



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

QToN No. 1

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Mrs Elizabeth Kikkert MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),  
Mr Andrew Braddock MLA

**Inquiry into the Work Health and Safety Amendment Bill 2022**  
**ANSWER TO QUESTION TAKEN ON NOTICE**  
**DUE DATE: 10 FEBRUARY 2023**

Asked by Mr Andrew Braddock MLA on 2 February 2023: Ms Agius took on notice the following question(s):

[Ref: Hansard Uncorrected Proof Transcript 2/02/2023 [PAGE 7]]

In relation to:

**MR PETERSSON:** Wonderful. Just one other question before I will let Mr Braddock take over. Have you seen the speaker's proposed amendment?

**Ms Agius:** I have not had time to look at anything in relation to this hearing because I have been absolutely flat out, so no, I have not.

**MR PETERSSON:** Thank you.

**MR BRADDOCK:** Supplementary on that, we would appreciate your views on that particular amendment because when it comes up for debate we would like to know whether you are supportive of that. Is that something we can arrangement as a committee to write that to you and obtain your views before the completion of this report?

**Ms Agius:** I am happy to take anything on notice.

[Ms Agius]: The answer to the Member's question is as follows:—

Subsequent to my appearance before the Committee I have reviewed the Office of the Legislative Assembly's (OLA's) proposed amendment to the *Work Health and Safety Act 2011* (WHS Act) and provide the following response.

As stated in my submission to the Inquiry, WorkSafe ACT believes all workers, and all workplaces are entitled to be safe and healthy. I do not believe a person conducting a business or undertaking (PCBU) should be able to pick and choose when work health and safety legislation applies to their workplace.

It is without question that the OLA's amendment was drafted in an attempt to resolve/clarify its perceived issues relating to privilege. I note there are various legal opinions relating to the application of parliamentary privilege. For example, a joint legal opinion made by Saul Holt KC and Katherine Brown, submitted to the Select Committee on Privileges 2022, made the following observations:

*"Parliamentary privilege in the ACT is a creature of statute. In circumstances where a later statute has, at the very least arguably, empowered an inspector to issue the notice, it is far from clear that the privilege the Legislative Assembly claims continues in force. A question of law is raised about whether the Legislative Assembly, in empowering the inspectors to issue the notices, altered its own privileges."*<sup>1</sup>

It then followed that:

*"...the proper approach, consistent with longstanding authority and the separation of powers, is to bring the question before the courts ..."*<sup>2</sup>

Noting the above, I believe the OLA's attempt to prescribe privilege in the WHS Act, by way of the proposed amendment, will inadvertently remove work health and safety protections for workers who are supporting the operation of a proceeding of the Legislative Assembly, or any of its committees. This would include the protection afforded to workers such as security personnel, Hansard staff, ministerial advisors, public servants and other statutory office holders while they were attending or supporting a proceeding of the Legislative Assembly, or any of its committees.

The element of the proposed amendment which I am most concerned about is the following:

*"... nothing in this Act [the WHS 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." (Emphasis added)*

If adopted, it is my view that this change would not only limit the powers of Worksafe ACT to undertake its functions to protect the safety of workers under the WHS Act, but it would also remove the ability for Health and Safety Representatives (HSR) to exercise their powers and functions (s 68), and remove the right of a worker to cease unsafe work (s 84) if in doing so they could interrupt a proceeding.

In my view the removal of HSR powers and the right of a worker to cease unsafe work are reason enough for this amendment not to be adopted. I would like to note that I trust this is an unintended consequence of the proposed amendment and removing worker rights to safety would not have been the OLA's intention.

I acknowledge that the Speaker has the important responsibility of ensuring the smooth operation of proceedings within the Legislative Assembly and has concerns relating to matters of privilege. In contrast my primary concern is ensuring the safety of Territory workers.

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<sup>1</sup> Select Committee on Privileges 2022, Submission 03.6a - WHS - Attachment - Parliamentary privilege advice final, p.12

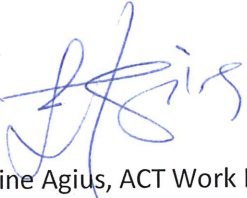
<sup>2</sup> Select Committee on Privileges 2022, Submission 03.6a - WHS - Attachment - Parliamentary privilege advice final, p.13

I know both of our functions can operate in harmony as was evidenced by the continuation of assembly business during the hard COVID-19 lockdowns. Although the OLA's proposed amendment may result in the smooth operation of proceedings, it may not result in increased safety outcomes for workers and others.

For this reason, and the additional concerns raised above, I do not support the amendment as it is currently drafted.

Approved for circulation to the Standing Committee on Public Accounts

Signature:



Date: 6 Feb 23

By Jacqueline Agius, ACT Work Health and Safety Commissioner

