

2023

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS –
REPORT 12 – INQUIRY INTO THE WORK HEALTH AND
SAFETY AMENDMENT BILL 2022

GOVERNMENT RESPONSE

TABLED BY
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Chief Minister
May 2023

Introduction

The Standing Committee on Public Accounts resolved to undertake an inquiry into the *Work Health and Safety Amendment Bill 2022* (Amendment Bill) following the Bill's presentation in the Assembly on 20 October 2022.

The Committee published its report on 1 March 2023 and made a series of recommendations relating to the Bill.

Overarching ACT Government Comments

All Canberrans have a right to work at workplaces which are safe and where everything that can reasonably be done to assure their workplace health and welfare has been done. These rights extend to people who work at the ACT Legislative Assembly and in its precincts.

The *Work Health and Safety Act 2011* (WHS Act) sets out how these rights must be provided for by persons conducting a business or undertaking.

The Government also acknowledges the important role of parliamentary privileges, immunities and associated powers in the ACT and Australian system of government.

The Government thanks the Standing Committee for its consideration of the Amendment Bill and for its report to the Assembly.

Government response to the Committee's recommendations

Recommendation 1

The Committee recommends that the Assembly pass the Work Health and Safety Amendment Bill 2022 with further amendment to ensure absolute clarity that the Assembly is a workplace.

Recommendation 2

The Committee recommends that the Assembly pass the Speaker's amendment, without the words 'or otherwise interrupt', to ensure there is no diminution or abrogation of the powers, privileges and immunities of the Assembly.

Government response – AGREED-IN-PRINCIPLE

The Government considers the *Work Health and Safety Amendment Bill 2022* puts beyond doubt that the ACT Legislative Assembly is a workplace by clarifying that work carried out by Members of the Assembly and others at the Assembly precinct is work carried out as an undertaking under the Act.

The Government also acknowledges the important role of parliamentary privileges and immunities. This is recognised within the framing of the WHS Act as it currently applies to the Crown in right of the Territory under section 10 of that Act. In applying to the Crown “in so far as the legislative power of the Legislative Assembly permits” it can only operate to the extent that it is consistent with the ACT’s legislative powers, privileges and immunities afforded to the Assembly under the Self-Government Act¹.

However, the Government expresses some caution in legislating additional clarifying provisions to ensure they do not unintentionally capture and prevent regulatory activities that would otherwise not constitute a breach of parliamentary privilege. Relevantly, where privilege is engaged the conduct must be such that it *improperly* interferes with the functions of the Assembly in order to be found as a breach of privilege and it is suggested that any further clarifying amendments consider this carefully.

Recommendation 3

The Committee recommends that the ACT Government amend the Work Health and Safety Amendment Bill 2022 to clarify the role of Members of the Assembly as officers under the Act.

Government response – NOTED

The Government does not consider this amendment necessary to resolve the current issue of putting beyond doubt that the WHS Act applies to the ACT Legislative Assembly as a workplace.

However, the Government will give careful consideration to whether such an amendment to the WHS Act is required in consultation with stakeholders and the ACT’s Work Health and Safety Council, which advises the Minister for Industrial Relations and Workplace Safety on matters, including the operation of work health and safety laws in the Territory.

¹ The ACT’s Self-Government Act, passed by the Federal Parliament, sets out the arrangements for the ACT’s system of government. Relevantly, the Self-Government Act states that until the Assembly makes a law with respect to its powers, its members and committees have the same powers as the House of Representatives. As the ACT Legislative Assembly has not yet made a law regarding its powers it is bound by the privileges set out in Commonwealth law. Any Territory law, or part of a law, that is inconsistent would be inoperative. https://legislation.act.gov.au/a/db_6271/

Recommendation 4

The Committee recommends that the Legislative Assembly for the ACT develop a memorandum of understanding with WorkSafe ACT on how it will exercise its regulatory functions within the Assembly precincts, acknowledging the parliamentary privilege issues engaged.

Government response – NOTED

This recommendation is a matter for the Speaker of the Legislative Assembly and WorkSafe ACT to resolve.