



Director of Public Prosecutions Amendment (Norfolk Island) Regulations 2017

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

Dated 27 July 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

George Brandis QC
Attorney-General

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1 Name

This instrument is the *Director of Public Prosecutions Amendment (Norfolk Island) Regulations 2017*.

2 Commencement

- (1) Each provision of this instrument 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 instrument	The day after this instrument is registered.	5 August 2017

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Director of Public Prosecutions Act 1983*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Director of Public Prosecutions Regulations 1984

1 Before regulation 1

Insert:

Part 1—Preliminary

2 Regulation 2

Insert:

continued Norfolk Island law means:

- (a) a law that was continued in force in Norfolk Island by section 16 of the *Norfolk Island Act 1979*, as the law is in force from time to time (whether before or after the commencement of that section); or
- (b) a Legislative Assembly law (within the meaning of the *Norfolk Island Act 1979*), or a law made under a Legislative Assembly law, that was continued in force in Norfolk Island by section 16A of that Act, as the law is in force from time to time (whether before or after the commencement of that section).

Norfolk Island authority means:

- (a) an authority, institution or other body (other than a society, association or incorporated company) established for a public purpose by or under a continued Norfolk Island law; or
- (b) a society, association or incorporated company in which an authority, institution or other body of the kind referred to in paragraph (a) has a controlling interest; or
- (c) a person who holds:
 - (i) an office or position established by or under a continued Norfolk Island law; or
 - (ii) an appointment made under a continued Norfolk Island law.

3 After regulation 2

Insert:

Part 2—General provisions

4 Subregulation 3(1)

Omit “the other functions of the Director are”, substitute “other functions of the Director are”.

5 At the end of the Regulations

Add:

Part 3—Norfolk Island

6 Functions relating to Norfolk Island

- (1) For the purposes of paragraph 6(2)(b) of the Act, the Director also has the following functions:
- (a) to institute prosecutions on indictment for indictable offences against continued Norfolk Island laws;
 - (b) to carry on prosecutions of the kind referred to in paragraph (a) (not being prosecutions instituted by the Attorney-General), whether or not instituted by the Director;
 - (c) if the Attorney-General requests the Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney-General—to carry on that prosecution;
 - (d) to institute proceedings for the commitment of persons for trial in respect of indictable offences against continued Norfolk Island laws;
 - (e) to institute proceedings for the summary conviction of persons in respect of offences against continued Norfolk Island laws;
 - (f) to carry on proceedings of a kind referred to in paragraph (d) or (e) (whether or not instituted by the Director);
 - (g) to assist a coroner in inquests and inquiries conducted under continued Norfolk Island laws;
 - (h) in respect of matters specified under subregulation (2):
 - (i) to institute proceedings; or
 - (ii) to carry on proceedings (whether or not instituted by the Director); or
 - (iii) to coordinate or supervise the institution or carrying on of proceedings;
for the recovery of pecuniary penalties under continued Norfolk Island laws;
 - (i) to give, to a Norfolk Island authority, legal advice on law enforcement or a matter relating to law enforcement, whether or not the advice is for the purposes of a particular investigation;
 - (j) to give, to a Norfolk Island authority or an authority of the Commonwealth, legal advice on the investigation or prosecution of an offence against a continued Norfolk Island law or a matter relating to the investigation or prosecution of such an offence, whether or not the advice is for the purposes of a particular investigation or prosecution;
 - (k) any function conferred on the Director by or under a continued Norfolk Island law;
 - (l) to do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (k).
- (2) The Attorney-General may, by legislative instrument, specify a matter or class of matters for the purposes of paragraph (1)(h).
- (3) Nothing in paragraph (1)(i) affects the power of the Director (or a person entitled to represent the Director) under regulation 12.

7 Instituting prosecutions

- (1) The Director may, with the consent of the person concerned, institute a prosecution of a person on indictment for an indictable offence against a continued Norfolk Island law in respect of which the person has not been examined or committed for trial.
- (2) If a person has been committed for trial in respect of an indictable offence or indictable offences against continued Norfolk Island laws, the Director may, whether or not the Director institutes a prosecution on indictment for the offence, or for all or any of the offences, for which the person was committed for trial, institute a prosecution of the person on indictment for:
 - (a) an offence for which the person was examined but not committed for trial; or
 - (b) any other offence founded on facts or evidence disclosed in the course of committal proceedings;without:
 - (c) if paragraph (a) applies—the person having been committed for trial in respect of the offence; or
 - (d) if paragraph (b) applies—the person having been examined or committed for trial in respect of the offence.
- (3) If:
 - (a) a person has been committed for trial otherwise than in respect of an offence against a continued Norfolk Island law; and
 - (b) the Director is satisfied:
 - (i) that the facts or evidence on the basis of which the person was committed for trial disclose the commission of an indictable offence or indictable offences against continued Norfolk Island laws; and
 - (ii) that, had the person's committal for trial for the indictable offence or indictable offences been sought on the basis of those facts or that evidence, the person could have been committed for trial for the indictable offence or indictable offences;the Director may institute a prosecution on indictment of the person for the indictable offence or indictable offences or any of the indictable offences without the person having been examined or committed for trial.
- (4) In any other case where the Director considers it appropriate to do so, the Director may institute a prosecution of a person on indictment for an indictable offence against a continued Norfolk Island law in respect of which the person has not been examined or committed for trial.
- (5) If a person is committed for trial before a court (the **initial court**) for one or more indictable offences against a continued Norfolk Island law, the Director may institute in another court (the **later court**) a prosecution of the person on indictment for any or all of the offences.
- (6) Subregulation (5) applies even if the Director has instituted a prosecution (the **initial prosecution**) before the initial court for any or all of the offences. However, the Director must discontinue the initial prosecution in respect of each offence covered by the prosecution in the later court.
- (7) The institution or carrying on by the Director of proceedings for the recovery of a pecuniary penalty under a continued Norfolk Island law, or any other act or

thing done by the Director in relation to such proceedings, may not be challenged or called in question in any court on the ground that the proceedings did not or do not relate to a matter in relation to which paragraph 6(1)(h) applies.

8 Additional powers in relation to prosecutions

- (1) For the purposes of the performance of his or her functions under regulation 6, the Director may prosecute by indictment in his or her official name indictable offences against continued Norfolk Island laws, but nothing in this subregulation prevents the Director from prosecuting an offence against a continued Norfolk Island law in any other manner.
- (2) If the Director institutes a prosecution on indictment for an offence against a continued Norfolk Island law, the indictment must be signed:
 - (a) by the Director; or
 - (b) for and on behalf of the Director, by a person authorised by the Director, by instrument in writing, to sign indictments.
- (3) For the purposes of the performance of his or her functions under regulation 6, the Director may take over a prosecution on indictment for an offence against a continued Norfolk Island law, being a prosecution instituted by another person (other than the Attorney-General).
- (4) If:
 - (a) a person is under commitment, or has been indicted, on a charge of an indictable offence against a continued Norfolk Island law; and
 - (b) the prosecution for the offence was instituted, has been taken over or is being carried on by the Director;
 the Director may decline to proceed further in the prosecution and may, if the person is in custody, by warrant signed by the Director, direct the discharge of the person from custody, and if such a direction is given, the person must be discharged accordingly.
- (5) For the purposes of the performance of his or her functions under regulation 6, the Director may take over a proceeding that was instituted or is being carried on by another person, being a proceeding:
 - (a) for the commitment of a person for trial in respect of an indictable offence against a continued Norfolk Island law; or
 - (b) for the summary conviction of a person in respect of an offence against a continued Norfolk Island law;
 and if the Director takes over such a proceeding, he or she may decline to carry it on further.
- (6) If the Director is carrying on a proceeding instituted by another person, being a proceeding of the kind mentioned in paragraph (5)(a) or (b), the Director may decline to carry it on further even if the Director has not taken it over under subregulation (5).

9 Undertakings

Undertakings that evidence will not be used

- (1) The Director may, if he or she considers it appropriate to do so, give to a person an undertaking that:

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in specified proceedings; or
- (b) the fact that the person discloses or produces a document or other thing in specified proceedings; or
- (c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced, in specified proceedings;

will not be used in evidence against the person, and if the Director gives such an undertaking:

- (d) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the specified proceedings; or
- (e) the fact that the person discloses or produces a document or other thing in the specified proceedings; or
- (f) any information, document or other thing that is obtained as mentioned in paragraph (c);

as the case may be, is not admissible in evidence against the person in any civil or criminal proceedings in a federal court or in a court of a State or Territory, other than proceedings in respect of the falsity of evidence given by the person.

- (2) In subregulation (1):

specified proceedings means:

- (a) proceedings for an offence against, or for the imposition of or the recovery of a pecuniary penalty under, a continued Norfolk Island law; or
- (b) proceedings by way of a coronial inquest or inquiry conducted under a continued Norfolk Island law.

Undertakings not to prosecute

- (3) The Director may, if the Director considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted (whether on indictment or summarily):
 - (a) for a specified offence against a continued Norfolk Island law; or
 - (b) in respect of specified acts or omissions that constitute, or may constitute, an offence against a continued Norfolk Island law.
- (4) If the Director gives to a person an undertaking under subregulation (3), no criminal proceedings may be instituted in a federal court or in a court of a State or Territory against the person in respect of such an offence or in respect of such acts or omissions.
- (5) An undertaking under subregulation (3) may be subject to such conditions (if any) as the Director considers appropriate.

10 Appeals

- (1) If the Director has instituted or taken over, or is carrying on, a prosecution for an offence against a continued Norfolk Island law, the Director may exercise in respect of that prosecution, in addition to such rights of appeal (if any) as are exercisable by him or her otherwise than under this subregulation, such rights of appeal (if any) as are exercisable by the Attorney-General in respect of that prosecution.

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- (2) Nothing in subregulation (1) prevents the exercise by the Attorney-General of a right of appeal that, but for that subregulation, would be exercisable by the Attorney-General.
- (3) If:
- (a) proceedings for the summary conviction of a person in respect of an offence against a continued Norfolk Island law were instituted by a person (the **relevant person**) other than the Director; and
 - (b) the Director subsequently carried on the proceedings;
- then:
- (c) in addition to any other rights of appeal the Director has, the Director may exercise, in respect of the proceedings, such rights of appeal as (disregarding the effect of paragraph (d)) are exercisable by the relevant person; and
 - (d) unless the Attorney-General is the relevant person—the relevant person cannot exercise those rights of appeal.
- (4) If:
- (a) proceedings for the summary conviction of a person in respect of an offence against a continued Norfolk Island law were instituted by a person (the **relevant person**) other than the Director; and
 - (b) the proceedings were not carried on by the Director;
- then:
- (c) if the relevant person institutes an appeal in respect of the proceedings, the Director may carry on that appeal on behalf of the relevant person; and
 - (d) if the defendant in the proceedings institutes an appeal in respect of the proceedings, the Director may act on behalf of the respondent in the appeal.

11 Recovering pecuniary penalty

For the purposes of the performance of the function referred to in paragraph 6(1)(h), the Director may institute, in the name of the Commonwealth or of a Norfolk Island authority, proceedings for the recovery of a pecuniary penalty under a continued Norfolk Island law.

12 Director may act as counsel or solicitor for Norfolk Island authority

If a Norfolk Island authority is a party to a proceeding in respect of a matter:

- (a) that has arisen out of or is connected with the performance of any of the functions of the Director under regulation 6; or
 - (b) that may result in the performance by the Director of such a function;
- the Director, or a person who is entitled to represent the Director in proceedings referred to in regulation 18, may act as counsel or solicitor for that authority.

13 Powers and functions of Director do not affect those of other persons

- (1) Nothing in this Part (other than subregulation 8(5)) affects the right of a person to institute or carry on proceedings for:
- (a) the commitment of persons for trial in respect of indictable offences against continued Norfolk Island laws; or

- (b) the summary conviction of persons in respect of offences against continued Norfolk Island laws.
- (2) Nothing in this Part affects the right of a person to institute or carry on proceedings for the recovery of pecuniary penalties under continued Norfolk Island laws.

14 Directions and guidelines by Director

- (1) The Director may, by instrument in writing, give directions or guidelines to:
 - (a) the Commissioner of Police of the Australian Federal Police; or
 - (b) the Australian Government Solicitor; or
 - (c) any other person who:
 - (i) conducts investigations in relation to offences against continued Norfolk Island laws; or
 - (ii) institutes or carries on prosecutions for offences against continued Norfolk Island laws;with respect to the prosecution of offences against continued Norfolk Island laws.
- (2) Without limiting subregulation (1), directions or guidelines under that subregulation may be given in relation to particular cases and may specify:
 - (a) an offence against a continued Norfolk Island law, being an offence a matter relating to which is to be referred to the Director for the institution or carrying on of a prosecution for that offence; or
 - (b) a class of offences against continued Norfolk Island laws, being offences matters relating to which are to be referred to the Director for the institution or carrying on of prosecutions for those offences.
- (3) The Director must:
 - (a) give to the Attorney-General a copy of each direction or guideline given under subregulation (1); and
 - (b) include in an annual report given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period:
 - (i) a copy of each direction or guideline given under subregulation (1) during the period; and
 - (ii) a copy of each direction or guideline given under subregulation (1) as in force at the end of the period.

15 Provision of information to Director

If a prosecution for an offence against a continued Norfolk Island law has been instituted, or is being carried on, by a person other than the Director and:

- (a) the Director informs the person that the Director is considering taking over the prosecution or directing that the matter be referred to the Director for the carrying on of the prosecution; or
- (b) the Director takes over the prosecution or directs that the matter be referred to the Director for the carrying on of the prosecution; or

- (c) the person considers that the Director should take over the prosecution or that the matter should be referred to the Director for the carrying on of the prosecution;

the person must give the Director:

- (d) a full report of the circumstances of the matter; and
- (e) a copy of the statements of any witnesses; and
- (f) each material document in the possession of the person; and
- (g) such other information or material as the Director requires.

16 Director may request assistance of Commissioner of Police

If the Director:

- (a) is considering instituting, taking over or carrying on, or has instituted or taken over, or is carrying on, a prosecution for an offence against a continued Norfolk Island law; and
- (b) is of the opinion that a matter connected with, or arising out of, the offence requires further investigation;

the Director may, in writing, request the Commissioner of Police of the Australian Federal Police for the assistance of the Commissioner, a Deputy Commissioner of the Australian Federal Police or AFP employees (within the meaning of the *Australian Federal Police Act 1979*) in the investigation of that matter, and if the Director so requests, the Commissioner must, so far as practicable, comply with the request.

17 Director to inform court when taking over or carrying on proceedings

(1) If:

- (a) under subregulation 8(3) or (5), the Director takes over a prosecution or proceeding; or
- (b) the Director decides to carry on:
 - (i) a prosecution for an offence against a continued Norfolk Island law; or
 - (ii) a proceeding for the recovery of a pecuniary penalty under a continued Norfolk Island law;
 being a prosecution or proceeding that was instituted or is being carried on by another person;

the Director must, as soon as practicable:

- (c) by notice in writing, inform the registrar or other proper officer of the court in which the prosecution or proceeding is to be heard; or
- (d) if the prosecution or proceeding is being heard by a judge or magistrate—in such manner as the Director thinks fit, inform the judge or magistrate;

that the Director has taken over, or is carrying on, as the case may be, the prosecution or proceeding, but failure of the Director to do so does not affect any of the Director's powers in relation to the prosecution or proceeding.

- (2) The Director is, as from the time when he or she complies with subregulation (1) in relation to a prosecution or proceeding that he or she has taken over under subregulation 8(3) or (5), to be taken for all purposes to be the prosecutor, informant or complainant, as the case requires, in that prosecution or proceeding.

18 Appearances by and on behalf of Director

In:

- (a) proceedings:
 - (i) instituted, taken over or carried on by the Director under this Part; or
 - (ii) to which the Director is, or is seeking to become, a party under this Part; or
 - (iii) in which the Director intervenes or seeks to intervene under this Part; or
- (b) an inquest or inquiry conducted under a continued Norfolk Island law, being an inquest or inquiry in which the Director is assisting the coroner; or
- (c) proceedings by way of appeal from, or otherwise arising out of, proceedings of a kind referred to in paragraph (a) or an inquest or inquiry of the kind referred to in paragraph (b);

the Director may appear in person or may be represented:

- (d) by a member of the staff of the Office who is a legal practitioner; or
- (e) by counsel or solicitor; or
- (f) by the Australian Government Solicitor.

19 Appearances on behalf of Director in summary or committal proceedings

Without limiting the class of persons who may represent the Director under regulation 18, in proceedings for the summary conviction of a person or for the commitment of a person for trial in respect of an indictable offence, the Director may be represented by a member of the Australian Federal Police, or a member of the police force of a State or Territory, whether or not the member concerned is a legal practitioner.

Part 4—Application and transitional provisions

20 Amendments made by the *Director of Public Prosecutions Amendment (Norfolk Island) Regulations 2017*

The amendments of these Regulations made by the *Director of Public Prosecutions Amendment (Norfolk Island) Regulations 2017* apply in relation to proceedings instituted before or after the commencement of those Regulations in relation to conduct occurring before or after that commencement.