



Speaker

Mrs Elizabeth Kikkert MLA
Chair
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2602

Amendments to the Work Health and Safety Act

Dear Mrs Kikkert,

Thank you for your letter of 20 February 2023 seeking a further submission to clarify the reason for paragraph (3) of my proposed amendments to the *Work Health and Safety Act 2022* (WHS Act).

It is my view that the law of parliamentary privilege already protects the Assembly from improper interference by the work safety regulator or any other person. As you know, it is also my longstanding view that the WHS Act applies to MLAs, Assembly workers and the Assembly workplace.

Nonetheless, following the events of last year, both the Government and I are seeking to provide greater legislative clarity in relation to both of these matters.

Legal advice tendered as part of last year's Assembly privileges inquiry suggested that there could be some doubt as to whether express statutory provision is required to abrogate the privileges of the Assembly in respect of WHS laws (see paragraphs 28-35 of advice provided to WorkSafe by Saul Holt KC and Katharine Brown).

Given this, it is prudent to make abundantly clear that the WHS Act cannot be interpreted in such a way as to abrogate parliamentary privilege and, as a consequence, that the WHS Act does not empower any person to prohibit or otherwise interrupt Assembly proceedings (which is the purpose of paragraph (3)).

The Privileges Committee 2022 accepted as much in making its findings.

Finding 1 of the committee's report was that the issuing of the first prohibition notice by WorkSafe was an improper interference and a breach of the privileges of the Assembly. The committee noted in its report that:

... the Committee does not resile from its belief that, without there being clear and unambiguous statutory authority to do so, no entity outside of the Assembly should be capable of trespassing upon the exclusive cognisance of the Assembly or its committees to manage its own affairs (p 23).

One of the committee's recommendations (recommendation 3), was that:

...the *Work Health and Safety Act 2011* be amended to:

- (1) provide clarity that the Assembly is a workplace; and
- (2) provide that nothing in the Act:
 - (a) abrogates or derogates from the powers, privileges and immunities of the Legislative Assembly, its committees or its members; or
 - (b) gives an inspector or any other person the power to prohibit the proceedings of the Assembly or its committees (recommendation 3).

In unanimously adopting the report, the Assembly has categorically supported this position.

The Government's Work Health and Safety Act Amendment Bill 2022 addresses paragraph (1) of the above recommendation. My draft amendments address paragraph (2) of the recommendation and make it abundantly clear that there are no express or implied powers in the WHS Act giving any person the power to prohibit Assembly proceedings.

In its present form, my amendment includes the additional phrase 'or otherwise interrupt'.

Noting that this language does not appear in the recommendation of the Privileges Committee, I propose to omit the phrase so that paragraph (3) of my amendment is consistent with recommendation 3 and would simply read as follows:

...nothing in this Act gives the regulator or anyone else exercising a function under this Act the power to prohibit ~~or otherwise interrupt~~ a proceeding of the Legislative Assembly or any of its committees.

Thank you for the opportunity to clarify these matters and I look forward to your report.

Yours sincerely,



Joy Burch MLA
Speaker of the Legislative Assembly

22 February 2023