

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004**

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**Submitter:** ACT Government

**Organisation:** ACT Chief Ministers Department  
ACT WorkCover

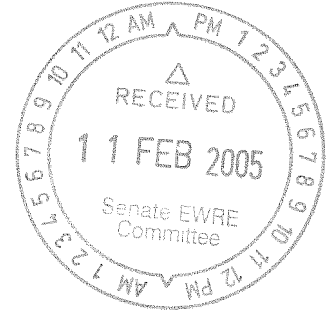
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Senator John Tierney  
Chair  
Senate Employment, Workplace Relations and Education  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator

The Australian Capital Territory has considered the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004 (the Bill) and makes the following comments by way of submission to the Committee's inquiry into the Bill.

As a matter of principle, the Territory believes that employee organisations have a valuable role to play in monitoring compliance with State and Territory industrial laws and that it should be for State and Territories to determine the scope and limits of this role. Accordingly, the Territory submits that it is for each State and Territory to legislate to provide for such union rights of entry as are necessary for the effective operation of State and Territory industrial laws.

While the present Commonwealth Government may consider it desirable to exclude the operation of State industrial laws, as indicated in the Second Reading Speech to the Bill, the fact remains that under the Australian Constitution legislative power in relation to industrial relations remains shared between the States and the Commonwealth, unless there has been a specific reference of legislative powers to the Commonwealth.

It is acknowledged that the Territory remains subject to section 122 of the Constitution and that as a result the Territory does not have the same legislative powers in relation to industrial relations that other States may have. Nevertheless, the ACT Government's view is that it would be consistent with the principle of self-government, and the provisions of the *ACT (Self-Government) Act 1988* (Cth), for the Territory to be placed on the same footing as States for industrial relations matters.

The Commonwealth has given the Territory legislative responsibility for dealing with workers' compensation and occupational health and safety, among other matters concerning industrial relations. Having given the Territory those responsibilities, it is the ACT Government's view that the Commonwealth should permit the Territory to effectively perform these regulatory functions without unduly limiting its legislative options.

In relation specifically to occupational health and safety, I would like to draw the Committee's attention to the right of entry provisions contained in Part 5, Division 5.4 of the ACT *Occupational Health and Safety Act 1989* (the OHS Act). These provisions are built on the fundamental premise that safety in the workplace is enhanced by the involvement of workers and their representative organisations. This premise is reflected in similar findings by Mr Chris Maxwell QC in his recent review of the Victorian *Occupational Health and Safety Act 1985* which recommended the enactment of rights of entry for authorised representatives of unions.

There is considerable international evidence to support this approach. Professor David Walters, for example, cites a number of studies which suggest "that indicators of objective health and safety performance, such as injury rates, are better in situations in which joint arrangements are in place and/or when trade unions are engaged in worker representation in workplaces. Other studies point to associations between the presence of representative structures and indicators of a more systematic approach to OHS management".<sup>1</sup>

In the ACT's view, effective prevention performance requires support for both direct and representative union-based participation in workplace safety arrangements. Right of entry provisions in the OHS Act ensure that representatives of organisations with members or potential members in a workplace can enter work premises where there are reasonable grounds to suspect that a contravention of the OHS Act has happened, is happening, or is likely to happen.

These provisions are similar to provisions in the NSW *Occupational Health and Safety Act 2000* and those in the recently enacted Victorian *Occupational Health and Safety Act 2004*. The ACT provisions allow authorised representatives of an employee association registered under the Commonwealth *Workplace Relations Act 1996* to enter premises and investigate suspected contraventions of the occupational health and safety legislation. The authorised representative is required to tell the person in charge of work or the premises about the outcome of the investigation. These provisions promote cooperation in the workplace by enabling employers to work together with employees and their representatives to solve workplace safety problems as they develop.

The provisions augment the ACT Government's own program of workplace inspections and investigations by health and safety inspectors employed by ACT WorkCover. The additional scrutiny that is afforded by the right of entry provisions enhances monitoring of compliance with workplace safety laws beyond that which can be undertaken by the ACT Government's occupational health and safety inspectorate.

The ACT submits that if the Commonwealth's proposed legislation is enacted, it is essential that the ACT right of entry provisions under *Occupational Health and Safety Act 1989* should be prescribed as an "OHS law" for the purposes of proposed section 280B of the *Workplace Relations Act 1996*. We would strongly urge that this prescription of Division 5.4 of the *Occupational Health and Safety Act 1989* take effect from the date of commencement of the proposed amendments to make sure that there is no hiatus in the

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<sup>1</sup> Walters, Professor David. "Workplace Arrangements for OHS in the 21<sup>st</sup> Century", July 2003: p.1. (Paper presented to the Conference, Australian Regulation for the 21<sup>st</sup> Century, 21-22 July 2003.)

effective operation of the Territory's occupational health and safety laws when the Commonwealth legislation commences.

Further information about the administration of the ACT's right of entry provisions under the *Occupational Health and Safety Act 1989* is attached.

I trust that these comments will assist the Committee in its deliberations.

Yours sincerely

M.L. Harris  
Chief Executive  
Chief Minister's Department