

## Gonczarek, Melinda

---

**From:** Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>  
**Sent:** Thursday, 18 August 2022 7:30 PM  
**To:** Burch, Joy; Speaker  
**Subject:** Request to the Work Health and Safety Commissioner to withdraw Prohibition Notice  
**Attachments:** Letter from Aaron Guilfoyle to Joy Burch MLA dated 18 August 2022.pdf

**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. [Learn why this is important](#)

Dear Madam Speaker,

Letter **attached**.

Regards,

**Aaron Guilfoyle**  
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. A.Guilfoyle@macdonnells.com.au

**MACDONNELLS LAW**  
**MACDONNELLS.COM.AU**

---

*Individual Liability Limited by a scheme approved under professional standards legislation.*

**Important Message** – Due to the increase in scams involving transferring of money between bank accounts and credit cards, we strongly advise that you **ALWAYS** contact us via phone to verify our bank account details, prior to you making a deposit. If we change our bank account details we will contact you by phone so please **DO NOT** act on any correspondence which suggests we have changed our account details without first phoning us.

This e-mail and any attachments to it are confidential and may contain legally privileged information. Unless expressly authorised by the sender, you must not use, disseminate, copy or distribute the information in this e-mail. If you are not the intended recipient, you have received this communication in error. In that case, please delete all copies of the e-mail immediately and contact MacDonnells either by return e-mail or telephone 07 3031 9700. We recommend that you scan this e-mail and any attachment for viruses before opening. MacDonnells does not accept any liability for any loss or damage incurred either directly or indirectly from opening this e-mail or any attachments to it.

Our Ref: AJG:AJG:220890

18 August 2022

Ms Joy Burch MLA  
Speaker of the Legislative Assembly  
Legislative Assembly for the ACT  
Civic Square  
London Circuit GPO Box 1020  
Canberra ACT 2601

By Email: [Speaker@parliament.act.gov.au](mailto:Speaker@parliament.act.gov.au); [Joy.Burch@parliament.act.gov.au](mailto:Joy.Burch@parliament.act.gov.au)

Dear Madam Speaker,

**Request to withdraw Prohibition Notice N-000005068**

1. We refer to your letter of 15 August 2022 to Work Health and Safety Commissioner, Ms Jacqueline Agius (the **Commissioner**), in which you respectfully requested that Commissioner Agius withdraw a prohibition notice issued on 12 August 2022.
2. We advise that we act for the Commissioner and write to respectfully respond to your letter and the request therein.
3. On 12 August 2022, Inspector O'Connor, an inspector duly appointed under the *Work Health and Safety Act 2011* (ACT) (the **Act**), attended at the precincts of the Legislative Assembly of the Australian Capital Territory (the **workplace**).
4. Inspector O'Connor issued a verbal instruction whilst at the workplace and, later that day, issued Prohibition Notice N-000005068 (the **Notice**) to the Legislative Assembly.
5. The Notice discloses that Inspector O'Connor believed that s19 of the Act was being, or was likely to be, contravened. The Notice further discloses the basis of the belief held by Inspector O'Connor in that respect, including:

"The Select Committee on Estimates 2022-23 (the Committee) has not undertaken a risk assessment in relation to the planned activity 'Estimates 2022-23 Hearings' and has not consulted, so far as is reasonably practicable, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by the activity."

6. Inspector O'Connor prohibited:

"[The] undertaking [of] any hearings or committee meetings at the 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".

7. Inspector O'Connor directed that the Legislative Assembly:

"1. Undertake a risk assessment in relation to face-to-face hearings or committee meetings at the Legislative Assembly of the Australian Capital Territory.

2. Develop and implement adequate control measures in line with the Hierarchy of Control pursuant to regulation 36 of the Work Health and Safety Regulation 2011.

3. Consult with all workers who are, or are likely to be, directly affected by the activity.

4. Provide evidence of the risk assessment, control measures, and consultation process having been undertaken..."

8. We note the following in your letter:

"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."

And, further:

"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." (our emphasis)

9. The power to issue notices under the Act, including prohibition notices under s195, vests in inspectors by virtue of their appointment as such under the Act. Section 195 prescribes preconditions to the issue of a prohibition notice, including that the inspector must reasonably believe that, "an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard." (see s195(1)(b) of the Act)

10. The belief must be personal to the inspector issuing the notice. As we note above, Inspector O'Connor spoke in the notice to her belief and to the basis or bases upon which that belief was formed.

11. Consistent with what appears on the face of the Notice, we are instructed the Commissioner neither issued the Notice, nor directed the Notice be issued.
12. The Commissioner is the regulator under the Act. In that capacity, the Commissioner may vary or cancel a prohibition notice issued by an inspector. (see s207(2) of the Act)
13. We are instructed that, subsequent to the receipt of your letter, the Notice was cancelled by the Commissioner. We are further instructed that Inspector O'Connor attended the workplace on the morning of 15 August 2022 and communicated that cancellation.
14. We note that whilst at the workplace, Inspector O'Connor gave a verbal instruction, and subsequently issued Prohibition Notice N-0000005078 (the **further Notice**) in terms consistent with that instruction.
15. The further Notice issue by Inspector O'Connor prohibited:

"Conducting committee hearings at the Legislative Assembly of the Australian Capital Territory, *at which participants attend in person*, 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." (our emphasis)

16. We are instructed the further Notice remains in force, but that consideration is currently being given to the lifting of that notice.

Yours faithfully

**MacDonnells Law**



**Contact:** Aaron Guilfoyle  
**Position:** Special Counsel  
**Direct:** +61 7 3031 9878  
**Email:** AGuilfoyle@macdonnells.com.au

