

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**Select Committee on Privileges 2022 - Report 1 - Imposition of a prohibition
notice by Worksafe ACT - Government Response**

**Presented by
Andrew Barr MLA
Chief Minister
March 2023**

Introduction

On 15 August 2022 the ACT Legislative Assembly established the Select Committee on Privileges 2022 to examine whether there had been a breach of privilege relating to the actions of the Work Health and Safety Commissioner (or any other person), and whether they improperly interfered with the free exercise of the authority of the Select Committee on Estimates 2022-23 or breached any other privileges of the Assembly.

The Committee also examined an alleged breach of privilege raised by the Select Committee on Estimates 2022-23 in relation to possible interference in the work of the Committee by a Minister.

The Committee made ten recommendations in its final report dated 28 November 2022.

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. 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 WHS Commissioner is the regulator empowered by the WHS Act to conduct compliance and enforcement activities in support of these objectives.

The Government acknowledges the important role of parliamentary privileges, immunities and associated powers in the ACT and Australian system of government and recognises that the unique nature of parliamentary work calls for the highest level of integrity and responsibility.

The Government thanks the Select Committee for the time and effort taken to consider the establishing terms and matters arising in connection with the Committee's inquiry, and for its report to the Assembly.

Government response to the Select Committee's recommendations

Recommendation 1

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

Government response – Noted

The Government notes this recommendation.

In relation to the consideration of a memorandum of understanding (MoU) between the Assembly and WorkSafe ACT, both parties have the legal capacity to enter into such an agreement.

In the case of the ACT Legislative Assembly, this is assigned to the Speaker of the Assembly and is enabled by section 7 of the *Legislative Assembly Precincts Act 2001* regarding the control and management of the Assembly precincts.

In relation to WorkSafe ACT, the Office of the WHS Commissioner is a territory authority and therefore also has the power to enter into an MoU with the legal capacity and powers of an individual that is a corporation (*Financial Management Act 1996*, sections 73 and 74).

While it is not uncommon for entities to enter into an MoU, MoUs are not generally regarded as legally binding or enforceable and operate primarily on the basis of reasonable endeavours and agreement, to achieve the desired outcome.

In noting this recommendation, the Government considers that whether an MoU is entered into to assist in managing the relationship between the Assembly and WorkSafe ACT ultimately falls to the responsibility of the Speaker of the Assembly and the WorkSafe ACT.

Recommendation 2

The Committee recommends that no further action be taken with WorkSafe ACT.

Government response – Noted

The Government notes this recommendation.

Recommendation 3

The Committee recommends that the Work Health and Safety Act 2011 be amended to:

- (1) provide clarity that the Assembly is a workplace; and*
- (2) provide that nothing in the Act;*
 - a. abrogates or derogates from the powers, privileges and immunities of the Legislative Assembly, its committees or its members; or*
 - b. gives an inspector or any other person the power to prohibit the proceedings of the Assembly or its committees.*

Government response – Noted

The Government notes this recommendation and amendments to the WHS Act already before the ACT Legislative Assembly.

On 20 October 2022 the *Work Health and Safety Amendment Bill 2022* (the Bill) was introduced in the ACT Legislative Assembly to clarify by putting beyond any doubt that the WHS Act applies to the Assembly. This is consistent with the longstanding policy view of the application of the WHS Act and would not create any new or alter the existing obligations and responsibilities under that Act.

Importantly, the ACT legislature can only legislate in so far as it has the power to do so. In fact, this is already recognised and acknowledged within the existing framing and structure of the Act: see section 10 of the WHS Act¹.

This should address any concerns that in clarifying the application of the WHS Act to the Assembly its powers, privileges and immunities may somehow be compromised.

Recommendation 4

The Committee recommends that the Government draws the matters raised in this report in particular, to the attention of regulatory bodies in the ACT who potentially may have cause to interact with the Legislative Assembly in future and, more broadly, to the wider ACT Public Service.

Government Response – Agree

The Government agrees to this recommendation.

¹ <https://legislation.act.gov.au/a/2011-35/>, refer section 10 of the WHS Act which states the application of the Act as binding on the Crown, and an undertaking of the Crown “in so far as the legislative power of the Legislative Assembly permits”.

The Government acknowledges and upholds the powers, privileges and immunities of the Legislative Assembly along with the principles of accountable government.

The ACT public service and regulatory bodies are able to access a variety of resources to assist in understanding the powers, privileges and immunities of the Assembly and Assembly process when performing their functions. This report and the matters it raises have been brought to the attention of Ministers and the ACT public service.

The Government also takes the opportunity in this response to highlight the importance of duties and obligations under the WHS Act. Work health and safety laws are one of the cornerstones of the ACT's legislative framework for protecting and ensuring the workplace rights of Canberrans. It is critical that the health and safety of workers in all ACT workplaces is assured. Every Canberran has the right to be safe at work and to return home safely from work every day.

Recommendation 5

The Committee recommends that all Ministers take care in their interactions with independent regulators, so they are not open to the perception of improperly influencing or directing a particular investigation or regulatory action.

Recommendation 6

The Committee recommends that all Ministers ensure that they and their officers keep appropriate written records of significant matters.

Recommendation 7

The Committee recommends that Ministers should take care to provide accurate information to the media and the public, particularly on key matters that could risk the reputation of the Assembly or the Government.

Government Response to recommendations 5, 6 & 7 – Noted

The Government notes this recommendation.

The Government is committed to the principles of good governance, including transparency, probity and accountability.

Ministers are often required to interact with independent authorities of the Government that fall within their portfolio. It is critical that these interactions occur to ensure the Government is well equipped to carry out its functions.

Relevantly, all Ministers are expected to uphold the Ministerial [Code of Conduct](#) 2020 when carrying out their functions and responsibilities.

In light of there being no finding of a breach against an ACT Minister in performing their functions, this recommendation is an opportune reminder of the Government's

commitment to accountability and integrity. Senior Executive Ministerial staff and the ACT Public Service have also taken this opportunity to discuss and reaffirm the Executive and ACT Government's commitment to appropriate record keeping, and ensuring accurate communication with media and the public.

Recommendation 8

The Committee recommends that in the next review of the Latimer House principles, the Speaker refer:

- 1) for assessment the Executive's compliance with the objectives enunciated in the principles, particularly in its relationship with the Legislative Assembly; and*
- 2) to the Standing Committee on Administration and Procedure whether Continuing Resolution 8A requires amendment or re-affirmation to accentuate the independence of the legislature from Executive interference, in terms similar to the motion passed by the Senate.*

Government Response – Noted

The Government notes this recommendation. Any action in relation to this recommendation falls within the remit of the Assembly and its Members to consider and resolve.

The Government remains committed to upholding the Principles that guide the operations and functions of the Assembly.

These Principles are reflected in continuing resolution 8A of the Legislative Assembly as annexed to the Standing Orders for the Assembly.

Recommendation 9

The Committee recommends that Continuing Resolution 5 relating to the code of conduct for all Members of the Legislative Assembly for the Australian Capital Territory be amended to make clear that Members, in carrying out their responsibilities, have a duty to act in a way that does not unreasonably place the health, safety and wellbeing of others at risk.

Government Response – Noted

The Government notes this recommendation. Any action in relation to this recommendation falls within the remit of the Assembly and its Members to consider and resolve.

The Government is supportive of the intent of this recommendation, in so far as it seeks to strengthen workplace safety.

However, the Government suggests that references to WHS duties and obligations in any amendment to the Continuing Resolution more exactly reflect the WHS Act, to avoid the perception of a lesser standard applying to the Assembly. While the wording in this recommendation may articulate the obligations as it applies to a worker or others at a workplace, it does not adequately reflect the higher duties placed on a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of those at the workplace (workers and others).

Recommendation 10

The Committee recommends that the powers of a committee of the Assembly to compel:

- 1) documents pertaining to that committee or a member of that committee; and*
 - 2) the identity of a person whose identity is otherwise protected under law;*
- be considered as part of the ongoing review into standing orders.*

Government Response – Noted

The Government notes this recommendation. Any review of the powers of the Assembly is for members of the Assembly to consider and resolve.

However, the Government shares the concern of the Committee that caution needs to be taken in exercising powers that compel others, in particular, circumstances relating to the protection of personal and sensitive information and encourages a consultative approach to

ensure the ACT continues to meet the expectations of the Canberra community in carrying out the functions of government.

Laws that protect the identity of complainants reflect the necessary level of protections and safeguards that allow a person to make a complaint without fear and facilitate a culture of public accountability and integrity.

The protection and safeguarding of complainants should be given the highest regard when considering the powers of government bodies and agencies, including Assembly committees, to compel certain documents and/or information.

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