



ACT
Government


Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2021-030

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	39
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: 
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Sunday, 21 February 2021 7:16:20 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:
First Name:
Last Name:
Business/Organisation
Address:
Suburb:
Postcode:
State/Territory:
Phone/mobile:
Email address:



Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

All documents relating to the amendments made in 2020 to the Work Health and Safety Act 2011 ACT ("the Act") including but not limited to:- - any briefings, correspondence or other documents, including advice, between the relevant Minister and/or the Minister's office and the WHS Commissioner during the period 1 January 2020 to 31 December 2020; - any briefings, correspondence or other documents, including advice, received from the ACT Government Solicitor during the period 1 January 2020 to 31 December 2020; - any briefings, correspondence or other documents between the Minister, Minister's office, or the WHS Commissioner with other stakeholders or third parties in relation to changes to the Act during the period 1 January 2020 to 31 December 2020; - any correspondence or documents received requesting changes or advocating for amendments to the WHS Act during the period 1 January 2020 to 31 December 2020, in particular with a focus on the amendments allowing entry permit holders the ability to record interactions when exercising their right of entry.

I do not want to access

the following
documents in relation
to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2021-030



Dear 

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 21 February 2021.

Specifically, you are seeking: *"All documents relating to the amendments made in 2020 to the Work Health and Safety Act 2011 ACT ("the Act") including but not limited to:*

- *any briefings, correspondence or other documents, including advice, between the relevant Minister and/or the Minister's office and the WHS Commissioner during the period 1 January 2020 to 31 December 2020;*
- *any briefings, correspondence or other documents, including advice, received from the ACT Government Solicitor during the period 1 January 2020 to 31 December 2020;*
- *any briefings, correspondence or other documents between the Minister, Minister's office, or the WHS Commissioner with other stakeholders or third parties in relation to changes to the Act during the period 1 January 2020 to 31 December 2020;*
- *any correspondence or documents received requesting changes or advocating for amendments to the WHS Act during the period 1 January 2020 to 31 December 2020, in particular with a focus on the amendments allowing entry permit holders the ability to record interactions when exercising their right of entry."*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 23 March 2021. Due to the volume of documents to assess you agreed to extend the due date which is now 21 April 2021.

Decision on access

Searches were completed for relevant documents and a large number of documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to 32 documents and partial access to 12 documents relevant to your request as I consider them to contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have decided to refuse access to numerous documents as I consider them to be contrary to the public interest information under Schedule 1 sections 1.2 (Legal Professional Privilege) and 1.6 (Cabinet Information).

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Contrary to the public interest information under schedule 1 of the Act

In processing this request, CMTEDD found numerous documents which were identified as being within the scope of your request that contain information that was prepared for, or that would disclose the deliberations of Cabinet. This information is considered to be contrary to the public interest under section 1.6 of Schedule 1 of the Act and therefore has been withheld from release. The primary purpose of the 'cabinet exemption' is to maintain the confidentiality of the cabinet process and to uphold the principle of collective ministerial responsibility. This was discussed in *The Commonwealth v Northern Land Council* [1993] HCA 24; (1993) 176 CLR 604 (21 April 1993). Paragraph 6 of the decision, states that:

... it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may

exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made.

In reviewing the documents, I consider they contain information which has been developed as part of the Cabinet consideration process (s 1.6(1)(a)) or is directly related to the deliberation and considerations of Cabinet (s 1.6(1)(d)). I am satisfied that release of this information would disclose information which has not been 'officially disclosed'. In making this decision, I note the decision of Deputy President Forgie in *Re Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301 who stated:

....deliberations are its thinking processes, be they directed to gathering information, analysing information or discussing strategies. They remain its deliberations whether or not a decision is reached. [Cabinet's] decisions are its conclusions as to the courses of action that it adopts be they conclusions as to its final strategy on a matter or its conclusions as to the manner in which a matter is to proceed.

Accordingly, I have decided to withhold this information from release under the Act.

There are also 43 documents that have been identified as being within the scope of your request are composed of information that is considered to be contrary to the public interest information under section 1.2 of Schedule 1 of the Act as it is information that is deemed privileged under Legal Professional Privilege. This information can only be released if the parties involved agree to waive that privilege. The parties have not waived privilege.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lie. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
 - ii) *contribute to positive and informed debate on important issues or matters of public interest;*

Having considered the factors identified as relevant in this matter, I consider that release of the information, within the scope of the request, may contribute to positive and informed debate on a matter of public interest and enhance the government's accountability. I am satisfied that this factor favouring disclosure carries significant weight. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

Factors favouring nondisclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (email addresses and personal mobile phone numbers) could prejudice their right to privacy under the *Human Rights Act 2004*.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107 (2)(b) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD

disclosure log three days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

21 April 2021



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
All documents relating to the amendments made in 2020 to the Work Health and Safety Act 2011 ACT ("the Act") including but not limited to: any briefings, correspondence or other documents, including advice, between the relevant Minister and/or the Minister's office and the WHS Commissioner during the period 1 January 2020 to 31 December 2020.	CMTEDDFOI 2021-030

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	Ministerial Brief – Minor and technical Government amendments	Undated	Full release	N/A	Yes
2	4-6	Email – Draft _ WHS entry permit holder devices – Guidelines attached	7 May 2020	Full release	N/A	Yes
3	7	Email – WHS entry permit holder – device storage	7 May 2020	Full release	N/A	Yes
4	8-9	Email – Commissioner's view on s118A	11 Jun 2020	Full release	N/A	Yes
5	10-11	Email – media release attached	17 Jun 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
6	12	Email – Legislative Amendments introduced today in the ACT Legislative Assembly	18 Jun 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
7	13-14	Email – emails to stakeholders re EWSLA Bill	18 Jun 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
8	15	Email – Urgent debate pack for EWSLA Bill	30 Jun 2020	Full release	N/A	Yes
9	16-17	Email – Right of Entry Changes	1 Jul 2020	Full release	N/A	Yes
10	18-19	Email – Employment and Workplace Safety Legislation Amendment Bill 2020	3 Jul 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
11	20	Email – Advice request standing orders	6 Jul 2020	Full release	N/A	Yes
12	21-23	Email – RE: Proposed Government Amendment for inclusion in JLAB	7 Jul 2020	Full release	N/A	Yes
13	24-26	Email – Proposed Government Amendment for inclusion in JLAB	7 Jul 2020	Full release	N/A	Yes

14	27-31	Email – RE: Proposed Government Amendment for inclusion in JLAB	13 Jul 2020	Full release	N/A	Yes
15	32-35	Email trail – RE: Proposed Government Amendment for inclusion in JLAB	13 Jul 2020	Full release	N/A	Yes
16	36	Email – RE: Gov amendments to JACSD Bill – AV recording start date	15 Jul 2020	Full release	N/A	Yes
17	37	Email – RE: JLAB Govt amendment re EWSLA Bill	15 Jul 2020	Full release	N/A	Yes
18	38-39	Email – RE: Justice Legislation Amendment Bill 2020	15 Jul 2020	Full release	N/A	Yes
19	40-42	Ministerial Brief – to seek Ministers agreement to the proposed Government amendment	16 Jul 2020	Full release	N/A	Yes
20	43	Letter from Minister Orr to Minister Rattenbury	16 Jul 2020	Full release	N/A	Yes
21	44-45	Email – RE: EWSLA Act – Govt Amendment	16 Jul 2020	Full release	N/A	Yes
22	46-47	Email – RE: JLAB Government Amendment	16 Jul 2020	Full release	N/A	Yes
23	48-49	Email – EWSLA Act – Govt amendment to JLAB	16 Jul 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
24	50-51	Email – EWSLA Act – Govt amendment to JLAB	16 Jul 2020	Full release	N/A	Yes
25	52-58	Email with attachment – Ministerial Brief	31 Jul 2020	Full release	N/A	Yes
26	59	Email – Request for commencement notice on Sections 105-108 of EWSLA Act	24 Aug 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
27	60-61	Email – RE: Request for commencement notice on sections 105-108 of EWSLA Act	20 Aug 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
28	62-65	Email trail – RE: Justice Legislation Amendment Bill 2020 – Update	20 Aug 2020	Full release	N/A	Yes
29	66-68	Email – Commencement notice EWSLA Act WHS right of entry – Signed by Minister Orr	4 Sep 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
30	69-70	Email – Signed WHS Right of Entry commencement notice	4 Sep 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
31	71	Email – WHS right of entry changes – confirmation of commencement	4 Sep 2020	Full release	N/A	Yes
32	72-73	Email – Draft letter to MBA	7 Sep 2020	Full release	N/A	Yes
33	74-75	Email – New WHS right of entry and filming powers commence	7 Sep 2020	Full release	N/A	Yes

34	76-78	Email – Signed WHS Right of Entry commencement notice	7 Sep 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
35	79-81	Ministerial Brief – To allow for commencement of the right of entry amendments to the Work Health and Safety Act 2011	7 Sep 2020	Full release	N/A	Yes
36	82-84	Email – feedback on draft email	8 Sep 2020	Full release	N/A	Yes
37	85-90	Email – Employment & Workplace Safety Legislation Amendment Act 2020 – right of entry provisions commencing on 7 September 2020	8 Sep 2020	Partial release	Sch 2 s2.2 (a)(ii) Out of Scope	Yes
38	91-95	Email – Employment and Workplace Safety Legislation Amendment Act 2020 – right of entry	8 Sep 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
39	96-99	Email trail – New Ministerial – Correspondence from MBA ACT with attachments	8 Sep 2020	Full release	N/A	Yes
40	100-102	Attachments to above email – letter and factsheet	7 Sep 2020	Full release	N/A	Yes
41	103-107	Email - Employment and Workplace Safety Legislation Amendment Act 2020 – right of entry provisions commencing on 7 September 2020	9 Sep 2020	Full release	N/A	Yes
42	108-112	Email – MBA Member Workshop – Questions	16 Sep 2020	Full release	N/A	Yes
43	113	Email – RE: MBA session tomorrow	16 Sep 2020	Full release	N/A	Yes
44	114-117	Work Health and Safety Council – Regulatory Policy Update – Agenda items	Undated	Full release	N/A	Yes
45-87	Withheld	Documents covered under Legal Professional Privilege		Exempt	Sch 1 1.2	No
88	Withheld	Documents covered under Cabinet Information (over 3000 pages)		Exempt	Sch 1 1.6	No
Total No of Docs						
88						

Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To:	Minister for Employment and Workplace Safety	Tracking No.: CMTEDD2020/2982
From:	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject:	Employment and Workplace Safety Legislation Amendment Bill 2020 – Debate Package	
Critical Date:	By 12pm, 01/07/2020	
Critical Reason:	Minor and technical Government amendments are required to be lodged with Chamber Support by 12 Noon, the day before the sitting day the Bill is to be debated.	

- Cc: UT .../.../...

Recommendations

That you:

1. **agree** the attached Debate Package for the Employment and Workplace Safety Legislation Amendment Bill 2020 (the Bill) for presentation on 18 June 2020;
Agreed / Not Agreed / Please Discuss
2. **agree** the proposed Government amendment at Attachment B to remove the *Public Sector Management Act 1994* amendments from the Bill and provide the signed Government amendment to Chamber Support for the Legislative Assembly by 12pm, Wednesday, 1 July 2020;
Agreed / Not Agreed / Please Discuss
3. **agree** the supplementary Explanatory Statement at Attachment C for the proposed Government amendment for tabling in the Legislative Assembly; and
Agreed / Not Agreed / Please Discuss
4. **note** that should a response to Scrutiny Committee be required this will be provided separately.
Noted / Please Discuss

Suzanne Orr MLA/...../.....

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Minister's Office Feedback

Background

1. The Employment and Workplace Safety Legislation Amendment Bill 2020 (the Bill) was introduced in the Legislative Assembly on 18 June 2020 and is now proposed for debate in the Assembly on 2 July 2020.

Issues

2. The Bill, as introduced, makes amendments to:
 - a. the *Workers Compensation Act 1951* (WC Act);
 - b. the *Dangerous Goods (Road Transport) Act 2009* (DG Act);
 - c. the *Work Health and Safety Act 2011* (WHS Act); and
 - d. the *Public Sector Management Act 1994* (PSM Act).
3. Following discussions with the CPSU (refer CMTEDD2020/3000), the PSM Act amendments are to be removed via Government Amendment from the Bill.
 - a. This Government amendment has been prepared by PCO and is at Attachment B for your signature. For debate on 2 July 2020, the signed Government amendment will need to be lodged with Chamber Support by 12 NOON, Wednesday, 1 July 2020.
 - b. The associated supplementary Explanatory Statement is at Attachment C.
 - c. We consider the Government amendment to be minor and technical and therefore not required to be provided to Scrutiny Committee for comment 7 days prior to debate. However, Members of the Assembly are ultimately responsible for deciding whether it is minor or technical and if it is not, you would need to seek leave under the standing orders for the Assembly to consider the Government amendment and debate the Bill on 2 July 2020.
4. A Debate Package for the Bill has been prepared for your consideration at Attachment A.
5. The Scrutiny Committee is expected to release their report on the Bill on Tuesday, 30 June 2020. Should a response be required this will be provided separately.

Financial Implications

6. Nil.

ConsultationInternal

7. Nil.

Cross Directorate

8. Nil.

External

9. Nil.

Work Health and Safety

10. Nil.

Benefits/Sensitivities

11. Nil.

Communications, media and engagement implications

12. Refer to the Communications Plan in CMTEDD2020/1109.

Signatory Name: Michael Young

Phone: 53095

Action Officer: Ellen Lukins

Phone: 53874

Attachments

Attachment	Title
Attachment A	Debate package and attachments
Attachment B	Proposed Government Amendment — removal of the PSM Act amendment
Attachment C	Supplementary Explanatory Statement for the proposed Government Amendment

From: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Sent: 07/05/2020 6:31 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: WHS entry permit holder- device storage
Attachments: Draft_WHS entry permit holder devices_Guidelines.docx

UNCLASSIFIED

Hi Ellen

As discussed, I have prepared a preliminary draft guidelines and questions (attached) relating to device and data storage, and the retention and disposal of data collected by WHS entry permit holders inquiring into suspected contraventions of the WHS Act.

Along with each possible piece guidance for this, there will be a number of questions. I am sure there will be many more we need to consider in the development of this piece of guidance.

If you have time to take a look so that we can discuss and develop further that would be helpful.

Thank in advance.

Teo

Teo Findlay | Assistant Director, Regulatory Policy
Phone: 02 6205 2835 | Email: teo.findlay@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

WHS entry permit holders – storage, retention and disposal of data – suspected contraventions of the *Work Health and Safety Act 2011*.

The purpose of these guidelines are—

To impose requirements for the secure storage, use and disposal of records in connection with devices used, and records collected, by WHS entry permit holders while inquiring into (recording) suspected contraventions of the *Work Health and Safety Act 2011* (WHS Act).

Guidelines

Records obtained by WHS entry permit holder devices

All audio and visual records obtained by a WHS entry permit holder inquiring into a suspected contravention of the WHS Act, where providing evidence of a contravention, must be kept in a secure place that is not accessible to persons who are not authorised to deal with the record. (Persons authorised to deal with the record to be defined as WHS entry permit holder, regulator, inspector, authorised person i.e. police).

Recordings made by WHS entry permit holders while inquiring into suspected contraventions of the WHS Act must not be used for any other purpose than that of providing the record to the regulator, an inspector or authorised person for the purpose of investigation.

Any record/data obtained in the course of an inquiry, if satisfied it is not likely to be required in connection with its intended purpose – the investigation of a suspected breach of the WHS Act by the regulator, must be destroyed/disposed of as soon as reasonably practicable (in line with established disposal schedule), and not used for any other purpose.

All data obtained by a WHS entry permit holder in the course of inquiring into a suspected contravention of the WHS Act must, as soon as reasonably practicable, be transferred from the device it was recorded on, to a device at the WHS entry permit holders workplace (i.e. a secure computer that can not be accessed by persons other than those authorised to deal with the record).

Any record made by a WHS entry permit holder during an inquiry into a suspected contravention of the WHS Act must, as soon as reasonably practicable, be securely provided to the regulator for investigation.

The WHS regulator, an inspector or an authorised person may require a WHS entry permit holder, on request, to provide the recording device for inspection.

WHS entry permit holders – storage, retention and disposal of data – suspected contraventions of the *Work Health and Safety Act 2011*.

Conditions on entry permits

The express terms of s 118(1) limit the power in the proposed s 118(1)(da) to circumstances where the taking of audio and visual recordings are relevant to the suspected contravention.

Section 135 of the WHS Act provides the regulator with the power to impose conditions on a WHS entry permit. Section 131 and 135 of the WHS Act and regulation 26(h) of the *Work Health and Safety Regulation 2011* do not impose any limit on the type of condition that might be imposed on an entry permit.

The regulator may consider it appropriate to propose a condition on every WHS entry permit whereby the permit holder is required to provide the recording device to the regulator or an inspector on request (including the recording and any evidence of its transmission or communication which must be retained) as a condition of the exercise of the power in s 118(1)(da). This condition would have to be carefully drafted to ensure it provided sufficient investigatory powers to make s 155 unnecessary.

Issues/questions

How are records providing evidence of contraventions of the WHS Act to be provided a WHS entry permit holder to the regulator, and in what timeframe?

Provision of WHS entry permit holder device to the regulator for inspection?

Should WHS entry permit holders be required to nominate device(s) to be used for recording suspected contraventions of the WHS Act (i.e. devices owned by the WHS entry permit holders organisation – to be used solely for the purpose for recording suspected contraventions, rather than using devices such as personal mobile phones)?

If personal mobile phones are to be used for recording while inquiring into a suspected contravention of the WHS Act, what issues does this raise from a human rights/privacy perspective, given the regulator may require the device be provided for inspection?

Where a record obtained by a WHS entry permit holder provides evidence of a contravention, how long is the WHS entry permit holder organisation required to retain the record, and what disposal schedule would apply?

From: "Lukins, Ellen"
Sent: 07/05/2020 7:02 AM
To: "Findlay, Teo" <Teo.Findlay@act.gov.au>
Subject: RE: WHS entry permit holder- device storage

UNCLASSIFIED

Thanks Teo and will have a look – we can discuss tomorrow or Tuesday next week time dependent 💎💎

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



Important: This message may contain confidential or privileged information. If you are not the recipient of this message, you are hereby notified that you must not disseminate, copy or take any action based upon it. If you think this was sent to you by mistake, please delete all copies and advise the sender immediately.

From: Findlay, Teo <Teo.Findlay@act.gov.au>
Sent: Thursday, 7 May 2020 4:32 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: WHS entry permit holder- device storage

UNCLASSIFIED

Hi Ellen

As discussed, I have prepared a preliminary draft guidelines and questions (attached) relating to device and data storage, and the retention and disposal of data collected by WHS entry permit holders inquiring into suspected contraventions of the WHS Act.

Along with each possible piece guidance for this, there will be a number of questions. I am sure there will be many more we need to consider in the development of this piece of guidance.

If you have time to take a look so that we can discuss and develop further that would be helpful.

Thank in advance.

Teo

Teo Findlay | Assistant Director, Regulatory Policy
Phone: 02 6205 2835 | Email: teo.findlay@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 11/06/2020 8:06 AM
To: "Agius, Jacqueline" <Jacqueline.Agius@act.gov.au>
Cc: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Commissioner's view on s118A

UNCLASSIFIED

Hi Jacqui

Thanks for your email.

You do have broad powers to condition the authorised officers' permits. So that option is available to you.

For the purposes of achieving Human Rights compliance, there is a preference to see the controls in the Act (for future proofing purposes) – but from a regulatory admin point of view I think that would be an effective approach.

Regards

Michael

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>
Sent: Thursday, 11 June 2020 5:47 PM
To: Young, Michael <Michael.Young@act.gov.au>
Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: Commissioner's view on s118A

UNCLASSIFIED

Hi Michael,

Thank you for sending this through. I have thought a little more about retaining the requirement for authorised officers to take reasonably practicable action to warn people that they are being videoed. I think that this is perfectly reasonable but wonder if rather than it being in the legislation (noting numbering) we make it a condition of the right of entry permit.

Let me know what you think?

Regards

indicate a preference to retain a requirement on

Jacqueline Agius | Work Health and Safety Commissioner
Mobile: Sch 2 2(a)(ii) | Email: jacqueline.agius@act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Thursday, 11 June 2020 4:31 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>
Subject: Commissioner's view on s118A

UNCLASSIFIED

Hi Ellen

I just had the opportunity to talk with Jacqui about how the regulator might operate if the Bill went ahead as per the current draft Bill (i.e. with s118A* controls removed).

Jacqui's view was:

- the power to compel an authorised official to hand over a personal device would be limited – in the way that the GSO advice describes, **but**
- existing compliance and investigation powers allow inspectors to investigate the conduct of authorised officials and these would be adequate to respond to concerns about the inappropriate use of video. For example they could collect witness statements from people who may have observed the official taking a video.

Jacqui did however indicate a preference to retain a requirement on authorised officers to take reasonably practicable action to warn people that they are being videoed. She indicated that she would discuss this point further with the office.

*numbering of the section may not align with the latest draft Bill – please update as appropriate before forwarding.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 17/06/2020 5:47 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: Orr - Media release - WHS Legislation - July 2020 (002)
Attachments: Orr - Media release - WHS Legislation - July 2020 (002).docx

UNCLASSIFIED

Suzanne Orr MLA

Minister for Disability
Minister for Community Service and Facilities
Minister for Employment and Workplace Safety
Minister for Government Services and Procurement
Member for Yerrabi

... July 2020

Improvements to injury management and work safety laws to drive higher safety standards

Today the *Employment and Workplace Safety Legislation Amendment Bill 2020* was introduced in the ACT Legislative Assembly.

Minister for Employment and Workplace Safety, Suzanne Orr, introduced a Bill to amend the *Workers Compensation Act 1951*, *Dangerous Goods (Road Transport) Act 2009* and *Work Health and Safety Act 2011* (WHS Act).

In summary, the amendments would:

- establish a best practice licensing framework for workers' compensation insurers and self-insurers that will enable all injured workers to have the same expectations about service delivery regardless of whether their employers are insured or self-insured;
- better align the Territory's dangerous goods transport legislation with the agreed model laws; and
- improve the effectiveness of the Territory's work health and safety laws, by introducing a power for inspectors to deal with illegally installed asbestos and to modernising the evidence gathering powers available to authorised officers when inquiring into suspected work safety contraventions.

"The ACT Government is committed to protecting workers and ensuring WHS compliance in the Territory. Everyone deserves to feel safe in the workplace and these amendments will help to protect employees from potentially hazardous situations in the workplace," said Minister Orr.




Statement ends

Media contact/s:

Ryan Curran T (02) 6207 2648 M [Sch 2.2\(a\)\(ii\)](#) ryan.curran@act.gov.au

ACT Legislative Assembly

Phone (02) 6205 1439 Email: orr@act.gov.au

 [@SuzanneOrrMLA](#)  [SuzanneOrrMLA](#)  [SuzanneOrrMLA](#)

From: "ACTWorkHealthandSafetyCouncil.Secretariat"
<ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Sent: 18/06/2020 3:43 AM
To: "Jason O'Mara" <[redacted]@cfmeu.org>; "[redacted] Sch 2.2(a)(ii)@anu.edu.au"
[redacted] Sch 2.2(a)(ii)@anu.edu.au>; "Shane Carter" <[redacted] Sch 2.2(a)(ii)@anmfact.org.au>; "Brooke Muscat"
[redacted] Sch 2.2(a)(ii)@cpsu.org.au>; "Matthew Harrison" <[redacted] Sch 2.2(a)(ii)@unionsact.org.au>; "Erryn Cresshull"
[redacted] Sch 2.2(a)(ii)@unitedworkers.org.au>; "Ashlee Berry" <[redacted] Sch 2.2(a)(ii)@mba.org.au> [redacted] Sch 2.2(a)(ii)@ywca-
canberra.org.au [redacted] Sch 2.2(a)(ii)@ywca-canberra.org.au>; "Anthony Brierley" <[redacted] Sch 2.2(a)(ii)@actaha.org.au>; "Young,
Michael" <Michael.Young@act.gov.au>; "Agius, Jacqueline" <Jacqueline.Agius@act.gov.au>; "Connell, Patrick"
<Patrick.Connell@act.gov.au>
Cc: "Howe, Lucy" <Lucy.Howe@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FYI: Legislative Amendments introduced today in the ACT Legislative Assembly

UNCLASSIFIED For-Official-Use-Only

Good afternoon Council Members

Today the Minister for Employment and Workplace Safety, Suzanne Orr MLA, introduced the Employment and Workplace Safety Legislation Amendment Bill 2020 in the ACT Legislative Assembly.

This Bill makes amendments to legislation within the Minister's portfolio relating to injury management and work safety laws. These amendments have previously been flagged at meetings of the WHS Council and also relate to recommendations made by the previous Work Safety Council.

The Bill and Explanatory Statement can be found here on the ACT Legislation Register:
https://legislation.act.gov.au/b/db_62496/.

Happy to discuss the Bill further with those who are interested.

Kind regards,
Ellen
WHS Council Secretariat

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: "Lukins, Ellen"
Sent: 18/06/2020 1:31 AM
To: "Connell, Patrick" <Patrick.Connell@act.gov.au>; "Young, Michael" <Michael.Young@act.gov.au>
Cc: "Ferguson, David" <David.Ferguson@act.gov.au>
Subject: RE: Emails to stakeholders re EWSLA Bill

Hi Pat

Will do

The best contact for the Insurance Council of Australia is Robert Whelan (Executive Director and CEO) email: [Sch 2.2\(a\)\(ii\)@insurancecouncil.com.au](mailto:Sch 2.2(a)(ii)@insurancecouncil.com.au) (would cc in [Sch 2.2\(a\)\(ii\)](mailto:Sch 2.2(a)(ii)@insurancecouncil.com.au), Senior Policy Manager, [Sch 2.2\(a\)\(ii\)@insurancecouncil.com.au](mailto:Sch 2.2(a)(ii)@insurancecouncil.com.au))

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Connell, Patrick <Patrick.Connell@act.gov.au>
Sent: Thursday, 18 June 2020 11:21 AM
To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Ferguson, David <David.Ferguson@act.gov.au>
Subject: RE: Emails to stakeholders re EWSLA Bill

Ellen – can you please circulate to WHS Council members?

From: Connell, Patrick
Sent: Thursday, 18 June 2020 11:20 AM
To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Ferguson, David <David.Ferguson@act.gov.au>
Subject: Emails to stakeholders re EWSLA Bill

Hi Michael and Ellen

I will be emailing a copy of the EWSLA Bill, ES and PS to key stakeholders once introduced by the Minister.

Here is a list of who I will contact:

- Dr Graham Catt, CBC
- Michael Hopkins, MBA
- Greg Weller, HIA

- Insurance Council – can you please provide the best contact person and details
- Matthew Harrison, UnionsACT
- Brooke Muscat & Maddy Northam, CPSU
- Lyndal Ryan, UWU
- Jason O'Mara, CFMEU

Michael – can you please ask the relevant officials in JACS to inform relevant Dangerous Goods stakeholders?

Please let me know if you believe anyone else should be added to the list.

Thanks

Pat

Patrick Connell | Adviser

Office of Minister Suzanne Orr

ACT Government

T (02) 6205 1686 | M **Sch 2.2(a)(ii)**



From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 30/06/2020 5:40 AM
To: "Treasury DLO" <TreasuryDLO@act.gov.au>; "Turner, Mikaela" <Mikaela.Turner@act.gov.au>
Cc: "Connell, Patrick" <Patrick.Connell@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: urgent debate pack for EWSLA Bill

UNCLASSIFIED

Hi Blake and Mikaela

I have just approved the EWSLA Bill debate package on Trim CMTEDD2020/2982.

The Bill has a govt amendment and the Trim item includes instruments necessary for making of that amendment – so needs to be approved by midday tomorrow.

For your urgent attention please.

Thanks

Michael

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: "Hagen, Vicki" <Vicki.Hagen@act.gov.au>
Sent: 01/07/2020 1:37 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Right of Entry Changes

Thanks Ellen

Vicki Hagen | Assistant Director
P: 02 6207 0068 | E: vicki.hagen@act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Wednesday, 1 July 2020 11:33 AM
To: Hagen, Vicki <Vicki.Hagen@act.gov.au>
Subject: RE: Right of Entry Changes

UNCLASSIFIED For-Official-Use-Only

Hi Vicki

The ROE changes were not changes to commence on 1 July 2020 (these were silica dust WES reductions).

The Bill you refer to is currently before the Legislative Assembly awaiting debate – it will commence, should it be passed, in line with the dates set out in the commencement clause.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Hagen, Vicki <Vicki.Hagen@act.gov.au>
Sent: Wednesday, 1 July 2020 11:30 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: Right of Entry Changes

Hi Ellen

I understand that there were proposed ROE changes to come into effect on 1 July 2020.

I checked the ACT Legislation Register and the status of the [Employment and Workplace Safety Legislation Amendment Bill 2020](#) shows as before the Assembly.

I assume that these changes will be delayed until the bill is passed in the Assembly and notified.

Can you please confirm.

Thanks

Vicki

Vicki Hagen | Assistant Director

P: 02 6207 0068 | E: vicki.hagen@act.gov.au

Office of the Work Health and Safety Commissioner

GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.



From: "Lukins, Ellen"
Sent: 03/07/2020 1:13 AM
To: "Jason O'Mara" <[redacted]@cfmeu.org>; [redacted] <[redacted]@anu.edu.au>
[redacted] <[redacted]@anu.edu.au>; "Shane Carter" <[redacted]@anmfact.org.au>; "Brooke Muscat"
[redacted] <[redacted]@cpsu.org.au>; "Matthew Harrison" <[redacted]@unionsact.org.au>; "Erryn Cresshull"
[redacted] <[redacted]@unitedworkers.org.au>; "Ashlee Berry" <[redacted]@mba.org.au>; [redacted] <[redacted]@ywca-
canberra.org.au> [redacted] <[redacted]@ywca-canberra.org.au>; "Anthony Brierley" <[redacted]@actaha.org.au>; "Young,
Michael" <Michael.Young@act.gov.au>; "Agius, Jacqueline" <Jacqueline.Agius@act.gov.au>; "Connell, Patrick"
<Patrick.Connell@act.gov.au>
Cc: "Howe, Lucy" <Lucy.Howe@act.gov.au>; "ACTWorkHealthandSafetyCouncil.Secretariat"
<ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Subject: FOR INFORMATION: Employment and Workplace Safety Legislation Amendment Bill 2020

UNCLASSIFIED For-Official-Use-Only

Good morning Members

Just providing an update from the email below for information.

The Employment and Workplace Safety Legislation Amendment Bill 2020 was debated and passed by the ACT Legislative Assembly yesterday, 2 July 2020. The Amendment Act will be notified and available on the ACT Legislation register in due course, in the meantime the Bill is still available at the link in my previous email below.

Happy for Members to get in touch if you are interested in discussing the Amendment Act further.

Also, for Members information, the reduced silica dust workplace exposure standard to 0.05mg/m³ has now commenced in the ACT, per the media release by Minister Suzanne Orr MLA earlier last month on 11 June 2020. The relevant legislative instrument implementing this can be found at: <https://legislation.act.gov.au/ni/2020-380/> which adopts the current *Workplace Exposure Standards for Airborne Contaminants* published on the Safe Work Australia website.

Lastly, for Members information, the Statement of Expectations 2020 for the Office of the WHS Commissioner is now available on the ACT Legislation Register at: <https://legislation.act.gov.au/ni/2020-382/>.

Kind regards,
Ellen
WHS Council Secretariat

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: ACTWorkHealthandSafetyCouncil.Secretariat <ACTWorkHealthandSafetyCouncil.Secretariat@act.gov.au>
Sent: Thursday, 18 June 2020 1:44 PM
To: Jason O'Mara <[redacted]@cfmeu.org>; [redacted] <[redacted]@anu.edu.au>; Shane Carter <[redacted]@anmfact.org.au>;
Brooke Muscat <[redacted]@cpsu.org.au>; Matthew Harrison <[redacted]@unionsact.org.au>; Erryn

Cresshull ^{Sch 2.2(a)(ii)}@unitedworkers.org.au>; Ashlee Berry ^{Sch 2.2(a)(ii)}@mba.org.au>; ^{Sch 2.2(a)(ii)}@ywca-canberra.org.au>; Anthony Brierley ^{Sch 2.2(a)(ii)}@actaha.org.au>; Young, Michael <Michael.Young@act.gov.au>; Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; Connell, Patrick <Patrick.CConnell@act.gov.au>
Cc: Howe, Lucy <Lucy.Howe@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: FYI: Legislative Amendments introduced today in the ACT Legislative Assembly

UNCLASSIFIED For-Official-Use-Only

Good afternoon Council Members

Today the Minister for Employment and Workplace Safety, Suzanne Orr MLA, introduced the Employment and Workplace Safety Legislation Amendment Bill 2020 in the ACT Legislative Assembly.

This Bill makes amendments to legislation within the Minister's portfolio relating to injury management and work safety laws. These amendments have previously been flagged at meetings of the WHS Council and also relate to recommendations made by the previous Work Safety Council.

The Bill and Explanatory Statement can be found here on the ACT Legislation Register:
https://legislation.act.gov.au/b/db_62496/.

Happy to discuss the Bill further with those who are interested.

Kind regards,
Ellen
WHS Council Secretariat

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: "Lukins, Ellen"
Sent: 06/07/2020 7:34 AM
To: "Rafferty, Janice" <Janice.Rafferty@parliament.act.gov.au>
Subject: Advice request - standing orders

UNCLASSIFIED Sensitive

Hi Janice

Thank you for your time today.

We are looking for some advice on the Standing Orders for the Legislative Assembly, in particular standing order 181 which requires Government amendments to be within the long title of a Bill and relevant to the subject matter of the Bill.

Specifically, we would appreciate your advice on whether the following would be in line with standing order 181 – an amendment to the Justice Legislation Amendment Bill 2020 (still before the Assembly) to include an amendment to section 2 (2) of the *Employment and Workplace Safety Legislation Amendment Act 2020* (passed last Thursday, 2 July 2020) that would provide for a different commencement of sections 106-109. In looking at the long title of the Justice Bill it seems like it is quite broad, being to “amend legislation about justice, and other purposes”.

Thanks again and look forward to your advice.

Please give me a call if you need to discuss some more.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 07/07/2020 6:53 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Message from David Ferguson – he supports the commencement by notice approach. So your current instructions are good to keep.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 7 July 2020 3:20 PM
To: Ng, Daniel <Daniel.Ng@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

Thank you for sending through an update. We have let our Minister's office that they may be contacted by Rattenbury's Office about the proposed Government amendments.

I expect to get some advice about the application of standing order 181 by Thursday 9 July and will let you know the outcome as soon as it is received.

Thanks again for considering this request and apologies for the last minute issues this creates for your Bill.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Ng, Daniel <Daniel.Ng@act.gov.au>
Sent: Tuesday, 7 July 2020 3:05 PM
To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>
Subject: FW: Proposed Government Amendment for inclusion in JLAB

Hi Michael, Ellen

See below regarding your proposed amendment to the JLAB.

I'll let you know when I hear back from the Rattenbury office, noting that their Minister is actually away on leave this week.

Kind regards

Daniel

Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608
Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Robbins, Jarrah <Jarrah.Robbins@act.gov.au>
Sent: Tuesday, 7 July 2020 1:46 PM
To: Ng, Daniel <Daniel.Ng@act.gov.au>
Cc: MJCARs <MJCARS@act.gov.au>; McNeill, Jennifer <Jennifer.McNeill@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Smith, Rebekah <Rebekah.Smith@act.gov.au>; Esguerra, Indra <Indra.Esguerra@act.gov.au>
Subject: Re: Proposed Government Amendment for inclusion in JLAB

Thank you for that fullsome advice Daniel- I'll discuss further with Indra and get back to you tomorrow

Sent from my iPhone

On 7 Jul 2020, at 1:03 pm, Ng, Daniel <Daniel.Ng@act.gov.au> wrote:

Hi Jarrah

As discussed, I am writing to raise with you a proposal to move Government amendments to the JLAB which amend the recently passed *Employment and Workplace Safety Legislation Amendment Act 2020* (the Bill) (passed and currently awaiting notification).

The amendment proposed would be a minor and technical one to the commencement provision for the Bill – currently section 2 (2) dealing with the commencement of section 106 to 109 (the WHS right of entry amendments) provides for commencement six months after notification. ***It is proposed that this section be amended to commencement by written notice of the Minister (relying on the automatic commencement provisions of the Legislation Act 2001).***

It is anticipated this would allow for an earlier commencement of these provisions rather than waiting the full 6 months for commencement. This has been requested by Minister Orr's office directly.

We consider that this amendment would be minor and technical in nature, would not enliven the requirement to provide it to the Standing Committee for its consideration prior to it being moved.

However, our preliminary view is that there would be difficulties with the operation of Standing Order 181.

Standing Order 181 provides that an admissible amendment at the detail stage of a bill is "an amendment may be moved to any part of the bill, provided it is within the long title and relevant to the subject matter of the bill, and otherwise conforms with the standing orders."

Given that the JLAB as presented would not have any other amendments to the legislation amended by the Bill, we think there may be some concerns that the amendments do not meet the 'subject matter' requirement of SO 181 (notwithstanding that it is a general omnibus bill). However as discussed, we consider that it would be appropriate to seek the advice of the Clerk about this, and CMTEDD have agreed to conduct this liaison. I will come back to you with the outcome of these discussions.

SO 181 will likely need to be suspended if the Clerk considers that the Government amendment is not within scope and the Government wishes to proceed with the amendment.

Grateful if you could let us know whether the Minister would support such an amendment being progressed. I've let CMTEDD know that you may seek to contact Minister Orr's office about this proposal.

Very happy to discuss if you require further information.

Kind regards

Daniel

**Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608
Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au

<image002.jpg>

From: "Ng, Daniel" <Daniel.Ng@act.gov.au>
Sent: 07/07/2020 10:50 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Cc: "Hutchinson, Zoe" <Zoe.Hutchinson@act.gov.au>; "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

No worries at all Ellen. Happy to try and help where we can.

Kind regards

Daniel

Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608
Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 7 July 2020 3:20 PM
To: Ng, Daniel <Daniel.Ng@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

Thank you for sending through an update. We have let our Minister's office that they may be contacted by Rattenbury's Office about the proposed Government amendments.

I expect to get some advice about the application of standing order 181 by Thursday 9 July and will let you know the outcome as soon as it is received.

Thanks again for considering this request and apologies for the last minute issues this creates for your Bill.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government



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From: Ng, Daniel <Daniel.Ng@act.gov.au>
Sent: Tuesday, 7 July 2020 3:05 PM
To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>
Subject: FW: Proposed Government Amendment for inclusion in JLAB

Hi Michael, Ellen

See below regarding your proposed amendment to the JLAB.

I'll let you know when I hear back from the Rattenbury office, noting that their Minister is actually away on leave this week.

Kind regards

Daniel

Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608
Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Robbins, Jarrah <Jarrah.Robbins@act.gov.au>
Sent: Tuesday, 7 July 2020 1:46 PM
To: Ng, Daniel <Daniel.Ng@act.gov.au>
Cc: MJCARS <MJCARS@act.gov.au>; McNeill, Jennifer <Jennifer.McNeill@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Smith, Rebekah <Rebekah.Smith@act.gov.au>; Esguerra, Indra <Indra.Esguerra@act.gov.au>
Subject: Re: Proposed Government Amendment for inclusion in JLAB

Thank you for that fullsome advice Daniel- I'll discuss further with Indra and get back to you tomorrow

Sent from my iPhone

On 7 Jul 2020, at 1:03 pm, Ng, Daniel <Daniel.Ng@act.gov.au> wrote:

Hi Jarrah

As discussed, I am writing to raise with you a proposal to move Government amendments to the JLAB which amend the recently passed *Employment and Workplace Safety Legislation Amendment Act 2020* (the Bill) (passed and currently awaiting notification).

The amendment proposed would be a minor and technical one to the commencement provision for the Bill – currently section 2 (2) dealing with the commencement of section 106 to 109 (the WHS right of entry amendments) provides for commencement six months after notification. ***It is proposed that this***

section be amended to commencement by written notice of the Minister (relying on the automatic commencement provisions of the Legislation Act 2001).

It is anticipated this would allow for an earlier commencement of these provisions rather than waiting the full 6 months for commencement. This has been requested by Minister Orr's office directly.

We consider that this amendment would be minor and technical in nature, would not enliven the requirement to provide it to the Standing Committee for its consideration prior to it being moved.

However, our preliminary view is that there would be difficulties with the operation of Standing Order 181.

Standing Order 181 provides that an admissible amendment at the detail stage of a bill is "an amendment may be moved to any part of the bill, provided it is within the long title and relevant to the subject matter of the bill, and otherwise conforms with the standing orders."

Given that the JLAB as presented would not have any other amendments to the legislation amended by the Bill, we think there may be some concerns that the amendments do not meet the 'subject matter' requirement of SO 181 (notwithstanding that it is a general omnibus bill). However as discussed, we consider that it would be appropriate to seek the advice of the Clerk about this, and CMTEDD have agreed to conduct this liaison. I will come back to you with the outcome of these discussions.

SO 181 will likely need to be suspended if the Clerk considers that the Government amendment is not within scope and the Government wishes to proceed with the amendment.

Grateful if you could let us know whether the Minister would support such an amendment being progressed. I've let CMTEDD know that you may seek to contact Minister Orr's office about this proposal.

Very happy to discuss if you require further information.

Kind regards

Daniel

**Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs** | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au

<image002.jpg>

From: "Lukins, Ellen"
Sent: 13/07/2020 7:03 AM
To: "Ng, Daniel" <Daniel.Ng@act.gov.au>; "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

Excellent, thank you.

We will prepare the correspondence from our Minister and get in touch with Natasha re timeframe/inputs required.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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From: Ng, Daniel <Daniel.Ng@act.gov.au>
Sent: Monday, 13 July 2020 4:15 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

Hi Ellen

Thanks so much for that.

Minister Rattenbury's office have said that they are OK in principle with the inclusion of the amendment.

They would like an exchange of letters between Ministers, which formally seeks Minister Rattenbury's agreement to the amendment being moved. Assume you will progress Minister Orr's request, and we will prepare Minister Rattenbury's reply.

Given the timeframes, I think it safe to proceed on the basis that the amendment is in.

My contacts on the bill are Zoe Hutchinson and Natasha Del Piero.

We understand that we are tentatively scheduled for debate next Thursday. If you get in touch with Natasha, she can let you know the timeframes for clearance etc, and the documents you will need to contribute to/prepare (drafting instructions, supp explanatory statement etc).

Feel free to give me a bell if you'd like to discuss the above.

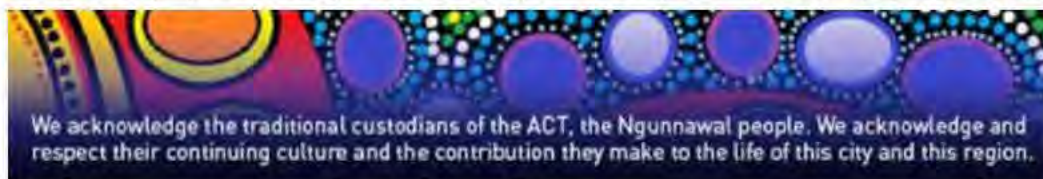
Kind regards

Daniel

Daniel Ng | Executive Branch Manager |

Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>

Sent: Monday, 13 July 2020 3:00 PM

To: Ng, Daniel <Daniel.Ng@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>

Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

I've just spoken to Janice Raffety in the Clerks Office and her advice is that she doesn't think standing order 181 would have to be suspended, noting the very broad long title of the JLAB "*an Act to amend legislation about justice, and for other purposes*".

Please let us know though if you need more formal/written advice from the Clerk on the issue to pass on to Minister Rattenbury's office.

Happy to discuss.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government



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From: Ng, Daniel <Daniel.Ng@act.gov.au>

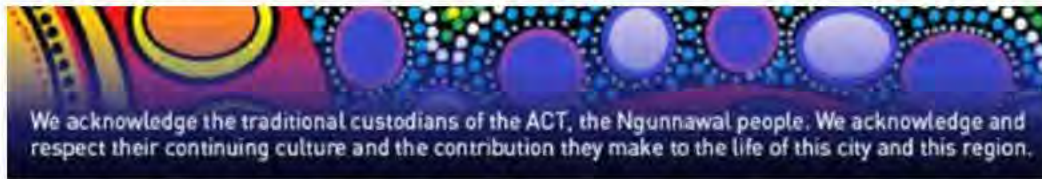
Sent: Monday, 13 July 2020 11:00 AM

To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>

Subject: RE: Proposed Government Amendment for inclusion in JLAB

That would be great. Thanks very much Ellen.

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

I'll follow up with Janice who I spoke to in the clerks office – unfortunately she was away for some of last week as well.

Will let you know ASAP.

Cheers,
Ellen

Chief Minister, Treasury and Economic Development Directorate | ACT Government

[illegible]

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Subject: FW: Proposed Government Amendment for inclusion in JLAB

Hi Ellen, Michael

See below from Minister Rattenbury's office.

I was away Thursday, Friday last week, so have only seen this today.

If you have received advice from the Clerk's office, I am very happy to pass it on to Jarrah.

Give me a ring if you'd like to discuss.

Many thanks

Daniel

Daniel Ng | Executive Branch Manager |

Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**

Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Robbins, Jarrah <Jarrah.Robbins@act.gov.au>

Sent: Thursday, 9 July 2020 7:57 AM

To: Ng, Daniel <Daniel.Ng@act.gov.au>

Cc: MJCARS <MJCARS@act.gov.au>; McNeill, Jennifer <Jennifer.McNeill@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Smith, Rebekah <Rebekah.Smith@act.gov.au>; Esguerra, Indra <Indra.Esguerra@act.gov.au>

Subject: Re: Proposed Government Amendment for inclusion in JLAB

Thanks Daniel,

Our office will reach out to Orrs, but after some internal discussion we are concerned that the below may not be proper/possible under standing orders, as you have outlined. Can you please provide any further advice you may receive from Cmttd/Clark to Indra and I as soon as it arrives?

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Grateful if you could let us know whether the Minister would support such an amendment being progressed. I’ve let CMTEDD know that you may seek to contact Minister Orr’s office about this proposal.

Very happy to discuss if you require further information.

Kind regards

Daniel

**Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au

<image002.jpg>

From: "Ng, Daniel" <Daniel.Ng@act.gov.au>
Sent: 13/07/2020 6:15 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

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My contacts on the bill are Zoe Hutchinson and Natasha Del Piero.

We understand that we are tentatively scheduled for debate next Thursday. If you get in touch with Natasha, she can let you know the timeframes for clearance etc, and the documents you will need to contribute to/prepare (drafting instructions, supp explanatory statement etc).

Feel free to give me a bell if you'd like to discuss the above.

Kind regards

Daniel

Daniel Ng | Executive Branch Manager |
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Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, 13 July 2020 3:00 PM
To: Ng, Daniel <Daniel.Ng@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

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Please let us know though if you need more formal/written advice from the Clerk on the issue to pass on to Minister Rattenbury's office.

Happy to discuss.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Ng, Daniel <Daniel.Ng@act.gov.au>

Sent: Monday, 13 July 2020 11:00 AM

To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>

Subject: RE: Proposed Government Amendment for inclusion in JLAB

That would be great. Thanks very much Ellen.

Daniel Ng | Executive Branch Manager |

Legislation, Policy & Programs | Justice and Community Safety Directorate | ACT Government

Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>

Sent: Monday, 13 July 2020 9:44 AM

To: Ng, Daniel <Daniel.Ng@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>

Subject: RE: Proposed Government Amendment for inclusion in JLAB

UNCLASSIFIED For-Official-Use-Only

Hi Daniel

I'll follow up with Janice who I spoke to in the clerks office – unfortunately she was away for some of last week as well.

Will let you know ASAP.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

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From: Ng, Daniel <Daniel.Ng@act.gov.au>
Sent: Monday, 13 July 2020 9:36 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Subject: FW: Proposed Government Amendment for inclusion in JLAB

Hi Ellen, Michael

See below from Minister Rattenbury's office.

I was away Thursday, Friday last week, so have only seen this today.

If you have received advice from the Clerk's office, I am very happy to pass it on to Jarrah.

Give me a ring if you'd like to discuss.

Many thanks

Daniel

Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs | Justice and Community Safety Directorate | **ACT Government**
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Cc: MJCARS <MJCARS@act.gov.au>; McNeill, Jennifer <Jennifer.McNeill@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Smith, Rebekah <Rebekah.Smith@act.gov.au>; Esguerra, Indra <Indra.Esguerra@act.gov.au>
Subject: Re: Proposed Government Amendment for inclusion in JLAB

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Our office will reach out to Orrs, but after some internal discussion we are concerned that the below may not be proper/possible under standing orders, as you have outlined. Can you please provide any further advice you may receive from CmtD/Clark to Indra and I as soon as it arrives?

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Very happy to discuss if you require further information.

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Daniel

**Daniel Ng | Executive Branch Manager |
Legislation, Policy & Programs** | Justice and Community Safety Directorate | **ACT Government**
Level 4, 12 Moore Street, CANBERRA CITY ACT 2601 | GPO Box 158, CANBERRA ACT 2608

Telephone: (02) 6207 0674 | Facsimile: (02) 6205 0937 | Email: Daniel.Ng@act.gov.au

<image002.jpg>

From: "Ford, Blake" <Blake.Ford@act.gov.au> on behalf of "Treasury DLO" <TreasuryDLO@act.gov.au>
Sent: 15/07/2020 1:11 AM
To: "Young, Michael" <Michael.Young@act.gov.au>; "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Gov amendment to JACSD Bill - AV recording start date - urgent min corro

Hi Michael and Ellen,

I've shared this with Pat for clearance just now.

Cheers,

Blake

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Wednesday, 15 July 2020 11:05 AM
To: Ferguson, David <David.Ferguson@act.gov.au>; Connell, Patrick <Patrick.CConnell@act.gov.au>
Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Treasury DLO <TreasuryDLO@act.gov.au>
Subject: Gov amendment to JACSD Bill - AV recording start date - urgent min corro

UNCLASSIFIED

Hello

Further to discussions at our meeting with the Minister on Monday, I have just approved CMTEDD2020/3339.

This Trim item provides an update on discussions with JACSD about the Govt amendment and includes a draft letter to Minister Rattenbury, seeking agreement to make the Gov amendment.

Discussions about the standing order have gone well (thank you Ellen), with representatives of the Clerk's office expressing the view that a suspension of the standing orders should not be necessary – this is described in the brief.

If possible, the letter should be signed by the Minister and provided to Minister Rattenbury's office asap – given the likely date of debate for the JACSD Bill.

I am tied up with attender panel for much of the day, but Ellen is available if you would like to discuss.

Thanks

Michael

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: "Del Piero, Natasha" <Natasha.DelPiero@act.gov.au>
Sent: 15/07/2020 4:53 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: JLAB Govt amendment re EWSLA Bill

UNCLASSIFIED Sensitive

Hi Ellen,

Thank you for sending the attached through.

Zoe has just sent me the Government amendment from PCO so no need for you to email me a copy. Thank you so much anyway!

Thanks,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Wednesday, 15 July 2020 2:45 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Subject: JLAB Govt amendment re EWSLA Bill

UNCLASSIFIED Sensitive

Hi Natasha

As promised earlier today, to facilitate your preparation of a response from Minister Rattenbury in relation to the proposed inclusion by our Minister's office of a Government amendment to the Justice Legislation Amendment Bill 2020 to amend the commencement clause in the Employment and Workplace Safety Legislation Amendment Act 2020, please see the attached draft brief and letter to Minister Rattenbury for your info (noting these are not the final as cleared through our Minister's office).

We also now have the finalised Govt amendment so will progress that briefing package ASAP – I noticed it was sent through to Zoe and not you so happy to forward to you if Zoe hasn't already.

Please give me a call if you need to discuss.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Del Piero, Natasha" <Natasha.DelPiero@act.gov.au>
Sent: 15/07/2020 4:51 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Justice Legislation Amendment Bill 2020

UNCLASSIFIED

Hi Ellen,

I spoke with Zoe about your suggested approach below.

Zoe would prefer that we include the recommendation to approve the government amendment in our debate package to Minister Rattenbury (rather than you CC'ing Minister Rattenbury in your brief to Minister Orr). As such, we will not need to refer to your brief in our brief.

The documents we will attach and refer to in our brief will include:

1. the finalised Government amendment (the presentation copy of the Bill);
2. the supplementary ES;
3. the clause by clause speaking notes to the Government amendment; and
4. we will incorporate your Q&A points into our existing Q&A document.

Would it be possible for you to send me the above 4 documents by **COB tomorrow** (so that I can incorporate them into our debate pack and clear the pack to Zoe for her review on Friday morning)?

Happy to discuss.

Thanks,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 14 July 2020 6:40 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Subject: RE: Justice Legislation Amendment Bill 2020

UNCLASSIFIED

Hi Natasha

Thank you for sending this through and for your time earlier today to discuss.

We are progressing the brief and letter from our Minister to Minister Rattenbury to get formal agreement to inclusion of the proposed Govt amendment in the JLAB – happy to provide you a draft of the letter in advance to speed up the process from your end.

In terms of debate next week:

- you will have seen the draft of the proposed Govt amendment from PCO earlier today – I am yet to confirm/finalise this with PCO
- we will provide a brief up through our Minister's office through to yours with recommendations for both Minister's to sign that will include the following:
 - the finalised Government amendment;
 - supplementary ES for the Govt amendment;
 - speaking points to the Govt amendment; and
 - some brief Q&A points.
- Happy to provide drafts of the ES, speaking points and Q&A to you to clear through JACS, we will probably need to do this simultaneously with the briefing material being progressed through our channels as well.

I'm conscious that we don't want to hold up your debate package clearance so perhaps they can progress separately, with the Govt amendment material being included in the debate package once cleared through Ministers offices'. Please let me know if you or Zoe has any views on this approach.

Talk soon and thanks again for your assistance.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>

Sent: Tuesday, 14 July 2020 3:26 PM

To: Lukins, Ellen <Ellen.Lukins@act.gov.au>

Subject: Justice Legislation Amendment Bill 2020

UNCLASSIFIED

Hi Ellen,

Thank you for your call earlier this morning in relation to the government amendments to the Justice Legislation Amendment Bill 2020.

As discussed, please find **attached** example supplementary ES for MJCARs.

Also, so that you can reference the Justice Legislation Amendment Bill Debate Pack in your brief, the TRIM record number is: **LEG:2019/00052-008**.

Please don't hesitate to contact me if you any questions.

Thanks,
Natasha

Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To:	Minister for Employment and Workplace Safety	Tracking No.: CMTEDD2020/3339
From:	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject:	<i>Employment and Workplace Safety Legislation Amendment Act 2020</i> – amending the commencement provision for sections 105-108 of the Act	
Critical Date:	16/07/2020	
Critical Reason:	To seek Minister Rattenbury's agreement to the proposed Government amendment to the Justice Legislation Amendment Bill 2020 prior to debate scheduled for 23 July 2020.	
Cc:	UT	

Recommendations

That you:

1. **sign** the attached letter to Minister Rattenbury to seek his agreement to make a Government amendment to the Justice Legislation Amendment Bill 2020 to amend the commencement of sections 106-109 in section 2 (2) of the *Employment and Workplace Safety Legislation Amendment Act 2020* to commencement by written notice of the Minister; and

Signed / Not Signed / Please Discuss

2. **note** that WSIR will work with JACS to process the Government amendment.

Noted / Please Discuss

Suzanne Orr MLA

Minister's Office Feedback

UNCLASSIFIED

Background

1. The Employment and Workplace Safety Legislation Amendment Act 2020 (EWSLA Act) was debated and passed in the Legislative Assembly on 2 July 2020 and has now been notified on the ACT Legislation Register.

Issues

2. The sections of the EWSLA Act that amend the *Work Health and Safety Act 2011* to allow audio/visual recordings to be taken by WHS entry permit-holders when exercising a workplace right of entry were to commence under section 2(2) of the Act six months from the date of notification.
 - a. This commencement allowed provision for implementation of the changes, particularly when guidelines for use of the new power were being contemplated in developing the Bill.
3. Your office has since requested that their commencement be amended to commencement by written notice of the Minister.
 - a. As guidelines are now not required for these provisions, it is anticipated that an earlier commencement may be appropriate following discussions with the Work Health and Safety Commissioner.
 - b. It is noted that the *Legislation Act 2001* would apply to automatically commence the provisions within six months if no written notice is made.
4. The only current opportunity for such an amendment would be via a Government amendment to the Justice Legislation Amendment Bill 2020 (JLAB) which is yet to be debated in the ACT Legislative Assembly. Proposed for debate on 23 July 2020.
5. We have discussed this option with JACS and have been advised that formal correspondence is required seeking the agreement of Minister Rattenbury, the responsible Minister for the JLAB, to the proposed Government amendment.
6. A letter seeking Minister Rattenbury's agreement has been prepared for your consideration (Attachment A).
7. A separate brief will follow for your approval of the drafted Government amendment and associated material prior to providing it to Minister Rattenbury's office for signature.

Financial Implications

8. Nil.

Consultation

Internal

9. Nil.

Cross Directorate

10. WSIR has consulted with JACS who have provided support in-principle to the proposed inclusion of a Government amendment to the JLAB.
11. WSIR has also discussed with the Chamber Support for the Assembly to seek advice on the application of standing order 181 which requires all Government amendments to Bills to fall within the long title of the Bill. Advice received by WSIR is that this standing order is unlikely to have to be suspended for the proposed amendment as:
 - a. the long title of the JLAB is quite broad as is its contents; and
 - b. the relevant provisions in the EWSLA Act are broadly justice related as part of a regulatory scheme for WHS obligations.

External

12. Nil.

Work Health and Safety

13. Nil.

Benefits/Sensitivities

14. Nil.

Communications, media and engagement implications

15. Nil.

Signatory Name: Michael Young

Phone: 53095

Action Officer: Ellen Lukins

Phone: 53874

Attachments

Attachment	Title
Attachment A	Letter to Minister Rattenbury



Suzanne Orr MLA

Minister for Disability
Minister for Community Services and Facilities
Minister for Employment and Workplace Safety
Minister for Government Services and Procurement
Member for Yerrabi

Mr Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Minister ~~Rattenbury~~ *Shane,*

I am writing to you in relation to the Justice Legislation Amendment Bill 2020 (JLAB) that is currently before the ACT Legislative Assembly.

Earlier in July 2020, the Employment and Workplace Safety Legislation Amendment Act 2020 (EWSLA Act) was debated and passed in the ACT Legislative Assembly.

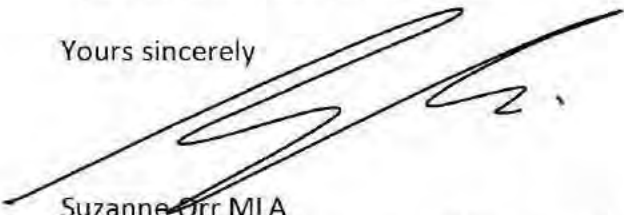
The EWSLA Act, much like the JLAB, contained amendments to a number of pieces of legislation relevant to justice and community safety. Included in this Act were amendments to the *Work Health and Safety Act 2011* that will, when commenced, allow WHS entry permit-holders to take audio/visual recordings of suspected WHS breaches while they are exercising a workplace right of entry (refer sections 105-108). The purpose of these amendments is to ensure our work health and safety laws are effective in protecting the health and safety of workers, and this amendment in particular, will allow WHS entry permit-holders when exercising a right of entry at a workplace to inquire into suspected WHS breaches to better document those breaches.

As drafted these sections were to commence six months after notification of the EWSLA Act. I now consider that, subject to discussions with the Work Health and Safety Commissioner, an appropriate commencement that is earlier than the full six months is preferable.

Given the broad long title and contents of the JLAB and its likely debate in late July 2020, I am seeking your support for the inclusion of a Government amendment to the JLAB to amend the commencement of sections 105-108 of the EWSLA Act.

I thank you for your consideration.

Yours sincerely


Suzanne Orr MLA
Minister for Employment and Workplace Safety

16/07/20

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 1439 Email orr@act.gov.au



@SuzanneOrrMLA



SuzanneOrrMLA



SuzanneOrrMLA



From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 16/07/2020 6:01 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: EWSLA Act - Govt Amendment

UNCLASSIFIED Sensitive

Very nice – thank you.

Some minor points:

- Should references to the Minister in the ES say the portfolio? Given elsewhere in the Bill the Minister is presumably Rattenbury's portfolio?
- Re the final point copied below – rather than say should not be delayed, could we phrase in the positive – ie seeking to commence the provision as soon as reasonably possible and the amendment would allow for that to occur

Given the safety track record in the ACT this year, with two fatalities in the construction industry so far, it is critical to the health and safety of our workers that our laws are effective.

In view of this, the commencement of sections 105 to 108 should not be delayed.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 3:54 PM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: EWSLA Act - Govt Amendment
Importance: High

UNCLASSIFIED Sensitive

Hi Michael

I spoke to Pat earlier today so he is aware that the MO will need to clear these documents urgently.

Attached is the following material to provide to JACS for debate of the Justice Legislation Amendment Bill 2020:

- Final Government Amendment
- Supplementary Explanatory Statement for the Government Amendment
- Debate speaking points (& detail stage points) and questions and answers.

Can you clear so I can send to JACS a draft, noting that there may be subsequent changes by our Minister's office.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

**WORK HEALTH, SAFETY AND WELLBEING -
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From: "Lukins, Ellen"
Sent: 16/07/2020 8:20 AM
To: "Del Piero, Natasha" <Natasha.DelPiero@act.gov.au>
Subject: RE: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Natasha

No worries.

Just confirming, they have been cleared through our MO now as well with no changes.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Sent: Thursday, 16 July 2020 4:20 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Ellen,

Thank you very much for drafting these documents so quickly.

Kind Regards,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 4:13 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>
Subject: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Natasha

Please see attached the material for the Government amendment, ie:

- Final Government Amendment;
- Supplementary Explanatory Statement for the Government Amendment; and
- Debate points (& clause speaking points) and Q&As for the Government Amendment.

Please note, while it is cleared internally, we may have some slight tweaks come through from our Minister's office, however, I do not want to hold up your processes.

Let me know if you need anything further.

Many thanks
Ellen

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Connell, Patrick" <Patrick.Connell@act.gov.au>
Sent: 16/07/2020 6:52 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Treasury DLO" <TreasuryDLO@act.gov.au>
Cc: "Young, Michael" <Michael.Young@act.gov.au>; "Ferguson, David" <David.Ferguson@act.gov.au>
Subject: RE: URGENT: EWSLA Act - Govt amendment to JLAB

UNCLASSIFIED Sensitive

Hi Ellen

Thanks for sending this across – we appreciate the quick turnaround and background work on this.

All items are cleared for inclusion in Minister Rattenbury's debate pack.

Thanks
Pat

Patrick Connell | Adviser
Office of Minister Suzanne Orr
ACT Government
T (02) 6205 1686 | M Sch 2.2(a)(ii)



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 4:22 PM
To: Connell, Patrick <Patrick.Connell@act.gov.au>; Treasury DLO <TreasuryDLO@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>
Subject: URGENT: EWSLA Act - Govt amendment to JLAB
Importance: High

UNCLASSIFIED Sensitive

Hi Pat

As discussed earlier today, attached is the supporting material for the Government amendment to the Justice Legislation Amendment Bill 2020 to amend the commencement of the WHS right of entry power provisions of the EWSLA Act.

We will need this material cleared urgently as it is required by JACS for their debate package up to Minister Rattenbury.

Happy for you to call if there are any issues/questions.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Ford, Blake" <Blake.Ford@act.gov.au> on behalf of "Treasury DLO" <TreasuryDLO@act.gov.au>
Sent: 16/07/2020 6:25 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: URGENT: EWSLA Act - Govt amendment to JLAB

No worries, thanks Ellen. Let me know if you need me to chase up the MO, or anything else.

Cheers,

Blake

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 4:25 PM
To: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: URGENT: EWSLA Act - Govt amendment to JLAB

UNCLASSIFIED Sensitive

Hi Blake

No, it is going up via JACS Trim as part of their debate pack, we just need our MO to clear.

Thanks
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Ford, Blake <Blake.Ford@act.gov.au> **On Behalf Of** Treasury DLO
Sent: Thursday, 16 July 2020 4:23 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: URGENT: EWSLA Act - Govt amendment to JLAB

Hi – do I need to grab this from TRIM, or is this all good?

Cheers,

Blake

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 4:22 PM
To: Connell, Patrick <Patrick.CConnell@act.gov.au>; Treasury DLO <TreasuryDLO@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>

Subject: URGENT: EWSLA Act - Govt amendment to JLAB
Importance: High

UNCLASSIFIED Sensitive

Hi Pat

As discussed earlier today, attached is the supporting material for the Government amendment to the Justice Legislation Amendment Bill 2020 to amend the commencement of the WHS right of entry power provisions of the EWSLA Act.

We will need this material cleared urgently as it is required by JACS for their debate package up to Minister Rattenbury.

Happy for you to call if there are any issues/questions.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Del Piero, Natasha" <Natasha.DelPiero@act.gov.au>
Sent: 31/07/2020 4:27 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: JLAB - Government Amendment
Attachments: Brief - Cover Brief - Justice Legislation Amendment Bill 2020 - Debate Pack.DOCX

UNCLASSIFIED Sensitive

Hi Ellen,

As discussed, please find **attached** Brief to Minister Rattenbury in relation to the Justice Legislation Amendment Bill 2020.

The Brief has been cleared by Zoe and will be cleared to our MO shortly.

Please do not hesitate to contact me if you have any questions.

Kind Regards,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 6:20 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Subject: RE: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Natasha

No worries.

Just confirming, they have been cleared through our MO now as well with no changes.

Kind regards,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Sent: Thursday, 16 July 2020 4:20 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: RE: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Ellen,

Thank you very much for drafting these documents so quickly.

Kind Regards,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 16 July 2020 4:13 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Cc: Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>
Subject: JLAB - Government Amendment

UNCLASSIFIED Sensitive

Hi Natasha

Please see attached the material for the Government amendment, ie:

- Final Government Amendment;
- Supplementary Explanatory Statement for the Government Amendment; and
- Debate points (& clause speaking points) and Q&As for the Government Amendment.

Please note, while it is cleared internally, we may have some slight tweaks come through from our Minister's office, however, I do not want to hold up your processes.

Let me know if you need anything further.

Many thanks
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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Justice and Community Safety Directorate

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To:	Minister for Justice, Consumer Affairs and Road Safety	Tracking No.: LEG:2019/00052-008
Date:	31/07/2020	
CC:		
From:	Executive Branch Manager, Legislation Policy and Programs	
Subject:	Debate pack for the Justice Legislation Amendment Bill 2020 (the Bill)	
Critical Date:	12/08/2020	
Critical Reason:	The Bill is likely to be scheduled for debate in the ACT Legislative Assembly in August. An embargoed copy of the debate speech and the supplementary Explanatory Statement as well as a signed copy of the Government amendments must be lodged with the Clerk's office the day before debate.	

- DDG(I) .../.../...

Recommendations

That you:

1. note the information contained in this brief;

Noted / Please Discuss

2. note the debate speech at Attachment A, the clause by clause speaking notes at Attachment B for the Government amendment and the Q&A at Attachment C to support the debate of the Justice Legislation Amendment Bill 2020 (the Bill) in the ACT Legislative Assembly;

Noted / Please Discuss

3. agree to move the Government amendments at Attachment E;

Agreed / Not agreed / Please Discuss

UNCLASSIFIED

4. note that a copy of the Government amendments (Attachment E) signed by you must be delivered to the Clerk of the Assembly by 12pm the day before the Bill is scheduled for debate in the Legislative Assembly;

Noted / Please Discuss

5. agree to table the supplementary Explanatory Statement which addresses the Government amendments at Attachment F; and

Agreed / Not agreed / Please Discuss

6. sign the cover letter to the Chair of the Scrutiny Committee at Attachment G which presents the proposed Government amendments to the Scrutiny Committee.

Signed / Not signed / Please Discuss

Shane Rattenbury MLA /...../.....

Minister's Office Feedback

Background

1. The Justice Legislation Amendment Bill 2020 (the Bill) was introduced in the ACT Legislative Assembly on 18 June 2020. The presentation copy of the Bill is at Attachment D for your reference.
2. The Bill is likely to be scheduled for debate in August.
3. On 30 June 2020, the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (Scrutiny Committee) released *Scrutiny Report 45* and, in this report, asked you to respond to its comments about the Bill's amendments to the *Civil Law (Sale of Residential Property) Act 2003* and the *Civil Law (Sale of Residential Property) Regulation 2004*.
4. On 22 July 2020, you signed a letter to the Chair of the Scrutiny Committee in response to the Scrutiny Committee's comments in *Scrutiny Report 45* (MIN:2020/001496).
5. On 28 July 2020, the Scrutiny Committee published *Scrutiny Report 47*. This report noted that the Scrutiny Committee has received your response letter and will consider it as its next meeting.

Issues

Debate of the Bill

6. The debate speech (Attachment A), the clause by clause speaking notes for the proposed Government amendment (Attachment B) and the Q&A (Attachment C) have been provided to support the debate of the Bill (Attachment D).
7. An embargoed copy of the debate speech and the supplementary Explanatory Statement as well as a signed copy of the Government amendments must be lodged with the Clerk's office the day before the Bill is debated in the ACT Legislative Assembly.

Proposed Government Amendment

8. On 16 July 2020, Minister Orr MLA sought your approval to move a Government amendment to the Bill to amend section 2(2) of the *Employment and Workplace Safety Legislation Amendment Act 2020* (the Act) (MIN:2020/001613).
9. On 26 July 2020, you signed a response letter to Minister Orr agreeing to the inclusion of the amendment (MIN:2020/001613).
10. The Government amendment makes a minor amendment to section 2(2) of the Act to allow for sections 105 to 108 to commence on a day fixed by the Minister by written notice. Currently, sections 105 to 108 will commence six months after notification of that Act. Sections 105 to 108 of the Act amend the *Work Health and Safety Act 2011* to allow Work Health and Safety (WHS) entry permit-holders to take audio/visual recordings of suspected WHS breaches while they are exercising a workplace right of entry.
11. The Clerk's office provided advice to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) that the Government amendment complies with Standing Order 181 which provides that an amendment may be moved providing its subject matter is within the long title of the Bill. In this case the long title of the Bill relevantly provides that the Bill is to amend legislation about justice, and for other purposes. The Government amendment to the commencement of sections 105 to 108 in the *Employment and Workplace Safety Legislation Amendment Act 2020* amends provisions that support the regulation of work health and safety obligations and will encourage better compliance with those obligations.
12. A supplementary Explanatory Statement which addresses the Government amendments (Attachment F) has also been prepared for your consideration. In relation to the proposed Government amendment, CMTEDD provided input into the supplementary Explanatory Statement (Attachment F), the clause by clause speaking notes (Attachment B) and the Q&A (Attachment C). JACS understands that CMTEDD are also briefing Minister Orr with these materials.

13. Standing Order 182A provides the requirement that amendments to be provided to the Scrutiny Committee may be dispensed with, by leave, if an amendment is either (a) urgent, (b) minor or technical in nature, or (c) in response to comments made by the Scrutiny Committee. In this case, JACS considers that the amendment to the commencement provision is minor and technical and that the requirement of Scrutiny Committee consultation can be dispensed with by leave.
14. For completeness, as instructed by your office, JACS has prepared a cover letter outlining the Government amendments to the Chair of the Scrutiny Committee Attachment G should you wish to provide the Scrutiny Committee with these amendments.

Financial Implications

15. Nil for this brief.

Consultation

Internal

16. Nil response

Cross Directorate

17. CMTEDD – Ms Ellen Lukins (Senior Director, Regulatory Policy, Workplace Safety and Industrial Relations, 02 6205 3874) in relation to the proposed Government amendment. CMTEDD have been provided a copy of this brief.

External

18. Nil response

Work Health and Safety

19. Nil response

Benefits/Sensitivities

20. The Government amendment would allow sections 105 to 108 of the Act to be commenced as soon as reasonably possible (by written notice of the Minister for Employment and Workplace Safety). This would ensure the amendment operates as soon as possible. As noted above, this amendment will allow WHS entry permit-holders to take audio/visual recordings of suspected WHS breaches while they are exercising a workplace right of entry.

Communications, media and engagement implications

21. Nil response.

Signatory Name: Zoe Hutchinson

Phone: 76192

Action Officer: Natasha Del Piero

Phone: 76480

Attachments

Attachment	Title
Attachment A	Debate speech
Attachment B	Clause by clause speaking notes
Attachment C	Q&A
Attachment D	Presentation copy of the Justice Legislation Amendment Bill 2020
Attachment E	Government amendments to the Justice Legislation Amendment Bill 2020
Attachment F	Supplementary Explanatory Statement
Attachment G	Cover letter outlining Government amendments to the Chair of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

From: "Agius, Jacqueline" <Jacqueline.Agius@act.gov.au>
Sent: 24/08/2020 5:50 AM
To: "Young, Michael" <Michael.Young@act.gov.au>
Cc: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Grey, Amanda" <Amanda.Grey@act.gov.au>
Subject: Re: Request for commencement notice on Sections 105-108 of EWSLA Act

Hi Michael

We have not agreed to a start date as yet.

Jacqui

Get Outlook for iOS

From: Young, Michael <Michael.Young@act.gov.au>

Sent: Friday, August 21, 2020 9:59:05 AM

To: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Cc: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>

Subject: RE: Request for commencement notice on Sections 105-108 of EWSLA Act

OFFICIAL

Hi Jacqui

I have not yet responded to Pat – before I do, can you advise whether you have agreed a start date with the Minister's Office?

Thanks

Michael

Michael Young | Executive Group Manager

02 6205 3095 | michael.young@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Connell, Patrick <Patrick.CConnell@act.gov.au>

Sent: Thursday, 20 August 2020 12:10 PM

To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>

Cc: Treasury DLO <TreasuryDLO@act.gov.au>; Ferguson, David <David.Ferguson@act.gov.au>

Subject: Request for commencement notice on Sections 105-108 of EWSLA Act

OFFICIAL

Hi Michael and Ellen

As the JLAB has just passed the Assembly, can you please prepare the commencement notice for Sections 105-108 of the EWSLA Act?

We require this to be provided to our office within 1-2 days of the Amendment Act being notified.

Thanks

Pat

Patrick Connell | Adviser

Office of Minister Suzanne Orr

ACT Government

T (02) 6205 1686 | M [Sch 2.2\(a\)\(ii\)](#)



From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 20/08/2020 11:59 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Request for commencement notice on Sections 105-108 of EWSLA Act

OFFICIAL

Didn't see this in time

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 20 August 2020 1:14 PM
To: Connell, Patrick <Patrick.CConnell@act.gov.au>; Young, Michael <Michael.Young@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>; Ferguson, David <David.Ferguson@act.gov.au>
Subject: RE: Request for commencement notice on Sections 105-108 of EWSLA Act

OFFICIAL

Thanks Pat

We'll prepare the commencement notice for the Minister as discussed this morning with a date TBC noting that the Office will finalise the commencement date with the WHS Commissioner.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Connell, Patrick <Patrick.CConnell@act.gov.au>
Sent: Thursday, 20 August 2020 12:10 PM
To: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>; Ferguson, David <David.Ferguson@act.gov.au>
Subject: Request for commencement notice on Sections 105-108 of EWSLA Act

OFFICIAL

Hi Michael and Ellen

As the JLAB has just passed the Assembly, can you please prepare the commencement notice for Sections 105-108 of the EWSLA Act?

We require this to be provided to our office within 1-2 days of the Amendment Act being notified.

Thanks

Pat

Patrick Connell | Adviser

Office of Minister Suzanne Orr

ACT Government

T (02) 6205 1686 | M **Sch 2.2(a)(ii)**



From: "Del Piero, Natasha" <Natasha.DelPiero@act.gov.au>
Sent: 20/08/2020 11:12 PM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Justice Legislation Amendment Bill 2020 - Update

OFFICIAL

Hi Ellen,

Thank you and thanks again for all your assistance 😊

Cheers,
Natasha

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Thursday, 20 August 2020 6:33 PM
To: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Subject: RE: Justice Legislation Amendment Bill 2020 - Update

OFFICIAL

Hi Natasha

Fantastic and well done!!

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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From: Del Piero, Natasha <Natasha.DelPiero@act.gov.au>
Sent: Thursday, 20 August 2020 4:12 PM
To: Ng, Jessica <Jessica.Ng@act.gov.au>; Cogger, Caroline <Caroline.Cogger@act.gov.au>; Kingham, Amy <Amy.Kingham@act.gov.au>; Pound, Laura <Laura.Pound@act.gov.au>; Axell, Anita <Anita.Axell@act.gov.au>; Martin, Victor <Victor.Martin@act.gov.au>; Lodwick, Hari <Hari.Lodwick@act.gov.au>; Toohey, Karen <Karen.Toohey@act.gov.au>; Campbell, Kevin <Kevin.Campbell@act.gov.au>; Thilagaratnam, Renuka <Renuka.Thilagaratnam@act.gov.au>; Cox, Kirra <Kirra.Cox@act.gov.au>; Wright, Emma <Emma.Wright@act.gov.au>; Cui, Tracy <Tracy.Cui@act.gov.au>; Holland, Katherine <Katherine.Holland@act.gov.au>; Perks, Danielle <Danielle.Perks@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; Kemp, Alison <Alison.Kemp@act.gov.au>; BeresfordWylie, Serena <Serena.BeresfordWylie@act.gov.au>; Rosenberg, Madelon <Madelon.Rosenberg@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Balthazar, Michael <Michael.Balthazar@act.gov.au>; McIntosh, Andrew <Andrew.McIntosh@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Johns, Stephanie

<Stephanie.Johns@act.gov.au>

Subject: Justice Legislation Amendment Bill 2020 - Update

OFFICIAL

Dear Justice Bill Action Officers,

I am pleased to advise you that the Justice Legislation Amendment Bill 2020 was debated and passed in the Legislative Assembly this morning.

The Bill included Government amendments to the *Employment and Workplace Safety Legislation Amendment Act 2020* and the *Confiscation of Criminal Assets Act 2003*.

Given the Bill has now passed, you will need to start progressing required implementation work in relation to your amendments. If your legislative amendments commence by written notice, you will also need to consider when commencement should occur with a view to necessary briefings to prepare commencement notices. Please let us know if you would like any guidance in this respect.

Thank you for your contributions to this process and congratulations on the passage of the Bill.

Kind Regards,
Natasha

From: Del Piero, Natasha

Sent: Thursday, 13 August 2020 11:43 AM

To: Ng, Jessica <Jessica.Ng@act.gov.au>; Cogger, Caroline <Caroline.Cogger@act.gov.au>; Kingham, Amy <Amy.Kingham@act.gov.au>; Pound, Laura <Laura.Pound@act.gov.au>; Axell, Anita <Anita.Axell@act.gov.au>; Martin, Victor <Victor.Martin@act.gov.au>; Lodwick, Hari <Hari.Lodwick@act.gov.au>; Toohey, Karen <Karen.Toohey@act.gov.au>; Campbell, Kevin <Kevin.Campbell@act.gov.au>; Thilagaratnam, Renuka <Renuka.Thilagaratnam@act.gov.au>; Cox, Kirra <Kirra.Cox@act.gov.au>; Wright, Emma <Emma.Wright@act.gov.au>; Cui, Tracy <Tracy.Cui@act.gov.au>; Holland, Katherine <Katherine.Holland@act.gov.au>; Perks, Danielle <Danielle.Perks@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; Kemp, Alison <Alison.Kemp@act.gov.au>; 'BeresfordWylie, Serena' <Serena.BeresfordWylie@act.gov.au>; Rosenberg, Madelon <Madelon.Rosenberg@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Balthazar, Michael <Michael.Balthazar@act.gov.au>; McIntosh, Andrew <Andrew.McIntosh@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Johns, Stephanie <Stephanie.Johns@act.gov.au>

Subject: Justice Legislation Amendment Bill 2020 - Update

OFFICIAL

Dear Justice Bill Action Officers,

I confirm that the Justice Legislation Amendment Bill 2020 is scheduled for debate this afternoon (in-principle stage).

The detail stage of the debate is scheduled for next Thursday, 20 August 2020.

Kind Regards,
Natasha

From: Del Piero, Natasha

Sent: Wednesday, 29 July 2020 4:55 PM

To: Ng, Jessica <Jessica.Ng@act.gov.au>; Cogger, Caroline <Caroline.Cogger@act.gov.au>; Kingham, Amy <Amy.Kingham@act.gov.au>; Pound, Laura <Laura.Pound@act.gov.au>; Axell, Anita <Anita.Axell@act.gov.au>; Martin, Victor <Victor.Martin@act.gov.au>; Lodwick, Hari <Hari.Lodwick@act.gov.au>; Toohey, Karen

<Karen.Toohey@act.gov.au>; Campbell, Kevin <Kevin.Campbell@act.gov.au>; Thilagaratnam, Renuka <Renuka.Thilagaratnam@act.gov.au>; Cox, Kirra <Kirra.Cox@act.gov.au>; Wright, Emma <Emma.Wright@act.gov.au>; Cui, Tracy <Tracy.Cui@act.gov.au>; Holland, Katherine <Katherine.Holland@act.gov.au>; Perks, Danielle <Danielle.Perks@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; Kemp, Alison <Alison.Kemp@act.gov.au>; 'BeresfordWylie, Serena' <Serena.BeresfordWylie@act.gov.au>; Rosenberg, Madelon <Madelon.Rosenberg@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Balthazar, Michael <Michael.Balthazar@act.gov.au>; McIntosh, Andrew <Andrew.McIntosh@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>

Subject: Justice Legislation Amendment Bill 2020 - Update

UNCLASSIFIED

Dear Justice Bill Action Officers,

I confirm that the debate of the Justice Legislation Amendment Bill 2020 has been rescheduled from tomorrow, 30 July 2020 to one of the sitting dates in August.

It is likely that the Bill will be debated on Thursday, 13 August 2020 but this is not yet confirmed.

I will provide you with another update once the debate date for the Bill is confirmed.

Kind Regards,
Natasha

From: Del Piero, Natasha

Sent: Wednesday, 22 July 2020 9:07 AM

To: Ng, Jessica <Jessica.Ng@act.gov.au>; Cogger, Caroline <Caroline.Cogger@act.gov.au>; Kingham, Amy <Amy.Kingham@act.gov.au>; Pound, Laura <Laura.Pound@act.gov.au>; Axell, Anita <Anita.Axell@act.gov.au>; Martin, Victor <Victor.Martin@act.gov.au>; Lodwick, Hari <Hari.Lodwick@act.gov.au>; Toohey, Karen <Karen.Toohey@act.gov.au>; Campbell, Kevin <Kevin.Campbell@act.gov.au>; Thilagaratnam, Renuka <Renuka.Thilagaratnam@act.gov.au>; Cox, Kirra <Kirra.Cox@act.gov.au>; Wright, Emma <Emma.Wright@act.gov.au>; Cui, Tracy <Tracy.Cui@act.gov.au>; Holland, Katherine <Katherine.Holland@act.gov.au>; Perks, Danielle <Danielle.Perks@act.gov.au>; Greenland, Karen <Karen.Greenland@act.gov.au>; Kemp, Alison <Alison.Kemp@act.gov.au>; 'BeresfordWylie, Serena' <Serena.BeresfordWylie@act.gov.au>; Rosenberg, Madelon <Madelon.Rosenberg@act.gov.au>; Hutchinson, Zoe <Zoe.Hutchinson@act.gov.au>; Balthazar, Michael <Michael.Balthazar@act.gov.au>; McIntosh, Andrew <Andrew.McIntosh@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>

Subject: Justice Legislation Amendment Bill 2020 - Update

UNCLASSIFIED

Good morning Justice Bill Action Officers,

I confirm that the Justice Legislation Amendment Bill 2020 is currently scheduled for debate in the Legislative Assembly on Thursday, 30 July 2020.

Kind Regards,
Natasha

Natasha Del Piero | Policy Officer | Civil Law

☎ 02 6207 6480 | 📠 02 6205 0937 | Email: natasha.delpiero@act.gov.au

Legislation, Policy and Programs | Justice and Community Safety Directorate | ACT Government
Level 4, 12 Moore Street, Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601

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From: "Lukins, Ellen"
Sent: 04/09/2020 4:11 AM
To: "CMTEDD Government Business and Coordination" <CMTEDD.GBC@act.gov.au>
Subject: FW: Signed WHS Right of Entry commencement notice
Attachments: ATT A_Commencement notice_EWSLA Act_WHS right of entry - SIGNED BY MINISTER
ORR.pdf

OFFICIAL

Good afternoon

Attached is the signed commencement notice instrument – refer CMTEDD2020/4103 for the word version.

Can we please request notification today? I have advised PCO already that this item will be coming through for notification.

Let me know if you need anything further.

Thank you
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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From: Connell, Patrick <Patrick.CConnell@act.gov.au>
Sent: Friday, 4 September 2020 1:51 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen

Please see attached signed version for notification.

Thanks
Pat

Patrick Connell | Adviser
Office of Minister Suzanne Orr
ACT Government
T (02) 6205 1686 | M **Sch 2 2(a)(ii)**



Australian Capital Territory

Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

Commencement notice CN2020—

made under the

Employment and Workplace Safety Legislation Amendment Act 2020,
s 2 (Commencement)

Sections 105 to 108 of the *Employment and Workplace Safety Legislation Amendment Act 2020* commence on 7 September 2020.

A stylized, handwritten signature in black ink, consisting of several fluid, connected strokes.

Suzanne Orr MLA
Minister for Employment and Workplace Safety

From: "Lukins, Ellen"
Sent: 04/09/2020 5:43 AM
To: "Alieva, Daria" <Daria.Alieva@act.gov.au>
Subject: Fwd: Signed WHS Right of Entry commencement notice

Hi Daria

See below for confirmation of the instrument being signed today.

Thank you
Ellen

Get [Outlook for Android](#)

From: Connell, Patrick <Patrick.CConnell@act.gov.au>
Sent: Friday, 4 September 2020, 3:40 pm
To: Lukins, Ellen
Cc: Treasury DLO
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen

Just to confirm, Minister Orr signed the notice today.

Thanks
Pat

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Friday, 4 September 2020 2:02 PM
To: Connell, Patrick <Patrick.CConnell@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Thanks Pat, we'll arrange notification.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Connell, Patrick <Patrick.Connell@act.gov.au>
Sent: Friday, 4 September 2020 1:51 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen

Please see attached signed version for notification.

Thanks
Pat

Patrick Connell | Adviser
Office of Minister Suzanne Orr
ACT Government
T (02) 6205 1686 | M **Sch 2.2(a)(ii)**



From: "Lukins, Ellen"
Sent: 04/09/2020 6:51 AM
To: "Grey, Amanda" <Amanda.Grey@act.gov.au>; "MacLaughlan, Leanne" <Leanne.MacLaughlan@act.gov.au>
Cc: "Young, Michael" <Michael.Young@act.gov.au>
Subject: WHS right of entry changes - confirmation of commencement

OFFICIAL

Hi Amanda and Leanne

I understand you both are expecting this, just thought I would confirm that the commencement instrument for the WHS right of entry changes has been signed today and will commence on Monday, 7 September 2020.

PCO is in the process of notifying it so should be available on the ACT Legislation Register shortly here:
<https://legislation.act.gov.au/notifications>.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 07/09/2020 4:07 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: Draft Letter to Michael Hopkins - Membership of WHS Council SLJC Advisory Council (004)

OFFICIAL

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Young, Michael
Sent: Monday, 7 September 2020 2:06 PM
To: Ferguson, David <David.Ferguson@act.gov.au>
Subject: RE: Draft Letter to Michael Hopkins - Membership of WHS Council SLJC Advisory Council (004)

OFFICIAL

Maybe change to *do not change what can be observed during safety inspections*.

It's a technical issue relating to what can be investigated in a single entry. Previously the same issues would have been investigated – the official would just to have entered twice.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Ferguson, David <David.Ferguson@act.gov.au>
Sent: Monday, 7 September 2020 2:03 PM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Draft Letter to Michael Hopkins - Membership of WHS Council SLJC Advisory Council (004)

Michael, appreciate that clarification but the point is to say, matters covered by this power do not change – ie, only safety issues. Perhaps “do not change what can be observed during a safety expectation”?

From: Young, Michael <Michael.Young@act.gov.au>
Sent: Monday, 7 September 2020 1:58 PM
To: Ferguson, David <David.Ferguson@act.gov.au>
Subject: RE: Draft Letter to Michael Hopkins - Membership of WHS Council SLJC Advisory Council (004)

OFFICIAL

Hello

Can I suggest deleting this bit of the next to last para:

do not change the scope of safety inspections that currently happen at their worksites.

Arguably there has been a slight change – removing the requirement to exit and re enter to respond to observed breaches (rather than the power to record), means that scope becomes reasonable suspicion plus secondary observed breaches.

I think the para reads well without it.

Will send updated QA/fact sheet shortly.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Ferguson, David <David.Ferguson@act.gov.au>

Sent: Monday, 7 September 2020 1:37 PM

To: Young, Michael <Michael.Young@act.gov.au>; Connell, Patrick <Patrick.Connell@act.gov.au>

Subject: Draft Letter to Michael Hopkins - Membership of WHS Council SLJC Advisory Council (004)

From: "Lukins, Ellen"
Sent: 07/09/2020 7:12 AM
To: "Stringer, Callum" <Callum.Stringer@act.gov.au>; "VanDeLaarschot, Kerry" <Kerry.VanDeLaarschot@act.gov.au>; "Findlay, Teo" <Teo.Findlay@act.gov.au>; "Howe, Lucy" <Lucy.Howe@act.gov.au>; "Megaraj, Arulmani" <Arulmani.Megaraj@act.gov.au>
Subject: FW: New WHS right of entry and filming powers commence

OFFICIAL

Hi all

FYI – we made the OHS Alert today.

Relevantly, the new WHS right of entry powers commenced today which will allow permit-holders to take audio/visual recordings of suspected WHS contraventions while exercising a right of entry at a workplace.

Happy to discuss further at our team meeting this week.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: OHS Alert <updates@ohsalert.com.au>
Sent: Monday, 7 September 2020 3:58 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: New WHS right of entry and filming powers commence

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.



Ellen Lukins, your latest news from OHS Alert

New WHS right of entry and filming powers commence

Monday, 07 September 2020 3:57pm

WHS entry permit holders are permitted, from today, to photograph or film suspected safety contraventions at ACT workplaces, under a Bill that also adopts \$500,000 "prohibited asbestos" fines and amends workers' compensation laws. [» read more »](#)

Did you miss:

- » [Employer loses bid for three medical re-examinations](#)
- » [Months of remote work required by controversial plan](#)
- » [Charged PCBU creates WHS role, as safety regulator cracks down on rogue operators](#)
- » [Vaping poses threat to workplace health outcomes](#)
- » [Inexperienced worker's crane blunder costs man \\$532k](#)
- » [OHS Alert's COVID-19 coverage](#)

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From: "Lukins, Ellen"
Sent: 07/09/2020 11:30 PM
To: "Connell, Patrick" <Patrick.Connell@act.gov.au>; "Treasury DLO" <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Pat

Yes, Blake has saved it on to Trim 😊

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Connell, Patrick <Patrick.Connell@act.gov.au>
Sent: Tuesday, 8 September 2020 9:24 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>; Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen and Blake

I believe this was signed and processed yesterday afternoon.

Thanks
Pat

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Monday, 7 September 2020 2:31 PM
To: Connell, Patrick <Patrick.Connell@act.gov.au>; Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Pat & Blake

This was actioned and notified last Friday (4/9) as requested – I've added the signed instrument to the TRIM folder and word version of the MO edits to insert the date in the instrument.

Are you able to chase up and add the signed brief to the TRIM folder (CMTEDD2020/4103)?

Thanks
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: Connell, Patrick <Patrick.CConnell@act.gov.au>
Sent: Friday, 4 September 2020 3:41 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen

Just to confirm, Minister Orr signed the notice today.

Thanks
Pat

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Friday, 4 September 2020 2:02 PM
To: Connell, Patrick <Patrick.CConnell@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: RE: Signed WHS Right of Entry commencement notice

OFFICIAL

Thanks Pat, we'll arrange notification.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

**WORK HEALTH, SAFETY AND WELLBEING -
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From: Connell, Patrick <Patrick.CConnell@act.gov.au>
Sent: Friday, 4 September 2020 1:51 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Cc: Treasury DLO <TreasuryDLO@act.gov.au>
Subject: Signed WHS Right of Entry commencement notice

OFFICIAL

Hi Ellen

Please see attached signed version for notification.

Thanks
Pat

Patrick Connell | Adviser
Office of Minister Suzanne Orr
ACT Government
T (02) 6205 1686 | M Sch 2.2(a)(ii)



Chief Minister, Treasury and Economic Development Directorate

To:	Minister for Employment and Workplace Safety	Tracking No.: CMTEDD2020/4103
From:	Executive Group Manager, Workplace Safety and Industrial Relations	
Subject:	Employment and Workplace Safety Legislation Amendment Act 2020: commencement of right of entry provisions	
Critical Date:	04/09/2020	
Critical Reason:	To allow for commencement of the right of entry amendments to the Work Health and Safety Act 2011	
UT	.../.../...	

Recommendations

That you **sign** the attached commencement notice for sections 105-108 of the *Employment and Workplace Safety Legislation Amendment Act 2020*.

Signed / Not Signed / Please Discuss

Suzanne Orr MLA

Minister's Office Feedback

Background

1. The *Employment and Workplace Safety Legislation Amendment Act 2020* (EWSLA Act) was debated and passed in the Legislative Assembly on 2 July 2020 and has now been notified on the ACT Legislation Register.
2. Following agreement in CMTEDD2020/3339, a Government amendment to the Justice Legislation Amendment Bill 2020 was tabled in the Legislative Assembly that would amend the commencement of the WHS rights of entry amendments in the EWSLA Act to enable commencement earlier than six months, by written notice of the Minister.

Issues

3. On 20 August 2020, the Justice Legislation Amendment Bill 2020 was debated and passed as amended. The Bill has since been notified on the ACT Legislation Register on 27 August 2020, meaning the amendment to the EWSLA Act will commence on 28 August 2020.
4. A commencement notice for sections 105-108 of the EWSLA Act may be made after 28 August 2020 to commence those provisions, relating to WHS right of entry amendments, on a date fixed by the Minister. If no date for commencement is fixed, they will automatically commence on 9 January 2021.
5. Your Office has indicated a preference to fix an earlier date for commencement in consultation with the Work Health and Safety Commissioner that would allow sufficient implementation time for WorkSafe ACT.
6. As per a request from your office, the commencement notice has been prepared for your consideration and signature at Attachment A, subject to a date for commencement being decided.

Financial Implications

7. Nil.

Consultation

Internal

8. Nil.

Cross Directorate

9. Nil.

External

10. Nil.

Work Health and Safety

11. Nil.

Benefits/Sensitivities

12. Nil.

Communications, media and engagement implications

13. Stakeholder engagement and awareness about the commencement of the provisions will be required. WSIR will initiate awareness raising of the provisions commencing with the WHS Commissioner, utilising the WorkSafe ACT website and WHS Council.

Signatory Name: Michael Young

Phone: 53095

Action Officer: Ellen Lukins

Phone: 53874

Attachments

Attachment	Title
Attachment A	Commencement notice

From: "Lukins, Ellen"
Sent: 08/09/2020 1:19 AM
To: "Young, Michael" <Michael.Young@act.gov.au>
Subject: RE: As discussed

OFFICIAL: Sensitive

Hi

The issues at a stakeholders session could get quite detailed and operational (ie circumstance specific) – we would have to step back from giving PCBU legal advice on the application of the Commonwealth privacy act.

As you say the proposed email and offer is reasonable, but we will have to be prepared for some questions that we either need to defer to a decision of the Government or independent legal advice. I would propose a joint session with the regulator so they can go through the guidance material they are developing and respond to some of the more operations/regulator questions that may come up.

I would propose talking with Michael Hopkins before the session to get an idea of the information re right of entry they issue to members ...

Will give you a call to discuss after HWCA but, while I have some reservations in that it may descend into a re-justification of the policy ... I think Jacqui's email is fine, it may also be an opportunity for us to demonstrate an appreciation that their PCBU policies will need to be revisited to ensure they accommodate the new requirements.

Cheers,
EL

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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From: Young, Michael <Michael.Young@act.gov.au>
Sent: Tuesday, 8 September 2020 10:42 AM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: FW: As discussed
Importance: High

OFFICIAL: Sensitive

Hi

I'm in HWCA – Jacqui has asked for feedback on her draft email below.

The upshot is that we would be offered up to talk with their stakeholders about detail of the changes. I think that's reasonable but would be interested in your views. It would be essentially a flashback to the human rights design work...

M

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Sent: Tuesday, 8 September 2020 10:23 AM

To: Young, Michael <Michael.Young@act.gov.au>

Subject: As discussed

Importance: High

OFFICIAL: Sensitive

Hi Michael,

As discussed please see below my suggested email to Michael Hopkins for your consideration. If you are amenable to me sending this email I will CC you into it.

Cheers

Jacqui

In response to your email below, it is important that I clarify my role as the Work Health and Safety Commissioner. The Work Health and Safety Act 2011 (WHS Act) is clear that the WHS Commissioner must act independently and not take direction from anyone. The WHS Commissioner is the regulator and responsible for enforcing the WHS Act. That means as the regulator, I do not have a role in making or amending legislation. This is the responsibility of the ACT Government.

Since commencing in the role of WHS Commissioner, I have been open and transparent with all stakeholders, including the Master Builders Association. Your initial response to WorkSafe's correspondence alerting you to the 7 September 2020 commencement date is disappointing. It suggests that my office had been aware of this information and had intentionally delayed advising you. This is absolutely incorrect. While I acknowledge your frustrations in relation to the timing of the commencement date notification, I firmly believe my office has acted appropriately and done everything it can to engage with you and all stakeholders on this matter.

As I have stated previously, I am committed to changing the safety culture in the ACT, particularly in the construction sector so that employees are safe in their workplaces.

I have discussed your request for an information session with Michael Young, Executive Group Manager of Work Place Safety and Industrial Relations. Michael will be in contact to discuss this with you.

The relevant guidance material is in the process of being updated to reflect changes made to the entry permit-holder provision of the WHS Act. These documents will be distributed to you and all stakeholders as soon as they are finalised and available on WorkSafe ACT Website.

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601



ACT
Government

I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.



From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 08/09/2020 4:47 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

I have a 3pm – call you after - ta

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Tuesday, 8 September 2020 2:45 PM
To: Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

No worries – **Out of scope** so I will be in the office – have a short meeting at 4.30 though 😊

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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Sent: Tuesday, 8 September 2020 2:44 PM
To: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Subject: FW: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

FYI – will give you a call in a while to discuss approach.

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Michael Hopkins [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)
Sent: Tuesday, 8 September 2020 1:40 PM
To: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

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Thanks Jacqui. I will await Michael's call.

Regards,

Michael Hopkins

CHIEF EXECUTIVE OFFICER

Master Builders Association of the ACT
Civil Contractors Federation of the ACT
1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5900

Mob: [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)

[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)

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Kind regards

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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From: Michael Hopkins <Sch 2.2(a)(ii)@mba.org.au>

Sent: Monday, 7 September 2020 12:41 PM

To: Grey, Amanda <Amanda.Grey@act.gov.au>; Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

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Jacqui and Amanda,

Thank you for notifying us about the *Employment and Workplace Safety Legislation Amendment Commencement Notice 2020*.

As the Commissioner and Deputy Commissioner of an Agency reporting directly to the Minister responsible for this law, I find it implausible that you were not aware of this significant legislative change before 6:55pm on Friday evening. We are very disappointed at the lack of engagement and consultation on this matter.

It is inexcusable that anyone from the ACT Government would not inform the people impacted by such a significant legislative change which, as Jacqui acknowledged in her text message to me, will impact our members, any earlier.

I look forward to your advice about how you intend to inform all affected members of the local construction industry (not just members of the MBA) about this change, including how you intend to protect the privacy of individuals, including young apprentices, resulting from this change.

We would like to invite you to a member information session where you can respond directly to our members. If you could let me know when you are available for a session later this week or next week that would be helpful.

Regards,

Michael Hopkins

CHIEF EXECUTIVE OFFICER

Master Builders Association of the ACT

Civil Contractors Federation of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5900

Mob Sch 2.2(a)(ii)

Sch 2.2(a)(ii)@mba.org.au

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From: Grey, Amanda <Amanda.Grey@act.gov.au>

Sent: Friday, 4 September 2020 6:55 PM

To: Michael Hopkins <[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)>

Cc: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; MacLaughlan, Leanne <Leanne.MacLaughlan@act.gov.au>

Subject: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

Good evening Michael

I am writing to advise you that late this afternoon the *Employment and Workplace Safety Legislation Amendment Commencement Notice 2020* was published. The commencement notice provides that Sections 105 to 108 of the *Employment and Workplace Safety Legislation Amendment Act 2020* commence on

7 September 2020. As you are aware these sections deal with right of entry powers provided to WHS entry permit-holders and are reproduced below my signature block for your reference.

In summary, the *Employment and Workplace Safety Legislation Amendment Act 2020* amends the *Work Health and Safety Act 2011* by extending rights of WHS entry permit-holders while at a workplace to include taking photographs, films, or audio, video or other recordings relevant to a suspected contravention of that Act. This does not extend to where doing so would result in a contravention of a law of the Commonwealth or State. The Act also allows an entry permit-holder to exercise these and other entry rights in relation to further contraventions of the Act which are encountered in the course of investigating an initial suspected contravention.

As we also only received notice this afternoon of the amendments commencing on Monday, we are seeking your advice regarding the most efficient way to advise your Members of this change before Monday morning. I am available to discuss this with you or alternatively I understand Jacqui has also sent you a text message about this matter and would welcome a discussion.

Kind regards

Amanda

AMANDA GREY | DEPUTY WHS COMMISSIONER

Phone: 02 6207 2718 | Mobile: [Sch 2.2\(a\)\(ii\)](tel:0262072718) | amanda.grey@act.gov.au

OFFICE OF THE WORK HEALTH AND SAFETY COMMISSIONER

GPO Box 158 Canberra ACT 2601 | www.worksafe.act.gov.au

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

Part 5 Work Health and Safety Act 2011

106 Rights that may be exercised while at workplace New section 118 (1) (da)

insert

- (da) take photographs, films, or audio, video or other recordings relevant to the suspected contravention;

107 Section 118 (2)

substitute

- (2) However, if it would result in a contravention of a law of the Commonwealth or a law of a State—
- (a) the relevant person is not required, under subsection (1) (d), to allow the WHS entry permit-holder to inspect or make copies of a document; and
 - (b) the WHS entry permit-holder must not, under subsection (1) (da), take photographs, films, or audio, video or other recordings.

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

before the notes, insert

- (5) If, in the course of inquiring into a suspected contravention of this Act, the WHS entry permit-holder reasonably suspects that another contravention of this Act has occurred, the WHS entry permit-holder may exercise a right mentioned in subsection (1) in relation to the other contravention.

insert

118A Notice of exercise of right under s 118 (1) (da)

- (1) This section applies in relation to the exercise of a right under section 118 (1) (da) by a WHS entry permit-holder.
- (2) The WHS entry permit-holder must give notice to the relevant person conducting a business or undertaking about the exercise of the right—
- (a) if, at the time the WHS entry permit-holder enters the workplace under this division, the WHS entry permit-holder intends to exercise the right in relation to the suspected contravention of this Act—as soon as reasonably practicable after entering the workplace; and
- (b) if, while at a workplace under this division, the WHS entry permit-holder forms the intention to exercise, or has exercised, the right in relation to another contravention of this Act in the circumstances mentioned in section 118 (5)—as soon as reasonably practicable after forming that intention or exercising the right.

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From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 08/09/2020 4:43 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

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Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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Thanks Jacqui. I will await Michael's call.

Regards,

Michael Hopkins
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Master Builders Association of the ACT
Civil Contractors Federation of the ACT
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WORKSAFEACT



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Phone: 02 6207 2718 | Mobile: Sch 2.2(a)(ii) | amanda.grey@act.gov.au

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106 Rights that may be exercised while at workplace New section 118 (1) (da)

insert

- (da) take photographs, films, or audio, video or other recordings relevant to the suspected contravention;

107 Section 118 (2)

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Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

108 New section 118 (5)

before the notes, insert

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109 New section 118A

insert

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Agius, Jacqueline

From: Agius, Jacqueline
Sent: Tuesday, 8 September 2020 10:46 AM
To: Young, Michael
Subject: RE: NEW MINISTERIAL - Correspondence from MBA ACT - Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

OFFICIAL

Thank you Michael

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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From: Young, Michael <Michael.Young@act.gov.au>
Sent: Tuesday, 8 September 2020 10:04 AM
To: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Subject: FW: NEW MINISTERIAL - Correspondence from MBA ACT - Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

OFFICIAL

FYI

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Ford, Blake <Blake.Ford@act.gov.au> **On Behalf Of** Treasury DLO
Sent: Monday, 7 September 2020 5:08 PM
To: CMTEDD MLO <CMTEDD.MLO@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>; Lukins, Ellen <Ellen.Lukins@act.gov.au>; Turner, Mikaela <Mikaela.Turner@act.gov.au>; Cameron, Susan <Susan.Cameron@act.gov.au>
Subject: NEW MINISTERIAL - Correspondence from MBA ACT - Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

OFFICIAL

Hi MLO Team

New Ministerial please to put in TRIM for allocation to: WSIR

Action required: For noting.

For all correspondence, please include an email address for the recipient.

If this has been allocated incorrectly, or you require input from another directorate, please advise ASAP.

Regards

Blake Ford | Directorate Liaison Officer - Treasury
Office of the Chief Minister | Office of Minister Stephen-Smith | Office of Minister Berry | Office of Minister Steel | Office of Minister Ramsay
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Phone: +61 2 6205 3033 | Email: TreasuryDLO@act.gov.au | ACT Legislative Assembly | www.act.gov.au

Please consider the environment before printing this email. If printing is necessary, print double-sided and black and white.

From: ORR <ORR@act.gov.au>

Sent: Monday, 7 September 2020 2:49 PM

To: Michael Hopkins <[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)>

Subject: RE: Correspondence from MBA ACT - Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

OFFICIAL

Good afternoon Mr Hopkins

Please find attached correspondence from Minister Orr.

Kind regards

Office of Minister Suzanne Orr

Minister for Disability

Minister for Community Services and Facilities

Minister for Employment and Workplace Safety

Minister for Government Services and Procurement

ACT Government | Member for Yerrabi

T (02) 6205 1439



From: Michael Hopkins <[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)>

Sent: Sunday, 6 September 2020 9:35 AM

To: BARR Reception <BARR@act.gov.au>; Barr, Andrew <Andrew.Barr@act.gov.au>; ORR <ORR@act.gov.au>

Cc: Cook, Michael <Michael.Cook@act.gov.au>; COE <COE@parliament.act.gov.au>; WALL <WALL@parliament.act.gov.au>; Wall, Andrew <Andrew.Wall@parliament.act.gov.au>; Alistair Coe <alistair.coe@alistaircoe.com.au>; Young, Michael <Michael.Young@act.gov.au>; Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Subject: Correspondence from MBA ACT - Employment and Workplace Safety Legislation Amendment Commencement Notice 2020

Importance: High

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Chief Minister and Minister,

Please find attached correspondence from MBA ACT about *Employment and Workplace Safety Legislation Amendment Commencement Notice 2020*.

I look forward to your urgent reply.

Regards,

Michael Hopkins
CHIEF EXECUTIVE OFFICER

Master Builders Association of the ACT
Civil Contractors Federation of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5900

Mob: Sch 2.2(a)(ii)

Sch 2.2(a)(ii)@mba.org.au

www.mba.org.au

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Suzanne Orr MLA

Minister for Disability
Minister for Community Services and Facilities
Minister for Employment and Workplace Safety
Minister for Government Services and Procurement
Member for Yerrabi

Michael Hopkins
Chief Executive Officer
Master Builders Association of the ACT

Via email: [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)

Dear Mr Hopkins

Michael

I am responding to your letter to the Chief Minister of 6 September regarding the Employment and Work Safety Legislation Amendment Act 2020 (the EWSLA Act), as the matters you raised sit within my portfolios.

Respectfully, the issues you raise are substantive to the Government's legislation and not related to implementation of the changes.

Substantive policy issues were debated in the Legislative Assembly prior to the passage of the EWSLA Act on 2 July 2020. The need to bring commencement of these provisions forward to a date as soon as practicable was communicated with amendments to the Justice Legislation Amendment Act 2020, which passed on 20 August 2020.

This is a narrowly targeted reform that addresses a technical issue. Sections 105 to 108 of the EWSLA Act only allow for right of entry permit holders already conducting safety inspections to take photos or otherwise document breaches of the Work Health and Safety Act. No other change is introduced, and there is no action required of any business owner in response to this law.

These changes do not in any way alter grounds for exercising right of entry. The privacy and other stringent restrictions which already operate in section 148 of the *Work Health and Safety Act 2011* apply to any photos or other documents taken. Those provisions already cover sensitive employee data, and can be used effectively to address misuse of any photographs by right of entry permit holders.

Since the time the Bill was introduced, routine inspections by Worksafe ACT have continued to find unsafe conditions on construction worksites. The lack of compliance with safety laws in the industry follows two tragic deaths and shows that stronger enforcement of our laws is necessary.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 1439 Email orr@act.gov.au



@SuzanneOrrMLA



SuzanneOrrMLA



SuzanneOrrMLA

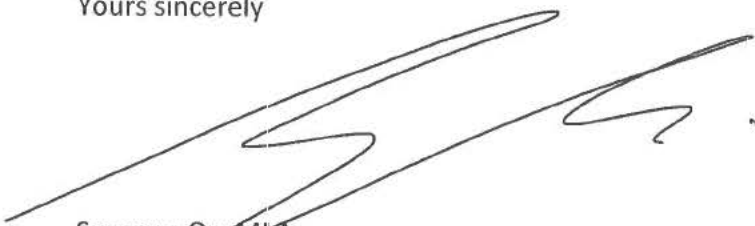


When inspectors or right of entry permit holders see unsafe conditions, it is the Government's expectation that they should take evidence and supply that evidence to the Work Health and Safety Commissioner for appropriate enforcement. Any other result, especially one that occurs for technical legal reasons, cannot be justified to our community in light of the clear and demonstrated need to improve safety on ACT worksites.

While I understand you wish to raise concerns with the underlying policy, it is important that your members understand that these changes do not require any action of local businesses and do not change the scope of safety matters for which permit holders can enter a workplace.

To help you communicate with and reassure your members, I have attached a Questions and Answers document which I encourage you to circulate.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Suzanne Orr', written over a horizontal line.

Suzanne Orr MLA
Minister for Employment and Workplace Safety

07/09/20

AMENDMENTS TO WHS RIGHT OF ENTRY LAWS

FACTSHEET

Amendments to the *Work Health and Safety Act 2011*, new sections 118(da) and 118A introduced changes to the WHS right of entry laws in the ACT, commencing 7 September 2020.

What powers do WHS entry permit-holders currently have?

WHS permit-holders can inquire into suspected WHS contraventions at a workplace under work health and safety laws. Otherwise known as right of entry.

The powers that can be exercised on right of entry and in relation to a suspected WHS contraventions are:

- > inspect work systems, plant, substances, structures or other things;
- > consult with relevant workers;
- > consult with the PCBU;
- > inspect and make copies of documents; and
- > warn a person who is reasonably believed to be immediately or imminently exposed to a serious risk to their health or safety.

In addition, a permit-holder may, on at least 24 hours notice, also gain right of entry to inspect employee records or other documents held by a third party.

What is the purpose of the amendment to right of entry powers?

The amendments will allow WHS entry permit-holders to take photographs, audio and visual

recordings of WHS contraventions while exercising a right of entry at a workplace.

To enable these powers to be effective in facilitating compliance with WHS duties and obligations, these powers have also been extended to any other WHS contravention observed by the permit-holder while exercising a right of entry.

The purpose of these amendments is to allow better evidence gathering methods for WHS entry permit-holders when inquiring into suspected WHS breaches at a workplace.

What new requirements do these changes impose on right of entry permit holders?

Right of entry permit holders are required, under section 118A, to give notice to persons conducting a business or undertaking (PCBUs) of their intention to use their right to take photographs, films, audio, video or other recordings under new section 118 (da) as soon as reasonably practicable after entering a workplace.

What new requirements apply to person conducting a business or undertaking?

Business owners (PCBUs) obligations are unchanged by the amendments to section 118 and 118A.

This fact sheet is current at September 2020.

From: "Young, Michael" <Michael.Young@act.gov.au>
Sent: 09/09/2020 5:16 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>
Subject: FW: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

FYI

Michael Young | Executive Group Manager
02 6205 3095 | michael.young@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



From: Michael Hopkins [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)
Sent: Wednesday, 9 September 2020 3:09 PM
To: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Cc: Young, Michael <Michael.Young@act.gov.au>
Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

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Jacqui and Amanda,

Michael Young has kindly agreed to present an overview of the new laws at a MBA member session on Thursday 17 September 8:00 and 9:00am.

We would like to invite you both to attend the session to hear any questions from our members. If you could provide an answer during the session that would be most helpful. If not, we can work together with Michael to provide responses following the information session.

Bethany Mason from the MBA will send you a meeting invite with a Teams link.

Regards,

Michael Hopkins
CHIEF EXECUTIVE OFFICER
Master Builders Association of the ACT
Civil Contractors Federation of the ACT
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PO Box 1211, Fyshwick ACT 2609
Tel: (02) 6175 5900
Mob [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)
[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)
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From: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Sent: Tuesday, 8 September 2020 1:34 PM

To: Michael Hopkins <Michael.Hopkins@mba.org.au>; Grey, Amanda <Amanda.Grey@act.gov.au>

Cc: Young, Michael <Michael.Young@act.gov.au>

Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

Hi Michael,

In response to your email below, it is important that I clarify my role as the Work Health and Safety Commissioner. The Work Health and Safety Act 2011 (WHS Act) is clear that the WHS Commissioner must act independently and not take direction from anyone. The WHS Commissioner is the regulator and responsible for enforcing the WHS Act. That means as the regulator, I do not have a role in making or amending legislation. This is the responsibility of the ACT Government.

Since commencing in the role of WHS Commissioner, I have been open and transparent with all stakeholders, including the Master Builders Association. Your initial response to WorkSafe's correspondence alerting you to the 7 September 2020 commencement date is disappointing. It suggests that my office had been aware of this information and had intentionally delayed advising you. This is absolutely incorrect. While I acknowledge your frustrations in relation to the timing of the commencement date notification, I firmly believe my office has acted appropriately and done everything it can to engage with you and all stakeholders on this matter.

As I have stated previously, I am committed to changing the safety culture in the ACT, particularly in the construction sector so that employees are safe in their workplaces.

I have discussed your request for an information session with Michael Young, Executive Group Manager of Workplace Safety and Industrial Relations. Michael will be in contact to discuss this with you.

The relevant guidance material is in the process of being updated to reflect changes made to the entry permit-holder provision of the WHS Act. These documents will be distributed to you and all stakeholders as soon as they are finalised and available on WorkSafe ACT Website.

Kind regards

Jacqueline Agius | Work Health and Safety Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Michael Hopkins [Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)

Sent: Monday, 7 September 2020 12:41 PM

To: Grey, Amanda <Amanda.Grey@act.gov.au>; Agius, Jacqueline <Jacqueline.Agius@act.gov.au>

Subject: RE: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

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Jacqui and Amanda,

Thank you for notifying us about the *Employment and Workplace Safety Legislation Amendment Commencement Notice 2020*.

As the Commissioner and Deputy Commissioner of an Agency reporting directly to the Minister responsible for this law, I find it implausible that you were not aware of this significant legislative change before 6:55pm on Friday evening. We are very disappointed at the lack of engagement and consultation on this matter.

It is inexcusable that anyone from the ACT Government would not inform the people impacted by such a significant legislative change which, as Jacqui acknowledged in her text message to me, will impact our members, any earlier.

I look forward to your advice about how you intend to inform all affected members of the local construction industry (not just members of the MBA) about this change, including how you intend to protect the privacy of individuals, including young apprentices, resulting from this change.

We would like to invite you to a member information session where you can respond directly to our members. If you could let me know when you are available for a session later this week or next week that would be helpful.

Regards,

Michael Hopkins

CHIEF EXECUTIVE OFFICER

Master Builders Association of the ACT

Civil Contractors Federation of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5900

Mob: [Sch 2.2\(a\)\(ii\)](mailto:Sch 2.2(a)(ii)@mba.org.au)

[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)

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From: Grey, Amanda <Amanda.Grey@act.gov.au>

Sent: Friday, 4 September 2020 6:55 PM

To: Michael Hopkins <[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)>

Cc: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; MacLaughlan, Leanne <Leanne.MacLaughlan@act.gov.au>

Subject: Employment and Workplace Safety Legislation Amendment Act 2020 - right of entry provisions commencing on 7 September 2020

OFFICIAL

Good evening Michael

I am writing to advise you that late this afternoon the *Employment and Workplace Safety Legislation Amendment Commencement Notice 2020* was published. The commencement notice provides that Sections 105 to 108 of the *Employment and Workplace Safety Legislation Amendment Act 2020* commence on **7 September 2020**. As you are aware these sections deal with right of entry powers provided to WHS entry permit-holders and are reproduced below my signature block for your reference.

In summary, the *Employment and Workplace Safety Legislation Amendment Act 2020* amends the *Work Health and Safety Act 2011* by extending rights of WHS entry permit-holders while at a workplace to include taking photographs, films, or audio, video or other recordings relevant to a suspected contravention of that Act. This does not extend to where doing so would result in a contravention of a law of the Commonwealth or State. The Act also allows an entry permit-holder to exercise these and other entry rights in relation to further contraventions of the Act which are encountered in the course of investigating an initial suspected contravention.

As we also only received notice this afternoon of the amendments commencing on Monday, we are seeking your advice regarding the most efficient way to advise your Members of this change before Monday morning. I am available to discuss this with you or alternatively I understand Jacqui has also sent you a text message about this matter and would welcome a discussion.

Kind regards

Amanda

AMANDA GREY | DEPUTY WHS COMMISSIONER

Phone: 02 6207 2718 | Mobile: <[Sch 2.2\(a\)\(ii\)@mba.org.au](mailto:Sch 2.2(a)(ii)@mba.org.au)> amanda.grey@act.gov.au

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**106 Rights that may be exercised while at workplace
New section 118 (1) (da)***insert*

- (da) take photographs, films, or audio, video or other recordings relevant to the suspected contravention;

107 Section 118 (2)*substitute*

- (2) However, if it would result in a contravention of a law of the Commonwealth or a law of a State—
- (a) the relevant person is not required, under subsection (1) (d), to allow the WHS entry permit-holder to inspect or make copies of a document; and
 - (b) the WHS entry permit-holder must not, under subsection (1) (da), take photographs, films, or audio, video or other recordings.

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

108 New section 118 (5)*before the notes, insert*

- (5) If, in the course of inquiring into a suspected contravention of this Act, the WHS entry permit-holder reasonably suspects that another contravention of this Act has occurred, the WHS entry permit-holder may exercise a right mentioned in subsection (1) in relation to the other contravention.

109 New section 118A*insert***118A Notice of exercise of right under s 118 (1) (da)**

- (1) This section applies in relation to the exercise of a right under section 118 (1) (da) by a WHS entry permit-holder.
- (2) The WHS entry permit-holder must give notice to the relevant person conducting a business or undertaking about the exercise of the right—
 - (a) if, at the time the WHS entry permit-holder enters the workplace under this division, the WHS entry permit-holder intends to exercise the right in relation to the suspected contravention of this Act—as soon as reasonably practicable after entering the workplace; and
 - (b) if, while at a workplace under this division, the WHS entry permit-holder forms the intention to exercise, or has exercised, the right in relation to another contravention of this Act in the circumstances mentioned in section 118 (5)—as soon as reasonably practicable after forming that intention or exercising the right.

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From: "Lukins, Ellen"
Sent: 16/09/2020 6:59 AM
To: "Young, Michael" <Michael.Young@act.gov.au>
Subject: FW: MBA Member Workshop
Attachments: Questions.docx

OFFICIAL

Hi Michael

Attached is the list of questions that have come through from MBA members (I have also send a copy of these to Jacqui and Amanda). A lot of them are actually about what will WorkSafe do but I expect the information we provide will cover off a lot of it.

Ashlee indicated they had about 47 rsvp's but did expect that some may be some no-shows on the day.

Preparation points for the presenting at the session are below (I will add to tonight with some of the technical points to add if prodded but this is the high-level running sheet for us):

1. Background – quick overview of the policy including why it was brought forward – **happy to acknowledge the policy leading up the changes but would prefer not to go into too much detail as we agree with your comments yesterday in terms of focussing on the changes themselves and what they mean for PCBU's looking to comply with the ROE provisions;**
 - Acknowledge the concerns of members regarding the timing of commencement of the provisions
 - The policy considerations leading to the changes was largely carried out over a number of years via the ACT Work Safety Council and consideration by its Members
 - In terms of the changes incorporated in the *Employment and Workplace Safety Legislation Amendment Act 2020*, these changes were made following recommendations from via the Council and it is noted that they follow a number of deaths in the residential construction sector - the primary incorporation of the changes to drive better workplace safety compliance
 - The changes bring back into the Territory's WHS laws, the previous arrangements under OH&S laws applying in the ACT prior to adopting the model WHS laws however, it is noted that in this regard some of the protections afforded under the model WHS laws adopted in the Territory re permitted uses for documents are greater than what was in place when the same provisions were applied pre-2011, for example, the restrictions found in section 148 of the WHS Act did not exist under previous OH&S laws in relation to the exercise of right of entry powers
 - There is a role for unions as permit-holders in supporting/augmenting the role of inspectors, this has been recognised as part of the nationally agreed model WHS laws - these changes support that role
2. What the changes are – i.e. change to EPH powers – **no issues with setting this information out**
 - Changes are two-fold and are applicable to what the WHS permit holder can do while exercising a right of entry at a workplace:
 - One [new section 118(1)(da)] - can take photographs, films, or audio, video or other recordings *relevant* to the suspected contravention
 - Second [new section 118(5)] - if they see another suspected contravention while at the workplace (not the suspected contravention that they gained entry for) they no longer have to exit and re-enter, they are able to exercise their right of entry powers in relation to the other suspected contravention while on-site
 - no changes to the basis for right of entry - ie there must be reasonable belief of a suspected contravention s117 and it must relate to or affect a relevant worker
 - 'Relevant worker' is defined in the Act as:

relevant worker, in relation to a workplace, means a worker—

- (a) who is a member, or eligible to be a member, of a relevant union; and
- (b) whose industrial interests the relevant union is entitled to represent; and
- (c) who works at that workplace.

From <https://legislation.act.gov.au/Scripts/pdf.js/web/Viewer.html?file=/View/GetFile/a/2011-35/current/PDF/2011-35.PDF> >

- **also, no changes have been made to the way in which right of entry powers may be exercised generally, eg during usual working hours (s126), only at an area of the workplace where the relevant workers are or a work area that directly affects the health and safety of those workers (s127)**
3. ROE information – from entry to exit looking at all things including notice requirements, what can be recorded, what it is used for.
- a. EPH obligations
 - b. PCBU obligations
 - c. Worker rights to privacy – **we can discuss this in terms of legislative policy, noting that each PCBU may need to get independent legal advice in relation to the particular considerations applying to their workplace – we will look to set this and para's a & b out as part of our presentation on the ROE process.**
- **Step one - entry by a permit-holder**
 - no change - there must still be a valid entry by a WHS permit-holders
 - **Step two - powers on entry while at the workplace relating to the new recording power in s118(da)**
 - the changes introduce a new power that may be exercised on entry for a suspected contravention
 - this new power means that permit-holders can take photographs, audio and visual recordings relevant to a suspected contravention
 - **Step three - obligations of pcbu**
 - There have been no changes to the right of entry obligations under the Act on pcbus - in other words a pcbu must not without reasonable excuse, refuse or unduly delay entry if the permit-holder is entitled to enter (ie a valid right of entry) and must not intentionally or unreasonably hinder or obstruct a permit-holder in entering or exercising a right under the right of entry part
 - Similarly, division 7.7 of the Act also has not changed in relation to the obligations on permit-holders to not intentionally or unreasonably delay, hinder or obstruct a person or work at the workplace
 - **Step three - limitations & controls on the power to take recordings**
 - same limitations as are applicable to the exercise of a right of entry - for example:
 - when a right may be exercised
 - what it may be used in relation to
 - section 148 limitations on disclosure of documents - applies to the use of the new power in s118(1)(da) as recordings are considered to be documents
 - in addition, federal privacy laws apply as WHS permit holders will also be registered organisations - some case law may be relevant as to whether they are exercising their right of entry powers as the organisation or as an individual permit-holder ... policies could be prepared by PCBUs on the assumption

that these laws apply - where they apply is to the **disclosure** of personal or sensitive information, ie blurring of people caught in the frame of a video recording, etc

- common law privileges still apply and have not been overridden - eg self-incrimination & legal privileges - unlike inspectors, permit-holders cannot compel a person to give an answer, noting obligations not to intentionally or unreasonably hinder or obstruct

- Refer to pcbus needing to review their policies relating to right of entry as they wish to develop special procedures for their workplace in view of the

4. Privacy considerations and related questions to privilege and potential self-incrimination – **we would prefer to deal with this in the context of stepping out what the changes mean for ROE processes under point 3, and in particular, the limitations on its use**

5. Penalties for non-compliance (PCBU and EPH) – **no issues with including this in the presentation.**

- Penalties have not changed, the right of entry provisions fall under the civil penalty part
- Penalties on misuse of the new power may include cancellation of the permit-holders permit, civil penalties or permit conditions as currently allowed for if there is a misuse of right of entry powers

Ellen Lukins | Senior Director, Regulatory Policy

02 6205 3874 | ellen.lukins@act.gov.au

Workplace Safety and Industrial Relations

Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
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From: Ashlee Berry <[Sch 2 2(a)(iii)]@mba.org.au>

Sent: Tuesday, 15 September 2020 8:52 PM

To: Lukins, Ellen <Ellen.Lukins@act.gov.au>

Subject: MBA Member Workshop

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Hi Ellen

Thanks for your time today, and for presenting at our member workshop on Thursday morning.

I have attached a list of the questions we have received from members so far. I'll do a quick introduction at the beginning of the workshop, and then hand over to you and Michael Young.

If you're able to cover the following that would be really helpful – let me know if anything on this list is outside your area.

1. Background – quick overview of the policy including why it was brought forward;
2. What the changes are – i.e. change to EPH powers
3. ROE information – from entry to exit looking at all things including notice requirements, what can be recorded, what it is used for.
 - a. EPH obligations
 - b. PCBU obligations
 - c. Worker rights to privacy
4. Privacy considerations and related questions to privilege and potential self-incrimination
5. Penalties for non-compliance (PCBU and EPH)

Happy to chat tomorrow if you have any queries.

Regards,

Ashlee Berry
MEMBER SERVICES DIRECTOR

Master Builders Association of the
ACT

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PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5900

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NOTICE: COVID-19 Our office has now reopened to external visitors. While some staff have returned to the office, many of our staff will continue to work from home during this time. We will continue to comply with the National Guidelines and ensure social distancing and hygiene precautions are taken. We thank you for your understanding and cooperation during these difficult and unprecedented times.



Questions for WorkSafe ACT

Changes to ROE Powers

1. What prompted these changes to be brought forward? Industry is seeking justification/clarification!
2. Why wasn't there any consultation with or notification to industry of these changes being brought forward?
3. Does WorkSafe ACT anticipate that expediting the commencement of the changes will result in a better response from industry relating to safety?
4. Is the intention of the changes to promote quicker response of WorkSafe ACT to alleged breaches resulting in subsequent enforcement?
5. Does/should an entry permit holder provide the PCBU with a copy of the recording (video, audio, other)? Can the PCBU request a copy of this recording and must it be provided?
6. What is the recording to be used for? How can this be guaranteed?
7. Can the PCBU refuse the recording? What advice should be provided to the parties?
8. Can a worker refuse to be recorded? What advice should be provided to a worker?
9. How it is recommended that the PCBU inform its workers of the entry permit holder's powers (a) of being entitled to take the recording if notice is provided, and (b) commence recording of the suspected contravention? What does this look like in practice?
10. How can the PCBU protect the privacy of its workers? Referring to the privacy laws will not be sufficient – examples need to be provided for industry to understand this.
11. What remedies does the PCBU have available to it if the recording is used for other purposes? Can/should WorkSafe ACT regulate the use of the material?
12. Will WorkSafe ACT be providing further guidance regarding the changes and what is expected of a PCBU and its workers?
13. Will WorkSafe ACT be providing guidance to an entry permit holder as to when the recording can commence and what it can be used for?

From: "Grey, Amanda" <Amanda.Grey@act.gov.au>
Sent: 16/09/2020 7:11 AM
To: "Lukins, Ellen" <Ellen.Lukins@act.gov.au>; "Agius, Jacqueline" <Jacqueline.Agius@act.gov.au>
Subject: RE: MBA session tomorrow

OFFICIAL

Thanks Ellen

From: Lukins, Ellen <Ellen.Lukins@act.gov.au>
Sent: Wednesday, 16 September 2020 4:06 PM
To: Agius, Jacqueline <Jacqueline.Agius@act.gov.au>; Grey, Amanda <Amanda.Grey@act.gov.au>
Subject: MBA session tomorrow

OFFICIAL

Hi Jacqui & Amanda

In preparation for tomorrow's session with the MBA and MBA members on the new WHS right of entry changes we have been provided an advance copy of the questions being asked by members who have rsvp'd for the event.

While we are preparing the information as part of our presentation at the session and to a large extent this will cover off most of the questions being asked – I just wanted to give you an advance copy of the questions being asked given that they specifically refer to how/what/etc. WorkSafe will be doing ...

Happy for you to give me a call to discuss.

Cheers,
Ellen

Ellen Lukins | Senior Director, Regulatory Policy
02 6205 3874 | ellen.lukins@act.gov.au
Workplace Safety and Industrial Relations
Chief Minister, Treasury and Economic Development Directorate | ACT Government

WORK HEALTH, SAFETY AND WELLBEING -
WE ALL HAVE A ROLE



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WORK HEALTH AND SAFETY COUNCIL



Agenda Item

For NOTING

REGULATORY POLICY UPDATE

Prepared by the WHS Council Secretariat

Recommendation:

It is recommended that Members:

- **note** the legislative items for development.

Background

The Regulatory Policy Team in Workplace Safety and Industrial Relations, CMTEDD carries legislative and policy responsibility for the WHS, workers compensation and other related legislation.

The following items are provided as an update on the activities of the Regulatory Policy Team as they relate to the work of the WHS Council.

Labour Hire Licensing Scheme

On 20 February 2020 the ACT Government introduced legislation in the Legislative Assembly that would establish a labour hire licensing scheme for labour hire providers wanting to continue to operate in the Territory.

This legislation has been developed following a number of similar inquiries into insecure work, vulnerable workers and labour hire arrangements. In particular, the ACT Legislative Assembly Standing Committee on Education, Employment and Youth Affairs' (Standing Committee) released its final report of the *Inquiry into the Extent, Nature and Consequence of Insecure Work in the ACT* in May 2018. Following that report the ACT Government committed to, in the absence of a comprehensive national scheme, develop a local labour hire licensing scheme.

The new scheme would encourage responsible practices in the ACT labour hire sector and ensure labour hire providers are meeting their existing workplace responsibilities to workers.

Workers Compensation

Amendments to the *Workers Compensation Act 1951* were passed in the Legislative Assembly on 20 February 2020 under the *Workers Compensation Amendment Act 2019*. These amendments are technical and would primarily:

- ensure the continued coverage of family day care and in-home care educators for workers' compensation purposes; and

- ensure that the Default Insurance Fund covers workers' compensation claims where an injured worker's employer and any responsible principal contractor are both uninsured.

The provisions in relation to approved insurers and exemption for self-insurers are currently under review with considerations being given to moving to a licensing model for both workers' compensation insurers and self-insurers.

Work health and safety legislation

Amendments are being considered following the advice from the previous Work Safety Council that the rights on entry exercisable by WHS permit holders should be expanded to allow the taking of audio/visual recordings at a workplace in relation to a suspected WHS breach.

Workplace Exposure Standards (WES) – silica dust

WHS Ministers have agreed to reduce the WES for silica dust. In the ACT, adopting the reduced silica dust WES will require an amendment to the Regulation. Consistent with other jurisdictions it is expected that the reduced WES for silica dust will be applied as soon as possible.

Next Steps

Nil.

WORK HEALTH AND SAFETY COUNCIL



Agenda Item 5.1 REGULATORY POLICY UPDATE

For NOTING

Prepared by the WHS Council Secretariat

Recommendation:

It is recommended that Members:

- **note** the legislative and policy update.

Background

The Regulatory Policy Team in Workplace Safety and Industrial Relations, CMTEDD carries legislative and policy responsibility for the WHS, workers compensation and other related legislation.

Issues

The following items are provided as an update on the activities of the Regulatory Policy Team as they relate to the work of the WHS Council.

National 2018 WHS review (the Boland review)

National consideration of the Boland review recommendations is expected to recommence after delays due to COVID-19.

Information about the Boland review can be found on the Safe Work Australia website at:

<https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/review-model-whs-laws>

Legislative amendments

Employment and Workplace Safety Legislation Amendment Act 2020: this Act was passed by the Legislative Assembly on 2 June 2020 and will make amendments to the:

- *Workers Compensation Act 1951* (WC Act) – changes to the WC Act were made to shift the current approval of insurers/exemption for self-insurers to a licensing framework for both insurers and self-insurers, the changes will commence from December 2020, associated regulation amendments will be required to support the licensing framework and provide an interim/short-term extension of current approvals/exemption to accommodate the implementation of the new licensing framework;
- *Dangerous Goods (Road Transport) Act 200* (DGRT Act) – changes to the DGRT Act were made to better align the Territory with the model dangerous goods road transport laws, these changes are for commencement by written notice of the Minister or automatic commencement by July 2021, associated regulation changes will also be made to align the regulations with the model laws; and

- *Work Health and Safety Act 2011* (WHS Act) – changes were made to the WHS Act to adopt recent model WHS laws amendments to allow the WHS regulator to issue non-compliance notices for the removal of illegally installed asbestos (commenced on 10 July 2020) and also to establish the audio/visual right of entry power for WHS permit holders (to commence by December 2020).

Work Health and Safety Amendment Regulation 2020: this amending Regulation was made on 30 June 2020, including:

- amending the definition of workplace exposure standards to facilitate the adoption of revised workplace exposure standards published by Safe Work Australia via notifiable instrument, commenced 1 July 2020;
- establishing a public register of infringement notice information in relation to breaches by WHS licensees, to commence on 1 February 2020; and
- made technical amendments to adopt recent amendments to the model WHS regulations in relation to blood lead levels and diving regulations.

Silica Dust: from 1 July 2020, the workplace exposure standard for silica dust exposure in the workplace was reduced to 0.05mg/m³ in the ACT: *Work Health and Safety (Workplace Exposure Standards) Declaration 2020 (No 1)*, <https://legislation.act.gov.au/ni/2020-380/>.