



Guidance note—Work Health and Safety

1. In accordance with standing order 16(1)(ii)(a), the Standing Committee on Administration and Procedure (the Committee) has developed this guidance note on work health and safety responsibilities and duties that apply to MLAs and their staff, the Clerk and staff of the Office, and other workers performing work in the Assembly precincts or another workplace.
2. It is high-level overview, not an exhaustive statement of applicable responsibilities. To ensure that duty-holders have a complete understanding of their obligations, they should review:
 - relevant provisions of the *Work Health and Safety Act 2011* (the Act) and relevant delegated legislation;
 - policies and procedures addressing health and safety matters that are available on the Assembly intranet; and
 - publications available on the WorkSafe ACT website.

Application of the Act to MLAs

3. Under the Act, work carried out by an MLA in the exercise of their functions, and work carried out by other people to support a member in the exercise of their functions, is work carried out in an undertaking.

What is a workplace?

4. Under the Act, a workplace means a place where work is carried out for a business or undertaking and includes any place where a worker (See paragraphs 11-12 below) goes, or is likely to be, while at work.
5. This includes the Assembly precincts (including members' offices) and other places where workers are present while performing work on behalf of the Assembly, a member, or the Office.

Persons Conducting a Business or Undertaking (PCBU)

6. Under the Act, a person conducts a business or undertaking—
 - a) whether the person conducts the business or undertaking alone or with others; and
 - b) whether or not the business or undertaking is conducted for profit or gain.
7. Each MLA and the Clerk of the Legislative Assembly is a PCBU.
8. Accordingly, each has the primary duty of care to ensure, so far as reasonably practicable, the health and safety of workers engaged, or caused to be engaged, by the

person; and workers whose activities in carrying out work are influenced or directed by the persons, while the workers are at work in the business or undertaking.

9. Each PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
10. In conducting their undertakings, MLAs and the Clerk must work together to eliminate risks to health and safety so far as reasonably practicable. If it not reasonably practicable to eliminate risks to health and safety, MLAs and the Clerk must minimise those risks so far as is reasonably practicable.

Workers

11. A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as—
 - a) an employee;
 - b) a contractor or subcontractor;
 - c) an employee of a contractor or subcontractor;
 - d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking;
 - e) an outworker;
 - f) an apprentice or trainee;
 - g) a student gaining work experience;
 - h) a volunteer; or
 - i) a person of a prescribed class.
12. This includes staff and contractors of an MLA or the Office. While at work, a worker must—
 - a) take reasonable care for their own health and safety;
 - b) take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons;
 - c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and
 - d) cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

Officer of the Territory—Senior staff of MLAs and the Office

13. A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Territory is taken to be an officer of the Territory for the purposes of the Act.
14. This may include senior staff of an MLA and senior staff of the Office.

15. An officer must exercise due diligence to ensure that the PCBU complies with the PCBU's duties and obligations. Due diligence includes:
- a) taking reasonable steps to acquire and keep up-to-date knowledge of work health and safety matters;
 - b) gaining an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations;
 - c) ensuring that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking;
 - d) ensuring that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
 - e) ensuring that the PCBU has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and
 - f) verifying the provision and use of the resources and processes referred to above at paragraphs c) to e).

Cannot transfer a duty

16. None of the duties under the Act may be transferred to another person.

Health and Safety Committee (HSC)

17. The Office of the Legislative Assembly and MLAs have established an Assembly Health and Safety Committee. The functions of the HSC are:
- 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; and
 - 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.
18. The HSC is made up of management representatives and health and safety workers' representatives from:
- the ACT Executive ALP
 - Non-Executive ALP
 - ACT Greens
 - Canberra Liberals
 - Independent MLAs
 - Office of the Legislative Assembly

19. There is also a representative from the Executive Support area of the Chief Minister, Treasury and Economic Development Directorate, and a union representative.

Memorandum of Understanding (MOU)

20. In the 10th Assembly the Speaker and the Acting Commissioner entered into an MOU to provide a mutual basis of understanding in relation to:
- a) the power, privileges and immunities of the Legislative Assembly, its committees, and its members; and
 - b) the important WHS functions performed by the Office of the Work Health and Safety Commissioner (WorkSafe ACT) and its inspectors.
21. By reason of the *Parliamentary Privileges Act 1987* (Cth) and the *Legislative Assembly Precincts Act 2001*, the Speaker is to be consulted by a WorkSafe ACT inspector prior to an inspector seeking to exercise a compliance or investigative power:
- a) within the Assembly precincts;
 - b) in relation to the Assembly or an Assembly committee;
 - c) in relation to an MLA or a workplace in which the MLA performs their functions as an MLA or in which a worker of an MLA performs their work on behalf of an MLA; or
 - d) in relation to the Clerk, workers of the Office, and associated workplaces.
22. In consulting with the Speaker, the WorkSafe ACT inspector will advise the Speaker of the nature of the proposed exercise of the power or function to the extent necessary for the Speaker to assess any implications for parliamentary privilege or contempt of the Assembly.
23. The Speaker will advise the WorkSafe ACT inspector of any issues of parliamentary privilege that potentially arise, including whether any proposed action by the inspector could give rise to a possible contempt against the Assembly, its committees, or its members.
24. It is open to the Speaker and an inspector to, together, consider any arrangements that may be adopted in a particular matter to:
- achieve a compliance outcome under the relevant WHS legislation; and/or
 - eliminate the risk of a contempt or breach of privilege occurring.

Respect in the workplace

25. The Assembly's Respect in the Workplace Policy applies to all of those working in an Assembly workplace. Developed in consultation with the Assembly's HSC, the policy is endorsed by the Chief Minister, Leader of the Opposition, Leader of the ACT Greens, the Clerk and the two independent members and aims to assist people in the Assembly workplace to meet their various duties and obligations, including by:
- Making it clear that respect in the workplace is essential to a safe working environment and bullying, harassment or workplace violence will not be tolerated.

- Making it clear that all individuals in the Assembly workplace have an obligation to behave respectfully at all times and to report bullying, harassment or workplace violence.
- Adopting prevention strategies, training and guidance on work health and safety obligations and duties to prevent and address harmful behaviours in the workplace.
- Providing information and options to report bullying, harassment or workplace violence.
- Making sure that there is appropriate support, confidentiality, and procedural fairness in effectively managing reports of bullying, harassment or workplace violence.

26. The policy is available on the Assembly intranet.

Child Safety Code of Conduct and Policy

27. The Assembly's Child Safety Code of Conduct and Policy sets out detailed obligations for dealing with children in the course of the work of the Assembly and its members. It has been endorsed by the Chief Minister, Leader of the Opposition, Leader of the ACT Greens, the two independent members and the Clerk of the Assembly.
28. Available on the Assembly website and intranet, the code and policy establish clear requirements for interacting with children in the course of the work of the Assembly, MLAs or the Office.

Information and training

29. Members of the 10th Assembly and their senior staff and the Clerk and senior staff of the Office undertook training on PCBU duties and requirements under the WHS Act.
30. The Speaker and the Standing Committee on Administration and Procedure consider that MLAs and senior staff be required to undertake PCBU training, via the online module developed by the Office of the Legislative Assembly, at least once each Assembly and that all new MLAs and their senior staff should undertake the training within the first six months of a new Assembly.