a developmental disorder; or

(c) any other intellectual disability.

165F Meaning of *lawyer* for this Chapter

In this Chapter:

lawyer means a person who is entitled to practise as a practitioner under sections 7, 8 and 9 of the *Legal Profession Act 1993*.

165G References to offences include related ancillary offences

- (1) A reference in a provision of this Chapter to a particular offence includes a reference to an offence against section 44 (attempt), 47 (incitement) or 48 (conspiracy) of the *Criminal Code 2007* that relates to that particular offence.
- (2) Subsection (1) does not apply if the provision is expressly or impliedly to the contrary effect.

Note: Sections 45 (complicity and common purpose) and 46 (agency) of the *Criminal Code 2007* operate as extensions of principal offences and are therefore not referred to in this section.

Division 2—Evidence in sexual and violent offence proceedings

Subdivision A—Preliminary

166 Definitions for this Division

In this Division:

less serious violent offence means:

- (a) an offence against any of the following provisions of the *Criminal Code 2007*:
 - (i) subsection 79(1) (wounding);
 - (ii) section 80 (assault with intent to commit certain indictable offences);
 - (iii) subsection 81(1) (inflicting actual bodily harm);
 - (iv) subsection 82(1) (assault occasioning actual bodily harm);
 - (v) section 83 (causing grievous bodily harm);
 - (vi) section 84 (common assault);
 - (vii) section 87 (acts endangering health etc);
 - (viii) subsection 88(3) or (4) (culpable driving of motor vehicle);
 - (ix) section 90 (threat to inflict grievous bodily harm);
 - (x) section 92 (possession of object with intent to kill, etc.);
 - (xi) section 96 (abduction of young person);
 - (xii) section 100 (exposing or abandoning child);
 - (xiii) section 259 (damaging property); or
- (b) an offence against section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) (contravening apprehended violence order).

serious violent offence means an offence against any of the following provisions of the *Criminal Code 2007*:

- (a) section 70 (murder);
- (b) section 73 (manslaughter);
- (c) section 77 (intentionally inflicting grievous bodily harm);
- (d) section 78 (recklessly inflicting grievous bodily harm);
- (e) subsection 79(2) (wounding);
- (f) subsection 81(2) (inflicting actual bodily harm);
- (g) subsection 82(2) (assault occasioning actual bodily harm);
- (h) section 86 (acts endangering life etc);
- (i) subsection 88(1) or (2) (culpable driving of motor vehicle);
- (j) section 89 (threat to kill);
- (k) section 91 (demands accompanied by threats);
- (l) section 93 (forcible confinement);
- (m) section 94 (stalking);
- (n) section 95 (torture);
- (o) section 97 (kidnapping);
- (p) section 99 (unlawfully taking child etc);
- (q) section 101 (child destruction);
- (r) section 102 (childbirth—grievous bodily harm);
- (s) section 147 (destroying or damaging property);
- (t) section 148 (arson);
- (u) section 186 (robbery);
- (v) section 187 (aggravated robbery);
- (w) section 188 (burglary);
- (x) section 189 (aggravated burglary).

sexual offence means an offence against any of the following provisions of the *Criminal Code 2007*:

- (a) Part 3.6 (sexual offences);
- (b) Part 3.9 (female genital mutilation);
- (c) Part 3.10 (sexual servitude).

sexual or violent offence means:

- (a) a sexual offence; or
- (b) a violent offence.

sexual or violent offence proceeding means:

- (a) a sexual offence proceeding; or
- (b) a violent offence proceeding.

similar act witness means a witness in a sexual or violent offence proceeding who gives, or intends to give, evidence in the proceeding that:

- (a) relates to an act committed on or in the presence of the witness by the accused; and
- (b) is tendency evidence or coincidence evidence under the *Evidence Act 2004*.

violent offence means a serious violent offence or a less serious violent offence.

witness with a disability means a person who gives, or intends to give, evidence in a proceeding and has a mental or physical disability that affects the person's ability to give evidence.

Subdivision B—Sexual and violent offence proceedings: general**167 Meaning of *complainant* and *sexual offence proceeding* for this Subdivision**

- (1) For the purposes of this Subdivision, the *complainant* in relation to a sexual or violent offence proceeding, is the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.
- (2) For the purposes of this Subdivision, a *sexual offence proceeding* is:
 - (a) a proceeding for a sexual offence; or
 - (b) a proceeding in relation to bail for a person charged with a sexual offence, whether or not the person is also charged with any other offence; or
 - (c) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (d) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraphs (a) to (c); or
 - (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).
- (3) For the purposes of paragraph (2)(a), a *proceeding for a sexual offence* includes:
 - (a) a proceeding for a sexual offence and any other offence; and
 - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
 - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (4) To remove any doubt, for the purposes of this section, a *proceeding* includes a committal hearing.

167A Meaning of *violent offence proceeding* for this Subdivision

- (1) For the purposes of this Subdivision, a *violent offence proceeding* is:
 - (a) a proceeding for a violent offence; or
 - (b) a proceeding in relation to bail for a person charged with a violent offence, whether or not the person is also charged with any other offence; or
 - (c) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (d) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraphs (a) to (c); or
 - (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).
- (2) For the purposes of paragraph (1)(a), a *proceeding for a violent offence* includes:
 - (a) a proceeding for a violent offence and any other offence; and
 - (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and

(c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

(3) To remove any doubt, for the purposes of this section, a *proceeding* includes a committal hearing.

167B Accused may be screened from witness in court

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in:
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if:
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Note: The following are examples for subparagraph (c)(ii):

- (a) the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence;
 - (b) the witness is intimidated or distressed because of the witness's relationship to the accused person.
- (2) For the purposes of subparagraph (1)(c)(ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the courtroom be arranged in a way that, while the witness is giving evidence, the witness cannot see:
- (a) the accused person; or
 - (b) anyone else the court considers should be screened from the witness.
- (4) However, the witness must be visible to:
- (a) the presiding judicial officer; and
 - (b) if the proceeding is a trial by jury—the jury; and
 - (c) the accused person; and
 - (d) the accused person's lawyer; and
 - (e) if the court has ordered that someone should be screened from the complainant or similar act witness—the person; and
 - (f) the prosecutor.

167C Examination of witness by self-represented accused person—procedure

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in:
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if:
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Note: The following are examples for subparagraph (c)(ii):

-
- (a) the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence;
 - (b) the witness is intimidated or distressed because of the witness's relationship to the accused person.
 - (2) For the purposes of subparagraph (1)(c)(ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
 - (3) This section also applies to a child or witness with a disability (the *witness*) giving evidence for the prosecution in a sexual or violent offence proceeding.
 - (4) The witness must not be examined personally by the accused person but may be examined instead by:
 - (a) the accused person's legal representative; or
 - (b) if the accused person does not have a legal representative—a person appointed by the court.
 - (5) If the accused person does not have a legal representative, the court must, as soon as practicable, tell the person:
 - (a) about the terms of subsection (4); and
 - (b) that the person may not present evidence from another witness in relation to a fact in issue to contradict the evidence of the witness in relation to the fact if the fact in the other witness's evidence intended to contradict the witness's evidence has not been put to the witness in cross-examination.
 - (6) A person appointed by the court for the purposes of paragraph (4)(b) may ask the witness only the questions that the accused person asks the person to put to the witness, and must not independently give the accused person legal or other advice.

Note: If the court considers a question to be unduly annoying, harassing, intimidating etc, the court must disallow it or tell the witness that it need not be answered (see subsection 41(1) (improper questions) of the *Evidence Act 2004*).
 - (7) If the accused person does not have a legal representative, the court may, if it considers it is in the interests of justice, do one or more of the following:
 - (a) adjourn the proceeding to enable the person to obtain a legal representative to conduct the examination;
 - (b) make:
 - (i) an order that the person obtain legal representation; and
 - (ii) any other order the court considers necessary to secure legal representation for the person.
 - (8) If the proceeding is a trial by jury, the court must tell the jury that:
 - (a) the accused person may not examine the witness personally; and
 - (b) obtaining, or being provided with, legal representation to examine the witness, or having the accused person's questions put to the witness by a person appointed by the court, is a usual practice; and
 - (c) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the examination is not conducted personally by the accused person.
 - (9) In this section:

examine includes cross-examine and re-examine.
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167D Sexual and violent offence proceeding—witness may have support person in court

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in:
 - (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if:
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.
- Note: The following are examples for subparagraph (c)(ii):
- (a) the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence;
 - (b) the witness is intimidated or distressed because of the witness's relationship to the accused person.
- (2) For the purposes of subparagraph (1)(c)(ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
 - (3) The court must, on application by a party who intends to call a witness, order that the witness have a person (a *support person*) in the court close to, and within the witness's sight, while the witness gives evidence.
 - (4) The court may order that a witness have more than one support person if it considers it is in the interests of justice.
 - (5) The support person must not:
 - (a) speak for the witness during the proceeding; or
 - (b) otherwise interfere in the proceeding.
 - (6) Unless the court otherwise orders, the support person must not be, or be likely to be, a witness or party in the proceeding.
 - (7) If the proceeding is a trial by jury, the court must tell the jury that:
 - (a) a witness having a support person in the court while giving evidence is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the support person is present.

167E Sexual and violent offence proceeding—evidence to be given in closed court

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in:
 - (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if:
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Note: The following are examples for subparagraph (c)(ii):

- (a) the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence;
- (b) the witness is intimidated or distressed because of the witness's relationship to the accused person.

- (2) For subparagraph (1)(c)(ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the court be closed to the public while all or part of the witness's evidence (including evidence given under cross-examination) is given.
- (4) In deciding whether to order that the court be closed to the public, the court must consider whether:
 - (a) the witness wants to give evidence in open court; and
 - (b) it is in the interests of justice that the witness give evidence in open court.
- (5) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
 - (a) a person nominated by the witness;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

Note: Publishing certain information in relation to sexual offence proceedings is an offence (see section 167F).

- (6) In this section, a reference to a person giving evidence includes the person giving evidence by:
 - (a) the playing of an audiovisual recording of the evidence under Subdivision C (sexual and violent offence proceedings: audiovisual recording of police interview admissible as evidence); or
 - (b) audiovisual link under Subdivision D (sexual and violent offence proceedings: giving evidence by audiovisual link); or
 - (c) the playing of an audiovisual recording or an audio recording of the evidence, or the tendering of a transcript of the evidence, under Subdivision E or F (special provisions relating to retrials and subsequent trials of sexual offence proceedings).

167F Sexual offence proceeding—prohibition of publication of complainant's identity

- (1) A person commits an offence if the person publishes, in relation to a sexual offence proceeding:
 - (a) the complainant's name; or
 - (b) protected identity information about the complainant; or
 - (c) a reference or allusion that discloses the complainant's identity; or
 - (d) a reference or allusion from which the complainant's identity might reasonably be worked out.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) It is a defence to a prosecution for an offence against this section if the person proves that the complainant consented to the publication before the publication happened.

Note: A defendant bears a legal burden in relation to the matter in this subsection, see section 59 of the *Criminal Code 2007*.

- (3) In this section:

protected identity information means information about, or allowing someone to find out, the private, business or official address, email address or telephone number of a person.

Subdivision C—Sexual and violent offence proceedings: audiovisual recording of police interview admissible as evidence

168 Meaning of *sexual offence* and *violent offence* for this Subdivision

- (1) For the purposes of this Subdivision, a ***sexual offence*** includes an offence under section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) in relation to another sexual offence.
- (2) For the purposes of this Subdivision, a ***violent offence*** includes an offence under section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) in relation to another violent offence.

168A Meaning of *sexual offence proceeding* for this Subdivision

- (1) For the purposes of this Subdivision, a ***sexual offence proceeding*** is:
- (a) a proceeding for a sexual offence; or
 - (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).
- (2) For the purposes of paragraph (1)(a), a ***proceeding for a sexual offence*** includes:
- (a) a proceeding for a sexual offence and any other offence; and
 - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
 - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

168B Meaning of *violent offence proceeding* for this Subdivision

- (1) For the purposes of this Subdivision, a ***violent offence proceeding*** is:
- (a) a proceeding for a violent offence; or
 - (b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).
- (2) For the purposes of paragraph (1)(a), a ***proceeding for a violent offence*** includes:
- (a) a proceeding for a violent offence and any other offence; and

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- (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and
 - (c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

168C Meaning of *witness* for this Subdivision

- (1) For the purposes of this Subdivision, a ***witness*** is a witness in a sexual or violent offence proceeding who:
 - (a) is a child on the day an audiovisual recording is made; or
 - (b) is intellectually impaired; or
 - (c) is a complainant or similar act witness in the proceeding.

Note: For ***intellectually impaired***, see section 165E.

- (2) In this section:

complainant, in a sexual or a violent offence proceeding, means the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.

168D Meaning of *audiovisual recording* for this Subdivision

- (1) For the purposes of this Subdivision, an ***audiovisual recording*** is an audiovisual recording that is of a witness answering questions of a police officer in relation to the investigation of a sexual or violent offence.
- (2) The audiovisual recording must include the following:
 - (a) the date when, and the place where, the recording was made;
 - (b) the times when the recording started and ended;
 - (c) the times when any break in questioning started and ended, and the reason for the break;
 - (d) the name of each person present during any part of the recording;
 - (e) for each person present during any part of the recording—the part when the person was present.
- (3) The audiovisual recording must:
 - (a) be certified by a police officer as an accurate record of the witness answering the questions; and
 - (b) not be edited or changed, unless the court hearing the proceeding in which the recording is tendered otherwise orders.

Note: For paragraph (b), a court might, for example, order that the recording be edited to omit inadmissible material.

168E Audiovisual recording may be admitted as evidence

- (1) An audiovisual recording may:
 - (a) be played at the hearing of a proceeding for the sexual or violent offence to which it relates; and
 - (b) if the recording is played at the hearing—be admitted as the witness's evidence in chief in the proceeding as if the witness gave the evidence at the hearing in person.

- (2) However, the court may refuse to admit all or any part of the audiovisual recording.
- (3) The witness must not be in the courtroom, or visible to anyone in the courtroom by audiovisual link, when the audiovisual recording is played at the hearing.
- (4) This section is subject to section 168J.

168F Audiovisual recording—notice

- (1) This section applies if the prosecutor in a sexual or violent offence proceeding intends to tender an audiovisual recording as evidence.
- (2) The prosecutor must give to the accused person or the person's lawyer:
 - (a) written notice that the prosecutor intends to tender the audiovisual recording; and
 - (b) a copy of a transcript of the recording.
- (3) The notice must state the following:
 - (a) each audiovisual recording the prosecutor intends to tender;
 - (b) that the accused person and the person's lawyer are entitled to see and listen to each recording at a police station or somewhere else decided by the police officer in charge in Norfolk Island;
 - (c) the person responsible (the *responsible person*) for arranging access to each recording.
- (4) For the purposes of paragraph (3)(c), the notice must state the responsible person by:
 - (a) naming the person; or
 - (b) stating the occupant of a position.

168G Audiovisual recording—notice for access

- (1) The accused person, or the person's lawyer, must give written notice to the responsible person to have access to an audiovisual recording.
- (2) The notice must state the following:
 - (a) the name of the accused person, and the person's lawyer;
 - (b) each audiovisual recording for which access is required.

168H Audiovisual recording—access to accused person

- (1) This section applies if an accused person, or the person's lawyer, gives notice under section 168G requesting access to an audiovisual recording.
- (2) The responsible person must give the person who gave notice access to see and listen to the audiovisual recording as soon as practicable after receiving the notice under section 168G.
- (3) The person who gave notice may have access to an audiovisual recording more than once.
- (4) The accused person, and the person's lawyer, must not be given, or take a copy of, an audiovisual recording.

168J Audiovisual recording—admissibility

- (1) An audiovisual recording is admissible in a sexual or violent offence proceeding only if:
 - (a) notice is given under section 168F; and
 - (b) a copy of a transcript of the recording is given to the accused person, or the person's lawyer, a reasonable time before the start of the hearing of the proceeding; and
 - (c) the accused person, and the person's lawyer, are given a reasonable opportunity to see and listen to the recording.
- (2) However, if the prosecutor fails to give notice under section 168F, the audiovisual recording is admissible if:
 - (a) a copy of a transcript of the recording is given to the accused person, or the person's lawyer, a reasonable time before the start of the hearing of the proceeding; and
 - (b) the accused person, and the person's lawyer, are given a reasonable opportunity to see and listen to the recording; and
 - (c) the court considers it is in the interests of justice to admit the recording.
- (3) This section does not prevent the parties consenting to the admission in evidence of an audiovisual recording.

168K Audiovisual recording—jury trial

- (1) This section applies if:
 - (a) a sexual or violent offence proceeding is a trial by jury; and
 - (b) an audiovisual recording is admitted in evidence in the proceeding.
- (2) The court must tell the jury that:
 - (a) admission of the audiovisual recording is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the evidence is given in that way.
- (3) If the court considers that a transcript of the audiovisual recording would be likely to help the jury's understanding of the evidence, the court may order that the transcript be made available to the jury.

168L Transcript of audiovisual recording—access to court

If an audiovisual recording is admitted in evidence in a sexual or violent offence proceeding, the court may order that a transcript of the recording be made available to the court.

168M Audiovisual recording—offences

- (1) A person commits an offence if the person, without authority:
 - (a) possesses an audiovisual recording; or
 - (b) supplies, or offers to supply, an audiovisual recording to another person; or
 - (c) plays, copies or erases, or allows someone else to play, copy or erase, an audiovisual recording.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) For the purposes of this section, a person has **authority** in relation to an audiovisual recording only if the person possesses the recording, or does something with the recording, in connection with:
- (a) the investigation of, or a proceeding for, an offence in relation to which the recording is prepared; or
 - (b) a re-hearing, re-trial or appeal in relation to such a proceeding, including a proceeding in which the recording is or may be admitted in evidence under Subdivision E or F.

Subdivision D—Sexual and violent offence proceedings: giving evidence by audiovisual link

169 Definitions for this Subdivision

In this Subdivision:

give evidence in a proceeding by audiovisual link means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

proceeding means a proceeding to which this Subdivision applies.

169A Meaning of complainant and sexual offence proceeding for this Subdivision

- (1) For the purposes of this Subdivision, the **complainant**, in relation to a sexual or violent offence proceeding, is the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.
- (2) For the purposes of this Subdivision, a **sexual offence proceeding** is:
- (a) a proceeding for a sexual offence; or
 - (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (c) a proceeding under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) in relation to a sexual offence;
 - (d) a proceeding by way of an inquest or inquiry in the Coroner's Court in relation to a sexual offence; or
 - (e) an appeal arising out of a proceeding mentioned in paragraphs (a) to (d).
- (3) For the purposes of paragraph (2)(a), a **proceeding for a sexual offence** includes:
- (a) a proceeding for a sexual offence and any other offence; and
 - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
 - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (4) To remove any doubt, for the purposes of this section, a **proceeding** includes a committal hearing.

169B Meaning of *violent offence proceeding* for this Subdivision

- (1) For the purposes of this Subdivision, a ***violent offence proceeding*** is:
 - (a) a proceeding for a violent offence; or
 - (b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
 - (c) a proceeding under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) in relation to a violent offence;
 - (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c).
- (2) For the purposes of paragraph (1)(a), a ***proceeding for a violent offence*** includes:
 - (a) a proceeding for a violent offence and any other offence; and
 - (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and
 - (c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (3) To remove any doubt, for the purposes of this section, a ***proceeding*** includes a committal hearing.

169C Proceedings to which this Subdivision applies

- (1) This Subdivision applies to the following proceedings:
 - (a) a sexual offence proceeding;
 - (b) a violent offence proceeding in relation to a serious violent offence;
 - (c) a violent offence proceeding in relation to a less serious violent offence if:
 - (i) the complainant or similar act witness (the ***witness***) is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Note 1: For ***relevant person***, see section 165A.

Note 2: The following are examples for subparagraph (c)(ii):

- (a) the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence;
 - (b) the witness is intimidated or distressed because of the witness's relationship to the accused person.
- (2) For the purposes of this Subdivision, it does not matter whether evidence is to be, or is being, given on oath or otherwise.

169D Complainant or similar act witness giving evidence by audiovisual link

- (1) This section applies if:
 - (a) a complainant or similar act witness is to give evidence in a proceeding; and
 - (b) the proceeding is to be heard in a courtroom; and
 - (c) the courtroom and an external place are linked by an audiovisual link.

- (2) The complainant's or similar act witness's evidence must be given by audiovisual link unless the court otherwise orders.
- (3) The court may make an order under subsection (2) only if satisfied:
 - (a) that:
 - (i) for the complainant—the complainant prefers to give evidence in the courtroom; and
 - (ii) for a similar act witness—the witness prefers to give evidence in the courtroom; or
 - (b) if the order is not made:
 - (i) the proceeding may be unreasonably delayed; or
 - (ii) there is a substantial risk that the court will not be able to ensure that the proceeding is conducted fairly.
- (4) While the complainant or similar act witness is at the external place to give evidence, the place is taken for all purposes (other than subsection 168E(3)) to be part of the courtroom.
- (5) While the complainant or similar act witness is at the external place to give evidence:
 - (a) the accused person must not be at the place; and
 - (b) the witness must not be able to see or hear the accused person; and
 - (c) the accused person must be able to see and hear the witness give evidence; and
 - (d) the accused person must be able to communicate with the person's lawyer.

169E Recording evidence given in sexual offence proceedings

- (1) If a complainant or similar act witness gives evidence in a sexual offence proceeding by audiovisual link under section 169D, the evidence must be recorded as an audiovisual recording.
- (2) If a court makes an order under subsection 169D(2) in a sexual offence proceeding that evidence given by a complainant or similar act witness not be given by audiovisual link, the evidence may be recorded as an audiovisual recording.

169F Consequential orders

- (1) This section applies if a complainant or similar act witness is to give evidence in a proceeding by audiovisual link.
- (2) The court may make any order it considers appropriate:
 - (a) to ensure that the proceeding is conducted fairly; or
 - (b) to allow the complainant or similar act witness to identify a person or thing; or
 - (c) to allow the complainant or similar act witness to take part in a view or to watch a demonstration or experiment; or
 - (d) to allow part of the proceeding to be heard somewhere other than in the courtroom.
- (3) The court may make any other order it considers appropriate, including, for example, an order stating:

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- (a) who may be with the complainant or similar act witness at the external place; or
 - (b) who must not be with the complainant or similar act witness at the external place; or
 - (c) who, in the courtroom, is to be able, or must not be able, to be heard, or seen and heard, by the complainant or similar act witness and people in the external place with the complainant or similar act witness; or
 - (d) who, in the courtroom, is to be able to see and hear the complainant or similar act witness and anyone else in the external place with the complainant or similar act witness; or
 - (e) how the audiovisual link is to operate.
- (4) The court may order that a person be excluded from the other place while the complainant or similar act witness is giving evidence.
 - (5) The court may direct that an order under this section apply only to a particular part of the proceeding.

169G Making orders under this Subdivision

- (1) The court may make an order under this Subdivision in a proceeding on its own initiative or on the application of:
 - (a) a party to the proceeding; or
 - (b) the complainant; or
 - (c) a similar act witness.
- (2) For the purpose of making an order under this Subdivision, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

169H Jury warning about inferences from complainant or similar act witness giving evidence by audiovisual link

- (1) This section applies if:
 - (a) a complainant or similar act witness gives evidence in a proceeding by audiovisual link; and
 - (b) the proceeding is before a jury.
- (2) The judge must warn the jury to the effect that the jury should not draw any inference against an accused person in the proceeding from the fact that the evidence of the complainant or similar act witness is given by audiovisual link.

Subdivision E—Special provisions relating to retrials of sexual offence proceedings

170 Definitions

In this Subdivision:

accused person, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a sexual offence.

complainant, in relation to any proceedings, means the person, or any of the persons, against whom a sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

original evidence of the complainant has the meaning given by subsection 170A(2).

original proceedings has the meaning given by subsection 170A(2).

prosecutor means the Director of Public Prosecutions or other person who institutes or is responsible for the conduct of a prosecution and includes (where the subject-matter or context allows or requires) a lawyer representing the prosecutor.

170A Admission of evidence of complainant in new trial proceedings

- (1) If a person is convicted of a sexual offence and, on an appeal against the conviction, a new trial is ordered, the prosecutor may tender as evidence in the new trial proceedings a record of the original evidence of the complainant.
- (2) For the purposes of this Subdivision, the **original evidence** of the complainant means all evidence given by the complainant in the proceedings from which the conviction arose (referred to in this Subdivision as the **original proceedings**), including the evidence given by the complainant on examination in chief in the original proceedings and any further evidence given on cross-examination or re-examination in those proceedings.
- (3) Despite anything to the contrary in the *Evidence Act 2004*, or any other Act or law, a record of the original evidence of the complainant is admissible in the new trial proceedings if:
 - (a) the prosecutor gives written notice to the accused person of the prosecutor's intention to tender the record under this section; and
 - (b) the prosecutor gives written notice to the court of the prosecutor's intention to tender the record under this section; and
 - (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the new trial proceedings or within such other period as the court may allow.
- (4) The hearsay rule (within the meaning of the *Evidence Act 2004*) does not prevent the admission of a record of the original evidence of the complainant under this Subdivision or the use of that record to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence.
- (5) The court hearing the new trial proceedings does not have any discretion to decline to admit a record of the original evidence of the complainant if it is admissible under this Subdivision.
- (6) However, the court may give directions requiring a record of the original evidence of the complainant to be altered or edited for the purpose of removing any statements that would not be admissible if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.
- (7) In addition, a record of the original evidence of the complainant may be altered or edited in accordance with an agreement between the prosecutor and the accused person or his or her lawyer (if any).

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- (8) This Subdivision applies in respect of proceedings for a new trial in which a person stands charged with a sexual offence whether or not the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

170B Complainant not compellable to give further evidence

If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Subdivision, the complainant is not compellable to give any further evidence in the proceedings (despite anything to the contrary in this Act or the *Evidence Act 2004*), including for the purpose of any examination in chief, cross-examination or re-examination by or at the request of the accused person or his or her lawyer.

170C Complainant may elect to give further evidence

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Subdivision, the complainant may, with leave of the court hearing the proceedings, and only if the complainant so chooses, give further oral evidence in the proceedings.

Note: The evidence may need to be given by audiovisual link: see Subdivision D.

- (2) The court is to give leave to the complainant to give such further evidence in the proceedings only if the court is satisfied, on application by one of the parties to the proceedings, that it is necessary for the complainant to give further oral evidence:
- (a) to clarify any matters relating to the original evidence of the complainant; or
 - (b) to canvas information or material that has become available since the original proceedings; or
 - (c) in the interests of justice.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the reasons for the grant of leave by the court.
- (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence. This applies despite section 170B.

170D Form in which record of original evidence of complainant is to be tendered

- (1) A record of the original evidence of the complainant tendered by the prosecutor under this Subdivision must be the best available record, or be comprised of the best available records, of the original evidence of the complainant, and the record or records concerned must be properly authenticated.
- (2) For the purposes of this section, the **best available record** of the evidence, or any part of the evidence, given by a complainant is:
- (a) an audiovisual recording of the evidence; or
 - (b) if an audiovisual recording of the evidence is not available—an audio recording of the evidence; or

- (c) if neither an audiovisual recording nor an audio recording of the evidence is available—a transcript of the evidence.
- (3) If the whole or part of the evidence given by the complainant in the original proceedings was given in the form of a recording made by a police officer, as provided for by Subdivision C, the **best available record** of that evidence is the recording viewed or heard by the court in those original proceedings.
- (4) A record of any evidence given by a complainant is **properly authenticated** for the purposes of this section if:
 - (a) the record has been authenticated by the court before which the evidence concerned was given or by the registrar or other proper officer of that court in accordance with any directions of the court; or
 - (b) the record has been authenticated by the person or body responsible for producing the record.

170E Access to audiovisual or audio recording

- (1) If a record of the original evidence of the complainant tendered or proposed to be tendered by the prosecutor under this Subdivision is an audiovisual recording or audio recording, the accused person, and his or her lawyer (if any), are not entitled to be given possession of the record or a copy of it (despite anything to the contrary in this Act or the *Evidence Act 2004*).
- (2) However, the accused person and his or her lawyer (if any) are to be given reasonable access to the recording to enable them to listen to it and, if the record is an audio visual recording, view it.
- (3) This may require access to be given on more than one occasion.

170F Exhibits may also be tendered

- (1) If a record of the original evidence of a complainant is tendered by the prosecutor under this Subdivision, any exhibits tendered in the original proceedings on the basis of the original evidence of the complainant and admitted in the original proceedings are also admissible in the new trial proceedings as if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.
- (2) This section does not prevent any other exhibits tendered in the original proceedings from being tendered and admitted in the new trial proceedings in accordance with the usual rules and practice of the court hearing the new trial proceedings.

Subdivision F—Special provisions relating to subsequent trials of sexual offence proceedings

Note: Subdivision E applies in relation to a retrial of proceedings that follows an appeal against a conviction for a sexual offence. This Subdivision, on the other hand, applies when a trial for a sexual offence has been discontinued and a new trial is listed.

171 Definitions

In this Subdivision:

accused person has the same meaning as in section 170.

complainant has the same meaning as in section 170.

original evidence of the complainant has the meaning given by subsection 171A(2).

original proceedings has the meaning given by subsection 171A(2).

171A Admission of evidence of complainant in new trial proceedings

- (1) If the trial of an accused person is discontinued following the jury being discharged because the jurors could not reach a verdict, or discontinued for any other reason, and, as a result, a new trial is listed, the prosecutor may tender as evidence in the new trial proceedings a record of the original evidence of the complainant.
- (2) For the purposes of this Subdivision, the **original evidence** of the complainant means all evidence given by the complainant in the discontinued trial (referred to in this Subdivision as the **original proceedings**), including the evidence given by the complainant on examination in chief in the original proceedings and any further evidence given on cross-examination or re-examination in those proceedings.
- (3) Despite anything to the contrary in the *Evidence Act 2004*, or any other Act or law, a record of the original evidence of the complainant is admissible in the new trial proceedings if:
 - (a) the prosecutor gives written notice to the accused person of the prosecutor's intention to tender the record under this section; and
 - (b) the prosecutor gives written notice to the court of the prosecutor's intention to tender the record under this section; and
 - (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the new trial proceedings or within such other period as the court may allow.
- (4) The hearsay rule (within the meaning of the *Evidence Act 2004*) does not prevent the admission of a record of the original evidence of the complainant under this Subdivision or the use of that record to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence.
- (5) Despite subsection (3), the court hearing the new trial proceedings may decline to admit a record of the original evidence of the complainant if, in the court's opinion, the accused would be unfairly disadvantaged by the admission of the record, having regard to the following:
 - (a) the completeness of the original evidence, including whether the complainant has been cross-examined on the evidence;
 - (b) the effect of editing any inadmissible evidence from the original evidence;
 - (c) the availability or willingness of the complainant to attend to give further evidence and to clarify any matters relating to the original evidence;
 - (d) the interests of justice;
 - (e) any other matter the court thinks relevant.
- (6) If the court allows a record of the original evidence of the complainant to be admitted, the court may give directions requiring the record to be altered or

edited for the purpose of removing any statements that would not be admissible if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings in accordance with the usual rules and practice of the court.

- (7) In addition, a record of the original evidence of the complainant may be altered or edited in accordance with an agreement between the prosecutor and the accused person or his or her counsel (if any).
- (8) This Subdivision applies in respect of proceedings for a new trial in which a person stands charged with a sexual offence whether or not the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

171B Whether complainant compellable to give further evidence

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Subdivision, the complainant is not compellable to give further evidence in the proceedings unless the court is satisfied that it is necessary for the complainant to give further evidence:
 - (a) to clarify any matters relating to the original evidence of the complainant;
or
 - (b) to canvas information or material that has become available since the original proceedings; or
 - (c) in the interests of justice.

Note: The evidence may need to be given by audiovisual link: see Subdivision D.

- (2) Subsection (1) applies despite anything to the contrary in this Act or the *Evidence Act 2004*.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the matters mentioned in subsection (1).
- (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence.

171C Complainant may elect to give further evidence

- (1) If a record of the original evidence of the complainant (or any part of the record) is admitted in proceedings under this Subdivision, the complainant may, with leave of the court hearing the proceedings, and only if the complainant so chooses, give further oral evidence in the proceedings.

Note: The evidence may need to be given by audiovisual link: see Subdivision D.

- (2) The court is to give leave to the complainant to give such further evidence in the proceedings only if the court is satisfied, on application by one of the parties to the proceedings, that it is necessary for the complainant to give further oral evidence:
 - (a) to clarify any matters relating to the original evidence of the complainant;
or

-
- (b) to canvas information or material that has become available since the original proceedings; or
 - (c) in the interests of justice.
- (3) The court is to ensure that the complainant is questioned by any party to the proceedings only in relation to matters that are relevant to the reasons for the grant of leave by the court.
 - (4) Subject to subsection (3), if a complainant gives any further oral evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence.

171D Application of provisions dealing with form of record of original evidence, access to recordings and exhibits

Sections 170D to 170F apply for the purposes of this Subdivision with such modifications as are necessary.

Division 3—Evidence in domestic violence proceedings

Subdivision A—Definitions for this Division

172 Meaning of *domestic violence offence* for this Division

In this Division:

domestic violence offence has the meaning given by section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

Note: **Complainant**, for a domestic violence offence proceeding, is an adult who is a relevant person in relation to the accused (see section 172B). For **relevant person**, see section 165A.

172A Meaning of *domestic violence offence proceeding* for this Division

(1) In this Division:

domestic violence offence proceeding means:

- (a) a proceeding for a domestic violence offence; or
- (b) a proceeding in relation to bail for a person charged with a domestic violence offence, whether or not the person is also charged with any other offence; or
- (c) a sentencing proceeding for a person convicted or found guilty of a domestic violence offence, whether or not the person is also convicted or found guilty of any other offence; or
- (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c); or
- (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

(2) In this section:

proceeding for a domestic violence offence includes:

- (a) a proceeding for a domestic violence offence and any other offence; and

- (b) a proceeding for a domestic violence offence and any other offence as an alternative to the domestic violence offence; and
- (c) a proceeding for a domestic violence offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

172B Meaning of *complainant* for this Division

In this Division:

complainant, for a domestic violence offence proceeding:

- (a) means a person:
 - (i) against whom a domestic violence offence the subject of the proceeding is alleged, or has been found, to have been committed; and
 - (ii) who is a relevant person in relation to the accused person; but
- (b) does not include a person who:
 - (i) is a child on the day a recorded statement is made; or
 - (ii) is intellectually impaired.

Note 1: For ***relevant person***, see section 165A. For ***intellectually impaired***, see section 165E.

Note 2: Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in Subdivision C of Division 2.

172C Meaning of *recorded statement* for this Division

(1) In this Division:

recorded statement means:

- (a) an audiovisual recording:
 - (i) of a complainant answering questions of a police officer in relation to the investigation of a domestic violence offence; and
 - (ii) made by a police officer; or
- (b) an audio recording that complies with paragraph (a):
 - (i) if the complainant does not consent to an audiovisual recording; or
 - (ii) in exceptional circumstances.

Note: An example of exceptional circumstances is technical difficulties with the visual aspect of the recording identified following the making of the recording.

(2) A police officer must, before making a recorded statement, tell the complainant that:

- (a) the recorded statement may be used in evidence at a hearing; and
- (b) if the recorded statement is used in evidence at a hearing, the complainant may be called to give evidence under cross-examination in person at the hearing; and
- (c) the complainant does not have to consent to the recording.

(3) In this section:

police officer includes a person who is a member of the police force of a State or another Territory if:

- (a) provisions of the law of that State or Territory correspond (or substantially correspond) to this Division; and
- (b) the person is trained in the taking of evidence under those provisions.

Subdivision B—Evidence may be given in closed court

173 Evidence may be given in closed court

- (1) This section applies to the complainant giving evidence in a domestic violence offence proceeding if the court considers that the complainant has a vulnerability that affects the complainant's ability to give evidence because of the circumstances of the proceeding or the complainant's circumstances.

Note: The following are examples for this subsection:

- (a) the complainant is likely to suffer severe emotional trauma because of the nature of the alleged offence;
 - (b) the complainant is intimidated or distressed because of the complainant's relationship to the accused person.
- (2) The court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the court be closed to the public while all or part of the complainant's evidence (including evidence given under cross-examination) is given.
- (4) In deciding whether to order that the court be closed to the public, the court must consider whether:
- (a) the complainant wants to give evidence in open court; and
 - (b) it is in the interests of justice that the complainant give evidence in open court.
- (5) However, an order under this section does not stop the following people from being in court when the complainant gives evidence:
- (a) a person nominated by the complainant;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.
- Note: Publishing certain information in relation to sexual offence proceedings is an offence (see section 167F).
- (6) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of a recorded statement of the evidence under Subdivision C.

Subdivision C—Recorded statement of police interview admissible as evidence: domestic violence offence proceedings

174 Recorded statement—requirements

- (1) A recorded statement must be made:
- (a) as soon as practicable after the events mentioned in the statement happened; and
 - (b) in the form of questions and answers.

Note: If the recorded statement is to be admitted as evidence in a proceeding, the rules of evidence apply to the content of the statement.

- (2) A recorded statement of a complainant must include the following:

- (a) the name of each person present during any part of the recording;
- (b) a statement by the complainant:
 - (i) of the complainant's name, age and whether the complainant lives in Norfolk Island; and
 - (ii) about the truth of the representations made by the complainant in the recorded statement.

- (3) As far as is practicable, a recorded statement must not contain an image of:
- (a) a child; or
 - (b) a person who is intellectually impaired.

Note 1: For *intellectually impaired*, see section 165E.

Note 2: Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in Subdivision C of Division 2.

- (4) If any part of a recorded statement is in a language other than English:
- (a) the recorded statement must contain an English translation of the part; or
 - (b) a separate written English translation of the part must accompany the recorded statement.
- (5) A recorded statement must not be edited or changed unless:
- (a) both parties consent to the edits or changes; or
 - (b) the court hearing the proceeding in which the recorded statement is tendered otherwise orders.

Note: For paragraph (b), a court might, for example, order that the recording be edited to omit inadmissible material.

174A Recorded statement—may be admitted as evidence

- (1) A recorded statement may:
- (a) be played at the hearing of a proceeding for the domestic violence offence to which it relates; and
 - (b) if the recorded statement is played at the hearing—be admitted as all or part of the complainant's evidence in chief in the proceeding as if the complainant gave the evidence at the hearing in person.
- (2) However, the court may refuse to admit all or any part of the recorded statement if the court considers it is in the interests of justice to do so.
- (3) The complainant may choose not to be present in the courtroom while the court is viewing or listening to the recorded statement.
- (4) If the complainant is giving evidence by audiovisual link from an external place under Subdivision D (sexual and violent offence proceedings: giving evidence by audiovisual link) of Division 2, the complainant must not be visible or audible to anyone in the courtroom by closed-circuit television or by means of similar technology while the court is viewing or listening to the recorded statement.
- (5) To remove any doubt, if a recorded statement is admitted as part of a complainant's evidence in chief in a proceeding, the complainant may give further evidence in chief.
- (6) This section is subject to section 174F (recorded statement—admissibility).

174B Recorded statement—hearsay rule and opinion rule

- (1) The hearsay rule and the opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement only because it is in that form.

Note: The hearsay rule and opinion rule will apply to the content of the recorded statement to be admitted as evidence.

- (2) In this section:

hearsay rule has the same meaning as in the Evidence Act 2004.

opinion rule has the same meaning as in the Evidence Act 2004.

174C Validity of proceeding not affected

- (1) The failure of a police officer to record a representation in the form of a recorded statement in accordance with the requirements of this Subdivision does not affect the validity of a proceeding in which evidence of the representation is given.
- (2) The failure of a complainant to give evidence in accordance with this Division does not affect the validity of a proceeding or any decision made in connection with the proceeding.

174D Recorded statement—represented accused person to be given copy

- (1) This section applies if:
 - (a) a recorded statement has been made in relation to a domestic violence offence that is the subject of a proceeding; and
 - (b) the accused person is represented by a lawyer in the proceeding.
- (2) The lawyer representing the accused person must be given a copy of the recorded statement as soon as practicable after the proceeding is commenced.
- (3) The lawyer representing the accused person must return the copy of the recorded statement by giving it to the prosecutor not later than 16 weeks after the proceeding is finalised.
- (4) The accused person must not be given, or take a copy of, the recorded statement.

174E Recorded statement—unrepresented accused person to be given access

- (1) This section applies if:
 - (a) a recorded statement has been made in relation to a domestic violence offence that is the subject of a proceeding; and
 - (b) the accused person is not represented by a lawyer in the proceeding.
- (2) The accused person must be given an audio copy of the recorded statement as soon as practicable after the proceeding is commenced.
- (3) Also, if it is reasonably practicable, the accused person must be given an opportunity to view a recorded statement that is in the form of a video recording at a police station on at least one of the following occasions:
 - (a) when the accused person is being questioned in relation to the alleged domestic violence offence;

- (b) at the request of the accused person, on a day arranged with the accused person;
 - (c) on another day stated in a written notice given to the accused person before committal proceedings or the trial commences.
- (4) If compliance with subsection (3) is not reasonably practicable, the accused person must be given the opportunity to view the recorded statement on a day on which proceedings relating to the offence are being held.

174F Recorded statement—admissibility

Evidence of a representation of a complainant given in the form of a recorded statement is not to be admitted if section 174D or 174E have not been complied with, unless the court is satisfied that:

- (a) the parties consent to the recorded statement being admitted; or
- (b) the accused person or the accused person's lawyer (if any) have been given a reasonable opportunity to listen to or view the recorded statement and it would be in the interests of justice to admit the recorded statement.

174G Recorded statement—accused person to be given audio copy

- (1) This section applies if:
- (a) the prosecutor in a domestic violence offence proceeding intends to tender a recorded statement as evidence; and
 - (b) the court accepts a plea of not guilty from the accused person; and
 - (c) the accused person has not already been given an audio copy of the recorded statement under section 174E (recorded statement—unrepresented accused person to be given access).
- (2) The accused person must be given an audio copy of the recorded statement.

174H Recorded statement—jury trial

- (1) This section applies if:
- (a) a domestic violence offence proceeding is a trial by jury; and
 - (b) a recorded statement is admitted in evidence in the proceeding.
- (2) The court must tell the jury that:
- (a) admission of a recorded statement is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the evidence is given in that way.
- (3) If the court considers that a transcript of the recorded statement would be likely to help the jury's understanding of the evidence, the court may order that the transcript be made available to the jury.

174J Recorded statement—offence to publish

- (1) A person commits an offence if the person:
- (a) publishes a recorded statement; and
 - (b) does not have authority to publish the recorded statement.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) For the purposes of this section, a person has **authority** to publish a recorded statement only if the person publishes the recorded statement in connection with:
- (a) the investigation of, or a proceeding for, an offence in relation to which the recorded statement is prepared; or
 - (b) a re-hearing, re-trial or appeal in relation to the proceeding; or
 - (c) a proceeding for the making, variation or revocation of an interim apprehended domestic violence order or an apprehended domestic violence order under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) if:
 - (i) the protected person under that Act in relation to the order is the complainant in relation to the recorded statement; and
 - (ii) the defendant under that Act in relation to the order is the person against whom the domestic violence offence, the subject of the recorded statement, is alleged.

- (3) In this section:

person includes the complainant in relation to the recorded statement.

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

Subdivision D—Recorded statement of police interview admissible as evidence: application for apprehended domestic violence order

175 Recorded statement—may be admitted as evidence in application for apprehended domestic violence order

- (1) This section applies if a recorded statement is made in relation to an alleged domestic violence offence.
- (2) The recorded statement may be admitted by the Court of Petty Sessions in proceedings for an application for an interim apprehended domestic violence order or an apprehended domestic violence order under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) if:
- (a) the protected person under that Act in relation to the order is the complainant in relation to the recorded statement; and
 - (b) the defendant under that Act in relation to the order is the person against whom the domestic violence offence is alleged.

59H Paragraph 177(2)(c)

After “convicted” (wherever occurring), insert “or found guilty”.

59K Section 183 (paragraph (b) of the definition of *criminal proceeding*)

After “convicted”, insert “or found guilty”.

59M Section 183 (note to the definition of *harm*)

Repeal the note.

59P Subsections 184(4), 186(2) and 187(3) (note)

Repeal the note.

59S Division 7 of Chapter 7

Repeal the Division.

59X Subsection 215(3)

Repeal the subsection.

Schedule 4—Sentencing

Norfolk Island Continued Laws Ordinance 2015

1 After item 297AA of Schedule 1

Insert:

297AB Paragraph 5(2)(f)

Before “the offender’s”, insert “subject to subsection (4),”.

297AC At the end of section 5

Add:

- (4) In sentencing an offender for an offence against Part 3.6, 3.7 or 3.10 of the *Criminal Code 2007*, the court must not under paragraphs (2)(f) and (g) of this section have regard to the offender’s good character as a mitigating factor if:
- (a) the offence was committed against a person who was under 16 years old at the time the offender engaged in the conduct constituting the offence; and
 - (b) the offender took or sought to take advantage of either of the following in the commission of the offence:
 - (i) the offender’s lack of previous findings of guilt or convictions;
 - (ii) a matter mentioned in paragraph 6(b) or (c).

297AH Subsection 43(1)

Omit all the words after “home detention order”, substitute:

if:

- (a) none of the offences for which the offender is being sentenced is a sexual offence; and
- (b) if any of the offences for which the offender is being sentenced is a violent offence or an offence committed under paragraph 87(2)(aa) (choking, suffocating or strangling another person) of the *Criminal Code 2007*—the offence was not committed against a person with whom the offender would likely reside under the order; and
- (c) in any case—the court is satisfied:
 - (i) that the offender is unlikely to commit a sexual offence or a violent offence while the order would be in force (whether or not the offender has previously committed offences of that nature); and
 - (ii) that it is desirable in the circumstances to make the order.

2 After item 297A of Schedule 1

Insert:

297H Clause 2 of Schedule 2

Omit “or 120”, substitute “, 120, 121A or 121B”.

Schedule 5—Consequential and technical amendments

Part 1—Amendments affecting the Adoption of Children Act 1932 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

1 After item 2A of Schedule 1

Insert:

Adoption of Children Act 1932 (Norfolk Island)

2AA Subsection 9(5)

Omit “, and the provisions of sections 73, 74 and 75 of the *Crimes Act 1900* of the State of New South Wales, in its application to Norfolk Island, as amended by any law of Norfolk Island for the time being in force,”.

Part 2—Amendments affecting the Child Welfare Act 2009 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

2 After item 31 of Schedule 1

Insert:

31AAA Subsection 33(1) (subparagraph (c)(iv) of the definition of *abuse*)

Omit “domestic violence offence within the meaning of the *Domestic Violence Act 1995*, section 3,”, substitute “domestic violence offence as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)”.

3 Before item 31E of Schedule 1

Insert:

31DE Section 59 (definition of *final care and protection order*)

Omit “a protection order or”, substitute “an”.

31DF Section 59

Repeal the following definitions:

- (a) definition of *final protection order*;
- (b) definition of *interim protection order*.

31DG Sections 70 to 73

Repeal the sections.

4 After item 31K of Schedule 1

Insert:

31KA Subsection 123(7)

Omit “, or a protection order,”.

5 After item 32AA of Schedule 1

Insert:

32AAA Subsection 170(4)

Repeal the subsection, substitute:

- (4) A person may not appeal to the Supreme Court in relation to a matter arising under this Act except in accordance with this Act.

6 Item 37 of Schedule 1

Repeal the item, substitute:

37 Dictionary (note 3)

Repeal the note.

37AA Dictionary

Repeal the following definitions:

- (a) definition of *final protection order*;
- (b) definition of *interim protection order*.

Part 3—Amendments affecting the Court of Petty Sessions Act 1960 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

7 Item 43AL of Schedule 1

Repeal the item, substitute:

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.

43ALA Subsection 4(1) (definition of *capital offence*)

Repeal the definition.

43ALB Subsection 4(1)

Insert:

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.

8 After item 43AP of Schedule 1

Insert:

43AT Paragraph 45(a)

Omit “the offence is a capital offence or”.

43AU Paragraph 45(a)

After “in respect of the offence”, insert “is imprisonment for life or”.

43AW Subsection 59(1)

Omit “death or”.

Part 4—Amendments affecting the Environment Act 1990 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

9 After item 88 of Schedule 1

Insert:

88K Subsection 134(1)

Omit “(1)”.

88L Subsection 134(2)

Repeal the subsection.

Part 5—Amendments affecting the Evidence Act 2004 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

10 After item 97 of Schedule 1

Insert:

97AAA Paragraph 19(a)

Omit “Part III or IIIA of the *Criminal Law Act 1960*”, substitute “Part 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.9 or 3.10 of the *Criminal Code 2007*”.

97AAB Paragraph 19(b)

Omit “section 12 of the *Child Welfare Act 1937*”, substitute “section 174 or 175 of the *Child Welfare Act 2009*”.

97AAC Paragraph 19(c)

Repeal the paragraph, substitute:

- (c) a domestic violence offence (as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)).

97AAH Subsection 181AR(2) (note)

Omit “Part 7 of the *Crimes Act 1900* (NSW) as applied by the *Criminal Law Act 1960*”, substitute “Chapter 7 of the *Criminal Code 2007*”.

97AAL Section 181R (definition of *Crimes Act*)

Repeal the definition.

97AAM Section 181R (definition of *prescribed sexual offence*)

Repeal the definition, substitute:

prescribed sexual offence means:

- (a) an offence against Part 3.6 of the *Criminal Code 2007*; or
- (b) if a person charged with an offence (the *offence charged*) is alleged, as an element of that offence, to have intended to commit an offence against Part 3.6 of the *Criminal Code 2007*—the offence charged.

Part 6—Amendments affecting the Firearms and Prohibited Weapons Act 1997 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

11 Before item 97AA of Schedule 1

Insert:

97AAO Subsection 16(3) (table items 7 and 8)

Repeal the items, substitute:

7	Interim apprehended violence order	Either: (a) an interim apprehended violence order is in force against the person under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) (NI); or (b) the person is the subject of an order under the law of a State or another Territory of the Commonwealth that has substantially the same effect as an order referred to in paragraph (a).
8	Final apprehended violence order	In the last 5 years, either: (a) a final apprehended violence order was in force against the person under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) (NI); or (b) the person was the subject of an order under the law of a State or another Territory of the Commonwealth that had substantially the same effect as an order referred to in paragraph (a); unless an appeal against the making of the order was upheld.

97AAP Subsection 21(1A)

Omit “if the person becomes subject to an interim protection order under the *Domestic Violence Act 1995*”, substitute “while an interim apprehended violence order against the person is in force under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)”.

97AAQ Paragraph 22(1)(a)

Repeal the paragraph, substitute:

- (a) if a final apprehended violence order comes into force against the person under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI);
or

97AAR Subsection 26A(3) (table items 3 and 4)

Repeal the items, substitute:

- | | | |
|-------|--|---|
| 3 | Firearms permit—
interim
apprehended
violence order | In the case of a firearms permit (except a visiting sporting shooter permit), either:
(a) an interim apprehended violence order is in force against the person under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) (NI); or
(b) the person is the subject of an order under the law of a State or another Territory of the Commonwealth that has substantially the same effect as an order referred to in paragraph (a). |
| <hr/> | | |
| 4 | Firearms permit—
final apprehended
violence order | In the case of a firearms permit (except a visiting sporting shooter permit), in the last 5 years either:
(a) a final apprehended violence order was in force against the person under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW) (NI); or
(b) the person was the subject of an order under the law of a State or another Territory of the Commonwealth that had substantially the same effect as an order referred to in paragraph (a);

unless an appeal against the making of the order was upheld. |

97AAS Subsection 26D(2)

Omit “if the holder becomes subject to an interim protection order under the *Domestic Violence Act 1995*”, substitute “while an interim apprehended violence order against the holder is in force under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI)”.

97AAT Paragraph 26E(1)(a)

Repeal the paragraph, substitute:

- (a) if a final apprehended violence order comes into force against the holder under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI);
or

97AAX After subsection 45D(1)

Insert:

- (1A) The Administrator must refuse to issue a permit to a person who is disqualified by subsection 98ZJ(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) from holding such a permit.

97AAY After subsection 45D(5)

Insert:

- (5A) The Administrator must, by written notice given to a person who:
- (a) has been issued a permit; and
(b) is disqualified by subsection 98ZJ(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) from holding such a permit;

Schedule 5 Consequential and technical amendments

Part 6 Amendments affecting the Firearms and Prohibited Weapons Act 1997 (Norfolk Island)

cancel the permit.

Part 7—Amendments affecting the Mental Health Act 1996 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

12 Before item 206AA of Schedule 1

Insert:

206AAA Section 4 (paragraph (a) of the definition of *custodial order*)

Omit “*Criminal Law Act 1960*, Part 11A”, substitute “Chapter 2 of the *Criminal Procedure Act 2007*”.

13 After item 206AA of Schedule 1

Insert:

206AAAA Section 17A (heading)

Repeal the heading, substitute:

17A Reasons for decisions in respect of referrals by courts under the *Criminal Procedure Act 2007*

14 After item 206AB of Schedule 1

Insert:

206AH Part 4A (heading)

Repeal the heading, substitute:

Part 4A—Referrals by courts under the *Criminal Procedure Act 2007*

206AI Subsection 37A(1) (definition of *order to determine fitness*)

Omit “the *Criminal Law Act 1960*, part 11A”, substitute “section 18 of the *Criminal Procedure Act 2007*”.

206AL Paragraph 37C(1)(c)

Repeal the paragraph, substitute:

- (c) an order is made in relation to the charge under:
 - (i) subsection 26(2) of the *Criminal Procedure Act 2007* (non-acquittal at special hearing—non-serious offence); or
 - (ii) subsection 27(2) of that Act (non-acquittal at special hearing—serious offence).

206AM Subsection 37D(1) (definition of *order for recommendations*)

Omit “under the *Criminal Law Act 1960*, Division 11A requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations to the court”, substitute “or the Court of Petty Sessions under paragraph 32(1)(a) or 37(1)(a), or subsection 40(1), of the *Criminal Procedure Act 2007* requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations”.

206AN Subsection 37D(2)

Omit “under the *Criminal Law Act 1960*, Division 11A, the Tribunal shall make recommendations to the Supreme Court”, substitute “the Tribunal must make recommendations, to the court that made the order,”.

206AP Subsection 37F(1) (paragraph (a) of the definition of *order for detention*)

Omit “the *Criminal Law Act 1960*, Part 11A”, substitute “paragraph 26(2)(a), subsection 27(2), paragraph 32(3)(a), subsection 33(1), paragraph 37(3)(a), subsection 38(1) or 44(2) or paragraph 44(4)(c) of the *Criminal Procedure Act 2007*”.

206AQ Paragraph 37F(3)(c)

Omit “the *Criminal Law Act 1960*, Part 11A”, substitute “subsection 9(2), 10(2), 12(2) or 13(2) of the *Criminal Procedure Act 2007*”.

206AR After paragraph 37F(6)(c)

Insert:

- (ca) if the order for detention was made by the Court of Petty Sessions—the Clerk of the Court of Petty Sessions;

206AS Paragraph 37F(7)(b)

Omit “Court”, substitute “Supreme Court”.

206AT Subsection 37J(2) (paragraph (a) of the definition of *limiting period*)

Omit “the *Criminal Law Act 1960*, Part 11A”, substitute “Chapter 2 of the *Criminal Procedure Act 2007*”.

206AU Part 4B (heading)

Repeal the heading, substitute:

Part 4B—Procedural matters for referrals by courts under the Criminal Procedure Act 2007

206AV Paragraph 37L(5)(d)

Omit “the *Criminal Law Act 1960*, Part 11A”, substitute “Chapter 2 of the *Criminal Procedure Act 2007*”.

Part 8—Amendments affecting the Summary Offences Act 2005 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

15 After item 335A of Schedule 1

Insert:

Summary Offences Act 2005 (Norfolk Island)

335P Paragraph 30(1)(a)

Repeal the paragraph, substitute:

- (a) an offence against Part 3.6 (sexual offences) or Part 3.7 (child pornography) of the *Criminal Code 2007*; or

335Q Subparagraphs 30(1)(b)(i) and (ii)

Repeal the subparagraphs.

Schedule 6—Transitional provisions

Norfolk Island Continued Laws Ordinance 2015

1 In the appropriate position in Part 2 of Schedule 1

Insert:

Division 15—Transitional provisions relating to the Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018

375A Provisions affecting the *Bail Act 2005* (Norfolk Island)

- (1) Despite the repeal and substitution of paragraph 9(1)(d) of the *Bail Act 2005* (Norfolk Island) by this Schedule at the commencement of this item, section 9 of that Act does not apply to an offence against section 42 of the *Domestic Violence Act 1995* (Norfolk Island).
- (2) Paragraph 25(1)(d) of the *Bail Act 2005* (Norfolk Island), as amended by this Schedule at the commencement of this item, applies as if the reference in that paragraph to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) included a reference to the *Domestic Violence Act 1995* (Norfolk Island).

376 Provision affecting the *Child Welfare Act 2009* (Norfolk Island)

Subparagraph (c)(iv) of the definition of *abuse* in subsection 33(1) of the *Child Welfare Act 2009* (Norfolk Island), as amended by this Schedule at the commencement of this item, applies as if the reference in that subparagraph to a domestic violence offence as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) included a reference to domestic violence, as defined in section 3 of the *Domestic Violence Act 1995* (Norfolk Island), occurring before the repeal of that Act by Schedule 2 to this Ordinance.

377 Provisions affecting the *Criminal Procedure Act 2007* (Norfolk Island)

- (1) The *Criminal Procedure Act 2007* (Norfolk Island), as amended by this Schedule at the commencement of this item, applies subject to this item as follows:
 - (a) Chapters 6, 6A and 7 apply in relation to proceedings conducted on or after that commencement, even if the proceedings were instituted or partly heard before that commencement;
 - (b) the other provisions of that Act apply in relation to proceedings instituted on or after that commencement.
- (2) Section 54 of the *Criminal Procedure Act 2007* (Norfolk Island), as amended by this Schedule at the commencement of this item, applies to each of the following as if it were an order described in subsection (1) of that section:
 - (a) a direction, that was in force under paragraph 15(1)(b) of the *Domestic Violence Act 1995* (Norfolk Island) immediately before the repeal of that Act by Schedule 2 to this Ordinance, to seize and detain a firearm for a period;

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- (b) an order, that was in force under paragraph 15(6)(a) of the *Domestic Violence Act 1995* (Norfolk Island) immediately before the repeal of that Act by Schedule 2 to this Ordinance, to seize a firearm.
- (3) Paragraphs 155C(c) and 160B(c) of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply as if a reference in those paragraphs to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) included a reference to the *Domestic Violence Act 1995* (Norfolk Island).
- (4) The following provisions of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply as if a reference in those provisions to section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) included a reference to section 42 of the *Domestic Violence Act 1995* (Norfolk Island):
- (a) paragraph (b) of the definition of *less serious violent offence* in section 166;
 - (b) subsections 168(1) and (2).
- (5) Subdivision C of Division 2 of Chapter 7 of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, applies in relation to an audiovisual recording, even if it was made before that commencement.
- (6) Paragraphs 168J(1)(b) and (2)(a) of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply in relation to proceedings instituted before that commencement as if those paragraphs required the copy of the transcript mentioned in those paragraphs to be given to the accused person, or the accused person's lawyer, as soon as practicable after that commencement.
- (7) Paragraphs 169A(2)(c) and 169B(1)(c) of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply as if a reference in those paragraphs to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) included a reference to the *Domestic Violence Act 1995* (Norfolk Island).
- (8) Subsection 174D(2) of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, applies in relation to proceedings instituted before that commencement as if that subsection required the copy of the recorded statement mentioned in that subsection to be given to the lawyer representing the accused person as soon as practicable after that commencement.
- (9) Subsection 174E(2) of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, applies in relation to proceedings instituted before that commencement as if that subsection required the audio copy of the recorded statement mentioned in that subsection to be given to the accused person as soon as practicable after that commencement.
- (10) Subdivisions E and F of Division 2 of Chapter 7 of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply in relation to new trial proceedings, even if the new trial was ordered or listed before that commencement.
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- (11) Subdivisions C and D of Division 3 of Chapter 7 of the *Criminal Procedure Act 2007* (Norfolk Island), as inserted by this Schedule at the commencement of this item, apply in relation to a recorded statement, even if it was made before that commencement.

378 Provisions affecting the *Evidence Act 2004* (Norfolk Island)

- (1) Section 18 of the *Evidence Act 2004* (Norfolk Island) does not apply in proceedings for an offence constituted by domestic violence as defined in the *Domestic Violence Act 1995* (Norfolk Island) immediately before its repeal by this Ordinance (despite the repeal and substitution of paragraph 19(c) of the *Evidence Act 2004* (Norfolk Island) by this Schedule).
- (2) The definition of *prescribed sexual offence* in section 181R of the *Evidence Act 2004* (Norfolk Island), as in force after its substitution by this Schedule at the commencement of this item, applies as if a reference in that definition to Part 3.6 of the *Criminal Code* included a reference to the following provisions of the *Crimes Act 1900* (NSW) as they applied in Norfolk Island because of the *Criminal Law Act 1960* (Norfolk Island):
- (a) Part 3A;
 - (b) sections 62 to 81 inclusive, sections 86 to 89 inclusive and sections 91A and 91B, as those sections were in force immediately before the commencement of the *Criminal Law Amendment Act 1993* (Norfolk Island).

379 Provisions affecting the *Firearms and Prohibited Weapons Act 1997* (Norfolk Island)

- (1) Item 8 of the table in subsection 16(3) of the *Firearms and Prohibited Weapons Act 1997* (Norfolk Island), as in force immediately before its repeal by this Schedule, continues to apply despite that repeal. This does not limit the application of item 8 of the table in subsection 16(3) of that Act as amended by this Schedule.
- (2) Item 4 of the table in subsection 26A(3) of the *Firearms and Prohibited Weapons Act 1997* (Norfolk Island), as in force immediately before its repeal by this Schedule, continues to apply despite that repeal. This does not limit the application of item 4 of the table in subsection 26A(3) of that Act as amended by this Schedule.

380 Provisions affecting the *Sentencing Act 2007* (Norfolk Island)

Subsections 5(4) and 43(1) of the *Sentencing Act 2007* (Norfolk Island), as amended by this Schedule at the commencement of this item, apply in relation to the sentencing of an offender on or after that commencement, even if an offence for which the offender is being sentenced was committed before that commencement.

381 Provisions affecting the *Summary Offences Act 2005* (Norfolk Island)

- (1) Paragraph 30(1)(a) of the *Summary Offences Act 2005* (Norfolk Island), as in force immediately before its repeal by this Schedule, continues to apply despite that repeal. This does not limit the application of paragraph 30(1)(a) of that Act as amended by this Schedule.

- (2) Despite the repeal of subparagraphs 30(1)(b)(i) and (ii) of the *Summary Offences Act 2005* (Norfolk Island) by this Schedule, those subparagraphs continue to apply in relation to paragraph 30(1)(a) of that Act as it applies because of subitem (1).

2 In the appropriate position in Schedule 2

Insert:

Part 9—Transitional provisions relating to repeal of the Domestic Violence Act 1995

28 Protection orders in force immediately before repeal

A protection order in force under the *Domestic Violence Act 1995* (Norfolk Island) immediately before the repeal of that Act by this Schedule has effect after that repeal as if it were an apprehended domestic violence order made under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

Note: An apprehended domestic violence order may be varied or revoked under Division 5 of Part 10 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

29 Interim protection orders in force immediately before repeal

An interim protection order in force under the *Domestic Violence Act 1995* (Norfolk Island) immediately before the repeal of that Act by this Schedule has effect after that repeal as if it were an interim apprehended domestic violence order made under Part 6 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).

Note: An interim apprehended domestic violence order made under Part 6 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) may be varied or revoked under Division 5 of Part 10 of that Act.

30 Applications on foot immediately before repeal

An application made (and not decided or withdrawn) for a protection order under the *Domestic Violence Act 1995* (Norfolk Island) before the repeal of that Act by this Schedule has effect after that repeal as if it were an application made under Part 4 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) for an apprehended domestic violence order.

Note: The application has that effect even if an interim protection order was made before that repeal as a result of the application.

31 Directions and orders for seizure etc. of firearms

The following continue to have effect despite the repeal of the *Domestic Violence Act 1995* (Norfolk Island) by this Schedule:

- (a) a direction, that was in force under paragraph 15(1)(b) of that Act immediately before that repeal, to seize and detain a firearm for a period;
- (b) an order, that was in force under paragraph 15(6)(a) of that Act immediately before that repeal, to seize a firearm.

32 Weapons seized before repeal

Division 1 of Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (NI) applies to a weapon seized under the *Domestic Violence Act 1995* (Norfolk Island) before its repeal by this Schedule as if the weapon were a dangerous implement that had been seized under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (NI):

- (a) if the seizure actually occurred before the repeal of the *Domestic Violence Act 1995*—when that Act was repealed; or
- (b) if the seizure actually occurred at a time on or after the repeal of the *Domestic Violence Act 1995*—at that time.

Note: Paragraph (b) could apply if the seizure occurred under a direction or order that was made under section 15 of the *Domestic Violence Act 1995* (Norfolk Island) and continued in effect by this Part despite the repeal of that Act.

33 Registered orders from other jurisdictions

- (1) A registered external order in force under the *Domestic Violence Act 1995* (Norfolk Island) immediately before the repeal of that Act has effect after that repeal as if it were a registered external protection order for the purposes of Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI).
- (2) However, paragraph 97(1)(a) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI) does not have the effect that the order is a local DVO for the purposes of Part 13B of that Act.
- (3) The order ceases to be registered under Part 13 of that Act if the order becomes a recognised DVO in Norfolk Island under Part 13B of that Act. In that case, Part 13B of that Act applies to the order in the same way as it applies to any other recognised DVO that is a non-local DVO for the purposes of that Part.

Note: Under this item, a registered external order under the *Domestic Violence Act 1995* (Norfolk Island) immediately before its repeal will continue to be enforceable in Norfolk Island as provided for by Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (NI). If the order becomes a recognised DVO for the purposes of Part 13B of that Act (because of section 98ZX of that Act or because of a declaration under section 98ZZB of that Act), the order ceases to be registered under Part 13 of that Act and is enforceable in Norfolk Island under Part 13B of that Act and corresponding laws (of States and other Territories).