

Gonczarek, Melinda

From: Speaker
Sent: Monday, 15 August 2022 7:22 AM
To: Agius, Jacqueline
Cc: O'Connor, Meaghan; Burch, Joy; Duncan, Tom
Subject: Prohibition Notice
Attachments: Prohibition_Notice_N-0000005068.pdf; Letter to WHS Commissioner 150822.pdf

Dear Commissioner,

Please find a letter in response to the Prohibition Notice served on me as Speaker on Friday evening.

Please note the letter asks for your reply by 10.15am today.

Joy Burch MLA
Speaker





Speaker

Ms Jacqueline Agius
Work Health and Safety Commissioner
Jacqueline.agius@act.gov.au

Dear Commissioner,

I write in relation to the service, by your office, of prohibition notice N-0000005068 (the notice), on me in my role as Speaker of the Legislative Assembly for the Australian Capital Territory.

The notice purports to prohibit:

Undertaking any hearings or committee meetings at Legislative Assembly of the Australian Capital Territory until a risk assessment has been undertaken, adequate control measures are implemented in line with the Hierarchy of Control, and consultation has been undertaken with all affected workers.

The terms of the notice are profoundly misconceived as a matter of law, represent a grave threat to the privileges of the Assembly, and could quite possibly amount to a contempt of the Assembly.

By the terms of the notice, you purport to have a power to restrain all the Assembly's select and standing committees from performing their core scrutiny and accountability functions on behalf of the Assembly, under threat of a fine for non-compliance and until actions specified by you are fulfilled to your satisfaction.

Such a proposition is entirely without merit. The action taken by you cuts directly across the separation of powers between the legislative and executive arms of government and, on its face, seeks to upend the exclusive cognisance of the Assembly to exercise control over its proceedings.

The Assembly has an inherent power of inquiry, which is predominantly exercised through its committees. Through Assembly standing orders, committees also have the power to call for papers, persons and records. Neither the general power of inquiry, nor committees' powers under standing orders can be displaced by your exercise of powers under the *Work Health and Safety Act 2011* (WHS Act). Were the Assembly to have envisaged that the powers of the Commissioner could be exercised in such a manner, express statutory provision would have been required.

These are matters of deep constitutional significance.

It is particularly egregious for a government agency to issue such a notice at a time when the Select Committee on Estimates 2022-2023 is commencing its scrutiny of the ACT Executive.

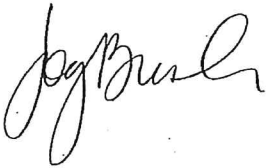
Setting aside issues relating to parliamentary privilege and the appropriate separation of powers, there are a number of technical and merits issues that arise in connection with the way in which the relevant powers under the WHS Act have been exercised and the terms of the notice itself.

While the WHS Commissioner fulfills important regulatory functions, these functions do not take precedence over the effective performance of the Assembly's legislative, representative, and accountability functions. I would be willing to enter a general dialogue with you at some later point about managing these tensions between the executive and the legislature.

Given the concerns I have raised, I would respectfully ask that you withdraw the notice.

Should the notice not be withdrawn by 10.15am on Monday 15 August 2022, I will be duty bound to consider taking action in the ACT Supreme Court to have the notice set aside.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joy Burch', written in a cursive style.

Joy Burch MLA
Speaker
Legislative Assembly for the ACT

15 August 2022