



ACT
Government

Chief Minister and Cabinet

MINUTE

Ref:

Date August 2012

To Minister for Industrial Relations

- Director-General
- Deputy Director-General, Workforce Capability and Governance Division

From A/g Director, Office of Industrial Relations

Subject Response to Scrutiny Report comment – Work Health and Safety Amendment Regulation 2012 (No.2)

Critical date and reason

A response to the Chair, Standing Committee on Justice and Community Safety need not be tabled in this Assembly. It is due within six sitting days of the 14 August 2012, which will fall on the first sitting day of the 8th Assembly.

Purpose

To provide you with a draft letter (**Attachment A**) responding to comments made by the Standing Committee on Justice and Community Safety (the Committee) in its Report (No. 55), about the Work Health and Safety Amendment Regulation 2012 (No.2).

Background

You previously agreed to make the Work Health and Safety Amendment Regulation 2012 (No. 2). This Regulation provides for additional transitional matters including maintaining inspector powers, retaining past delegations of power and rolling over membership of the ACT Work Safety Council. An instrument making that Regulation was tabled in the Assembly on Tuesday, 14 August 2012.

Issues

In its 20 August 2012 Scrutiny Report (**Attachment B**), the Committee notes that the transitional regulations provided for in the Amendment Regulation apply retrospectively and has questioned how the need arose to use a Henry VIII clause in the *Work Health and Safety Act 2011* (WHS Act). A draft letter to the Committee responding to these matters has been prepared for your consideration and signature at **Attachment A**.

Retrospectivity

The Committee accepts that retrospective operation is permitted under section 76 of the *Legislation Act 2001* and acknowledges that the explanatory statement deals expressly with this matter appropriately by stating that it does not have a prejudicial operation. However, the Committee notes that assessing whether retrospective operation is prejudicial to everyone may not be simple and seeks your assurance that in making this statement all persons affected have been considered (including persons or entities who may have been investigated or even prosecuted).

The draft letter prepared acknowledges the Committee's concern and provides assurance that the Statement was made in full consideration of the requirements in section 76 of the Legislation Act. It is also explained that

the transitional provisions are consistent with the principles agreed by the Assembly about the saving and operation of repealed laws as set out in section 84 of the Legislation Act.

Use of a "Henry VIII" clause

The Committee has asked why it was necessary to make the transitional arrangements in the Work Health and Safety Amendment Regulation 2012 (No.2). In the Committee's view, these matters should have been dealt with in drafting of the WHS Act.

While the Committee refers to a Henry VIII clause, that clause is in the Act and is not under scrutiny as the disallowance period for the Act has ended. The clause grants power to Government that may be considered broad and legislative in nature. The Committee accepts that the Henry VIII clause has been validly used at law.

As you are aware, the transitional matters set out in the Amending Regulation were not dealt with in the WHS Act on the basis that section 84 of the Legislation Act (Saving of operation of repealed and amended laws) could be fully relied on to the same effect. In that sense, the Henry VIII clause has been used only to give specific effect to the same principles set out in section 84 to remove any doubt. This is set out in the draft letter.

Consultation

Work Safe ACT and the Parliamentary Counsel's Office have been consulted.

Media

The Opposition has issued a media release stating that the making of a retrospective regulation in this instance should not have been necessary (**Attachment C**). The following speaking points are suggested should you wish to respond to these comments:

- the *Work Health and Safety Act 2011* was introduced on advice that the transitional matters set out, together with the *Legislation Act 2011*, sufficiently covered ongoing investigations;
- it has since been recommended to me that a regulation giving specific effect to section 84 of the *Legislation Act 2011* in this instance should be made for the purposes of clarification and to remove any uncertainty; and
- this decision followed further consideration by the Government Solicitor's Office, Parliamentary Counsel's Office and relevant Directorates. It is consistent with the intent of the Assembly to save the operation of repealed and amended laws.

Recommendations

That you:

1. **note** the information contained in this brief; and

NOTED/PLEASE DISCUSS

2. **sign** the letter to Mrs Vicki Dunne MLA, Chair of the Standing Committee on Justice and Community Safety, at **Attachment A**.

AGREED/NOT AGREED/PLEASE DISCUSS

John Rees

Action Officer: Katherine Jones
Phone: x50308

Dr Chris Bourke MLA *CB* 12/9/12



Dr Chris Bourke MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR CORRECTIONS

MEMBER FOR GINNINDERRA

Mrs Vicki Dunne MLA
Chair, Standing Committee on Justice and Community Safety
ACT Legislative Assembly Committee Office
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Dunne

I am writing in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No. 55 (20 August 2012) in relation to the Work Health and Safety Amendment Regulation 2012 (No. 2) ('the Regulation').

I note that the Committee seeks my advice as to why the matters dealt with in the Regulation did not feature in Part 20 of the *Work Health and Safety Act 2011* (WHS Act). In responding I appreciate the Committee's view that the Regulation is a valid and proper use of the empowering provision in section 306 of the WHS Act.

The WHS Act was introduced on advice that all transitional matters necessary for the conduct of ongoing investigations and prosecutions were sufficiently covered by the WHS Act, Work Health and Safety Regulation 2011 and section 84 of the *Legislation Act 2001*. Following passage of these laws I received further advice recommending that specifying these particular matters in the WHS Act itself would provide further clarity and remove any uncertainty about how the laws should operate together. This advice took into account the outcome of further consideration of the matter by the Government Solicitor's Office, Parliamentary Counsel's Office and relevant Directorates. It is consistent with the intent of the Assembly to save the operation of repealed and amended laws.

The Committee has also sought my assurance that the Explanatory Statement to the Regulation in respect of retrospective operation reflects a view formed after consideration of all persons who may be affected by the subordinate law. In particular, the potential effect of the Regulation on persons or entities investigated or liable to prosecution have been considered. I note the Committee's comments in this regard and can assure Members that the Statement was prepared in full consideration of the requirements of section 76 of the *Legislation Act*.

I appreciate the Committee's efforts in reviewing the Regulation and would like to thank it for its comments.

Yours sincerely

Dr Chris Bourke MLA
Minister for Industrial Relations
12 September 2012

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 2244 Fax (02) 6205 0332 Email: bourke@act.gov.au

Vicki Dunne MLA**Member for Ginninderra**

Shadow Attorney-General

Shadow Minister for Family and Community Services;

Nature Conservation and Water; Industrial Relations; Women; and the Arts

Manager of Opposition Business

Media release

Friday 31 August 2012

BOURKE BOTCHES WORK SAFETY LAWS

Six months of work health and safety inspections and investigations may have been carried out illegally because Chris Bourke couldn't get new work health and safety legislation right, according to ACT Shadow Industrial Relations Minister Vicki Dunne.

"Nationally harmonised work health and safety laws started on 1 January this year," Mrs Dunne said.

"But because of Chris Bourke's inability to manage his portfolio, WorkSafe inspectors may have been operating without legal authority.

"If anything had gone wrong, inspectors may not have had legal protection.

"Even the establishment of the new Work Safety Council was botched.

"It was not until July that the government came to the shocking realisation that it had botched the process, and then hastily made a regulation, retrospectively covering up their mistake.

"This is 'legislation 101' and Chris Bourke has failed spectacularly.

"Chris Bourke is simply not up to being a Minister, and is only in this position because ACT Labor has no other options.

"This is an error that has compromised work safety across the Territory," Mrs Dunne concluded.

Media contact: Hannah Passfield: 0421 955 219

Jones, Katherine (CMCD)

From: Jones, Katherine (CMCD)
Sent: Wednesday, 12 September 2012 9:07 AM
To: Collins, Jacob
Subject: FW: MIR letter to Scrutiny transitional WHS regs updated
Attachments: Brf MIR WHS Reg Amdt 2 Scrutiny Response updated.doc; MIR letter to Scrutiny transitional WHS regs updated.doc

Hi Jake

As requested, please see attached

Katherine

From: Jones, Katherine (CMCD)
Sent: Thursday, 30 August 2012 10:41 AM
To: Purtill, Garrett
Subject: MIR letter to Scrutiny transitional WHS regs updated

Hi Garrett

Sorry to miss your call earlier, here are the updated brief and letter on the WHS Regulation and scrutiny comment. Apologies for the lateness.

Kind Regards

Katherine Jones | Manager, Work Safety Policy
Phone: +61 2 6205 0308 | Fax: +61 2 6207 6775 | Email: katherine.jones@act.gov.au Office of
Industrial Relations | Chief Minister and Cabinet | ACT Government Level 5 Canberra Nara
Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au



Ref:

Date	August 2012
To	Minister for Industrial Relations
	• Director-General • Deputy Director-General, Workforce Capability and Governance Division
From	A/g Director, Office of Industrial Relations
Subject	Response to Scrutiny Report comment – Work Health and Safety Amendment Regulation 2012 (No.2)

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Recommendations

That you:

1. **note** the information contained in this brief; and

NOTED/PLEASE DISCUSS

2. **sign** the letter to Mrs Vicki Dunne MLA, Chair of the Standing Committee on Justice and Community Safety, at Attachment A.

AGREED/NOT AGREED/PLEASE DISCUSS

John Rees

Action Officer: Katherine Jones

Phone: x50308

Dr Chris Bourke MLA / /

**Dr Chris Bourke MLA**

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR CORRECTIONS

MEMBER FOR GINNINDERRA

Mrs Vicki Dunne MLA
Chair, Standing Committee on Justice and Community Safety
ACT Legislative Assembly Committee Office
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Dunne

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The Committee has also sought my assurance that the Explanatory Statement to the Regulation in respect of retrospective operation reflects a view formed after consideration of all persons who may be affected by the subordinate law. In particular, the potential effect of the Regulation on persons or entities investigated or liable to prosecution have been considered. I note the Committee's comments in this regard and can assure Members that the Statement was prepared in full consideration of the requirements of section 76 of the Legislation Act.

I appreciate the Committee's efforts in reviewing the Regulation and would like to thank it for its comments.

Yours sincerely

Dr Chris Bourke MLA
Minister for Industrial Relations
August 2012

ACT LEGISLATIVE ASSEMBLY

Collins, Jacob

From: Collins, Jacob
Sent: Wednesday, 12 September 2012 9:07 AM
To: Jones, Katherine (CMCD)
Subject: RE: MIR letter to Scrutiny transitional WHS regs updated

Categories: FOI - IR

thanks

From: Jones, Katherine (CMCD)
Sent: Wednesday, 12 September 2012 9:07 AM
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Hi Jake

As requested, please see attached

Katherine

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Katherine Jones | Manager, Work Safety Policy
Phone: +61 2 6205 0308 | Fax: +61 2 6207 6775 | Email: katherine.jones@act.gov.au Office of
Industrial Relations | Chief Minister and Cabinet | ACT Government Level 5 Canberra Nara
Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

Collins, Jacob

From: Jones, Katherine (CMCD)
Sent: Wednesday, 12 September 2012 9:19 AM
To: Collins, Jacob
Subject: RE: MIR letter to Scrutiny transitional WHS regs updated

Categories: FOI - IR

thanks

From: Collins, Jacob
Sent: Wednesday, 12 September 2012 9:17 AM
To: Jones, Katherine (CMCD)
Subject: RE: MIR letter to Scrutiny transitional WHS regs updated

Thought so – I only updated the month on the letter. Hopefully will be signed off this morning

From: Jones, Katherine (CMCD)
Sent: Wednesday, 12 September 2012 9:16 AM
To: Collins, Jacob
Subject: RE: MIR letter to Scrutiny transitional WHS regs updated

I haven't seen it signed. Garrett had it, had the changes made, then that is the last we saw... Thilaga is not in yet, so can't check on TRIM

From: Collins, Jacob
Sent: Wednesday, 12 September 2012 9:15 AM
To: Jones, Katherine (CMCD)
Subject: RE: MIR letter to Scrutiny transitional WHS regs updated

This hasn't been signed yet has it???

From: Jones, Katherine (CMCD)
Sent: Wednesday, 12 September 2012 9:07 AM
To: Collins, Jacob
Subject: FW: MIR letter to Scrutiny transitional WHS regs updated

Hi Jake

As requested, please see attached

Katherine

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Katherine Jones | Manager, Work Safety Policy

Phone: +61 2 6205 0308 | Fax: +61 2 6207 6775 | Email: katherine.jones@act.gov.au Office of
Industrial Relations | Chief Minister and Cabinet | ACT Government Level 5 Canberra Nara
Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

Cranney, Rosemary

From: Cranney, Rosemary
Sent: Thursday, 13 September 2012 3:35 PM
To: Collins, Jacob
Subject: RE: C1870/12 signed

Thank you Jake ☺

Rosemary Cranney | Policy Officer
Phone: +61 2 6207 9944 | Fax: +61 6207 6675 | Email: rosemary.cranney@act.gov.au
Work Safety and Industrial Relations Policy | Chief Minister and Cabinet | ACT Government
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Collins, Jacob
Sent: Thursday, 13 September 2012 3:34 PM
To: Cranney, Rosemary; Joyce, David
Cc: Rees, John
Subject: RE: C1870/12 signed

FFS!!

fine, I'll date it then

but the friggen Cabinet Office can bite me

From: Cranney, Rosemary
Sent: Thursday, 13 September 2012 3:33 PM
To: Collins, Jacob; Joyce, David
Cc: Rees, John
Subject: RE: C1870/12 signed

Yes we do – otherwise Cabinet Office refuses to accept them!

Rosemary Cranney | Policy Officer
Phone: +61 2 6207 9944 | Fax: +61 6207 6675 | Email: rosemary.cranney@act.gov.au
Work Safety and Industrial Relations Policy | Chief Minister and Cabinet | ACT Government
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Collins, Jacob
Sent: Thursday, 13 September 2012 3:32 PM
To: Cranney, Rosemary; Joyce, David
Cc: Rees, John
Subject: RE: C1870/12 signed

Date is as per the ministers signature on brief

I didn't think we dated instruments?

From: Cranney, Rosemary
Sent: Thursday, 13 September 2012 3:31 PM
To: Collins, Jacob; Joyce, David
Cc: Rees, John
Subject: RE: C1870/12 signed

Thanks Jake.

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Don't forget to stamp the date!

By the way, now that the instrument is signed, can the code be notified any time (i.e. I don't need to try and get it up today?)

Rosemary Cranney | Policy Officer

Phone: +61 2 6207 9944 | Fax: +61 6207 6675 | Email: rosemary.cranney@act.gov.au

Work Safety and Industrial Relations Policy | Chief Minister and Cabinet | ACT Government

Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Collins, Jacob

Sent: Thursday, 13 September 2012 3:28 PM

To: Joyce, David; Cranney, Rosemary

Cc: Rees, John

Subject: C1870/12 signed

Hi David / Rosemary,

Pls find attached FYI

Regards,

Jake

Jacob Collins | Directorate Liaison Officer

Aboriginal and Torres Strait Islander Affairs Portfolio

Industrial Relations Portfolio

Corrections Portfolio

p: 6205 9777

Cranney, Rosemary

From: Collins, Jacob
Sent: Thursday, 13 September 2012 3:28 PM
To: Joyce, David; Cranney, Rosemary
Cc: Rees, John
Subject: C1870/12 signed
Attachments: C1870-12.pdf

Hi David / Rosemary,

Pls find attached FYI

Regards,
Jake

Jacob Collins | Directorate Liaison Officer
Aboriginal and Torres Strait Islander Affairs Portfolio
Industrial Relations Portfolio
Corrections Portfolio
p: 6205 9777



ACT
Government

Chief Minister and Cabinet



MINUTE

Ref:

Date 30 August 2012

To Minister for Industrial Relations

- Director-General Not available S. Read 7/8/12
- Deputy Director-General, Workforce Capability and Governance AK 30/8/12

From A/g Director, Office of Industrial Relations

Subject New Code of Practice for the Dangerous Substances Act 2004 –
Management and Control of Asbestos

Critical date and reason

There is no critical date. It would be prudent to notify the *Code of Practice for the Management and Control of Asbestos in Workplaces* as a code of practice under the *Dangerous Substances Act 2004* promptly.

Purpose

To seek your agreement to sign a disallowable instrument (**Attachment A**), approving the *Code of Practice for the Management and Control of Asbestos in Workplaces* as a code of practice under the *Dangerous Substances Act 2004*.

Background

The *Code of Practice for the Management and Control of Asbestos in Workplaces* (Asbestos Code) focuses on managing asbestos *in-situ* in workplaces (**Attachment B**). It was previously approved as a code of practice in the Territory under the *Work Health and Safety Act 2008* but was repealed when that law was replaced by the *Work Health and Safety Act 2011* (WHS Act) on 1 January 2012. Prior to this, the Asbestos Code was an integral part of the ACT asbestos management and regulatory regime.

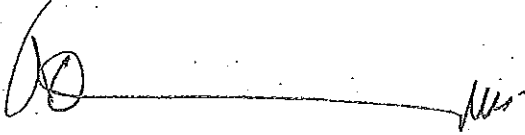
Issues

Safe Work Australia has prepared a new national harmonised code of practice to replace the Asbestos Code. It is not recommended that you adopt the harmonised code as it has been drafted to be consistent with the national model asbestos regulation that the Territory has not adopted – as such, it would be inconsistent with the *Dangerous Substances Act 2004* (DS Act) and other Territory laws that govern asbestos management.

As you are aware, this Office is currently working on amending the DS Act. This is to ensure the ongoing management of asbestos in the Territory remains in that DS Act and not in the WHS Act, which was envisaged under the national harmonisation of work health and safety legislation. You have previously agreed to table amendments for this purpose in the 8th Assembly.

Recommendation

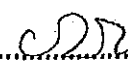
That you sign the disallowable instrument at **Attachment A** to approve the *Code of Practice for the Management and Control of Asbestos in Workplaces* as a code of practice under the *Dangerous Substances Act 2004*.



John Rees

Contact: David Joyce and Rosemary Cranney

Phone: x50709 and x79944

Dr Chris Bourke MLA  13/11/12
SIGNED/NOT SIGNED/PLEASE DISCUSS

Australian Capital Territory

Dangerous Substances (Code of Practice for the Management and Control of Asbestos in Workplaces) Approval 2012

Disallowable instrument DI2012--

made under the

Dangerous Substances Act 2004, s 219 (Codes of practice)

1 Name of instrument

This instrument is the *Dangerous Substances (Code of Practice for the Management and Control of Asbestos in Workplaces) Approval 2012*.

2 Commencement

This instrument commences on the day after notification.

3 Code of practice approval

I approve the attached Code of Practice for the Management and Control of Asbestos in Workplaces as a code of practice.



Dr Chris Bourke
Minister for Industrial Relations

Australian Capital Territory

Dangerous Substances (Code of Practice for the Management and Control of Asbestos in Workplaces) Approval 2012

Disallowable instrument DI2012–

made under the

Dangerous Substances Act 2004, s 219 (Codes of practice)

EXPLANATORY STATEMENT

Section 219 of the *Dangerous Substances Act 2004* (the Act) provides that the Minister may approve a code of practice setting out guidelines for the Act.

This instrument approves the Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)] as a Code of Practice for the Act.

This Code of Practice has been developed to assist persons with control of premises and/or plant to control the risks of asbestos-containing materials (ACM) in workplaces and applies to all workplaces where ACM remain, or are likely to remain, *in situ*.

All work covered by this Code of Practice involving a potential exposure of people to asbestos should be carried out in accordance with the Code in so far as that is consistent with relevant laws in the Territory that provide for asbestos management.

This Code was previously adopted as a Code of Practice under the *Work Safety Act 2008*, which has now been repealed.

The approval under section 219 is a disallowable instrument.

The instrument commences on the day after notification.