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

**ELEVENTH ASSEMBLY**

**WORKPLACE LEGISLATION AMENDMENT BILL 2025 (No 2)**

**REVISIONS TO THE REVISED EXPLANATORY STATEMENT**

**Presented by  
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## WORKPLACE LEGISLATION AMENDMENT BILL 2025 (No 2)

This revised explanatory statement (the statement) relates to the Workplace Legislation Amendment Bill 2025 (No 2) (the Bill). This Explanatory Statement has been revised for the Workplace Legislation Amendment Bill 2025 (No 2) following an Assembly motion agreed on 2 September 2025 to divide the Workplace Legislation Amendment Bill 2025 (No 2) as presented in the ACT Legislative Assembly. A human rights compatibility statement was provided with the Workplace Legislation Amendment Bill 2025 (No 2) as presented in the Legislative Assembly on 2 September 2025. It has been prepared to assist the reader. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not intended to be a comprehensive description of the Bill. What is said about a provision is not to be taken as providing a definitive interpretation of the meaning of a provision, this being a task for the courts.

The Bill is declared a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

### OVERVIEW OF THE BILL

The purpose of this Bill is to introduce amendments to the following legislation:

- *Evidence (Miscellaneous Provisions) Act 1991*, and
- *Workers Compensation Act 1951*.

### SUMMARY OF AMENDMENTS

#### **Amendments to the *Evidence (Miscellaneous Provisions) Act 1991***

The *Evidence (Miscellaneous Provisions) Act 1991* (EMP Act) sets out procedures to support the fair and effective presentation of evidence in court, particularly for vulnerable witnesses, by enabling automatic measures such as publication restrictions and protection of anonymity, audiovisual links, support persons, intermediaries, cross-examination restrictions, and other protections in sensitive cases such as sexual, violent and family violence proceedings.

Such special measures and protections do not automatically apply in proceedings for work health and safety (WHS) offences against the *Work Health and Safety Act 2011* (WHS Act) involving suspected or alleged sexual assault or sexual harassment in the workplace. Reliance in these matters is on separate applications being made to the court seeking the use of these protections. This creates a legal discrepancy between the treatment of victims in sexual offence, violent or family violence proceedings with victims in WHS proceedings. The protections afforded to a complainant in sexual, violent and family violence proceedings would be extended to similar complainants in a WHS proceedings, where the WHS breach involves an alleged or suspected sexual

assault or sexual harassment in the workplace. Specifically, the protections in legal proceedings extended by amendments in this Bill to a complainant in relation to a WHS proceeding will apply to provide those protections to the complainant from both the person who is alleged or was found to perpetrate the sexual violence and the duty holder who is the defendant within WHS proceedings, alleged to have failed to uphold their duty.

The definition of a complainant is also amended in the Bill under clause 6 to achieve this extension of protections in legal proceedings. This is particularly necessary in the context of a WHS proceeding which is not directly inquiring into the criminal nature of the sexual offence itself, rather it is responding to the offence of a WHS breach. The definitional change to complainant ensures that it appropriately captures a complainant witness in this context.

Similarly, to ensure the effectiveness of the changes, reference to the accused in a proceeding will also capture the person alleged or who was found to perpetrate the sexual violence under clause 5 of the Bill to specifically apply in the context of a WHS proceeding.

This acknowledges the circumstances specific to a WHS proceeding where the perpetrator of the alleged or suspected violence and the WHS duty holder may, and in fact are likely to not be the same person. These protections are considered to be necessary noting the power imbalance that exists between an employee and a duty holder.

Feedback from the ACT regulator<sup>1</sup> has indicated that the lack of automatic protections afforded to a victim involved, such as anonymity, has affected the willingness of these individuals from reporting and participating in workplace proceedings where it relates to sexual assault and harassment.

Amendments in this Bill to the EMP Act to extend these protections to complainants in WHS proceedings within a workplace context aim to help to address these concerns, including encouragement of reporting of such unacceptable conduct.

In defining the scope of “any other act of a sexually offensive, intimidating or humiliating nature” this is limited to one of a sexual context. It is not intended that any “intimidating” or “humiliating” act be applied in a broad sense, but rather the narrowed scope as intended by the amendment. For example, acts of a sexually offensive, sexually intimidating or sexually humiliating nature.

This amendment will also assist to address psychosocial hazards, further embedding the ACT Government’s commitment to ensuring workplaces proactively address and prevent such risks. The concern is that if protections for complainants in WHS sexual offence proceedings are not enhanced, the lack of support and additional special measures is likely to discourage the reporting of workplace issues to the regulator and continue to expose individuals to potential further unacceptable behaviour in the workplace.

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<sup>1</sup> [Inquiry into the Appropriation Bill 2024-2025 and Appropriation \(Office of the Legislative Assembly\) Bill 2024-2025.](#)

### **Amendment to the *Workers Compensation Act 1951***

The *Workers Compensation Act 1951* (WC Act) establishes the regulatory framework for the ACT's private sector workers' compensation scheme. The scheme provides for statutory workers' compensation entitlements and supports in the event of a work-related injury, illness or death. Specifically, the WC Act provides for statutory compensation benefits to be paid to injured workers covering medical treatment, rehabilitation assistance, financial compensation including weekly compensation and lump sum permanent impairment payments to support their recovery and return to work.

### ***Amendments to the Default Insurance Fund***

This Bill will also make amendments to allow the Executive to determine individual or classes of employers/employees who are eligible for a non-commercial mechanism for accessing workers' compensation through the making of a notifiable instrument. In summary, an eligible employer:

- may make an application to be a prescribed employer where they employ prescribed workers for a determined period
- if accepted as a prescribed employer, would not otherwise be required to hold a compulsory insurance policy, nor need to be a licensed self-insurer and as such, penalties will not apply from not holding a compulsory insurance policy
- injured workers who are a prescribed worker of a prescribed employer would receive compensation payable under the WC Act from the Default Insurance Fund utilising the fund's existing claims infrastructure
- the costs arising from these claims would be met from the Default Insurance Fund, which is primarily funded by a levy.

The Bill includes provisions for the determination of fee to apply to become a prescribed employer and information that must be provided with an application and would otherwise be required to be submitted to an insurer.

Relevantly, the Default Insurance Fund levy would be adjusted to account for the cost of covered claims, to the extent that costs exceed the amount paid by determined employers and cannot be absorbed by the Default Insurance Fund.

### **CONSULTATION ON THE PROPOSED APPROACH**

Stakeholders consulted regarding the proposed amendments within this Bill include the Chief Minister, Treasury and Economic Development Directorate, the Justice and Community Safety Directorate, the WHS Commissioner, WorkSafe ACT and the Work Health and Safety Council and broader affected industries and business. ACT Government has also consulted with ACT justice stakeholders in the development of the amendments relating to the EMP Act.

### **CLIMATE IMPACT**

This Bill will not have any climate impact.

## CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act). This Bill is consistent with human rights.

### Rights engaged

This Bill engages the following rights:

- Section 8 – Recognition and equality before the law (*promoted*)
- Section 11 – Protection of the family and children (*promoted*)
- Section 12 – Privacy and reputation (*promoted*)
- Section 21 – Right to a fair trial (*limited*)
- Section 22 – Right in criminal proceedings (*limited*)
- Section 27B – Right to work and other work-related rights (*promoted*)

### Rights promoted

#### EMP Act amendments – Right to recognition and equality before the law

The right to recognition and equality before the law provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

Extending protections under the EMP Act to victims of alleged or suspected sexual assault or harassment within the context of WHS proceedings ensures equal treatment across different proceeding types.

#### EMP Act amendments – Right to protection of families and children

In circumstances where WHS proceedings may involve minors or family-related contexts within the workplace (such as young workers or family-run businesses), the EMP Act amendment reinforces protections aligned with this right. By broadening the special protections afforded to complainants involved in WHS proceedings that include alleged or suspected sexual assault or harassment, the amendment promotes the right to protection of families and children. It provides critical safeguards for vulnerable workers including young workers, those who identify from a culturally and linguistic diverse background or others who may be more susceptible to coercion. For example, prohibition of publication of a complainant's identity will allow complainants to decide who they disclose the sexual assault or harassment to and reduce public scrutiny including further harassment, victimisation, and negative media attention or potential fall out with friends, family members or the community. It supports family members in cases where workplace misconduct intersects with family violence and helps protect children who may be indirectly impacted when a parent or guardian experiences workplace sexual harm. This is achieved where the court can consider family dynamics in the context of a workplace. These changes align with human rights principles by ensuring dignity, safety, and equal treatment under the law.

### EMP Act amendments – Right to privacy and reputation

The right to privacy protects individuals from unlawful or arbitrary interference with privacy. The right to reputation protects personal honour and reputation and imposes an obligation on government to provide adequate legislation to that end. Provisions that restrict the publication of a person's identity or allow evidence to be given remotely can help to safeguard the personal privacy and reputation of complainants, the accused and witnesses. This is especially the case in sensitive WHS proceedings involving alleged sexual assault or harassment, which may attract significant media attention and where victims may be vulnerable to harassment. This amendment therefore promotes the right to privacy.

### EMP Act amendments – Right to a fair trial

The use of special measures such as closing the court and the provision of support persons will support the right to a fair trial by protecting vulnerable witnesses and ensuring they can give evidence without fear or further traumatisation. Section 21 (2) of the HR Act permits the exclusion of the press and public from all or part of a trial:

- a) to protect morals, public order or national security in a democratic society; or
- b) if the interest of the private lives of the parties requires the exclusion; or
- c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because the publicity would otherwise prejudice the interest of justice.

### WC Act amendments – Right to work and other work-related rights

The amendments to the Default Insurance Fund promotes this right by ensuring that determined individuals or classes of employers/employees will be covered for workers compensation claims to be administered and paid using the claim management, funding and financial infrastructure established for the Default Insurance Fund. Meaning, under this arrangement, a worker will retain their rights in respect of workers' compensation.

Amendments to the Default Insurance Fund in this Bill do not impose any limitations on human rights. On the contrary, they reinforce and promote the right to work by clarifying the existing framework. The amendments are not expected to affect the individual rights of workers, nor alter employers' fundamental obligations regarding workers compensation and entitlements for injured or ill workers.

### **Rights Limited**

This Bill engages and limits a range of human rights. Each right that is limited is assessed below to ensure that it is based on evidence and is reasonably proportionate to achieve a legitimate purpose.

### EMP Act - Rights in criminal proceedings

#### ***1. Nature of the right and the limitation (s28(2)(a) and (c)).***

This amendment expands the meaning of "sexual offence proceeding" to include offences under the WHS Act that involve sexual assault incidents or any other act of a sexually offensive, intimidating or humiliating nature.

This means that the rights of an accused in WHS proceedings involving alleged sexual misconduct may be limited, particularly the rights in criminal proceedings. These include restrictions on direct cross-examination by self-represented accused persons and limitations on the admissibility of certain types of evidence, such as sexual reputation or counselling communications.

## **2. Legitimate purpose (s28(2)(b))**

Extending special protections to complainants in WHS proceedings involving sexual misconduct, such as shielding witnesses from direct cross-examination or limiting the admissibility of certain evidence, will protect vulnerable witnesses from further trauma and ensure their meaningful participation in legal proceedings. These protections aim to uphold other human rights, such as the right to life and recognition and equality before the law.

The intention of the limitation is to protect vulnerable complainants specifically from re-traumatisation and intimidation, and to ensure their meaningful participation in legal proceedings. This is a pressing and substantial objective, particularly in the context of sexual misconduct allegations in the workplace, where power imbalances and fear of reprisal may deter reporting.

The need for such changes has arisen from observations by the regulator that people are less likely to make a complaint if they are not guaranteed special protections such as anonymity during court proceedings. This reform was also pursued through a Private Member's Bill in 2024<sup>2</sup> but lapsed due to caretaker conventions. The policy is also made in the backdrop of recommendations made through the Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces 2020 inquiry<sup>3</sup>. In particular, recommendation 39 seeks to provide better protection of victims of sexual harassment who are witnesses in civil proceedings.

The protections also support broader public interests in promoting workplace safety, accountability, and access to justice. The amendment introduces targeted measures to support complainants, including:

- screening the accused from the witness
- restricting direct cross-examination by self-represented accused persons
- allowing support persons
- enabling closed court hearings and pre-trial evidence
- permitting audiovisual testimony
- prohibiting publication of the complainant's identity
- recognising family violence as relevant evidence, and
- excluding sexual reputation evidence.

These measures are designed to reduce re-traumatisation, intimidation, and disengagement, while enhancing access to justice and the quality of evidence. By modifying traditional courtroom procedures, the amendment promotes fairness and

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<sup>2</sup> [Evidence \(Miscellaneous Provisions\) Amendment Bill 2024](#).

<sup>3</sup> [Respect@Work: Sexual Harassment National Inquiry Report \(2020\)](#).

encourages reporting of misconduct, supporting the broader public interest in workplace safety and accountability.

### **3. *Rational connection between the limitation and the purpose (s28(2)(d))***

The amendment introduces special protections for complainants in WHS proceedings involving alleged sexual misconduct, such as shielding them from direct cross-examination or limiting the admissibility of certain evidence. These measures mirror safeguards already available in criminal sexual offence matters, ensuring consistency and fairness across legal contexts. While these protections may limit certain rights of the accused, particularly those typically afforded in criminal proceedings, they are rationally connected to the objective of protecting vulnerable witnesses from trauma and enabling their meaningful participation in legal processes. Stakeholder feedback has revealed that victims are less likely to make a complaint if they cannot be guaranteed anonymity.

This connection is further supported by the EMP Act, which already contains provisions which afford special protections in sexual offence proceedings in other areas such as family violence proceedings. These provisions have proven effective in supporting complainants through trauma-informed processes and ensuring procedural fairness. The amendment builds on this foundation by extending similar protections to WHS proceedings, thereby addressing a recognised gap in the current framework.

Consultation feedback from justice stakeholders also demonstrated strong support for the amendment, affirming that these special measures would enhance access to justice and workplace safety. The ACT's Sexual and Gender-based harassment Code of Practice 2024<sup>4</sup>, issued under the WHS Act, reinforces this approach by recognising sexual harassment as a psychosocial hazard, placing it on equal footing with physical risks. This further aligns with WHS commitments to ensure ethical conduct, psychological safety, and inclusive workplace culture.

### **4. *Proportionality (s28(2)(e))***

The purpose of the amendment which extends special protections to complainants in WHS proceedings is proportionate to the potential limitations it places on rights in criminal proceedings. While these measures may restrict certain procedural rights of the accused, such as direct cross-examination or the admissibility of specific evidence, they are carefully targeted to address a legitimate and pressing concern: protecting vulnerable witnesses from re-traumatisation and enabling meaningful participation in legal processes. Although the measures may limit the accused's right to equality before the law, they are designed to respond to the unique vulnerabilities of complainants in sexual offence proceedings, particularly in workplace contexts where power imbalances may exist.

Importantly, the core elements of a fair trial remain intact, and the measures are designed to balance the rights of both parties. As such, the limitations are not

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<sup>4</sup> [Work Health and Safety \(Sexual and Gender-Based Harassment Code of Practice\) Approval 2024 | Notifiable instruments](#)



excessive and represent a proportionate response that upholds justice, dignity, and workplace safety.

The EMP Act amendments introduce special measures that apply only in WHS proceedings involving suspected sexual assault or harassment, and only where the court determines they are necessary in the interests of justice. These include:

- screening the accused from the witness
- restricting direct cross-examination by self-represented accused persons
- allowing support persons
- closed court hearings and pre-trial evidence
- audiovisual testimony
- prohibition on publishing the complainant's identity
- recognition of family violence as relevant evidence
- exclusion of sexual reputation evidence, and
- protection of counselling communications.

These measures provide parity with protections available under EMP Act for other proceedings involving sexual offending, violent offences and family violence. They are tailored to the specific context of WHS cases involving sexual assault and harassment. They help create a safer and more supportive environment for complainants, uphold the integrity of proceedings, and reinforce accountability in workplace safety. This also sends the message that sexual offences are unacceptable, and that victims are entitled to support to give evidence without fear or intimidation, retribution or re-traumatisation, regardless of where the offending took place.

However, the amendments do not remove rights in criminal proceedings but limit them in a targeted way to protect the dignity, safety, and participation of vulnerable complainants. Other elements of rights in criminal proceedings and the right to a fair trial such as the right to be heard, to present a defence, and to have the matter determined by an impartial court remain unaffected by the amendment.

#### EMP Act amendments – Right to a fair trial

##### **1. Nature of the right and the limitation (s28(2)(a) and (c))**

The right to a fair trial is a cornerstone of civil and political rights, ensuring that individuals are treated with justice and procedural fairness in legal proceedings. However, under section 28(a) and (c) of the HR Act, this right is not absolute and may be subject to reasonable limitations where necessary to achieve a legitimate objective. The Bill amends the definition of “complainants” and broadens the scope of “sexual offence proceedings” under the EMP Act. As a result, all special protections typically afforded in sexual offence matters, such as but not limited to the use of alternative arrangements for giving evidence and prohibition of information that would reasonably identify a person, are now extended to proceedings under the WHS framework. While these measures aim to prevent further harm to vulnerable witnesses, their blanket application may limit the accused's right to a fair trial by

restricting traditional cross-examination methods and altering the standard procedures for presenting and testing evidence.

Any limitation on the right to a fair trial including differentiated protections for complainants, are narrowly applied and tailored to the specific nature of WHS proceedings. These limitations are designed to address vulnerability and power imbalances without undermining the overall fairness of the process. All special protections provided to a complainant in a sexual offence proceeding will be afforded to a complainant in a relevant WHS proceedings through the new definition. These protections include those relating to a complainant within table 43.4 of the EMP Act.

Each special measure/ protection afforded under this amendment and the possible limitation of rights to a fair trial impacted are assessed below:

Accused person may be screened from witness in court	Allowing the accused person to be screened from the witness in WHS proceedings involving alleged sexual misconduct may limit the right to a fair trial by altering the traditional courtroom setup, where the accused can see and be seen by the witness. This could be perceived as affecting the accused's ability to fully observe the witness's demeanour or to participate in their defence.
No examination of witness by self-represented accused person	Prohibiting a self-represented accused person from directly cross-examining a witness in WHS proceedings involving alleged sexual misconduct may limit the right to a fair trial by restricting the accused's ability to personally challenge the evidence. This could be seen as interfering with their control over their defence.
Witness may have support person in court	Limiting a witness in WHS proceedings to having a support person in court can impact the right to a fair trial if it creates an imbalance between parties, influences testimony, restricts cross-examination, or affects perceptions of impartiality. While support persons are intended to help vulnerable witnesses participate effectively, any restriction or unequal application of this allowance must be carefully managed to ensure both parties maintain equal footing and that the integrity of the evidence and proceedings is preserved.
Evidence to be given in closed court	The limitation that evidence may be given in a closed court during WHS proceedings can impact the right to a fair trial by restricting public scrutiny and transparency, which are key elements of procedural fairness. While it is recognised that courts may exclude the public for reasons like protecting vulnerable witnesses, national security, or the interests of justice, such measures must be strictly necessary and proportionate. Closing a court can undermine the principle of open justice, which ensures that justice is not only done but seen to be done. If not carefully justified, it may lead to perceptions of bias, limit accountability, and reduce trust in the legal process.

Giving evidence at pre-trial hearing	Allowing witnesses to give evidence at a pre-trial hearing in WHS proceedings can impact the right to a fair trial if it compromises key protections such as the presumption of innocence, the right to silence, or the ability to fully test evidence. While pre-trial hearings are often used to streamline proceedings and reduce delays, they may place undue pressure on witnesses or the accused to disclose their case prematurely, potentially affecting trial strategy. If evidence is taken before the full trial context is established, it may be harder for the defence to challenge it effectively, especially if procedural safeguards (like cross-examination rights or access to full disclosure) are limited.
Giving evidence by audiovisual link (AVL)	Allowing witnesses to give evidence by AVL can affect the quality of testimony, the effectiveness of cross-examination, or the perception of credibility. While AVL is increasingly accepted, especially post the Covid-19 pandemic, it does not replicate the full solemnity or dynamics of a courtroom. Technical issues, delays, or lack of access to documents during AVL sessions can also hinder the defence's ability to challenge evidence effectively. Moreover, if AVL is used without proper justification (e.g. the witness is not genuinely unavailable), it may unfairly disadvantage one party.
Prohibition of publication of complainants' identity	Prohibiting the publication of a complainant's identity in WHS proceedings can limit the right to a fair trial by restricting the defence's ability to investigate and gather evidence, especially if the identity is essential to verifying facts or locating witnesses. While such measures protect privacy and safety, they must be carefully balanced to ensure they do not compromise transparency, procedural fairness, or the accused's ability to mount a full defence.
Evidence of family violence may be relevant evidence	Allowing evidence of family violence to be considered relevant in WHS proceedings can limit the right to a fair trial if it introduces prejudicial information that distracts from the specific facts of the case or unfairly influences perceptions of the accused. While such evidence may provide important context, it must be directly relevant and carefully managed to avoid undermining the presumption of innocence or procedural fairness.
Immunity of sexual reputation	Prohibiting the use of a complainant's sexual reputation as evidence in WHS proceedings can limit the right to a fair trial if it prevents the defence from presenting information that may be relevant to credibility or context. While this measure protects complainants from unfair character attacks, it must be carefully balanced to ensure it does not exclude evidence that is genuinely probative and necessary for a fair defence.

## **2. Legitimate purpose (s28(2)(b))**

Broadening the protections to apply in relevant WHS proceedings are designed to protect vulnerable individuals, promote participation in the justice process, and address power imbalances in workplace settings. These measures aim to uphold the integrity of the proceedings and ensure that complainants can give evidence safely and effectively, which is a legitimate objective in a regulatory framework focused on workplace safety and accountability. While these limitations may affect aspects of the right to a fair trial, they are directed at achieving a necessary and proportionate balance between the rights of the accused and the broader public interest in safe and just workplaces.

The amendment serves a legitimate purpose by enhancing protections for vulnerable complainants in WHS sexual offence proceedings. It responds to a pressing social concern namely, the underreporting of workplace sexual misconduct due to inadequate procedural safeguards and aims to prevent re-traumatisation during legal processes. By addressing psychosocial hazards in the workplace, the amendment aligns with broader WHS and human rights objectives. While it introduces differentiated procedural protections that may appear to limit equality for other parties (such as accused persons or duty holders), these measures are necessary to address vulnerability and power imbalances, rather than to confer unfair advantage.

It is recognised, for example, that a closed court may impact the right to a fair trial because it limits public scrutiny and transparency of proceedings, which are generally fundamental to ensuring accountability and procedural fairness. Similarly, giving evidence via AVL may affect the right to a fair trial by reducing the immediacy and effectiveness of cross-examination, and potentially influencing the perception of credibility of a witness. However, each special requirement such as use of closed courts, AVL testimony, and ability to have a support person, positively impacts the complainant by reducing trauma, protecting privacy, and creating a safer environment for participation. These measures are designed to support vulnerable individuals, particularly in sexual offence proceedings, by minimising re-traumatisation and enabling more confident and accurate testimony, thereby enhancing access to justice.

### **3. *Rational connection between the limitation and the purpose (s28(2)(d))***

Extending protections akin to those already protected under the EMP Act to WHS proceedings, are rationally connected to the legitimate and pressing objective of ensuring that victim-survivors can give evidence without fear, re-traumatisation or intimidation. The amendments are necessary to uphold the fair administration of justice and protect the dignity of those involved.

Enabling special protections to complainants in WHS proceedings involving sexual assault or harassment is likely to increase participation, help reduce trauma and improve justice outcomes by creating a safer and more supportive environment for vulnerable individuals. The amendment aligns with trauma-informed legal practice and reinforces the ACT Government's commitment to fostering safe and respectful workplaces, particularly in contexts where power imbalances may deter reporting. A National Survey undertaken in 2018 indicated that 33% of people who had been in the workforce in the previous five years said they had experienced workplace sexual

harassment.<sup>5</sup> However, the number of WHS proceedings dealing with alleged sexual misconduct does not reflect this percentage and have been nominal.

Without such protections, witnesses may be deterred from giving evidence, undermining both the integrity of the process and the pursuit of justice in sensitive WHS matters. Findings from a report conducted by the Sexual Assault Prevention and Response Steering Committee<sup>6</sup> illustrated that victim survivors reflected on their interactions with the justice system which almost deterred them from reporting and pursuing an investigation altogether. Further, victim survivors spoke of the need for specialist training on the nature of sexual violence and trauma-informed practice in responding to disclosures. The consultation found that many victim survivors experienced lengthy timeframes with police investigation and criminal prosecution and these delays compounded the trauma they had experienced.

#### **4. Proportionality (s28(2)(e))**

The inclusion of protections including screening the accused from the witness, prohibiting direct cross-examination by self-represented accused persons, allowing support persons, and enabling evidence to be given via AVL or in closed court, are designed to reduce trauma, address power imbalances, and support vulnerable complainants. Each measure is narrowly applied and tailored to the specific context of WHS proceedings, ensuring that the overall fairness of the process is preserved. While these provisions may alter traditional courtroom dynamics or limit certain defence strategies, they are balanced by safeguards that maintain procedural integrity, such as judicial oversight, the right to legal representation, and the ability to challenge evidence.

The prohibition on publishing a complainant's identity and the exclusion of sexual reputation evidence further protect privacy and dignity without unduly compromising the accused's ability to mount a defence. The inclusion of family violence evidence is subject to judicial discretion, ensuring it does not unfairly prejudice the proceedings.

The EMP Act amendment introduces targeted procedural protections for complainants in WHS proceedings involving sexual assault or harassment, which are specifically designed to reduce trauma and encourage reporting. These protections are narrowly applied and do not alter the substantive rights or legal standing of other parties, such as the accused or duty holders. Given the sensitive nature of these proceedings and the well-documented barriers to reporting workplace sexual misconduct, the amendment represents a proportionate response to a serious and systemic issue. Such barriers include fear of repercussions, lack of trust in the reporting mechanisms, psychosocial hazards and trauma, privacy concerns and complexity of legal and procedural pathways<sup>7</sup>.

The extent of the limitation is narrow and targeted. It applies specifically to WHS proceedings involving sensitive allegations of a sexual nature and does not

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<sup>5</sup> Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) 26.

<sup>6</sup> [Listen, Take Action to Prevent, Believe and Heal – presented to the ACT Government by the Sexual Assault Prevention and Response Steering Committee.](#)

<sup>7</sup> [Workplace sexual assault - WorkSafe ACT.](#)

undermine the fairness of the legal process. Instead, it enhances procedural equity by ensuring that complainants are not disadvantaged due to the nature of the forum in which their matter is heard. Therefore, the amendment is the least rights-restrictive means reasonably available to achieve its legitimate objective, while maintaining fairness and integrity in the legal process. Further, these court protections currently require an application to be made before they can be applied. The proposed amendments aim to remove that requirement, allowing the protections to be automatically applied in cases involving victim-survivors with similar experiences. This approach is proportionate and justified, as the protections are specifically tailored to the context of WHS proceedings involving suspected sexual assault or harassment, and judicial oversight ensures fairness is upheld.

This approach balances the rights of the accused with the need to maintain the dignity, safety, and participation of witnesses. The protections are also consistent with existing practices in other sensitive jurisdictions, such as family violence and sexual offence proceedings, reinforcing their appropriateness and proportionality in the WHS context. Outlined below is the rationale as to why the limitation is reasonable for each circumstance and special measure afforded.

Accused person may be screened from witness in court	Facilitating the accused to be screened from the witness in WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. It protects vulnerable complainants from further trauma while preserving the accused's core rights, including being present, hearing the evidence, and challenging it through legal representation. Judicial discretion ensures the measure is applied only when necessary, ensuring it remains a justified and minimal interference with fair trial rights.
No examination of witness by self-represented accused person	Prohibiting a self-represented accused person from directly cross-examining a witness in WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. This restriction protects vulnerable witnesses from potential re-traumatisation or intimidation, while still allowing the accused to test the evidence through a court-appointed intermediary or legal representative. The measure preserves the fairness of the trial by ensuring the accused can challenge the evidence, while balancing the need to maintain the dignity and wellbeing of complainants in sensitive cases.
Witness may have support person in court	Allowing a witness to have a support person present in court during WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. This measure helps reduce stress and trauma for vulnerable witnesses, promoting their ability to give clear and reliable evidence. It does not interfere with the accused's ability to hear, challenge, or respond to the evidence, and therefore maintains the fairness of the proceedings while balancing the need to protect the wellbeing of complainants.

Evidence to be given in closed court	Requiring evidence to be given in a closed court during WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. This measure protects the privacy and emotional wellbeing of vulnerable witnesses, encouraging them to give clear and complete evidence. It does not restrict the accused's ability to be present or to challenge the evidence, ensuring that the fairness of the trial is maintained while balancing the need for a safe and respectful environment.
Giving evidence at pre-trial hearing	Facilitating this special measure is a proportionate limitation on the right to a fair trial. This measure helps assess the admissibility and relevance of sensitive evidence in a controlled setting, reducing the risk of unnecessary trauma to vulnerable witnesses during the main trial. It does not prevent the accused from participating in the hearing or challenging the evidence, ensuring procedural fairness is maintained while supporting the integrity and efficiency of the trial process.
Giving evidence by audiovisual link	This measure supports vulnerable witnesses by reducing the stress and potential trauma of appearing in person, while still enabling the accused to hear and challenge the evidence. It maintains the integrity of the trial process and ensures procedural fairness, while balancing the need to protect the wellbeing of complainants in sensitive cases. Therefore, allowing a witness to give evidence by audiovisual link in WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial.
Prohibition of publication on complainants' identity	Prohibiting the publication of a complainant's identity in WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. This measure protects the privacy, dignity, and safety of vulnerable individuals, encouraging reporting and participation in legal processes without fear of public exposure or stigma. It does not interfere with the accused's ability to access the evidence or challenge the complainant's testimony, ensuring that the fairness of the trial is preserved. The restriction is narrowly focused and serves a legitimate objective, making it a justified and balanced limitation in sensitive proceedings.
Evidence of family violence may be relevant evidence	Recognising evidence of family violence as relevant in WHS proceedings involving alleged sexual misconduct is a proportionate limitation on the right to a fair trial. This measure allows the court to consider patterns of behaviour that may contextualise the alleged misconduct, supporting a fuller understanding of the circumstances without prejudicing the accused. It does not remove the accused's right to challenge the evidence or receive a fair hearing, and its use is subject to judicial oversight to ensure relevance and fairness. This targeted approach balances the need to protect

	vulnerable complainants with the preservation of procedural justice.
Immunity of sexual reputation	This measure prevents irrelevant and prejudicial information from undermining the credibility of the complainant or distracting from the core issues of the case. It supports the integrity of the proceedings and protects the dignity and privacy of the complainant, while still allowing the accused to challenge relevant evidence through fair and lawful means. The restriction is narrowly applied and subject to judicial discretion, ensuring a balanced approach that upholds both fairness and protection.



## CLAUSE NOTES

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause provides the name of the Act, being the *Workplace Legislation Amendment Act 2025 (No 2)*.

#### Clause 2 Commencement

This clause provides for commencement of the Act, noting that:

- the Act (other than Part 2) commences on the day after its notification day, and
- Part 2, which amends the *Evidence (Miscellaneous Provisions) Act 1991* commences on the 7<sup>th</sup> day after its notification day.

#### Clause 3 Legislation amended

This clause lists the legislation which the Act amends including:

- *Evidence (Miscellaneous Provisions) Act 1991*, and
- *Workers Compensation Act 1951*.

### Part 2 Evidence (Miscellaneous Provisions) Act 1991

#### Clause 4 Meaning of *sexual offence proceeding*—ch4

##### **Section 41, definition of *sexual offence proceeding*, new paragraphs (d) and (e)**

This provision establishes the relevant offences against the *Work Health and Safety Act 2011* that are captured under the meaning of a sexual offence proceeding. It also expands the definition of what constitutes a “sexual offence proceeding”.

#### Clause 5 New section 41A

This provision clarifies how references to an “accused person” apply in workplace proceedings involving sexual offences. If the duty holder is also the alleged perpetrator of alleged sexual misconduct, special protections for the complainant apply which mirror those in criminal sexual offence cases. The special protections include:

- section 47(1) – court may order for the accused person to be screened from the witness while giving evidence
- section 60(6)(a) and (b) – relates to the ability for a witness to give their evidence in a pre-trial hearing by AVL link
- section 68(5)(a) and (b) – giving evidence by AVL link and states that the accused person must not be at the external place where the witness is giving evidence and requires that the witness must not be able to see or hear the accused person during their testimony
- section 76(2) – general immunity of evidence of a complainant’s sexual activities, and

- section 80C – specific directions regarding implied consent by a judge if there is a jury involved in the proceedings.

Even if the duty holder is not the alleged perpetrator, existing safeguards ensure complainants are protected from harm or traumatisation during proceedings.

**Clause 6      Section 42, definition of *complainant***

This provision substitutes the definition of “complainant” to also include for the purposes of a sexual offence proceeding, a person against whom a sexual assault or an act of a sexually offensive, intimidating or humiliating nature is suspected or alleged, or has been found, to have been committed. This addition captures the intended policy of broadening special protections to complainants to those within the work, health and safety content. It is intended that the broadening of these provisions is only afforded to the victim/complainant of the conduct and not to other witnesses.

**Part 3          Workers Compensation Act 1951**

**Clause 7      Section 145K**

This amendment provides that employers, other than those prescribed, must hold a self-insurer licence or maintain a compulsory insurance policy with a licensed insurer. Prescribed employers must also hold a self-insurer licence for non-prescribed workers unless covered by a compulsory insurance policy, ensuring all workers are appropriately insured.

**Clause 8      Failing to hold a self-insurer licence**

**Section 145S (1) (b)**

This is a consequential amendment to provide for who commits an offence for failing to hold a self-insurer licence. This provision excludes a person if they hold a compulsory insurance policy with a licensed insurer or if they are a prescribed employer that employs only prescribed workers.

**Clause 9      Section 145S (1), note**

This section note has been omitted.

**Clause 10     Compulsory insurance—employers  
New Section 147 (2) (e)**

This subsection excludes prescribed employers who employ only prescribed workers from this section that deals with employers who do not hold a compulsory insurance policy issued by a licensed insurer.

**Clause 11     Purpose of DI fund  
Section 166A (2) and note**

This amendment provides that the DI Fund must meet the costs of compensation to an injured worker whose employer does not have compulsory insurance policy, and where the employer is a prescribed employer and the injured worker is a prescribed worker.

## **Clause 12 Section 166A (4) and note**

This amendment substitutes the existing provision providing for the requirement of the DI Fund to meet the cost of an employer's liability that arises in relation to an injury or death of a worker by paying an amount that satisfies or discharges the liability to a person entitled to the amount in two circumstances, being:

- the employer of the worker does not have a compulsory insurance policy to cover the liability, or
- the employer is a prescribed employer, and the worker is a prescribed worker.

## **Clause 13 New division 8.2.2A**

This provision enables the Executive to determine the class of employers that may be a prescribed employer, the class of workers to be prescribed, the application process and conditions including the duration of time an employer may be a prescribed employer. The determination is a notifiable instrument, designed to facilitate transparency and administrative oversight.

This amendment allows the Executive to determine fees payable by prescribed employers for the administration of the DI fund. The determination is a disallowable instrument which ensures it is subject to oversight by members of the Legislative Assembly.

This provision allows an employer who employs prescribed workers to apply to the DI fund manager to become a prescribed employer for a specified period. The application must include an estimate of workforce and wages, along with any other information required by regulation.

This provision sets out the process for assessing applications to become a prescribed employer. The DI fund manager must approve applications where eligibility and required information are provided, may revoke prescribed status if conditions are breached, and must notify the employer in writing of any such decision.

This provision provides transitional arrangements for employers approved as prescribed employers between the commencement date and the end of February 2026. It ensures that the provisions apply to those employers and their prescribed workers in relation to any injuries occurring from the commencement date onwards.

## **Clause 14 Who may make a claim for payment Section 170 (3) (b)**

This amendment clarifies that an employer may be liable under section 170 of the *Workers Compensation Act 1951* if they do not hold a compulsory insurance policy for the injured worker, or if they are not a prescribed employer and the injured worker is not a prescribed worker.

## **Clause 15 Dictionary, new definitions**

This amendment provides definitions for “prescribed employer” and “prescribed worker”.