



17 March 2021

The Hon Nola Marino MP  
Assistant Minister for Regional Development and Territories  
Parliament House  
CANBERRA ACT 2600

Via email: [minister.marino@infrastructure.gov.au](mailto:minister.marino@infrastructure.gov.au)

CC: [rob.terrill@infrastructure.gov.au](mailto:rob.terrill@infrastructure.gov.au)

  
Dear Assistant Minister,

### **Norfolk Island Employment Rules 2020 [F2020L01536]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

#### ***Privacy***

Senate standing order 23(3)(h) requires the committee to scrutinise each legislative instrument as to whether it trespasses unduly on personal rights and liberties, including the right to privacy.

Section 10 of the instrument requires employers to keep records of employee first-aid training, employment-related injuries, and information provided to the minister in relation to the death or permanent incapacitation of an employee.

The explanatory statement explains that this information is not generally covered by the *Privacy Act 1988* and is exempt from the Australian privacy principles. Further, the instrument does not appear to provide for any safeguards in relation to the collection, use and disclosure of personal information under section 10 of the instrument.

From a technical scrutiny perspective, the committee is concerned to ensure that personal information collected by any third party, including employers, is subject to appropriate privacy safeguards.

**In light of the above, the committee requests your advice as to whether any safeguards apply to protect the privacy of personal information provided and recorded under section 10 of the instrument.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting that the 15th sitting day after the instrument was tabled in the Senate is 17 March 2021, the committee has resolved to give notice of a motion to disallow the instrument today as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 2021**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**

**Chair**

**Senate Standing Committee for the Scrutiny of Delegated Legislation**



**The Hon Nola Marino MP**

**Assistant Minister for Regional Development and Territories  
Federal Member for Forrest**

Ref: MC21-001630

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House  
CANBERRA ACT 2600

30 MAR 2021

Dear Senator Fierravanti-Wells *Bonnie*

Thank you for your letter of 17 March 2021 regarding the Norfolk Island Employment Rules 2020 (the Employment Rules).

The Employment Rules prescribe certain matters to support the administration of the Norfolk Island Workers' Compensation Scheme (the Scheme) and regulation of safe working practices under the *Employment Act 1988* (NI)(the Act).

Section 10 of the Employment Rules requires employers to keep records of employee first-aid training, employment-related injuries and information provided to the minister in relation to the death or permanent incapacitation of an employee. This information supports the administration of the Scheme under Part 3 of the Act and the regulation of safe working practices under Part 4.

These arrangements are the same as those in place in other states and territories, where information about employment-related accidents and injuries is collected under work health and safety laws to support the administration of workers' compensation schemes and to allow improvements to be made to workplace safety.

I acknowledge the point you have made about information provided in the Explanatory Statement which says that this information is not generally covered by the *Privacy Act 1988* (Cth) (the Privacy Act) and the Australian Privacy Principles (Principles). This statement reflects the fact the Privacy Act and Principles only apply to certain types of businesses and to people's personal information when it is not being used for the purpose of their employment. Where this is not the case, the Privacy Act, Principles and other safeguards do apply in Norfolk Island in the same way they apply in the rest of Australia.

It is important to note that the same safeguards which protect employees' information in the rest of Australia also apply in Norfolk Island. This ensures that the personal information collected by employers under section 10 of the Employment Rules is protected in the same way as it would be elsewhere in Australia.



### *Safeguards under the Privacy Act*

The Privacy Act and Principles apply to businesses with an annual turnover of \$3 million or more, all private health service providers, a limited range of small businesses, and all Australian Government agencies.

The Privacy Act sets out requirements for collecting, storing, using and disclosing personal information. Under the Privacy Act the Principles act to protect the privacy of personal information by:

- regulating the collection, use and disclosure of personal information,
- setting out internal governance requirements, and
- allowing for individuals to access their personal information and correct it in order to protect its accuracy and integrity.

On Norfolk Island, the largest employer is the Norfolk Island Regional Council (NIRC). As a local government body, the Privacy Act and Principles apply to the handling by the NIRC of any personal information in current and past employee records, effectively safeguarding employees' personal information.

For businesses on Norfolk Island which are subject to the Privacy Act, personal information relating to someone's current or former employment is safeguarded by the Privacy Act and Principles when it is used for a purpose which is not directly related to their employment.

### *Other safeguards under the Fair Work Ombudsman's Best Practice Guide*

The Fair Work Ombudsman also recommends all Australian businesses make a commitment to meet the requirements of the Principles in relation to employee records regardless of whether the Principles apply to them.

In Norfolk Island, the kinds of safeguards that businesses which are not covered by the Privacy Act would therefore have in place include:

- securing records containing personal information,
- having policies which manage the collection and handling of personal information,
- providing training and resources to managers, and
- communicating with staff and employees about privacy issues to ensure they understand how personal information should be treated.

Thank you for bringing your concerns to my attention and I trust this is of assistance.

Yours sincerely

Nola Marino



AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600  
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14 April 2021

The Hon Nola Marino MP  
Assistant Minister for Regional Development and Territories  
Parliament House  
CANBERRA ACT 2600

Via email: [minister.marino@infrastructure.gov.au](mailto:minister.marino@infrastructure.gov.au)

CC: [rob.terrell@infrastructure.gov.au](mailto:rob.terrell@infrastructure.gov.au)

  
Dear Assistant Minister,

**Norfolk Island Employment Rules 2020 [F2020L01536]**

Thank you for your response of 30 March 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments. The committee considered your response at its private meeting on 13 April 2021 and has resolved to seek your further advice about the issues outlined below.

***Privacy***

The committee appreciates your advice that the *Privacy Act 1988* (the Act) and the Australian Privacy Principles (the Principles) do apply to some Norfolk Island employers, in the same way the Act and the Principles apply to employers in the rest of Australia, depending of type and size of business, and annual turnover.

You have advised that for Norfolk Island businesses which are subject to the Act, personal information relating to someone's current or former employment is safeguarded by the Act and the Principles, when it is used for a purpose which is not directly related to their employment. If a business is not covered by the Act or the Principles, you have advised the Fair Work Ombudsman recommends the Principles be applied, but the committee understands this is not enforceable.

The explanatory statement for this instrument currently provides that 'employee records such as the ones referred to above are generally not covered by the *Privacy Act 1988* and are exempt from the Australian Privacy Principles'.

However, based on your advice, the committee understands that the safeguards in the Act and Principles may apply to the information handled under section 10 of the Employment Rules, if the employer is covered by the Act and the Principles.

**The committee therefore requests that the explanatory statement to the instrument be amended to include this further information, clarifying the circumstances when the Privacy Act and the Principles will apply to personal information collected and used under the Employment Rules, as outlined in your letter of 30 March 2021.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. The committee therefore gave notice of a motion to disallow the instrument on 17 March 2021 as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **28 April 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**



**The Hon Nola Marino MP**

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**Assistant Minister for Regional Development and Territories  
Federal Member for Forrest**

Ref: MS21-000632

**28 APR 2021**

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the  
Scrutiny of Delegated Legislation  
Parliament House  
CANBERRA ACT 2600

Dear Senator *Donnie*

Thank you for your letter of 14 April 2021 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), regarding the Norfolk Island Employment Rules 2020.

In response to the Committee's request, I have approved the inclusion of further information in the explanatory statement about the application of the *Privacy Act 1988* and the Australian Privacy Principles.

The amended explanatory statement will appear on the Federal Register of Legislation after the replacement has been uploaded.

Thank you for bringing the Committee's concerns to my attention and I trust this is of assistance.

Yours sincerely

Nola Marino





AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

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13 May 2021

The Hon Nola Marino MP  
Assistant Minister for Regional Development and Territories  
Parliament House  
CANBERRA ACT 2600

Via email: [minister.marino@infrastructure.gov.au](mailto:minister.marino@infrastructure.gov.au)

CC: [rob.terrell@infrastructure.gov.au](mailto:rob.terrell@infrastructure.gov.au)

  
Dear Assistant Minister,

**Norfolk Island Employment Rules 2020 [F2020L01536]**

Thank you for your response of 28 April 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee considered your response at its private meeting on 12 May 2021. Based on your advice about the application of the *Privacy Act 1988* and the Australian Privacy Principles, the committee has concluded its examination of the instrument.

The committee thanks you for registering a replacement explanatory which includes this additional information on the Federal Register of Legislation on 30 April 2021. In light of this, the committee has resolved to withdraw the disallowance notice in place on the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation