



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE COVID-19 PANDEMIC RESPONSE

Mr Alistair Coe MLA (Chair), Ms Tara Cheyne MLA (Deputy Chair), Mrs Vicki Dunne MLA,
Mr Michael Pettersson MLA, Ms Caroline Le Couteur MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by CAROLINE LE COUTEUR MLA on 14 May 2020: REBECCA CROSS took on notice the following question(s):

Ref: Hansard Transcript 14 May 2020, PAGE P197

In relation to:

MS LE COUTEUR: One question which I sincerely hope has not emerged but which I have read about is that in America there are calls for new legislation to reduce liability, particularly for hospitals but also other places, for COVID-19 infections. The government has been asked to give liability to people in hospitals doing surgery, businesses that open for COVID-19. Is that something that is a thing in the ACT or Australia at all or are you already set up so that you do not have to worry about those issues?

Ms Cross: I do not know the position in America. I would prefer to know a little more about it and see if there are any parallels here in the ACT.

MS LE COUTEUR: I do not think we have to do anything. Basically, what they are saying is that if you open your business—and hospitals are where it has been most of an issue in the US—if you follow the rules and one of your clients or patients gets sick shortly after that with COVID-19 can they sue you and say, “You made me sick,” or can you rely on saying, “The government said that if I had 1.5 metres or I disinfected, whatever, I’m sorted. You can’t hassle me. You can hassle someone else”?

Ms Cross: That question might be better directed to workplace health and safety—

THE CHAIR: Unfortunately the connection is dropping out. Are you able to perhaps turn your camera off but leave the microphone on? That may well result in at least better audio quality.

Ms Cross: Yes. Does this help you? Can you hear me better now?

THE CHAIR: Much better, thank you.

Ms Cross: Great. I was going to say that it is actually not my area of expertise. I think it comes into areas of workplace health and safety and the obligations of employers. Would it be possible to take that on notice so that I can make sure I get the right technical advice for you?

MS LE COUTEUR: Sure. I was not particularly thinking about obligations just as employers but obligations to your customers, your clients. Your restaurant has just opened. You come

in; you find that three days later you got COVID-19 there. They followed the rules. Can you sue them?

Ms Cross: I think, because this is a matter of public health and safety, they apply to your staff and members of the public. I would need to check; I am sorry.

REBECCA CROSS: The answer to the Member's question is as follows:—

Under the *Work Health and Safety Act 2011* (WHS Act), a person conducting a business or undertaking (PCBU) must do what is reasonably practicable to ensure the health and safety of workers and other persons, such as members of the public at the workplace.

Work health and safety (WHS) laws impose an obligation on PCBUs to identify, eliminate and where elimination is not possible, mitigate hazards and risk to health and safety in the workplace. This obligation applies to all risks to health and safety in the workplace, including the risk of COVID-19. The risk of COVID-19 in the workplace should be informed by expert health advice.

In relation to managing the risk of COVID-19 at workplaces in the ACT, WorkSafe ACT has published a suite of material on its website, including links to Safe Work Australia material and specific ACT material including a Consultation Safety note developed to assist businesses with the requirement to consult with workers as they re-open. This is available at:

https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/5015/kw/COVID-19#!tabs-1.

Breaches of the WHS Act are enforced by the WHS Commissioner as regulator under that Act.

In addition to obligations under the WHS Act, businesses must also comply with the Territory's Public Health (Emergency) Declarations that are in place which set out the restrictions applying to certain industries. Advice on these restrictions is available on the ACT Government's COVID-19 website at: <https://www.covid19.act.gov.au/business-hub/restrictions-and-advice>. Breaches of these restrictions are enforced by Health Protection Services and health inspectors.

The question of legal liability in a case where contact tracing is able to establish that a customer or patron contracted COVID-19 while visiting a business, for example a patron having lunch at a restaurant, would depend on the circumstances of each case. This is a matter on which PCBUs should seek their own independent legal advice.

Approved for circulation to the Select Committee on the COVID-19 pandemic response

Signature:



Date: 26 May 2020

By the Coordinator-General, Rebecca Cross