



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

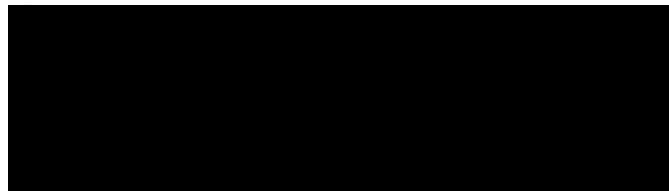
Elizabeth Kikkert MLA (Chair), Michael Pettersson MLA (Deputy Chair),  
Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into Work Health and Safety Amendment Bill 2022

**Submission Number: 01**

**Date Authorised for Publication: 20 January 2023**



Ms Sophie Mine  
Secretary, Standing Committee on Public Accounts

By email: [LACommitteePA@parliament.act.gov.au](mailto:LACommitteePA@parliament.act.gov.au)

Dear Ms Mine,

**Submission: Inquiry into Work Health and Safety Amendment Bill 2022**

Thank you for your 13 December 2022 letter inviting me to make a submission to the Standing Committee on Public Accounts' inquiry into the Work Health and Safety Amendment Bill 2022 (the Amendment Bill).

As the ACT Work Health and Safety Commissioner (WHS Commissioner) I am responsible for fulfilling the Regulator functions specified in the *Work Health and Safety Act 2011* (the Act) and related legislation. Specifically, these responsibilities include:

- the management and administration of the Office of the Work Health and safety Commissioner (WorkSafe ACT)
- the efficient and effective financial management of WorkSafe ACT, and
- exercising the functions of WorkSafe ACT and the Regulator's functions under section 152 of the Act.

Importantly, my position, and WorkSafe ACT, are independent of government. Our independence is essential as it allows compliance and enforcement activities to be undertaken in both ACT public and private sector workplaces without stakeholder influence.

WorkSafe ACT believes all workers, and all workplaces are entitled to be safe and healthy.

**Workplace and officer**

Before commenting on the Amendment Bill, I believe there are two matters that are relevant to my submission, namely:

- what is a workplace, and
- who is an officer.

Workplace

Work health and safety (WHS) duties apply in all workplaces. As defined in section 8 of the Act, a 'workplace' is a place where a worker goes or is likely to be to carry out work for a business or an undertaking, while at work. For clarity, a 'worker' is a person who performs work in any capacity whether paid or unpaid for an employer, business or organisation (section 7 of the Act).



## Officer

Where a workplace is identified, section 27 of the Act places a duty on an officer of a person conducting a business or undertaking (PCBU) to exercise due diligence to ensure that the PCBU complies with their duties or obligations under the Act.

Notably, section 10 of the Act binds the Crown and specifies that the Territory is liable for an offence against the Act. Sections 247 and 252 of the Act are relied upon to determine who *Officers of the Territory* (s247) and *Public Authorities* (252) are.

## **Amendment Bill**

With regard to the Amendment Bill's Explanatory Statement, I acknowledge that the intent is to put beyond doubt that the Act covers the work of Members of the Legislative Assembly (MLAs), Legislative Assembly Committee members and work that others do to support the work of MLAs (i.e. that the Legislative Assembly is a workplace).

I believe the clarification sought by the Amendment Bill reflects the expectations and standards of the community. Modern community expectations include the need for a transparent and accountable government and MLAs. A parliament which abides by the same laws they make and one which abides by the same laws which they expect their citizens to abide by.

I welcome the Amendment Bill in so far as it provides certainty to all workers in the Legislative Assembly that they are entitled to a safe workplace. I believe the Legislative Assembly should serve as a model workplace for the territory's public and private sector workforce and uphold the highest standards for ensuring safe and healthy workplaces.

However, although I acknowledge the Legislative Assembly is a unique workplace environment shaped by the role of MLAs and support staff, from my perspective, the fact that this matter required clarification and the Amendment Bill was deemed necessary is disappointing. I am of the view that the question of whether the Legislative Assembly is a workplace is already beyond doubt based on the definition of workplace in the Act (section 8).

This is evidenced by recent compliance and enforcement action taken by WorkSafe ACT in the Legislative Assembly<sup>1</sup> – the Amendment Bill ratifies this position.

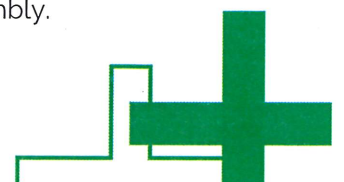
## **Suggested further clarifying amendment**

If the Government is looking to clarify the application of the Act to the Legislative Assembly, I feel there is also an opportunity to confirm who an 'officer' is within this workplace. A similar step was recently taken by the Commonwealth parliament to confirm parliamentary officer duties under the *Work Health and Safety Act 2011* (Cth) (Commonwealth Act) – which is also based on the national model WHS laws adopted by the Territory.

Similar to its original view that the Legislative Assembly is a workplace within the meaning of the Act, WorkSafe ACT is of the view that MLAs have a duty to exercise due diligence to ensure their workplaces comply with their WHS obligations and views them as officers under the Act.

The 2022 amendments to the Commonwealth Act apply to parliamentarians with duties as an officer, specifically:

<sup>1</sup> On 12 and 15 August 2022 WorkSafe ACT issued with Prohibition Notices N-0000005068 and N-0000005078 regarding the conduct of committee hearings at the Legislative Assembly.





*"To avoid doubt, a parliamentarian is an officer of the Commonwealth for the purposes of this Act in respect of the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of the Parliament."<sup>2</sup>*

This amendment provides clarity that Commonwealth parliamentarians have a duty to exercise due diligence to ensure their workplaces (including within Parliament House) comply with their WHS obligations. The due diligence duties of officers include acquiring and keeping up-to-date knowledge of WHS matters and ensuring the applicable PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information.<sup>3</sup>

It appears the prompt for this legislative change was the Australian Human Rights Commission's report *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* which observed that the Commonwealth Act was not clear whether a member of parliament was a person conducting a business or undertaking:

*"The status of individual parliamentarians as PCBUs has not been legally tested and that their constitutional status may also add complexity to this question. The Commission has therefore recommended legislative amendment to clarify the application of duties under the Work Health and Safety Act to parliamentarians."<sup>4</sup>*

Although WorkSafe ACT has formed a view that MLAs are 'officers' under the Act, I believe a clarifying amendment similar to the one made to the Commonwealth Act (ss 247(3)) would remove any doubt that MLAs are officers under the Act.

### **Summary**

As the regulator of the Act, WorkSafe ACT has a pre-existing opinion that the Legislative Assembly is a workplace. The Amendment Bill confirms this position in providing additional clarity, and for this reason I support the proposed change in the Amendment Bill.

However, I believe the Amendment Bill would benefit from an additional amendment to clarify that MLAs have officer duties – like recent amendments in the Commonwealth Act. This further amendment would confirm WorkSafe ACT's current regulatory approach and make it clear that the Legislative Assembly should be treated like any other workplace and MLAs should be treated as officers.

Thank you again for seeking my view on the Amendment Bill. If you have any questions relating to the submission please contact Bill Smith, Senior Director – Strategy, Compensation and Licensing at [REDACTED]

[REDACTED]

**Jacqueline Agius**

ACT Work Health and Safety Commissioner

17 January 2023

<sup>2</sup> Ss 247 (3) Work Health And Safety Act 2011 (Cth)

<sup>3</sup> Ss 27(5)(d) Work Health and Safety Act 2011 (Cth)

<sup>4</sup> *Set the Standard: Report on the Independent Review into Commonwealth Workplaces* - November 2021. Australian Human Rights Commission, pg 65

