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Chair, Standing Committee on Legal Affairs
ACT Legislative Assembly
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Our ref: CMTEDD2025/3821

21 October 2025

Dear ~~Ms Barry~~ *Chiaka*,

I refer to Scrutiny Report 10 of the Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the Committee) and comments of the Committee on the *Workplace Legislation Amendment Bill 2025 (No 3)* (the Bill).

The ACT Government thanks the Committee for its urgent and valuable consideration of the Bill. In responding to comments made and to assist the Committee I provide following information.

Amendments to the Long Service Leave Act 1976 (LSL Act)

I note the Committee made comments generally seeking clarification and the consideration of amendments to the explanatory statement (referring to paragraphs 1.42, 1.47, 1.56 and 1.70) in relation to part 3 of the Bill.

Powers of entry, direction and investigation by an authorised officer

Noting the Committee's comments at paragraph 1.42, the new section 13CC provides for two mechanisms for obtaining, inspecting and copying information.

Firstly, section 13CC (1) allows an authorised officer to direct a person to give information at any time and place within a reasonable period as required and is not limited to the provision of information only on the premises.

Secondly, and following a lawful entry to premises exercised under section 13C, section 13CC (2) then sets out the specific powers of an authorised officer, including powers in relation the provision of information for persons occupying the premises under section 13CC (2)(c) (i) and (ii).

While these provisions may be new in the context of the LSL Act, they are not new in other similar regulatory contexts as part of an established and effective compliance and enforcement suite across workplace and other laws applying in the Territory.

In this way, the provisions in the Bill are intended to align and harmonise with existing regulatory frameworks and would operate in the same intended manner.

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It is desirable in considering the efficiency of resources and the investigatory process that both mechanisms are available. The ability of an officer to exercise directive powers without being limited to attending and entering the physical location of the premises, for example directing via email, aids in the efficient use of limited resources both on the part of the employer and the regulator by avoiding multiple re-entries onto premises each time a direction to provide information is required.

To provide further clarification of the scope of section 13CC (1) the explanatory statement has been amended at page 16 of the statement.

In relation to comments of the Committee at paragraph 1.47, I note that section 13CC does not displace the principles of legal professional privilege as the section does not disrupt common law principles of legal client privilege under section 171 of the *Legislation Act 2001* (Legislation Act). Relevantly, section 13CC and its subsequent note are standard provisions available to regulators and have been drafted consistent with the Legislation Act.

Should the Committee wish to refer to existing regulatory frameworks that have similar information gathering and compliance powers that operate in the same or similar way, the Committee may refer to the following:

- *Work Health and Safety Act 2011*
- *Labour Hire Licensing Act 2020*
- *Long Service (Portable Schemes) Act 2009*
- *Property Developers Act 2024*
- *Assisted Reproductive Technology Act 2024*; and
- *Professional Engineers Act 2023*.

Similar powers for the entry and collection of information or documents for an authorised officer are also a feature in long service leave legislation operating in other in sections 29-33 of the *Long Service Leave Act 2018* (Vic).

Limitations to the right to privacy

I note the Committee's comments at paragraph 1.56 suggesting that the compliance powers inserted under the Bill in relation to the LSL Act may not be clearly linked to the Act referring variously to the language of 'for this Act' within the Bill.

In referring to the construction of sections 13C and 13CC and potential scope of powers of the authorised officer to obtain information or enter premises in circumstances, these are directly linked to the enforcement of workers' rights under the LSL Act.

The reason section 13CC (2) does not contain the same language as 13C of "for this Act" is because actions to collect information under section 13CC (2) rely upon the authorised officer to have lawfully entered the premises for the purposes of the Act. Therefore, the consideration of whether the collection of information is relevant "for this Act" has already been met as a precondition of entry. As part of standard drafting practices in the ACT, any actions by an authorised officer not linked to their specific functions within the LSL Act related to the enforcement or detection of information would not be considered "for this Act".

Further, the explanatory statement for the Bill reinforces that the purpose of this amendment is to enhance compliance and enforcement powers to modernise the compliance framework under the LSL Act.

While these provisions expand the investigative and enforcement powers of authorised officers under the Act and may therefore impact the right to privacy in certain circumstances, they are essential for officers and the regulator to have sufficient power and tools to effectively regulate non-compliance by employers with their obligations under the Act. Without an effective compliance framework, if an employer is not complying with their obligations to pay long service leave entitlements the onus and enforcement burden otherwise rests with individual employees (or former employees) to dispute or commence legal proceedings against their employer.

On this basis, the enhanced investigatory and compliance powers in the Bill are considered to be proportionate, directly linked to the purposes of the Act and the least restrictive means for limiting the right to privacy in establishing modern compliance and enforcement tools within the LSL Act that are effective in ensuring employers comply with their obligations to provide long service leave entitlements to their workers.

Impact of section 13CD (2) on the privilege of self-incrimination

At paragraph 1.70 the Committee has requested clarification regarding the proposed section 13CD (2) and the explanatory statement about the operation of powers under section 13CD (2) to require a person to comply with the directions of an authorised officer under the LSL Act.

These amendments are intended to capture circumstances where information or documents are lawfully required to be provided at the direction of an authorised officer for the purposes of compliance under the LSL Act. It is acknowledged that in some instances information obtained in this way might also include information that may be self-incriminating under other legislation, eg under the *Crimes Act 1900* or *Criminal Code 2002*. Given this, it is necessary to apply the associated safeguard included in section 13CD (2) not just to the LSL Act but also to offences under other Acts.

Section 13CD (2) is considered a standard form provision when incorporating powers to compel the production of information and documents.

The Committee has also noted typographical errors at paragraph 1.41. This has been corrected in revisions to the explanatory statement for the Bill with reference to section 11 in the clause note for clause 5 corrected to refer to section 11A as being inserted under clause 6 of the Bill.

Amendments to the *Workers Compensation Act 1951* (WC Act)

New payments for deceased workers' family members

The Committee has sought confirmation at paragraph 1.101 about the regulation making power. This power is found in the new section 84B (5) to be inserted under clause 25 of the Bill. In relation to the definition of a family member, I can confirm for the Committee that as described in the explanatory statement for the Bill the intention is that any expansion will be considered pursuant to the regulation making power under section 223 of the WC Act, which enables the Executive to make regulations, with an appropriate consultative process.

Technical amendment

From comments made by the Committee at paragraph 1.101 it is understood that clarification is sought on whether the amendment in Schedule 1 [1.9] to section 202 (1) of the WC Act is technical in nature or substantive.

While the human rights section of the explanatory statement has considered this amendment for fullness in addressing human rights issues, it is a technical correction.

Relevantly, the Legislation Act, s 102 (2) provides that references to provisions that are omitted and remade (with or without changes) remain effective. Prior to the commencement of the *Workers Compensation Amendment Act 2009*, section 11 there were 2 offences in the WC Act, s 147 (1) and (3). Those offences were omitted and remade, being reenacted as 4 offences (at section 147A (2) to (5) of the WC Act) with a more granular separation of the offences into more- and less-serious versions. As such, the offences were omitted and remade with changes and so the Legislation Act preserves the effectiveness of the cross-reference.

An amendment to the Explanatory Statement has not been considered necessary, as the nature of the amendment is a minor technical correction only to make the WC Act accurate on its face for readers.

Amendments to the *Work Health and Safety Act 2011* (WHS Act)

I thank the Committee for its commendation on the human rights discussion on section 39A and section 232 and note its commentary at paragraph 1.115 suggesting that while similar, the human rights discussion should include the amendments to section 39 of the WHS Act in the Bill.

To clarify, the explanatory statement has not addressed human rights specifically in relation to amendments to section 39 of the WHS Act in the Bill as section 39 is not considered to expand the existing strict liability provision. This has been clarified in revisions to the explanatory statement.

I otherwise **enclose** a revised Explanatory Statement.

I trust that the response above and consequent amendments to the Explanatory Statement sufficiently address the matters raised by the Committee regarding the Bill.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'MP' or similar initials, written in a cursive style.

Michael Pettersson MLA
Minister for Skills, Training and Industrial Relations.