

Chiaka Barry MLA
Chair, Standing Committee on Legal Affairs
ACT Legislative Assembly
Scrutiny@parliament.act.gov.au

Our ref: CMTEDD2025/2796

17 September 2025

Dear ~~Ms Barry~~ *Chiaka*,

I refer to Scrutiny Report 9 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 2) (the Bill).

The 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 the following information.

Amendments to the *Evidence (Miscellaneous Provisions) Act 1991 – part 2 of the Bill*

A number of comments made (at paragraphs 1.42, 1.48 and 1.51) by the Committee seek to understand the purpose, effect and definitional elements of part 2 of the Bill and in particular, clauses 5 and 6.

The stated purpose and effect of the amendment is in extending special protections, currently available to a 'complainant' in sexual offence, violent, and family violence proceedings, to those in workplace proceedings under the *Work Health and Safety Act 2011* (WHS Act) where the WHS breach involves sexual assault or harassment.

In summary these amendments aim to encourage reporting, reduce trauma, and address power imbalances, without altering the legal standing of other parties. The changes made, in particular those in clauses 5 and 6, are necessary to ensure this aim is achieved.

WHS proceedings are not inquiring into whether or not a sexual offence under the *Crimes Act 1900* has been committed. Given this, the WHS offence the subject of the WHS proceeding is distinct from and separate to the criminal offence of the act of sexual violence itself. In other words, a WHS offence is less likely to be committed against the complainant in the same way that a criminal offence would. Considering this and without the amendment in clause 6, extending legal protections for sexual violence complainants to WHS proceedings in clause 4 may be rendered ineffective.

Additionally, to ensure the effectiveness of extending these protections to a complainant in relation to a WHS proceeding the Bill ensures and makes it clear that an accused includes the person alleged or suspected to have committed the sexual assault or sexual harassment for the purposes of and in the context of relevant protections as stated in clause 5 of the Bill. This directly responds to the specific nature and context of a WHS proceeding acknowledging that in these circumstances the perpetrator of the alleged or suspected violence and the WHS duty holder may, and in fact are likely to not be the same person.

Relevantly, it is noted that the *Evidence (Miscellaneous Provisions) Act 1991* does not define the term 'accused', and as such, no amendment in the nature of clause 5 is required in order to capture the duty holder in this regard and against whom the WHS breach is being prosecuted.

In this context, the explanatory statement sets out variously how human rights may be engaged and justifies proportionality where those rights may be limited, for example in relation to rights in criminal proceedings and rights to a fair trial. They are narrowly scoped, context-specific, and subject to judicial oversight to preserve fairness. They do not alter the legal standing of other parties, but rather aim to reduce trauma, encourage reporting, and address power imbalances.

While the revised explanatory statement provided with the Bill has explained the purpose and effect of these amendments, I have provided some additional clarity in the attached revisions to the revised explanatory statement within the outline of the Bill.

Amendments to the *Workers Compensation Act 1951* – part 3 of the Bill

Noting the Committee's comment at paragraph 1.61, a determination allowed under the new section 166J is to be made in the form of a notifiable instrument. This enables timely and limited intervention to effectively avert potential market failure and instability within the workers compensation insurance sector.

Relevantly, exercising this legislative power by the Executive would not alter existing rights and obligations under the *Workers Compensation Act 1951*. It supports continuity and certainty of insurance coverage in limited and urgent circumstances. In this way it is not dissimilar or inconsistent with other instrument making powers under the workers' compensation scheme in relation to classifying workers and declaring certain categories of workers to be workers for that Act.

As a notifiable instrument there is transparency and accountability provided in where the new determination making powers are exercised under section 166J in the Bill.

To ensure absolute clarity in relation to comments made at paragraph 1.63 and noting that all rights considered to be engaged and limited have been addressed in the explanatory statement, additional wording has been added confirming that part 3 of the Bill does not limit human rights.

I otherwise **enclose** a copy of the revisions made to the revised Explanatory Statement. I trust this provides the Committee with sufficient context and assurance regarding the Bill's intent.

Yours sincerely



Michael Pettersson MLA
Minister for Skills, Training and Industrial Relations