



# Changes to Norfolk Island Laws: Protecting Vulnerable People (Criminal Procedure and Sentencing)

# FACTSHEET

## Modernising Criminal Procedure and Sentencing Laws

The *Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018* makes changes to a number of criminal laws in Norfolk Island, following the work of the Commonwealth Government's Norfolk Island Response Taskforce and the Royal Commission into Institutional Responses to Child Sexual Abuse. The Norfolk Island community was consulted about the changes in March and April 2018.

### What changes have been made?

The new laws provide better protections for witnesses who give evidence in court about certain types of crime. The amendments also remove home detention as a sentencing option for some offences and make some changes to when and how a person's 'good character' can be considered by a court.

#### Criminal Procedure Act

The definition of vulnerable witness and the range of measures available to assist those witnesses has been expanded. Vulnerable witnesses now include children, complainants in sexual offence proceedings, and people with disability. The range of measures introduced covers support people, audiovisual recording of evidence and changes to courtroom layout. These changes are designed to reduce possible trauma to vulnerable witnesses who give evidence.

Vulnerable witnesses will now be able to have a support person/s (or support animal) present in court while giving evidence. The court will be able to make a wider range of orders about how a courtroom should be arranged, such as using screens to allow witnesses to give evidence without seeing or hearing the accused.

To protect witnesses who have a vulnerability which affects their ability to give evidence, the decision to close the court is now available. The court will make the decision about whether a witness has a vulnerability, based on a range of factors such as any emotional trauma or distress a person might suffer giving evidence.

#### *Similar act witnesses*

Protections have also been broadened to cover more witnesses in sexual and violent offence proceedings, including 'similar act witnesses'. Similar act witnesses are witnesses in a sexual or violent offence proceeding who may give tendency or coincidence evidence that relates to an act committed on them by the accused person. These extended protections apply in all sexual offence proceedings and in some types of violent offence proceedings.

### ***Self-represented accused persons***

The amendments also provide additional protections for victims where an accused person chooses to represent themselves. In some cases, accused persons will not be able to cross examine witnesses themselves, and instead the examination will be done by a lawyer (either chosen by the accused person or appointed by the court).

### ***Audiovisual recordings of evidence***

It is now required that evidence given by audiovisual link be recorded. An audiovisual record includes audio recordings and transcripts. A police interview in domestic violence proceedings can be used as evidence, and an audiovisual record of evidence given by complainants, similar act witnesses, children and intellectually impaired witnesses in sexual offence proceedings will be made and can be used in future proceedings. This can reduce the trauma to complainants and witnesses in having to repeat the same evidence multiple times.

## **Sentencing Act**

The Sentencing Act has been amended so that a court, in a child sex offence proceeding, is now prevented from considering the convicted person's good character as a mitigating factor if the person used that 'good character' to help them commit the offence.

In addition, home detention orders are no longer available as an option when sentencing people convicted of a sexual or violent offence or people who the court thinks are at risk of committing a sexual or violent offence.

## **Why was the law changed?**

Since the *Criminal Procedure Act 2007* (NI) and the *Sentencing Act 2007* (NI) was enacted in Norfolk Island, there have been advances in criminal procedure and sentencing laws in other Australian jurisdictions. The amendments will enhance and modernise Norfolk Island laws and make them more consistent with laws in the rest of Australia. The changes also address recommendations for criminal law reform made by a number of reviews, including by the Australian Law Reform Commission and the Royal Commission into Institutional Responses to Child Sexual Abuse.

## **Who will enforce these changes?**

The changes to the laws will affect the Norfolk Island Court of Petty Sessions and the Norfolk Island Supreme Court, as well as legal practitioners who work in those courts.

## **Contacts**

For further information, please contact the Registry of the Court of Petty Sessions on 23691 or by email at [registry@nirc.gov.nf](mailto:registry@nirc.gov.nf), or your personal legal practitioner.

Compilations of continued Norfolk Island laws are available online at the Federal Register of Legislation at <https://www.legislation.gov.au/Browse/ByTitle/NorfolkIslandLegislation/InForce>