



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON PRIVILEGES 2022

Mr Jeremy Hanson CSC MLA (Chair), Ms Jo Clay MLA (Deputy Chair),
Mr Michael Petterson MLA

Submission Cover Sheet

Inquiry into possible contempt of the Assembly:
Imposition of prohibition notice by WorkSafe ACT

Submission Number: 1

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LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

Office of the Legislative Assembly



Mr Jeremy Hanson CSC MLA
Chair
Select Committee on Privileges
Legislative Assembly for the ACT
London Circuit, Canberra City, ACT 2601

Submission—Health and Safety Committee

Dear Mr Hanson,

In response to your letter of 18 August 2022, please see attached the HSC submission to the Select Committee on Privileges.

Yours sincerely,

Rachel Turner
Chair, H&S Committee

1 September 2022

1. Purpose

- 1.1. To assist the committee in its deliberations, this submission sets out:
- (a) the unique features of the Assembly's Work Health and Safety (WHS) arrangements;
 - (b) the process by which a work health and safety incident would ordinarily be managed.

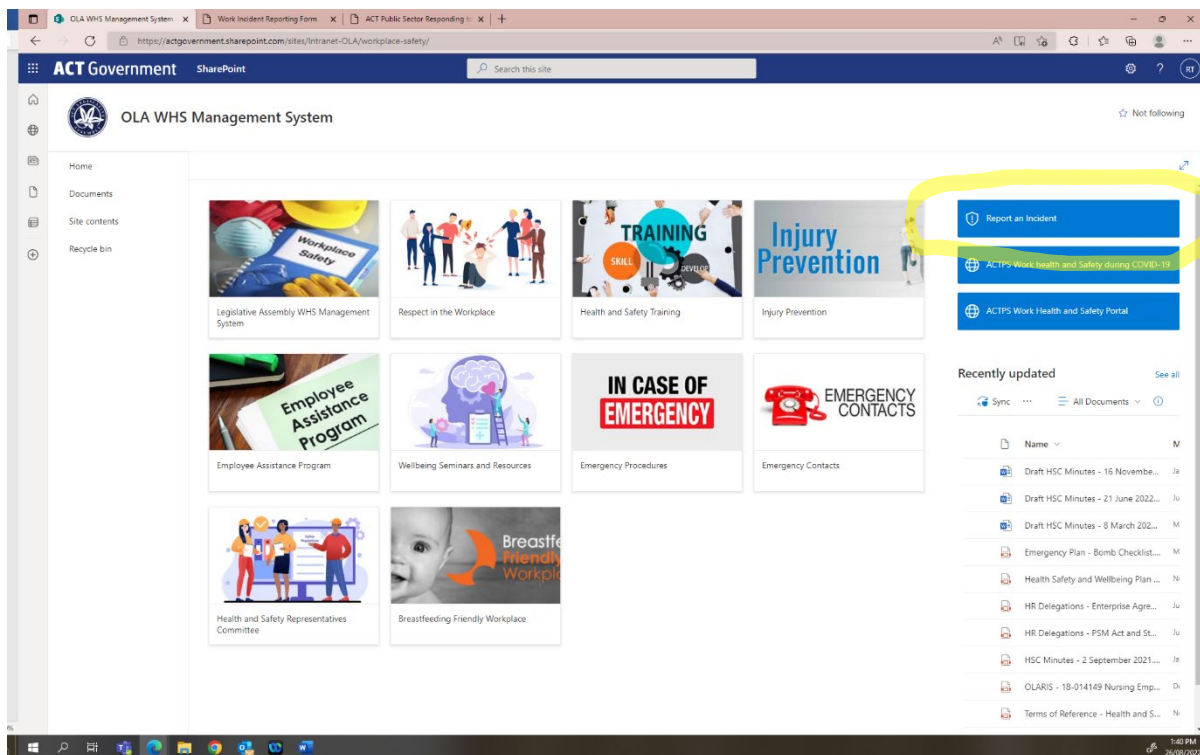
2. Assembly's WHS arrangements

- 2.1. The ACT *Work Health and Safety Act 2011* (WHS Act), and its subordinate *Work Health and Safety Regulation 2011*, is the primary legislation governing work health and safety for the Office of the Legislative Assembly.
- 2.2. The Assembly is unique in that under the WHS Act:
- MLAs and the Clerk of the Assembly are PCBUs and they have the primary responsibility in the workplace to ensure, so far as is reasonably practicable, that the health and safety of workers, visitors and others are not put at risk;
 - the Speaker has additional responsibilities as a PCBU, particularly in relation to the Assembly precinct;
 - there are some situations where responsibility is shared between PCBUs, such as with the provision of suitable accommodation and building and office security, in these cases, duties and responsibilities are concurrent and PCBUs must cooperate in meeting their shared responsibilities to the extent of the overlap as relevant to each situation;
 - some senior executives or managers will be officers as defined by the WHS Act and have a due diligence obligation to ensure that health and safety risks are identified, effective controls are implemented and monitored, and adequate resources are allocated; and
 - persons who have duties under the WHS Act must consult with workers, their representatives and other duty holders in undertaking their WHS responsibilities.
- 2.3. The Legislative Assembly Workplace Injury Prevention Policy Statement demonstrates the Assembly's commitment to meeting the legislative work, health, safety and wellbeing responsibilities and obligations. The Policy Statement details the Assembly's WHS responsibilities and obligations and endorsement by the Assembly's Leadership Group in May 2021. The Policy Statement is published on the OLA Intranet and a copy is included in **Attachment A**.
- 2.4. The Legislative Assembly Health and Safety Committee (the Committee) is established as a consultative and communicative forum that is responsible for overseeing the requirements of the WHS Act as they relate to the Legislative Assembly and the Office of the Legislative Assembly. The committee is the primary communication channel for Assembly workers, through workplace and management representatives, regarding workplace health and safety matters. Terms of Reference for the committee are published on the OLA Intranet site and provided at **Attachment B**.

- 2.5. There are a range of different strategies, policies, plans, and assessments in place to address WHS risks and/or hazards. In relation to COVID, the Assembly’s COVIDSafe Plan exists to provide an overarching framework to guide the Speaker, ministers, non-executive MLAs, the Clerk, their staff and others in the Assembly workplace to operate effectively and safely during the pandemic.
- 2.6. The Committee has been regularly engaged in relation to the COVIDSafe Plan and WHS Risk Register. The committee has regularly considered COVID WHS risks, control measures and the associated impacts on staff of the respective workgroups and those entering the precincts. Over the past 12-18 months discussions have occurred approximately every three months about the control measures in place and their effectiveness. Feedback from the group is invited on an ongoing basis and has been incorporated into successive revisions of the plan.

3. Management of a WHS incident or accident

- 3.1. The Assembly’s WHS Framework requires all Accidents and Incidents must be reported using the Whole of Government on-line system (RISKMAN). Which is available to report any workplace event that endangers the health or safety of a person or results in injury or disease, however minor, including dangerous occurrences.
- 3.2. The intranet for the Assembly clearly identifies the process for reporting a WHS incident. It is also important to note that workers can report an incident using the old paper form and submitting it to the relevant corporate area (the Office’s HR and Entitlements area or the CMTEDD Executive Support area).



- 3.3. It is observed that no report was made in RISKMAN, or submitted via the paper form, in relation to conducting committee hearings at the Assembly;
- 3.4. Reporting workplace accidents/incidents at a local level is of critical importance to how the Assembly responds to risks to health and safety at an organisational level and enables prompt remedial action to be taken.

4. Feedback from the H&S Committee

- 4.1. As Chair of the H&S Committee, I confirm no member of the H&S Committee raised at any time any concerns about the consultation process for the COVID plan or risk register.
- 4.2. It was observed the risk assessment prepared for Estimates hearings to address the prohibition notice comprised largely the same information provided in the risk register as part of the COVID safe plan. It was also noted that no obvious changes were made to the arrangements for hearings as appropriate arrangements were already in place.
- 4.3. Feedback received specific to the Privileges Committee request for input was that the issuing of the prohibition noticed had significant psychosocial impacts for staff including the stress and uncertainty of the situation, the rumour and discussion across the ACT Public Service, and a significant increase in workload for a number of staff to manage the impacts of the rescheduling of Estimates.

Attachment A

Workplace Injury Prevention Policy Statement



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

Workplace Injury Prevention Policy Statement

The signatories to this Policy Statement each recognise the broad legislative requirements that apply to the Assembly workplace under the *Work Health and Safety Act 2011* to provide and maintain a safe workplace and safe systems of work for all workers.

This Policy Statement:

- recognises that the health, safety and welfare of workers in the Assembly are of primary importance and that accountability for workers' safety at work rests with Members and the Clerk;
- acknowledges that aspects of the Assembly workplace are unique with the 25 Members and the Clerk having individual, as well as some shared, employer responsibilities - and seeks to ensure that these differences do not interfere with effective injury prevention and management and genuine leadership on those issues;
- recognises that the level of workplace injury in the Assembly has historically been quite low by Territory standards. As such, the Assembly is committed to maintaining a workplace that is healthy and safe for all concerned and where


effective prevention and management of illness and injury are important priorities; and

- endorses the "Responsibilities in Relation to Health and Safety" developed by the Assembly's Health and Safety Committee that accompany this Policy Statement.


The signatories below are committed to:

- continuously improving injury prevention performance, reflected in plans developed by the Assembly's Work Safety Committee;
- maintaining consultation and communication to accomplish our common health and safety goal;
- promoting a work safety culture;
- allocating resources to ensure that all workers understand the basic principles of injury prevention and management, including making expert assistance available, where necessary;
- enabling Health and Safety Representatives (HSR's) and managers to be appropriately trained and able to carry out their statutory functions; and
- maintaining appropriate information and reporting systems are maintained.


This policy will be subject to regular review.


Joy Burch MLA
Speaker


Andrew Barr MLA
Chief Minister


Elizabeth Lee MLA
Leader of the Opposition


Shane Rattenbury MLA
Leader ACT Greens


Tom Duncan
Clerk of the Assembly

May 2021

Responsibilities in Relation to Health and Safety

Tier 1: Person Conducting a Business or Undertaking

All Members and the Clerk are recognised as a Person Conducting a Business or Undertaking (PCBU) under the *Work Health and Safety Act 2011* (WHS Act). PCBUs have overall responsibility for the protection of workers' health and safety, and provide leadership for WHS activities within the Assembly.

PCBUs will allocate responsibility, accountability and authority for the implementation and effective management of work safety arrangements and processes, which will:

- ensure that health and safety is a management responsibility, which is known and accepted at all levels;
- establish effective arrangements to identify work-related hazards, control risks, and promote health at work;
- support health and safety education ;
- support injury prevention and health promotion programs; and
- provide appropriate resources to ensure that persons responsible for health and safety matters, including health and safety representatives and health and safety committee members, can perform their functions properly.

Tier 2: Senior Managers

All Senior Managers have a duty to exercise 'due diligence' to ensure their PCBU meets their duties to protect workers and other persons against harm to health and safety. Senior Managers must take every reasonably practicable step to achieve the objectives of the prevailing health and safety policies, strategies, and arrangements.

This will include:

- acquiring and maintaining knowledge on WHS matters;
- maintaining the workplace in a safe and healthy condition;
- ensuring all workers have access to information and training, and supervision, enabling them to work in a safe and healthy manner;
- providing information on health and safety when inducting new workers;
- informing and consulting with workers regarding significant workplace changes that will impact on the health and safety of workers;
- ensuring safe systems of work and access to and egress from the workplace;
- developing, implementing and monitoring arrangements for the safe use, handling, storage and transport of plant and substances; and
- providing information to the relevant corporate office of incidents that have implications for the health and safety of workers.

Tier 3: Workers

Workers have an important role to play in the achievement of the objectives of this Strategy. In particular, they have a responsibility to:

- take all reasonable steps to protect their own and other workers' safety;
- make proper use of all safeguards, safety devices and personal protective equipment provided by their employer;
- follow safe working practices and rules;
- inform management or health and safety representatives of risks, hazards and incidents in the workplace;
- report all accidents, injuries or incidents to their supervisor;
- remove themselves (including the cessation of work where appropriate) from any immediate threat to their health and safety in accordance with the provisions of the WHS Act; and
- undertake Health and Safety awareness training, and any other Health and Safety training that is relevant to their employment.

Tier 4: Third Parties

The Assembly will take all reasonably practicable steps to ensure Members, contractors, students and the public are not exposed to risks to their health and safety within its workplaces. While in the Assembly they are expected to:

- take all reasonable steps to protect their own and other workers' safety;
- make proper use of all safeguards, safety devices and personal protective equipment provided by the Assembly;
- follow safe working practices and rules;
- inform management or Health and Safety Representatives of risks, hazards and incidents in the workplace;
- report all accidents, injuries or incidents to the relevant Member or manager; and
- remove themselves (including the cessation of work where appropriate) from any immediate threat to their health and safety in accordance with the provisions of the WHS Act.

Other Responsibilities:

Apart from the groups above, some managers/workers will have additional responsibilities including:

Workplace Health and Safety Committee

The *Legislative Assembly Workplace Health and Safety Committee* (the Committee) is established as a consultative and communicative forum that is responsible for overseeing the requirements of the WHS Act as they relate to the Legislative Assembly and the Office of the Legislative Assembly (OLA). The committee is the primary communication channel for Assembly workers, through workplace and management representatives, regarding workplace health and safety matters. WHS Act sets out the functions of such a committee, as follows:

- a) *to facilitate cooperation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work;*
- b) *to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace; and*
- c) *any other functions prescribed by regulation or agreed between the person conducting the business or undertaking and the committee.*

Health and Safety Representatives

Health and Safety Representatives are important in ensuring health and safety in the workplace. The WHS Act sets out specific powers and functions that a Health and Safety Representative can perform in the interests of the workers they represent. This includes:

- representing workers in their work group in relation to work health and safety matters;
- monitoring the measures taken by the person in control of a business or undertaking to comply with the WHS Act in relation to their work group members;
- investigating complaints from work group members about work health and safety; and,
- inquiring into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking.

Health and Safety representative may also exercise their powers and functions:

- if there's a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group
- a member of another work group asks for the representative's assistance
- where the health and safety representative or deputy health and safety representative for another work group are unavailable.

Relevant Corporate area

The relevant Corporate area will take every reasonably practicable step to facilitate the achievement of the objectives of this Strategy. This will include:

- promoting health and safety initiatives;
- providing information and arranging health and safety training;
- providing information on health and safety in induction material;
- facilitating consultation regarding significant workplace change that will impact on the health and safety of workers;
- managing the processing of compensation claims, and the reporting of accidents and incidents; and
- participate in whole-of-government WHS policy development.

Attachment B

Health & Safety Committee Terms of Reference



LEGISLATIVE ASSEMBLY HEALTH AND SAFETY COMMITTEE – TERMS OF REFERENCE

ROLE AND FUNCTION

Section 75 of the *Work Health and Safety Act 2011* (WHS Act) provides for the establishment of a health and safety committee and s77 of the WHS Act sets out the functions of such a committee, as follows:

- a) *to facilitate cooperation between the person conducting a business or undertaking and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety at work;*
- b) *to assist in developing standards, rules and procedures relating to health and safety that are to be followed or complied with at the workplace; and*
- c) *any other functions prescribed by regulation or agreed between the person conducting the business or undertaking and the committee.*

Consistent with the above legislative provisions, the *Legislative Assembly Health and Safety Committee* (the Committee) is established as a consultative and communicative forum that is responsible for overseeing the requirements of the WHS Act as they relate to the Legislative Assembly and the Office of the Legislative Assembly (OLA). The committee is the primary communication channel for Assembly workers, through workplace and management representatives, regarding workplace health and safety matters.

2019 REVIEW

During 2019, a review was undertaken under the auspices of the (then) health and safety committee into the arrangements governing the work groups that existed within the Assembly. As part of this review, legal advice was received which confirmed that all 25 MLAs (as well as the Clerk) were "Persons Conducting a Business or Undertaking" (PCBUs). Through consultations between the PCBUs and workers, it has been agreed that the work groups below be formed and that a Health Safety Representative (HSR) be elected for each of those work groups:

Work Group
Executive ALP
Non-Executive ALP
Canberra Liberals
ACT Greens (Executive and Non-Executive)
OLA

CONSTITUTION OF COMMITTEE

Consistent with section 76 of the WHS Act. The PCBUs and workers have agreed that the Committee will be constituted as follows:

	Management Representative	HSR	Other
Executive ALP	1	1 [#]	
Non-Executive ALP		1	
Canberra Liberals	1	1	
ACT Greens (Executive and Non-Executive)	1	1	
Office of the Legislative Assembly	1	2	
CMTEDD – Executive / Corporate Management			1
Union Representatives			1

a 2nd HSR for this work group has been recommended by a workplace inspector, based on staff numbers

Where Deputy HSRs have been elected, they may attend committee meeting in the absence of the HSR.

If a management representative is unable to attend the meeting, a suitable replacement with management responsibilities may deputise.

OLA Business Support will provide secretariat support for the committee (see below). The Executive Manager, Business support will act as chair to committee meetings.

Committee members are expected to be aware of and informed about work safety matters from their work group; to feed those matters into relevant discussions at committee meetings; and to inform workers in their work group about committee meeting outcomes.

TIMING OF MEETINGS

The Committee will meet at least once every quarter as required by section 78 of the WHS Act. Section 78 also sets out the process for requesting any additional meetings of the committee.

QUORUM

A meeting will not be held without a quorum of at least five members. To be a valid quorum there must be:

- at least 3 x worker representatives (ie HSR or Union representative);
- at least 2 x management Representatives; and
- there must not be more management representatives present than worker representatives.

COMMITTEE SECRETARIAT

OLA Business Support will provide secretariat support to the Committee.

Where practicable a draft agenda – including any papers proposed for consideration - will be circulated to members by the Secretariat at least 3 working days prior to a meeting.

Minutes will be prepared by the secretariat and circulated to members of the Committee as soon as practicable following each meeting. The minutes will include major discussion points, agreed outcomes and a record of actions requiring follow up action. The minutes will be posted on the intranet in draft form to be available for all staff. Once the minutes are accepted at the next meeting, the minutes on the intranet will be reviewed to reflect any changes.

PRIVACY

Members are to be mindful of the sensitivity of some the issues discussed in the meeting and their obligations under the WHS Act and the Privacy Act.

ARRANGEMENTS FOLLOWING AN ASSEMBLY ELECTION

Within 90 days of the first sitting day following an Assembly general election, a review should be undertaken of work groups, HSRs and the constitution of the committee.

REVIEW MECHANISMS

The Terms of Reference will be reviewed annually.