

2016

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

WORKPLACE PRIVACY AMENDMENT BILL 2016
Amendments to be moved by the
Minister for Justice and Consumer Affairs

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by
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Minister for Justice and Consumer Affairs

WORKPLACE PRIVACY AMENDMENT BILL 2016

Introduction

This explanatory statement relates to a further amendment to the *Workplace Privacy Amendment Bill 2016* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. 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, and is not meant to be, a comprehensive description of the Bill.

Purpose of the Bill

In February 2016, the Minister for Justice and Consumer Affairs, Mr Shane Rattenbury MLA, tabled the report on the review of the *Workplace Privacy Act 2011* (the WPA). The purpose of the review was to identify any need for legislative changes to improve the operation of the WPA, which recognises an employer's need to take reasonable steps to protect their business and monitor their workplace without unreasonably impinging on a worker's right to privacy.

The Bill contains legislative amendments required to implement the review recommendations, including to:

- i) transfer responsibility for enforcement of the WPA from ACT Policing to the ACT Work Safety Commissioner;
- ii) extend the powers of authorised inspectors appointed under the *Work Health Safety Act 2011* (the WHS Act) to offences under the WPA;
- iii) allow employers to apply to the Magistrates Court for an authority to conduct surveillance of employees outside the workplace;
- iv) remove notice requirements for tracking devices where it would be unduly difficult to affix a notice to the device, and where the employer has taken appropriate action to notify workers of the device's tracking capability;
- v) amend the WHS Act to include WPA-related matters as matters on which the Work Safety Council may advise the Minister; and
- vi) amend the *Magistrates Court Act 1930* to grant the Industrial Court jurisdiction to hear and decide a proceeding under the WPA.

Outline

Background

The government amendment inserts new clause 12A into the Bill which provides for new section 34A of the WPA.

Section 34A requires a review of provisions allowing an employer to apply for and conduct covert surveillance of an employee outside the workplace. The review will be required after two years of the relevant provisions' operation.

This amendment introduces a further mechanism to guarantee that covert surveillance outside the workplace does not unduly infringe on an employee's right to privacy under section 12 of the *Human Rights Act 2004* (HRA). The amendment will also require an evaluation of the new provisions' operation in practice and provide a means by which to identify any necessary or recommended improvements.

Human Rights considerations

The government amendment will promote section 12 of the HRA – the right to privacy and reputation, by recognising the right of people not to have their privacy, family and home interfered with unlawfully or arbitrarily. By providing for a review of the provisions allowing covert surveillance of an employee outside the workplace after two years, the Government will be required to assess whether this capability imposes a proportionate and justifiable limitation on an employee's right to privacy.

Clause notes

Amendment 1 (proposed new clause 12A) inserts a new clause to provide that the Government must review the operation of provisions relating to covert surveillance of an employee outside the workplace after two years' operation of those provisions.