

2019

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO
STANDING COMMITTEE ON PUBLIC ACCOUNTS – REPORT 7
INQUIRY INTO AUDITOR GENERAL'S REPORT 1**

**WORKSAFE ACT'S MANAGEMENT OF ITS REGULATORY
RESPONSIBILITIES FOR THE DEMOLITION OF LOOSE-FILLED
ASBESTOS CONTAMINATED HOUSES**

**Presented by
Suzanne Orr MLA
Minister for Employment and Workplace Safety**

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Introduction

An independent review of the ACT's work safety compliance infrastructure, policies, and procedures was announced in May 2018 by the former Minister for Workplace Health and Safety and Industrial Relations, Rachel Stephen-Smith MLA and the Minister for Regulatory Services, Gordon Ramsay MLA.

The 2018 Independent Review was the first broad review of the ACT's work health and safety (WHS) compliance and enforcement arrangements since the adoption of the national model WHS legislation in the ACT in 2011. The review was finalised in August 2018, and its final report identified a suite of legislative, governance and administrative changes necessary to enable WorkSafe ACT to be a more effective and efficient WHS regulator. In a Ministerial Statement of October 2018, the former Minister for Employment and Workplace Safety, Rachel Stephen-Smith MLA advised the Legislative Assembly that the Government had given its in-principle support to all 27 recommendations made in the review. A five-member team has been established to implement the findings of the 2018 Independent Review.

The outcomes of the review, and the proposed changes that are being implemented, are directly relevant to the recommendations/findings made by the Committee and are provided by way of background and support of the outlined Government responses below.

Government Position on Recommendations/Findings

RECOMMENDATION 1

The Committee recommends that the ACT government directs and ensures that WorkSafe ACT follows documentary processes consistent with those envisaged in Auditor-General's Report No.1 of 2017: *WorkSafe ACT's management of its regulatory responsibilities for the demolition of loose-fill asbestos contaminated houses*.

GOVERNMENT POSITION – AGREED

The 2018 Independent Review drew on the findings of the Auditor-General's Report No. 1 of 2017: *WorkSafe ACT's Management of its Regulatory Responsibilities for the Demolition of Loose-Fill Asbestos Contaminated Houses* and there is consistency in the recommendations regarding corporate and regulatory governance.

One of the 2018 Independent Review's key findings was to improve the regulator's governance model under the *Work Health and Safety Act 2011* (WHS Act). Responsive to this recommendation, the *Work Health and Safety Amendment Bill 2019* (WHS Amendment Bill) was introduced into the Legislative Assembly on 15 August 2019. The WHS Amendment Bill establishes the statutory office of the WHS Commissioner as regulator and establishes the Office of the WHS Commissioner (to be known as WorkSafe ACT) to support the regulator as an independent and separate entity under the WHS Act.

The WHS Amendment Bill ensures transparency of funding and accountability by providing for annual reporting and financial reporting requirements by WorkSafe ACT through establishing it as a 'public sector body' for the purposes of the *Annual Reports (Governance Agencies) Act 2004*.

It is further intended that WorkSafe ACT will be a separate directorate for the purposes of the *Financial Management Act 1996*. This will enhance the transparency, accountability and scrutiny of WorkSafe ACT's financial management and resources.

Further transparency and accountability for WorkSafe ACT is achieved through the preparation of the compliance and enforcement policy, strategic plan and statement of operational intent. The WHS Amendment Bill requires these documents to be regularly updated and publicly available. This will enable stakeholders to better understand WorkSafe ACT's activities and have informed expectations about its compliance and enforcement activities and priorities. The preparation of these documents on a regular basis will ensure they are current, responsive and provide a formalised opportunity for strategic planning and a broad consideration of the role, protocols and operations of WorkSafe ACT.

The implementation of the 2018 Independent Review has required the review, and update as required, of WorkSafe ACT's Standard Operating Procedures. In addition, a capability framework and associated training program for staff are currently under development to ensure policies and procedures are communicated, understood and applied.

RECOMMENDATION 2

The Committee recommends that the ACT government implements documentary frameworks as soon as possible after a project begins. The ACT government should use these frameworks to form and reflect operational procedures and accountability measures.

GOVERNMENT POSITION - AGREED

The government supports appropriate corporate governance. In the context of WorkSafe ACT, a governance framework to support the accountability measures included in the WHS Amendment Bill is currently under development. This will include comprehensive intelligence led and evidence-based planning.

A Strategic Regulatory Services Team will be responsible for developing the scope for each regulatory program, incorporating consultation with the appropriate stakeholders and training for the inspectors allocated to each program. Each program will include performance measures to enable review and reporting and will be supported by Standard Operating Procedures to ensure consistency across programs.

RECOMMENDATION 3

The Committee recommends that the ACT government ensures that reliable documentary guidance for WorkSafe ACT inspectors is provided to support the discretion accorded them under the *Work Health and Safety Act 2011*.

GOVERNMENT POSITION - AGREED

The development of the new compliance and enforcement policy required by the WHS Amendment Bill will provide enhanced guidance to WorkSafe ACT inspectors on how to exercise their discretion in the use of available regulatory tools to address non-compliance. Under the new legislation the compliance and enforcement policy must include:

- (a) the aims of compliance and enforcement activity for WorkSafe ACT;
- (b) the key principles underpinning compliance and enforcement activity to be carried out;
- (c) the approach WorkSafe ACT must take in relation to monitoring and compliance;
- (d) the compliance and enforcement tools to be used; and
- (e) guidance material about enforcement, investigation and prosecution recommendation criteria to be applied.

As noted, the implementation of the 2018 Independent Review has required the review, and update as required, of WorkSafe ACT's Standard Operating Procedures.

RECOMMENDATION 4

The Committee recommends that the ACT government ensures that WorkSafe ACT provides regular written briefings on its work to the responsible Minister.

GOVERNMENT POSITION - AGREED

WorkSafe ACT currently has a variety of methods for providing regular written briefings to the responsible Minister through formal government processes.

WorkSafe ACT's reporting requirements will be further enhanced by the WHS Amendment Bill which provides that the responsible Minister make a statement of expectations setting out the priority activities and initiatives for WorkSafe ACT. The WHS Commissioner must respond with a statement of operational intent. These documents are both notifiable instruments.

In addition, the WHS Amendment Bill requires WorkSafe ACT to produce an annual report which must include any statement of expectation and statement of operational intent in effect during the reporting year and the extent to which the statement of operational intent was met and if it was not met, the reasons why it was not met.

RECOMMENDATION 5

The Committee recommends that the ACT government take immediate action to change administrative and legislative arrangements so that WorkSafe ACT is no longer the designated regulator or investigator where an employee of WorkSafe ACT is subject to a notifiable incident under the *Work Health and Safety Act 2011*.

GOVERNMENT POSITION - AGREED

As part of the implementation of the 2018 Independent Review administrative arrangements in cases where an employee of WorkSafe ACT is subject to a notifiable incident under the *Work Health and Safety Act 2011* are being considered as part of the broader review of governance. A paper with a range of options for consideration by the Work Health and Safety Compliance and Enforcement Reform Program Steering Committee is currently being prepared.

RECOMMENDATION 6

The Committee recommends that the ACT government ensures that the matter of a WorkSafe ACT inspector who was subject to exposure to loose-fill asbestos at Darke Street, Lyons, in August 2015 is appropriately resolved and that the ACT government report on the outcome to the Legislative Assembly for the ACT by the last sitting day of November 2019.

GOVERNMENT POSITION - NOTED

The WorkSafe ACT inspector who was subject to exposure to loose-fill asbestos at Darke Street, Lyons, in August 2015, has received assistance through a rehabilitation program with a final medical certificate being issued on 31 October 2018. As the inspector was fit to resume normal duties and required no further treatment or rehabilitation assistance, the claim was closed by Injury Management on 20 February 2019.

In relation to regulatory outcomes, the company involved with the house demolition pleaded guilty to a breach of the work health and safety legislation and was fined \$60,000 in the Industrial Magistrate's Court.

RECOMMENDATION 7

The Committee recommends that the ACT government, as a matter of urgency, ensures that WorkSafe ACT inspectors are able to exercise their discretion to issue prohibition orders, and other immediate and discretionary powers conferred by the *Work Health and Safety Act 2011*.

GOVERNMENT POSITION - AGREED

It is current policy within WorkSafe ACT that an inspector will issue a prohibition notice where there is a serious risk to the health and safety of a person emanating from an immediate or imminent exposure to a hazard.

The Access Canberra Regulatory Advisory Committee was established as the regulatory governance mechanism for Access Canberra to ensure executive oversight on regulatory matters. The Regulatory Advisory Committee considers contraventions of legislation that occurred and that have the potential to cause harm or pose significant risk to the community.

WorkSafe ACT matters are no longer referred to the Regulatory Advisory Committee for consideration. Data for the 2018-19 financial year for WorkSafe enforcement actions show:

- 360 Improvement Notices were issued (up from 170 in 2017-18);
- 220 Prohibition Notices (up from 77);
- 26 Infringement Notices (up from 23);
- 13 Non-Disturbance Notices (up from one); and
- 5 Enforceable Undertakings (up from 2).