



## **Norfolk Island Legislation Amendment (Criminal Justice Measures) Ordinance 2019**

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

Dated 04 April 2019

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 (Criminal Justice Measures) Ordinance 2019*.

## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Ordinance	The day after this Ordinance is registered.	6 April 2019

Note: This table relates only to the provisions of this Ordinance as originally made.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

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

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Amendment of the Criminal Code 2007 (Norfolk Island)

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

#### 1 After item 53D of Schedule 1

Insert:

#### 53DAAA Section 108

Repeal the section, substitute:

#### 108 Meaning of *sexual intercourse* in this Part

- (1) In this Part, *sexual intercourse* means:
  - (a) the penetration, to any extent, of the genitalia or anus of a person by any part of the body of another person; or
  - (b) the penetration, to any extent, of the genitalia or anus of a person, by an object, carried out by another person; or
  - (c) fellatio; or
  - (d) cunnilingus; or
  - (e) the continuation of any activity mentioned in paragraph (a), (b), (c) or (d).
- (2) In this Part, *sexual intercourse* does not include an act of penetration that:
  - (a) is carried out for a proper medical or hygienic purpose; or
  - (b) is carried out for a proper law enforcement purpose.

- (3) In this section:

*genitalia* includes surgically constructed or altered genitalia.

*object* includes an animal.

#### 108A Meaning of *act of indecency* in this Part

In this Part:

*act of indecency* means any act, other than sexual intercourse, that:

- (a) is of a sexual or indecent nature (including an indecent assault); and
  - (b) involves the human body, or bodily actions or functions;
- whether or not the act involves physical contact between people.

#### 53DAAB Subsection 113(1)

Omit “17 years”, substitute “20 years”.

#### 53DAAC After section 113

Insert:

**113A Sexual intercourse with person aged at least 16 but under 18—defendant in position of trust or authority**

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant engages in sexual intercourse with another person; and
  - (b) the other person is at least 16, but less than 18, years of age; and
  - (c) the defendant is in a position of trust or authority in relation to the other person for the purposes of the *Criminal Code* of the Commonwealth (see section 272.3 of that Code).

Penalty: Imprisonment for 10 years.

- (2) For the purposes of subsection (1):
- (a) absolute liability applies to paragraph (1)(b); and
  - (b) strict liability applies to paragraph (1)(c).

Note: For absolute liability, see section 24. For strict liability, see section 23.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
- (a) at the time of the alleged offence, there existed between the defendant and the other person a marriage that was valid, or recognised as valid, under a law in force in:
    - (i) the place where the marriage was solemnised; or
    - (ii) Norfolk Island; or
    - (iii) the place of the defendant's residence or domicile; and
  - (b) when it was solemnised, the marriage was genuine.

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

- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, at the time of the alleged offence, the defendant believed on reasonable grounds that the other person was of or above the age of 18 years.

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

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

Insert:

**53DAA Subsection 118(1)**

Omit "5 years", substitute "7 years".

**53DAB Subsection 118(2)**

Omit "7 years", substitute "9 years".

**53DAC After section 119**

Insert:

**119A Act of indecency with person aged at least 16 but under 18—defendant in position of trust or authority**

- (1) A person (the *defendant*) commits an offence if:

**Schedule 1** Amendments

**Part 1** Amendment of the Criminal Code 2007 (Norfolk Island)

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- (a) the defendant commits an act of indecency on, or in the presence of, another person; and
- (b) the other person is at least 16, but less than 18, years of age; and
- (c) the defendant is in a position of trust or authority in relation to the other person for the purposes of the *Criminal Code* of the Commonwealth (see section 272.3 of that Code).

Penalty: Imprisonment for 7 years.

- (2) For the purposes of subsection (1):
  - (a) absolute liability applies to paragraph (1)(b); and
  - (b) strict liability applies to paragraph (1)(c).

Note: For absolute liability, see section 24. For strict liability, see section 23.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:
  - (a) at the time of the alleged offence, there existed between the defendant and the other person a marriage that was valid, or recognised as valid, under a law in force in:
    - (i) the place where the marriage was solemnised; or
    - (ii) Norfolk Island; or
    - (iii) the place of the defendant's residence or domicile; and
  - (b) when it was solemnised, the marriage was genuine.

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

- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, at the time of the alleged offence, the defendant believed on reasonable grounds that the other person was of or above the age of 18 years.

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

**3 After item 53DB of Schedule 1**

Insert:

**53DBA Subsection 125(6) (at the end of the definition of *act of a sexual nature*)**

Add "(both within the meaning of Part 3.6)".

**53DBB Subsection 126(1)**

Omit "122, 123 (3) (b)", substitute "112, 113(3)(b)".

**4 After item 53DD of Schedule 1**

Insert:

**53DE At the end of section 129**

Add:

- (6) However, a person may be found guilty of an offence in accordance with this section only if the person has been accorded procedural fairness in relation to that finding of guilt.



**53DF Section 130**

Before “In an indictment”, insert “(1)”.

**53DG At the end of section 130**

Add:

- (2) In an indictment for an offence against section 113A, a count may be added for an offence against section 119A.

**53DH Section 131**

Omit “118 or 119”, substitute “118, 119 or 119A”.

## **Part 2—Amendment of the Telecommunications Act 1992 (Norfolk Island)**

### *Norfolk Island Continued Laws Ordinance 2015*

#### **5 After item 338 of Schedule 1**

Insert:

##### **338AA Section 3**

Insert:

Judge

officer in charge

##### **338AB Section 3**

Omit “Principal Police Officer”.

#### **6 After item 339D of Schedule 1**

Insert:

##### **339DA At the end of subsection 48(2)**

Add:

; or (d) the interception of a communication because of a request made, or purporting to be made, under subsection 54A(2) or (4).

##### **339DB At the end of section 48**

Add:

- (3) Subsection (1) does not apply to, or in relation to, an act done by a member of the Police Force in relation to a communication if all of the following conditions are satisfied:
  - (a) the member, or another member of the Police Force, is a party to the communication;
  - (b) there are reasonable grounds for suspecting that another party to the communication has:
    - (i) done an act that has resulted, or may result, in loss of life or the infliction of serious personal injury; or
    - (ii) threatened to kill or seriously injure another person or to cause serious damage to property; or
    - (iii) threatened to take his or her own life or to do an act that would or may endanger his or her own life or create a serious threat to his or her health or safety;
  - (c) because of the urgency of the need for the act to be done, it is not reasonably practicable for an application for a warrant to be made.
- (4) Subsection (1) does not apply to, or in relation to, an act done by a member of the Police Force in relation to a communication if all of the following conditions are satisfied:

- (a) the person to whom the communication is directed has consented to the doing of the act;
  - (b) there are reasonable grounds for believing that that person is likely to receive a communication from a person who has:
    - (i) done an act that has resulted, or may result, in loss of life or the infliction of serious personal injury; or
    - (ii) threatened to kill or seriously injure another person or to cause serious damage to property; or
    - (iii) threatened to take his or her own life or to do an act that would or may endanger his or her own life or create a serious threat to his or her health or safety;
  - (c) because of the urgency of the need for the act to be done, it is not reasonably practicable for an application for a warrant to be made.
- (5) As soon as practicable after the doing of an act in relation to a communication under subsection (3) or (4), a member of the Police Force concerned with the communication must apply for a warrant in relation to the matter.
- (6) Subsection (5) does not apply if:
- (a) action has been taken under subsection (3) or (4) to intercept a communication, or cause it to be intercepted; and
  - (b) the action has ceased before it is practicable for an application for a warrant to be made.
- (7) If a Judge does not issue a warrant in relation to an application made in relation to a matter arising under subsection (3) or (4), the officer in charge must ensure that no further action is taken by the Police Force to intercept the communication or to cause it to be intercepted.
- (8) The doing of an act mentioned in subparagraph (3)(b)(ii) or (iii) or (4)(b)(ii) or (iii) in a particular case is taken to constitute an eligible offence, even if it would not constitute an eligible offence apart from this subsection.
- Note: See paragraph 51(1)(d) and subsection 52(6). A warrant can only be issued for the purposes of an investigation relating to the commission of an eligible offence.
- (9) Subsection (8) has effect only to the extent necessary:
- (a) to enable an application to be made for the purposes of subsection (5); and
  - (b) to enable a decision to be made on such an application and, if a Judge so decides, a warrant to be issued; and
  - (c) to enable this Act to operate in relation to a warrant issued on the application.

**339DC Paragraph 50(3)(a)**

Omit “Principal Police Officer” (wherever occurring), substitute “officer in charge”.

**339DD Subparagraph 53(3)(b)(ii)**

Omit “Principal Police Officer”, substitute “officer in charge”.

**339DE At the end of Part 7**

Add:

### 54A Emergency requests

- (1) A person may take action under subsection (2) or (3) if:
  - (a) the person is a party to a communication passing over a telecommunications system; and
  - (b) as a result of information conveyed by another party to the communication (the *caller*) and of any other matters, the person forms the honest belief that either of the following emergencies exist:
    - (i) another person (whether or not the caller) is dying, is being seriously injured or has been seriously injured;
    - (ii) another person (whether or not the caller) is likely to die or be seriously injured; and
  - (c) the person does not know the location of the caller.
- (2) The person may request the Norfolk Island Regional Council to intercept a communication for the purposes of tracing the location of the caller if the person is:
  - (a) a member of the Police Force; and
  - (b) of the opinion that tracing the location of the caller is likely to be of assistance in dealing with the emergency.
- (3) If the person is not a member of the Police Force, the person may inform, or cause another person to inform, a member of the Police Force of the matters referred to in paragraphs (1)(a), (b) and (c).
- (4) A member of the Police Force may request the Norfolk Island Regional Council to intercept a communication for the purposes of tracing the location of the caller if the member is:
  - (a) informed by a person under subsection (3) of the matters referred to in paragraphs (1)(a), (b) and (c); and
  - (b) of the opinion that tracing the location of the caller is likely to be of assistance in dealing with the emergency.
- (5) If, because of a request under subsection (2) or (4), the Norfolk Island Regional Council intercepts a communication for the purpose of tracing the location of a caller, the Council must communicate the location of the caller to:
  - (a) the member of the Police Force who made the request; or
  - (b) another member of the Police Force.
- (6) A member of the Police Force who makes a request under subsection (2) or (4) must, as soon as practicable after making the request, give, or cause another member of the Police Force to give, written confirmation of the request to the Norfolk Island Regional Council.

### 7 After item 340A of Schedule 1

Insert:

#### 340AA Item 2 of Schedule 1

Insert:

*Judge* means a judge of the Supreme Court, and includes an acting Judge.

*officer in charge* means the police officer in charge of the Police Force.

**340AB Item 2 of Schedule 1 (definition of *Principal Police Officer*)**

Repeal the definition.

## **Part 3—Other amendments**

### *Norfolk Island Applied Laws Ordinance 2016*

#### **8 Items 17 and 19 of Schedule 1AAA**

Omit “Local Area Commander of Police”, substitute “Police Area Commander or Police District Commander”.

#### **9 Item 3 of Schedule 3A**

Repeal the item, substitute:

#### **3 Subsection 3(1)**

Insert:

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

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

*Police District Commander* means the police officer in charge in Norfolk Island.