

Explanatory Statement

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

Norfolk Island Act 1979

Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021

Norfolk Island Applied Laws (Queensland) Amendment (Norfolk Island Central School Support Staff Checks) Rules 2025

Authority

The *Norfolk Island Applied Laws (Queensland) Amendment (Norfolk Island Central School Support Staff Checks) Rules 2025* (the Amendment Rules) are made under subsection 7(1) of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (the Ordinance).

Purpose

The purpose of this instrument is to enable the Queensland Department of Education (DoE) to obtain regular and ongoing criminal history checks of Support Staff employed at the Norfolk Island Central School in lieu of a worker screening regime in Norfolk Island. The instrument seeks to meet this purpose by modifying the application of the *Public Sector Act 2022* (Qld)(NI) in Norfolk Island.

Background

The Ordinance applies the laws of Queensland, as in force in Queensland from time to time, in Norfolk Island (referred to as applied Queensland laws). The *Public Sector Act 2022* (Qld)(NI) currently applies in Norfolk Island without modifications.

The modifications made by the Amendment Rules provide for additional checks and assessment mechanisms to apply specifically to Support Staff at the Norfolk Island Central School. Support Staff are defined as employees performing school duties other than registered teachers, such as administrative staff and learning support officers. These modifications support the purpose of the instrument and are as minimal as practicable to meet that purpose.

The Amendment Rules insert new Schedule 10A to the Ordinance to modify the *Public Sector Act 2022* (Qld)(NI) as it applies in Norfolk Island, granting the Director-General of DoE authority to determine that the duties performed by Support Staff are “relevant duties” for the purposes of criminal history screening. This provides DoE the authority to request Support Staff to undertake a National Police Check as part of their pre-employment and ongoing suitability assessment.

The Amendment Rules also include a directive (Schedule 3: Suitability for employment directive), which sets out the procedural requirements for obtaining and using this information, including safeguards such as procedural fairness and documented risk-based assessments ensuring compliance with the *Human Rights Act 2019* (Qld)(NI).

Summary of the instrument

The Instrument inserts a new Schedule 10A into the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* to modify the application of the *Public Sector Act 2022* (Qld) in Norfolk Island.

The amendments consist of:

- Section 48: Re-defining “suitability directive” to take the meaning of “suitability of employment directive” as defined in Schedule 3.
- Section 48: Defining “Support Staff” in the context of the Norfolk Island Central School.
- Section 50(3,4); section 52A; section 55(c); section 64(1)(b-c): Enabling the chief executive (Director-General, DoE) to request criminal history screening for Support Staff.
- Section 50(3,4): Exempting Support Staff from certain limitations under section 50(2) of the Act.
- Section 52A: Authorising the chief executive to obtain written consent to access criminal history.
- Section 55(c): Providing mechanisms for assessing suitability based on criminal history and serious disciplinary action.
- Section 64(2-3); section 80: Repealing legislative provisions which do not apply to Norfolk Island in the absence of the application of the workers screening check regime.
- Inserting Schedule 3: Suitability for employment directive, to support public sector entities to conduct suitability assessments of proposed or current employees, and to support public sector entities implement a risk management strategy for the performance of child-related duties.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003* and subject to disallowance under that Act. The Amendment Rules commences the day after it is registered.

Details of the instrument are set out in Attachment A.

Consultation

The Department consulted with the Queensland Government during the drafting of the Amendment Rules to ensure that the modifications are fit-for-purpose, implementable, and achieve the desired safeguards for staff and children alike. The Queensland Government also consulted with applicable unions representing impacted staff, with all parties satisfied the changes do not create an additional impost on individual staff that was not already assumed as part of their employment obligations. The consultation did not identify any changes to be made to the Amendment Rules.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *Norfolk Island Applied Laws (Queensland) Amendment (Norfolk Island Central School Support Staff Checks) Rules 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Norfolk Island Applied Laws (Queensland) Amendment (Norfolk Island Central School Support Staff Checks) Rules 2025*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under subsection 7(1) of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (the Ordinance).

Section 4 – Amendments

Subsection (1) provides that Schedule 1 to the instrument amends the Ordinance as set out in the applicable items, and that any other item in Schedule 1 to the instrument has effect according to its terms.

Subsection (2) provides that the *Public Sector Act* (Qld) and legislation made under that Act, as in force from time to time, are in force in the Territory, with the amendments set out in Schedule 1 to the instrument.

The explanatory note under subsection (2) clarifies that the *Public Service Act 2008* (Qld) was repealed and re-enacted as the *Public Sector Act 2022* (Qld), and therefore the operation of the *Public Sector Act 2022* (Qld) has not been suspended.

Schedule 1 – Amendments

Schedule 1 contains amendments to *Public Sector Act 2022 (Qld)* specified in the Ordinance.

Item 1 – After Schedule 1

This item inserts new Schedule 10A (Amendments of the *Public Sector Act 2022* (Qld) into the Ordinance. This new Schedule modifies how the *Public Sector Act 2022* (Qld)(NI) operates in Norfolk Island.

Section 1 – Section 48 (definition of *suitability directive*)

This section substitutes the definition of the “suitability directive” to mean the suitability of employment directive at Schedule 3, which reflects textual amendments to tailor the operation of the directive for operation in Norfolk Island and Norfolk Island Central School (NICS) context.

Section 2 – Section 48 (after the definition of *suitability directive*)

This section inserts a definition of “Support Staff” to align with wording in the suitability directive as it pertains to the Support Staff and operations at NICS.

Section 3 – After subsection 50(2) (before the notes)

This section inserts two new subsections into section 50.

Subsection 50(3) provides that subsection 50(2) does not apply to Support Staff, allowing for child-related duties and regulated employment to be considered *relevant duties* for Support Staff.

Subsection 50(4) enables the chief executive of a public sector entity to designate a duty performed by a Support Staff to be a *relevant duty*. This allows the chief executive to have regard to the criminal history of a person appointed to perform that duty.

Section 4 – After section 52

This section inserts new section 52A. It provides that, if the chief executive designates a duty of a Support Staff to be a *relevant duty*, the chief executive may ask for the written consent of the person engaged or proposed to be engaged to perform that duty to obtain their criminal history.

Section 5 – After section 55(b)

This section inserts new paragraph 55(c). It provides that the chief executive must consider the person's criminal history in making an assessment about that person's suitability to perform the designated *relevant duty*.

Section 6 – Part 5, Division 4 (Heading)

This section replaces the previous heading of this Division, "Further assessment of persons issued with working with children authority", with the new heading "Further assessment of Support Staff". This reflects the updates made in other sections to the content of this Division.

Section 7 – Paragraph 64(1)(b)

This section replaces part of the subsection which refers to a working with children check regime which is not in place on Norfolk Island. The amended section reflects the new criminal history check procedure established in these amendments, stating that this Division applies if the person has been assessed as per the updated section 55.

Section 8 – Paragraph 64(1)(c)

This section removes part of the subsection which refers to a working with children check regime which is not in place on Norfolk Island. The amended section states that this division applies if the chief executive considers that the person may need further assessment to establish whether they should be engaged to perform a duty.

Section 9 – Subsection 64(2)

This section repeals subsection 64(2), removing exceptions outlined in the old subsection to the application of this Division. This enables sections 66 to 69 of the *Public Sector Act 2022* (Qld)(NI) to apply so that DoE can seek consent for a criminal history check, deal with a person's failure to provide consent, and assess the person's suitability under the suitability directive.

Section 10 – Subsection 64(3)

This section repeals subsection 64(3), removing a definition of *chief executive (working with children)* which is no longer used in the Act as updated by these amendments.

Section 11 – Section 80

This section repeals section 80, removing a requirement that the Queensland Public Service Commissioner must make a directive for this part. The removal of this section avoids any doubt that obligations under this section would not be re-engaged in circumstances where the Queensland Public Sector Commission has already made a directive for Part 5 of Chapter 3 of the *Public Sector Act 2022* (Qld)(NI) as a modified suitability directive has been added to the schedule to the version of the *Public Sector Act 2022* (Qld)(NI) that will apply as a territory law on Norfolk Island.

Section 12 – At the end of the Act.

This section adds a new Schedule 3: Suitability for employment directive, which reflects bespoke arrangements on Norfolk Island and NICS. The new Schedule 3 supports public sector entities to conduct suitability assessments of proposed or current employees, and to support public sector entities implement a risk management strategy for the performance of child-related duties.

Statement of Compatibility with Human Rights

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

Norfolk Island Applied Laws (Queensland) Amendment (Norfolk Island Central School Support Staff Checks) Rules 2025

Overview

The purpose of the instrument is to amend the Ordinance to modify the application of the *Public Sector Act 2022* (Qld)(NI) in Norfolk Island. These modifications enable the Queensland Department of Education (DoE) to obtain criminal history checks of Support Staff employed at the Norfolk Island Central School (NICS) as a means of providing additional safeguarding for children and the community in lieu of a worker screening regime in Norfolk Island.

The Ordinance applies the laws of Queensland, as in force in Queensland from time to time, in Norfolk Island (referred to as applied Queensland laws). *The Public Sector Act 2022* (Qld)(NI) currently applies in Norfolk Island without modifications.

The modifications made by the instrument provide for additional checks and assessment mechanisms to apply specifically to Support Staff at the Norfolk Island Central School. Support Staff are defined as employees performing school duties other than registered teachers, such as administrative staff and learning support officers.

The instrument insert new Schedule 10A to the Ordinance to modify the *Public Sector Act 2022* (Qld)(NI) as it applies in Norfolk Island, granting the Director-General of DoE authority to determine that the duties performed by Support Staff are “relevant duties” for the purposes of criminal history screening. This provides DoE authority to request Support Staff to undertake a National Police Check as part of their pre-employment and ongoing suitability assessment.

The instrument also include a directive (Schedule 3: Suitability of employment directive) by modifying the applied law to add it as a schedule to that law as it applies on NI, which sets out the procedural requirements for obtaining and using this information, including safeguards such as procedural fairness and documented risk-based assessments ensuring compliance with the *Human Rights Act 2019* (Qld)(NI).

Human rights implications

This Instrument engages the following rights:

- Right to privacy and reputation – the collection of criminal history information engages the right to privacy. However, the interference with this right is reasonable, necessary, and proportionate in achieving the legitimate objective of safeguarding children and ensuring the integrity of public sector employment. The directive embedded in the instrument sets out clear procedural safeguards, including consent, confidentiality, and documented, risk-based decision-making that incorporates principles of procedural fairness.

- Right to work and rights at work – the instrument affects the conditions under which individuals may be employed as Support Staff at the Norfolk Island Central School. However, this is consistent with similar screening processes for anyone working or volunteering with children across Australian workplaces, ensuring that persons working in proximity to children at the NICS are suitable for such roles and do not pose an unacceptable risk to children. The assessment processes are fair, transparent, and proportionate, and do not create an unreasonable barrier to employment.
- Rights of children and parents – the instrument positively engages this right by prioritising the safety and welfare of children attending the NICS. The screening of Support Staff contributes to a safe learning environment, upholding the obligation to take appropriate measures to protect children.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights. To the extent that it may limit certain rights, those limitations are reasonable, necessary and proportionate to achieve the legitimate purpose of protecting children and upholding public trust in the suitability of public sector employees. The instrument contains appropriate safeguards to ensure compliance with human rights and supports the broader objectives of child protection and transparent public sector governance.