

Chronology related to the Legislative Assembly – Jacqueline Agius

Date	Description	Annexure
11 August 2022	Telephone call from the Legislative Assembly	A. Notebook entry
11 August 2022	Email and attachments received from staffer seeking advice	B. Email and attachments
11 August 2022	Response to email from Jacqueline Agius	C. Email
11 August 2022	Email forwarded to Senior Director from Jacqueline Agius	D. Email
11 August 2022	Email reforwarded to Senior Director with attachments from Jacqueline Agius	E. Email
11 August 2022	Teams meeting complaint	F. Notebook entry
12 August 2022	Verbal update from Senior Director to Jacqueline Agius and Amanda Grey	G. Notebook entry
15 August 2022	Received email and correspondence from the Speaker of the Legislative Assembly	H. Email and attachment
15 August 2022	Discussion Senior Director	I. Notebook entry
15 August 2022	Direction to Inspectors	J. Notebook entry
15 August 2022	Email and correspondence received from Chair of the Select Committee on Estimates 2022 -2023	K. Email and attachment
15 August 2022	Verbal briefing from Senior Director	L. Notebook entry
15 August 2022	Emails correspondence between Senior Director, Committee Support, and Legal Counsel	M. Emails
16 August 2022	Emails and correspondence to Chair of the Select Committee on Estimates 2022-2023	N. Email and attachment

Chronology related to the Legislative Assembly – Jacqueline Agius

17 August 2022	Email and correspondence to Chair of the Select Committee on Estimates 2022-2023	O. Email and attachment
17 August 2022	Email and correspondence from Chair of the Select Committee on Estimates 2022-2023	P. Email and attachment
18 August 2022	Email from the Select Committee on Privileges 2022 with attached letter from the Chair of the Select Committee on Privileges	Q. Email and attachment
18 August 2022	Email to the Speaker of the Assembly with attachments and response	R. Emails with attachments
18 August 2022	Email forwarded to Brooke Grey	S. Email
18 August 2022	Email and Attachment to the speaker of the Assembly	T. Emails and attachments

T/E.

- All present

1. No deal in for estimates
2. Seeking advice \Rightarrow will email for advice + JA to forward to responsible manager
3. No risk-assessment - no consultation, not enough info - to email information for advice

~~Amber - 10/11/17~~

From: [Agius, Jacqueline](#)
To: [REDACTED]
Cc: [Grey, Amanda](#); [REDACTED]
Subject: RE: Correspondence from Minister Gentleman
Date: Thursday, 11 August 2022 5:28:27 PM
Attachments: [image003.png](#)
[image009.png](#)

OFFICIAL

Dear [REDACTED]

Thank you for your email. I will forward your email to our compliance and enforcement team for assessment. This team manage complaints to our office. They will contact you about this matter shortly.

Kind regards

Jacqueline Agius |Work Health and Safety Commissioner
|Labour Hire Licence Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: [REDACTED]
Sent: Thursday, 11 August 2022 4:31 PM
To: Agius, Jacqueline <Jacqueline.Agius@worksafe.act.gov.au>
Cc: Grey, Amanda <Amanda.Grey@worksafe.act.gov.au>; [REDACTED]
Subject: FW: Correspondence from Minister Gentleman
Importance: High

Good afternoon Commissioner

The Minister is currently engaging with the Assembly Select Committee on Estimates regarding hearing arrangements. The committee, as outlined in their letter attached, is insisting on all witnesses appearing in person. We have significant concerns, as outlined in the Minister's response, about how the committee will meet WHS obligations in the current COVID situation. I've also attached the photo from a recent hearing that Minister refers to in his letter.

Would appreciate any further WHS advice you have on this matter.

Many thanks

[REDACTED]

From: GENTLEMAN
Sent: Thursday, 11 August 2022 2:40 PM
To: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Cc: BURCH <BURCH@parliament.act.gov.au>
Subject: RE: Correspondence from Minister Gentleman
Importance: High

Good afternoon

Please find attached further correspondence from Minister Gentleman regarding estimates hearing arrangements.

Regards

[REDACTED]

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Thursday, 11 August 2022 12:34 PM
To: GENTLEMAN <GENTLEMAN@act.gov.au>

[REDACTED]

Subject: RE: Correspondence from Minister Gentleman

OFFICIAL

Good afternoon [REDACTED]

Please find attached the Chair's response to Minister Gentleman's letter.

Regards,

Dr David Monk
Senior Director, Committee Support
Office of the Legislative Assembly
02 620 50129
david.monk@parliament.act.gov.au
www.parliament.act.gov.au

From: GENTLEMAN <GENTLEMAN@act.gov.au>
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Importance: High

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Regards

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Subject: Correspondence from Minister Gentleman

Dear Committee

Please find attached correspondence from Minister Gentleman.

Kind regards

Office of Mick Gentleman MLA
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety
Manager of Government Business
Member for Brindabella

P: +61 6 620 50218 | Legislative Assembly Building, London Circuit, Canberra, ACT 2601 | GPO Box 1020, Canberra, ACT 2601



ACT
Government





Mick Gentleman MLA

Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

James Milligan MLA

Chair

Select Committee on Estimates 2022-23

ACT Legislative Assembly

CANBERRA ACT 2601

By email: LACommitteeEstimates@parliament.act.gov.au

Dear Chair *JAMES*

I write in response to the most recent letter from the Committee concerning Estimates. I again express the Government's strong recommendation for the upcoming Budget Estimates Hearings to be offered in a hybrid manner. Hybrid attendance is warranted to permit those staff who are required to attend to choose whether they attend in person or virtually to support ongoing COVID-smart arrangements given current rates of community transmission and the uncertainty of the current situation.

The ACT Chief Health Officer continues to recommend ongoing adherence to COVID-smart behaviours such as physical distancing, mask wearing indoors and staying home when unwell. As recently as 8 August 2022, ACT Health have issued public health communications to continue to recommend mask wearing indoors. The Chief Health Officer has also extended the public health emergency in the ACT until 11:59pm on 30 September 2022 due to the uncertainty of the epidemiological situation. A hybrid offering of Budget Estimates Hearings will prevent crowding and enhance physical distancing for those attending face-to-face and reduce the burden on those staff required to implement COVID-smart controls during proceedings, such as through increased cleaning protocols of desks and equipment between staff attending the committee.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



+61 2 6205 0218



gentleman@act.gov.au



@GENTLEMANMick



MickGentleman



mick.gentleman

The ACT Government prides itself on being an inclusive employer, where people of all backgrounds are valued, included and safe in our workplaces.

By failing to offer our staff the option to attend hearings virtually, we are excluding valued and diverse members of our workforce who may be exposed to serious risk when attending due to their personal health status, the personal health status of their loved ones, or due to their own exposure to COVID-19, from participating in the hearings. The ACT Government is obligated under the *Work Health and Safety Act (2011)* as an employer to provide safe workplaces for our staff, including those who are at increased risk of serious illness during the COVID-19 pandemic. The transmission of COVID-19 is considered a foreseeable risk during the pandemic which requires employers to implement targeted risk management strategies to eliminate or reduce the risk of infection including through measures such as hybrid attendance.

Given the rates of infection in the ACT, it would be reasonable to conclude that transmission is at least possible, or indeed likely, at an event requiring large numbers of staff from across the Canberra region to attend face-to-face, share furniture and equipment, and speak in an enclosed space for prolonged periods. Those staff attending are in critical roles from across the Service, where their absence due to illness would have significant impacts on business continuity in workforces that are already stretched due to staff absences and increased service demand. Hybrid attendance would reduce the risk of large groups of staff, or an entire team, in our critical workforces from becoming unwell or being required to reduce their movement in the community after a high-risk exposure.

Requiring face-to-face attendance may disrupt proceedings where key information is unable to be provided in a timely manner during proceedings due to the absence of staff who would have otherwise been able to participate virtually and provide information immediately. This is likely to result in a large number of questions on notice, or a requirement to schedule additional Estimates sessions, which could place additional burden on other critical business operations in both the Assembly and the Government.

Noting assurances that COVID-smart arrangements will be in place such as physical distancing, I draw your attention to evidence that suggest that members of the assembly are unaware of, or noncompliant with, COVID-smart arrangements for workplaces. For example, a recent post by Mr Peter Cain MLA on his Twitter account posted on 9 August 2022 at 5:20pm shows a photograph of the Educational and Community Inclusion Committee's inquiry. This photo demonstrates that COVID-smart arrangements are not being consistently implemented, or indeed implemented at all, in the Legislative Assembly. In the photograph there is no visible evidence of physical distancing between members, masks are not being worn, there is no hand sanitiser visible, and members appear to be gathered in an enclosed space for what appears to be a prolonged period. This indicates a very limited understanding as to what is appropriate during this period of increased risk of transmission.

As MLAs we are role models in the local and regional community, including to businesses and employers in our region. Throughout the pandemic the Assembly has taken a non-partisan approach to expressing support for the best public health advice and work health and safety responsibilities in managing the spread of COVID-19. It is incumbent upon us as leaders in the region to model and

support those public health recommendations to reduce the risk, and as an employer to ensure work health and safety obligations are met and are demonstrated to our valuable staff.

Noting rates of transmission both in the community, and in ACT Government workplaces, and the well-known impacts this has had on business continuity, workforce attendance, service delivery and workload management, I would expect members to support modes that reduce the risk to our staff and the impacts on service delivery for our community.

I look forward to hearing from you that Budget Estimates Hearings will occur in a hybrid manner to those staff who are required to be available to answer the Committee's questions.

Yours sincerely



Mick Gentleman MLA
Manager of Government Business
Minister for Industrial Relations and Workplace Safety

11/8/2022

Cc: Speaker (burch@parliament.act.gov.au)



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair), Dr Marisa Paterson MLA

Mr Mick Gentleman MLA
Manager of Government Business
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Minister,

2022-23 Budget Estimates Hearings

Thank you for your letter of 8 August 2022 regarding arrangements for Estimates hearings.

The Committee have decided not to use budget outputs as a basis for the hearings schedule this year based on difficulties it has presented in the past. This includes the statement not being available in sufficient time for the hearings schedule to be developed. Use of budget outputs has also meant that the schedule becomes very detailed which resulted in complaints raised during the last hearings in relation to confusion about responsibilities/topics relating to particular outputs. This made it difficult for members to know what sessions to ask questions. This also meant that questions were not being able to be addressed at the time because the relevant officials were not present.

There is also the question on the appropriateness of requiring a Government document in order to effectively scrutinise the Government.

The Committee expects relevant officials to be in attendance at all times during a session in line with the administrative arrangements to avoid these problems occurring and to ensure that appropriate scrutiny is applied to the Estimates process in line with community expectations.

The Committee views COVID safety practices as a high priority and has asked the Secretariat to ensure appropriate measures have been put in place. This includes availability of hand sanitiser, disinfectant wipes and face masks, social distancing and a cleaner in the room to insure efficiency in cleaning between sessions/witnesses.

A number of rooms/spaces have been made available to facilitate social distancing with maximum numbers clearly labelled:

- In the Prince Edward Island room, up to five witnesses can be seated at the table, with 13 seats in the gallery.
- There are 18 seats in the Kiribati room and a TV for viewing proceedings: and
- There are three seats and standing room in the waiting area with a TV for viewing proceedings.

While Webex Boards were installed last week, staff are still testing and being trained in their use and this presents risks of disruption to proceedings. Overall, the Committee has decided that the hearings will be face to face where possible to provide effective scrutiny of the budget. The boards will be used as an exception

where required, such as for witnesses isolating due to COVID-19 or vulnerable to COVID-19. Priority is to be placed on Ministers and most senior officials to be in the Prince Edward Island room.

Thank you for raising these issues with the Committee and for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Milligan', with a stylized flourish extending to the right.

James Milligan MLA

Chair

11 August 2022



From: [Agius, Jacqueline](#)
To: [REDACTED]
Cc: [Grey, Amanda](#); [REDACTED]
Subject: RE: Correspondence from Minister Gentleman
Date: Thursday, 11 August 2022 5:28:27 PM
Attachments: [image003.png](#)
[image009.png](#)

OFFICIAL

Dear [REDACTED]

Thank you for your email. I will forward your email to our compliance and enforcement team for assessment. This team manage complaints to our office. They will contact you about this matter shortly.

Kind regards

Jacqueline Agius |Work Health and Safety Commissioner
|Labour Hire Licence Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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Subject: FW: Correspondence from Minister Gentleman
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Good afternoon Commissioner

The Minister is currently engaging with the Assembly Select Committee on Estimates regarding hearing arrangements. The committee, as outlined in their letter attached, is insisting on all witnesses appearing in person. We have significant concerns, as outlined in the Minister's response, about how the committee will meet WHS obligations in the current COVID situation. I've also attached the photo from a recent hearing that Minister refers to in his letter.

Would appreciate any further WHS advice you have on this matter.

Many thanks

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Cc: BURCH <BURCH@parliament.act.gov.au>

Subject: RE: Correspondence from Minister Gentleman

Importance: High

Good afternoon

Please find attached further correspondence from Minister Gentleman regarding estimates hearing arrangements.

Regards

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Sent: Thursday, 11 August 2022 12:34 PM

To: GENTLEMAN <GENTLEMAN@act.gov.au>

[REDACTED]
[REDACTED]

Subject: RE: Correspondence from Minister Gentleman

OFFICIAL

Good afternoon [REDACTED]

Please find attached the Chair's response to Minister Gentleman's letter.

Regards,

Dr David Monk

Senior Director, Committee Support

Office of the Legislative Assembly

02 620 50129

david.monk@parliament.act.gov.au

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Minister for Police and Emergency Services
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Manager of Government Business
Member for Brindabella

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ACT
Government



CANBERRA

From: [Agius, Jacqueline](#)
To: [Alford, Robert](#)
Cc: [Grey, Amanda](#)
Subject: FW: Correspondence from Minister Gentleman
Date: Thursday, 11 August 2022 5:36:06 PM
Attachments: [image003.png](#)
[image009.png](#)

OFFICIAL

Hi Bob

I have received the below email complaint from [REDACTED]. Could you manage this complaint in the usual way please?

Stay safe

Jacqueline Agius |Work Health and Safety Commissioner
|Labour Hire Licence Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



ACT
Government

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To: [REDACTED]
Cc: Grey, Amanda <Amanda.Grey@worksafe.act.gov.au>; [REDACTED]
Subject: RE: Correspondence from Minister Gentleman

OFFICIAL

Dear [REDACTED]

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Many thanks

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Good afternoon

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Regards

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Good afternoon [REDACTED]

Please find attached the Chair's response to Minister Gentleman's letter.

Regards,

Dr David Monk

Senior Director, Committee Support

Office of the Legislative Assembly

02 620 50129

david.monk@parliament.act.gov.au

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Member for Brindabella

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ACT
Government



CANBERRA

From: Alford, Robert
Sent: Friday, 12 August 2022 11:38 AM
To: O'Connor, Meaghan; Bowden, Narelle
Cc: Grey, Brooke
Subject: FW: Correspondence from Minister Gentleman
Attachments: Correspondence from Minister Gentleman MLA - Select Committee on Estimates 2022-23.pdf; Signed letter to Mr Gentleman on COVID arrangements - 11 August 2022.pdf; Image (002).jpeg

Importance: High

OFFICIAL: Sensitive

Meaghan and Narelle

As discussed can you please investigate aspects of this complaint as received by the complainant in the below email to the WHS Commissioner.

Kind Regards

Bob Alford | Senior Director - Industry Compliance & Enforcement
P: 02 6205 4261 | Mobile: 0434 851139 | E: robert.alford@worksafe.act.gov.au
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



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Sent: Thursday, 11 August 2022 5:45 PM
To: Alford, Robert <Robert.Alford@worksafe.act.gov.au>
Subject: FW: Correspondence from Minister Gentleman
Importance: High

OFFICIAL

Hi Bob

I am not sure why the attachments did not come through. They should come through now.

Cheers

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|Labour Hire Licence Commissioner
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Office of the Legislative Assembly

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Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety
Manager of Government Business
Member for Brindabella

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~~Factors~~ Teams
Complaint re Estimator

* Bob advised!

12/08/22

Bob Alfred

- Advised inspectors returned from LA - PN determined due to risk
- Inspectors received push back and treated poorly

* check inspectors - okay asked advice - AG present Ben P present - advised I cannot direct them

→ Asked Bob to carefully assess notice before approving

- AG

discussed email sent for LA - saying F2F hearings

Agius, Jacqueline

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

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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



PROHIBITION NOTICE

This is a Prohibition Notice issued under section 195 of the Work Health and Safety Act 2011

Information

Notice number N-0000005068

Issued By: Meaghan O'Connor

ID number: P50341

To whom this notice is issued

Name of registered individual: Australian Capital Territory

Business or trading name: Legislative Assembly for the Australian Capital Territory

ABN: 0

Registered Address: 196 London Circuit, Canberra, ACT suburb: state: postcode:

Site address: suburb: state: ACT postcode:

Method of service: Email

Served on: Joy Burch

Date of issue: 12/08/2022

A verbal instruction was issued on:

12/08/2022 03:08 PM

Description

The provision that the inspector believes is being, or is likely to be, contravened by the activity (s196(1)(c)) is **WHS Acts** Section number - **19**

You are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

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.

until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied (s195(2)). The inspector reasonably believes that grounds for the issue of this notice exist (s195(1)), i.e. (a) an activity is occurring at a workplace that involves, or will involve, a serious risk to the health or safety of a person emanating from an immediate exposure to a hazard; or (b) 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.

Basis for belief (s196(1)(a))

I, Inspector Meaghan O'Connor, have formed a reasonable belief at 15:40pm on 12/08/2022, that the Legislative Assembly of the Australian Capital Territory has contravened section 19 of the Work Health and Safety Act. Section 19 states- A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged, by the person and workers

whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking. 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. Workers have been directed to attend this planned activity face-to-face only, without alternative options being provided that are readily available to control and eliminate the risk.

Briefly, the activity that the inspector believes involves or will involve the risk, and the matters that gave or will give rise to the risk (s196(1)(b))

The Legislative Assembly of the Australian Capital Territory has not identified reasonably foreseeable risks in the workplace, or implemented adequate control measures in relation to potential and known risks. The risk is transmission of a biological hazard in the workplace, being Covid-19, without consideration of eliminating the risk (in line with the Hierarchy of Controls) in preventing contraction of the disease that could cause serious injury or death.

This Notice may include directions concerning the measures to be taken to remedy the risk or contravention. You must comply with the direction

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 to Inspector O'Connor via meaghan.o'connor@worksafe.act.gov.au

This notice must be displayed in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice pursuant to section 210 of the Work Health and Safety Act 2011.

The inspector recommends that you:

Review the following information:

Work Health and Safety (How to Manage Work Health and Safety Risks Code of Practice) Approval 2020
Work Health and Safety (Work Health and Safety Consultation, Cooperation and Coordination Code of Practice) Approval 2022

See over for important information on your rights and responsibilities.

Prohibition Notice issued under section 191 of the Work Health and Safety Act 2011 - further information

If you have any questions you may contact the inspector who issued this notice.

Display of Notices

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

Compliance with direction or notice

The person to whom a Prohibition notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

Regulator may carry out action

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

Contents of Notice

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

Directions and recommendations

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Prohibition notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

Changes to notice by inspector

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

Privacy statement

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies.

WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at www.act.gov.au/privacy.

Review of this *Work Health and Safety Act* notice

If you have any questions or need more information you may contact the inspector who issued this notice, or email worksafe@act.gov.au.

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days. You may also make an application for the reviewer to stay the operation of the Prohibition notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: worksafe@act.gov.au

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at www.acat.act.gov.au.

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

WorkSafe ACT contact details

PO Box 158, Canberra ACT 2601

Email: Worksafe@act.gov.au

Phone: (02) 6207 3000

Fax:(02) 6205 0336.

Translating and Interpreting Service

Phone: 131 450



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.

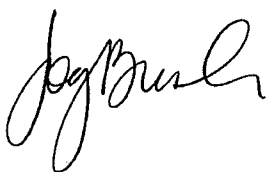
Setting aside issues relating to parliamentary privilege and the appropriate separation of powers, there are a number of technical and merits issues that arise in connection with the way in which the relevant powers under the WHS Act have been exercised and the terms of the notice itself.

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

15/08/22

-) worse way present

3. legal advice - My name
add PN too broad - can
direct with drawal can
re-visit to determine if
risk still imminent



Advised Brooker

15/08/20

4. Direction given to Meaghan + Ben
to withdraw notice - legal advice
can not re-visit up if risk
still imminent & a reasonable
belief is formed - consider
regulatory action - legal
to provide alternative
PN wording in case
← Brooke advised

Agius, Jacqueline

From: LA Committee - Estimates
Sent: Monday, 15 August 2022 9:34 AM
To: Agius, Jacqueline
Cc: WorkSafe; Monk, David; LA Committee - Estimates
Subject: CALL FOR PAPERS - DUE 1PM - Letter from the Select Committee on Estimates 2022-2023
Attachments: Letter to Commissioner from Select Committee on Estimates.pdf

Hello Ms Agius,

Please find attached to this email a letter from the Select Committee on Estimates 2022-2023 calling for the production of information.

The contact person for this inquiry is Dr David Monk available on 6205 0129.

Yours,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

Ms Jacqueline Agius
Work Health and Safety Commissioner
Worksafe ACT
Canberra Nara Centre
3 Constitution Avenue
CANBERRA ACT 2601

By email: Jacqueline.Agius@worksafe.act.gov.au
worksafe@worksafe.act.gov.au

Dear Ms Agius

Prohibition Notice in relation to activities of the Select Committee on Estimates 2022-2023

I am writing to you in my capacity as Chair of the Select Committee on Estimates 2022-2023 (the Committee) in relation to a Prohibition Notice issued under section 195 of the *Work Health and Safety Act 2011*, to the Speaker of the Legislative Assembly on Friday, 12 August 2022. The notice purports to prohibit the Committee from:

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.

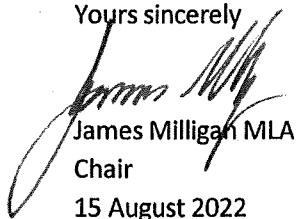
The Committee has this morning resolved to request that you provide it with the details of the complainant and the complaint in relation to the prohibition notice, by no later than **1pm today, 15 August 2022**.

This request is made pursuant to standing order 239, which provides: *A committee shall have power to send for persons, papers and records.*

Failure to provide this information to the Committee may constitute a contempt under standing order 277 (h): *A person shall not, without reasonable excuse, disobey a lawful order of the Assembly or a committee.*

If you wish to discuss this request, please contact Dr David Monk, Senior Director Committee Support, and Secretary to the Committee.

Yours sincerely


James Milligan MLA
Chair
15 August 2022

Annexure L.

15/08/22

6.10:57 - Briefing Brook Grey

AG - Present

→ PN with drawn before

10:15 - New PN verbally issued (9) 10:08 after notice withdrawn verbally

- Tom Duncan advised with drawn - D. Skinner

- Inspectors formed reasonable belief risk still imminent

- Inspectors provided risk register - no risk Assessment

- C-19 safe plan includes online

→ Inspectors told risk assessment is parliamentary privilege

- also told higher legal issues

(9) play - privilege & contempt - advised email to Commissioner this morning

→ Inspectors will review register to ensure risk still exists

Abel, Jess

From: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Sent: Tuesday, 16 August 2022 10:23 AM
To: Agius, Jacqueline
Subject: FW: Estimates Committee request of WorkSafe ACT

Categories: Red Category

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Hi Jacqui,

FYI below. We will be across shortly.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. AGuilfoyle@macdonnells.com.au

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From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, 16 August 2022 10:20 AM
To: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Cc: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Subject: RE: Estimates Committee request of WorkSafe ACT

OFFICIAL

Dear Mr Guilfoyle,

Thank you for this advice.

The Committee agrees to this extension.

The Committee does have a query in relation to your comment that the relevant notice has been withdrawn. The Speaker received a new notice yesterday afternoon. The Committee would appreciate it if you could please clarify this.



Yours sincerely,

Dr David Monk
Senior Director, Committee Support
Office of the Legislative Assembly
02 620 50129
david.monk@parliament.act.gov.au
www.parliament.act.gov.au



From: Monk, David <David.Monk@parliament.act.gov.au>
Sent: Monday, 15 August 2022 3:22 PM
To: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Cc: LA Committee - Estimates <LACCommitteeEstimates@parliament.act.gov.au>
Subject: RE: Estimates Committee request of WorkSafe ACT

OFFICIAL

Dear Mr Guilfoyle,

I confirm receipt of your email.

I am consulting the Committee and I will arrange for a response to be provided to you.

Yours sincerely,

Dr David Monk
Senior Director, Committee Support
Office of the Legislative Assembly
02 620 50129
david.monk@parliament.act.gov.au
www.parliament.act.gov.au

From: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Sent: Monday, 15 August 2022 3:00 PM
To: Monk, David <David.Monk@parliament.act.gov.au>
Cc: LA Committee - Estimates <LACCommitteeEstimates@parliament.act.gov.au>
Subject: RE: Estimates Committee request of WorkSafe ACT

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Dear Mr Milligan (via Mr Monk),

We refer to your letter of 15 August 2022 and advise we act for the Work Health and Safety Commissioner, Ms Agius

You advise the Select Committee on Estimates 2022-23 resolved this morning to request that the Commissioner provide "details of the complainant and the complaint in relation to the prohibition notice" issued on 12 August 2022.

The *Work Health and Safety Act 2011* (the **Act**) provides, at s.271(4) that a person, including the Commissioner, commits an offence if –

- (a) the person (the defendant) intentionally discloses to another person the name of an individual; and
- (b) the individual has made a complaint in relation to the person to whom the individual's name is disclosed; and
- (c) the defendant knows or is reckless as to that fact.

The person does not commit an offence under subsection if the disclosure is made with the consent of the individual or is required under a law.

There is a live question whether the disclosure is required under law. If not, the Commissioner would be prima facie liable for a criminal offence under the Act for disclosing the name of an individual to any person, including the Legislative Assembly, if the complaint was made about that person.

The issues bearing on that question are, *inter alia*, the extent to which a person served with a prohibition notice could circumvent that important privacy protection, and whether the information requested is a call for "persons, papers or records" pursuant to the *Standing Orders*.

We respectfully request, in circumstances where the relevant prohibition notice has now been withdrawn, an extension until close of business, tomorrow, 16 August 2022, to further respond to the request.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. AGuilfoyle@macdonnells.com.au

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Sent: Monday, 15 August 2022 11:26 AM
To: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Cc: LA Committee - Estimates <LACCommitteeEstimates@parliament.act.gov.au>
Subject: Estimates Committee request of WorkSafe ACT

OFFICIAL

Dear Mr Guilfoyle,

I am responding to your verbal request this morning that the deadline for the Committee's written request be extended from 1 pm to 3 pm today. The request is for information about the complaint and complainant in relation to the current prohibition notice served on the Speaker of the Legislative Assembly.



The Committee has agreed to the extension.

I look forward to discussing this matter further with you, as appropriate.

Yours sincerely,

Dr David Monk

Senior Director, Committee Support

Office of the Legislative Assembly

02 620 50129

david.monk@parliament.act.gov.au

www.parliament.act.gov.au

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Agius, Jacqueline

From: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Sent: Tuesday, 16 August 2022 3:15 PM
To: LA Committee - Estimates
Subject: RE: Estimates Committee request of WorkSafe ACT
Attachments: Letter from Aaron Guilfoyle to Mr James Milligan MLA dated 16 August 2022.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Red Category

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Dear Mr Monk,

Please find **attached** a letter to Mr Milligan MLA in response to Mr Milligan's letter of 15 August 2022. The letter also addresses the query of the Committee below.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878
M. 0418 723 811
E. AGuilfoyle@macdonnells.com.au

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Thank you for this advice.



The Committee agrees to this extension.

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Yours sincerely,

Dr David Monk
Senior Director, Committee Support
Office of the Legislative Assembly
02 620 50129

david.monk@parliament.act.gov.au
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Aaron Guilfoyle
Special Counsel

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Subject: Estimates Committee request of WorkSafe ACT

OFFICIAL



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The Committee has agreed to the extension.

I look forward to discussing this matter further with you, as appropriate.

Yours sincerely,

Dr David Monk

Senior Director, Committee Support

Office of the Legislative Assembly

02 620 50129

david.monk@parliament.act.gov.au

www.parliament.act.gov.au

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Our Ref: AJG:AJG:220890

16 August 2022

Mr James Milligan MLA
Chair, Select Committee on Estimates
Legislative Assembly
Civic Square, London Circuit
GPO Box 1020
Canberra ACT 2601

By Email: David.Monk@parliament.act.gov.au; LACommitteeEstimates@parliament.act.gov.au

Dear Mr Milligan,

Submission to withdraw request for information

1. I refer to your letter of 15 August 2022 to Work Health and Safety Commissioner Jacqueline Agius (**Commissioner Agius**) in which you state that the Select Committee on Estimates 2022-2023 (the **Select Committee**) resolved to 'request' that Commissioner Agius provide it with "the details of the complainant and the complaint" in relation to the Prohibition Notice issued on Friday 12 August 2022 ('PN 5068') by Inspector O'Connor.
2. You assert this request was "made pursuant to Standing Order 239 which provides: *A committee shall have power to send for persons, papers and records*" and that failure to provide this information to the Committee may constitute contempt under Standing Order 277(h), which provides that "(a) person shall not, **without reasonable excuse**, disobey a lawful order of the Assembly or a committee" (our emphasis).
3. Whilst it is not entirely clear what is meant by "the details of the complainant and the complaint", we have interpreted this as a 'request' by the Select Committee that Commissioner Agius divulge to it the identity of any person or persons who may have brought possible breaches of s19 of *the Work Health and Safety Act 2011 Act* (the **Act**) to the attention of WorkSafe ACT and the particulars of any such complaint.
4. For reasons set out below, and without confirming whether WorkSafe ACT received such a complaint, let alone divulging the particulars of it or the identity of a complainant, Commissioner Agius must refuse your 'request'.

Nature of the Request

5. As you are aware, the Act is an "Act about work health and safety, and for other purposes". Those purposes include ensuring that persons conducting a business or undertaking ensure, so far as reasonably practicable, the health and safety of workers engaged by the business or

undertaking (see s19). The Act is specifically stated to bind the Crown in the right of the Territory (see s10).

6. Section 271 of the Act is headed "Confidentiality of information". Section 271(4) states that it is an offence for a person, including Commissioner Agius, to intentionally disclose to another person (the complained about person) the name of an individual who has made a complaint to them about the complained about person. A clear intent of this provision is to protect 'whistle-blowers' who raise safety issues about their employers or third parties, from having their identity disclosed to those employers or third parties. In the context of ensuring the safety of workers, ensuring that persons who make complaints to WorkSafe ACT, about safety issues, may do so confidentially and without fear of retribution is clearly a desirable object. Such information can only be disclosed with the consent of the individual or where it is required under a law (s271(5)).
7. We also note, in passing, the *Public Interest Disclosure Act 2012* contains provisions about the protection of individuals who report 'disclosable conduct', which includes conduct that results in "a substantial and specific danger to public health or safety" (see s8(1)(b)).
8. Your request is made pursuant to a resolution of the Select Committee, and in the context of the issuing of PN 5068 by Inspector O'Connor.
9. On its face, your request seeks that Commissioner Agius disclose to the Select Committee the identity of a person who may have made a complaint about safety concerns held about the working environment in which the Select Committee was undertaking, or proposing to undertake, its duties. For very good reason, the legislature has determined that such disclosure be confidential.
10. Accordingly, to the extent that the Select Committee's request may be a lawful order in exercise of the powers of the Select Committee under Standing Order 277(h) (see further below), and to the extent that this request may still be relevant or valid given PN 5068 has subsequently been withdrawn, Commissioner Agius declines your request, pursuant to s.271(4) of the Act. We are not satisfied that the request qualifies as a requirement under a law, and, if we are mistaken as to this, we take the view that Commissioner Agius has a reasonable excuse in not complying with your request.

Nature of a Prohibition Notice

11. Sections 195(1) and (2) of the Act relevantly provide that if **an inspector** reasonably believes 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" then "(t)he inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied".
12. The inspector's belief may be informed by any number of factors. Even if an inspector has received a complaint or information about a workplace, and that information has provided a basis for an inspector to enter and inspect a workplace under the Act, the power to issue a prohibition notice is predicated on an inspector's reasonable belief, not a complaint or a complainant's belief.

13. Here, both the first (withdrawn) prohibition notice (PN 05068) and the current (in force) prohibition notice (PN 05078) make clear the bases of Inspector O'Connor's belief. Those bases exclusively relate to enquiries made by the inspector upon her entry to the workplace.
14. Any information, including that in the nature of a complaint, received by Commissioner Agius in her capacity as the regulator under the Act, or brought to the attention of Inspector O'Connor, has no nexus in law to the issue of the prohibition notice.

The Extent of the Power under Standing Orders

15. The request purports to be made by the Select Committee pursuant to Standing Order 239 of the *Standing Orders* of the Legislative Assembly, which provides]:

"A committee shall have power to send for persons, papers and records."

16. "Papers" and "records" are not defined in the *Standing Orders*. Records must be construed widely and could include electronic or other records held by Commissioner Agius.
17. The request in this instance, however, is one for information. It is tantamount to a request of Commissioner Agius to answer questions. That request falls well outside the power in Standing Order 239 by reference to its language. It is not a request for a defined paper or record, or a defined class of either.
18. We note Standing Order 240 provides "A committee may direct the secretary to the committee to summon witnesses to be examined before the committee". It is accepted that the Select Committee has power to summons Commissioner Agius to be examined before it. No such summons or request has been made.
19. Further, the particular request here has to be considered in the context of the Select Committee's Terms of Reference. On 24 March 2022, the Legislative Assembly passed a resolution that:

"(1) a Select Committee on Estimates 2022-2023 be appointed to examine the expenditure proposals contained in the Appropriation Bill 2022-2023, the Appropriation (Office of the Legislative Assembly) Bill 2022-2023 and any revenue estimates proposed by the Government in the 2022-2023 Budget and prepare a report to the Assembly."

20. The powers granted to the Select Committee under the *Standing Orders* are not without limits. The *Standing Orders* are made under the *Australian Capital Territory (Self-Government) Act 1988* (Cth). Just as that Act must be interpreted by reference to its purpose, so too must the *Standing Orders*, and the powers therein, be interpreted by reference to the Terms of Reference of the Select Committee.
21. It is inconceivable that the power to call for persons, papers and records, directed to the purpose of an examination of the expenditure proposals contained in the *Appropriation Bill 2022-2023, the Appropriation (Office of the Legislative Assembly) Bill 2022-2023* and any revenue estimates proposed by the Government in 2022-2023 could include a power to require the Work Health and Safety Commissioner to disclose the identity of a person who may have complained about possible non-compliance by the Legislative Assembly with its work health and safety duties under the Act.

22. Such an approach is entirely consistent with the confidentiality provisions in the Act referred to above (s271).
23. It is noted that the current prohibition notice (PN 05078) does not purport, in any way, to direct the conduct of the business of the Select Committee or prohibit hearings. Rather, it prohibits the conduct of that activity in a certain way, namely by participants attending in person. We suggest that if appropriate resources and attention were directed towards addressing the matters in PN 05078, rather than towards trying to identify a particular person who may have disclosed concerns they had about the safety of the working environment of the Select Committee, the prohibition notice might be able to be lifted within a relatively short period.
24. In any event, we note Standing Order 229C(3), which states that:

229C. A committee may conduct proceedings in any of the following ways:

...

(c) in any other form in accordance with the standing orders and practices relating to the conduct of committees of the Assembly.
25. We understand previous Select Committees have conducted hearings remotely in the course of the COVID-19 pandemic.

Summary

26. The Select Committee's request for information relating to PN05068 is otiose given that PN05068 has been withdrawn.
27. The Legislative Assembly holds work health and safety duties under the Act. It must comply with those duties to the same extent as any other duty holder. It would be an abuse of its unique position to obtain confidential information received by Commissioner Agius, under the cover of Standing Orders, where that information has no relevance to the work of the Select Committee and would not be available to any other duty holder.
28. The request is one for information. The power under which the request was made does not permit an examination of the independent Commissioner of this kind.
29. Compliance with the extant prohibition notice would remedy the risks identified in the notice and, again, render the request for information otiose.
30. We respectfully request the Select Committee to reconsider its position and resolve to withdraw the request.
31. We would be grateful for the response of the Select Committee by 5:00pm today, where that is the time nominated by the Select Committee for compliance with the request.

Yours faithfully
MacDonnells Law

A handwritten signature in black ink that reads "MacDonnells Law". The signature is written in a cursive, flowing style.

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

Agius, Jacqueline

From: Aaron Guilfoyle <aguilfoyle@macdonnells.com.au>
Sent: Wednesday, 17 August 2022 11:55 AM
To: Agius, Jacqueline
Subject: FW: Estimates Committee request of WorkSafe ACT
Attachments: Letter from Aaron Guilfoyle to Mr James Milligan MLA dated 17 August 2022.pdf
Follow Up Flag: Follow up
Flag Status: Completed

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Dear Jacqui,

For your information as discussed.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. AGuilfoyle@macdonnells.com.au

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MACDONNELLS.COM.AU

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From: Aaron Guilfoyle
Sent: Wednesday, 17 August 2022 10:46 AM
To: Monk, David <David.Monk@parliament.act.gov.au>; LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Subject: Estimates Committee request of WorkSafe ACT

Dear Mr Monk,

Please find **attached** a letter to Mr Milligan MLA.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. AGuilfoyle@macdonnells.com.au

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Our Ref: AJG:AJG:220890

17 August 2022

Mr James Milligan MLA
Chair, Select Committee on Estimates
Legislative Assembly
Civic Square, London Circuit
GPO Box 1020
Canberra ACT 2601

By Email: David.Monk@parliament.act.gov.au; LACommitteeEstimates@parliament.act.gov.au

Dear Mr Milligan,

Submission to withdraw request for information

1. We refer to our letter of 16 August 2022.
2. In your letter of 15 August 2022 to Work Health and Safety Commissioner Jacqueline Agius (**Commissioner Agius**) you advised the Select Committee on Estimates 2022-2023 (the **Select Committee**) resolved to 'request' that Commissioner Agius provide it with "the details of the complainant and the complaint" in relation to the Prohibition Notice issued on Friday 12 August 2022 ('PN 5068') by Inspector O'Connor.
3. You further advised of your view that a failure by Commissioner Agius to provide the requested information to the Select Committee may constitute contempt under Standing Order 277(h).
4. We requested yesterday that the Select Committee reconsider its position and resolve to withdraw the request. We have not received a response to that request.
5. We note that the Select Committee issued a statement late yesterday, which included the following:

"The Legislative Assembly yesterday agreed to establish a Select Committee on Privileges to inquire into this situation to understand if there has been a breach of privilege relating to the actions of the Work Health and Safety Commissioner and any other person and whether they have improperly interfered with the free exercise of the authority of the Select Committee on Estimates 2022-23 or breached any other privileges of the Assembly."
6. Further, we understand from recent media reporting that Select Committee hearings have been postponed until next week, in anticipation that the necessary steps to allow the Prohibition Notice to be lifted will be undertaken in the interim.

7. In light of the proposed establishment of a Select Committee on Privileges, the reported intention to address the issues raised in the Prohibition Notice, and for the reasons in our letter yesterday, we again request that the Select Committee resolve to withdraw the request made of Commissioner Agius.
8. Given the Select Committee has expressed a view that a failure to comply with the extant request may constitute contempt, this matter must be resolved as a matter of priority, in particular so as to avoid unnecessary costs being incurred by our client in preparation for anticipated litigation in the event the request of the Select Committee is not withdrawn.
9. We respectfully request that you respond no later than 12:00pm today.

Yours faithfully

MacDonnells Law

A handwritten signature in black ink that reads "MacDonnells Law". The signature is written in a cursive, flowing style.

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

Agius, Jacqueline

From: LA Committee - Estimates
Sent: Wednesday, 17 August 2022 5:23 PM
To: Agius, Jacqueline
Cc: Aaron Guilfoyle; WorkSafe; LA Committee - Estimates
Subject: Estimates Committee - Request for information in relation to Prohibition Notice
Attachments: Chair to Agius - Privilege advice - 17 August 2022.pdf



OFFICIAL

Dear Ms Agius,

Please find attached a letter from the Committee Chair to you in relation to the Committee's request on Monday.

Yours sincerely,

Dr David Monk

Senior Director, Committee Support

Office of the Legislative Assembly

02 620 50129

david.monk@parliament.act.gov.au

www.parliament.act.gov.au



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

Ms Jacqueline Agius
Work Health and Safety Commissioner
WorkSafe ACT
Canberra Nara Centre
3 Constitution Avenue
CANBERRA ACT 2601

By email: Jacqueline.Agius@worksafe.act.gov.au
worksafe@worksafe.act.gov.au

Dear Ms Agius,

Select Committee on Estimates 2022-2023—Breach of Standing Order 277

I am writing to you in my capacity as Chair of the Select Committee on Estimates 2022-2023 (the Committee) in relation to my letter to you dated 15 August 2022.

In that letter I advised you that the Committee had resolved to request that you provide it with the details of the complaint and the complainant in relation to the prohibition notice dated 12 August 2022, by no later than 1pm, 15 August 2022. The Committee subsequently granted you extensions to comply with the request by close of business 16 August 2022.

The letter explained that the request was made pursuant to standing order 239, which provides: *A committee shall have power to send for persons, papers and records.* The letter also set out that failure to provide that information to the Committee may constitute a contempt under standing order 277 (h): *A person shall not, without reasonable excuse, disobey a lawful order of the Assembly or a committee.*

The Committee, noting you have disobeyed its lawful order, resolved today to refer the matter to the Speaker under standing order 276 (privilege and contempt).

If you wish to discuss this matter, please contact Dr David Monk, Senior Director Committee Support, and Secretary to the Committee.

Yours sincerely,



James Milligan MLA
Chair

17 August 2022

Agius, Jacqueline

From: Kiermaier, Max
Sent: Thursday, 18 August 2022 12:34 PM
To: Agius, Jacqueline
Subject: Select Committee on Privileges 2022 - Inquiry
Attachments: 20220818115008261.pdf

Categories: Red Category

Dear Ms Agius

Attached is a letter from the Select Committee on Privileges 2022 established to examine potential privilege issues arising from the imposition of a prohibition notice on the Assembly on 12 August.

The Committee invites you to provide any information you believe may be relevant to its inquiry.

Max Kiermaier
Secretary
Select Committee on Privileges 2022
6207 2301
LCommitteePrivileges2022@parliament.act.gov.au



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON PRIVILEGES 2022

MR JEREMY HANSON CSC MLA (CHAIR), MS JO CLAY MLA (DEPUTY CHAIR),
MR MICHAEL PETTERSSON MLA

Ms Jacqueline Agius
Work Health and Safety Commissioner

Jacqueline.agius@act.gov.au

**Inquiry — Possible contempt of the Assembly – Imposition of prohibition notice by
WorkSafe ACT**

Dear Ms Agius

On 15 August 2022, the Assembly established a Select Committee on Privileges 2022 to examine potential parliamentary privilege issues relating to the imposition of a prohibition notice on the Assembly and its committees on 12 August 2022. In particular, the Committee is to examine:

“Whether there has been a breach of privilege relating to the actions of the Work Health and Safety Commissioner and any other person, and whether they have improperly interfered with the free exercise of the authority of the Select Committee on Estimates 2022-23 or breached any other privileges of the Assembly.”

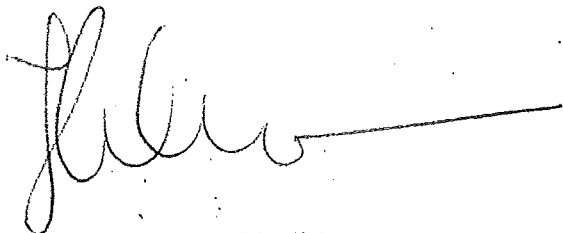
Section 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth) provides the Assembly with the same privileges and immunities as the House of Representatives. Under standing order 277(a) of the Assembly, a breach of those privileges may be regarded as a contempt. In determining whether the action amounts to a contempt of the Assembly, the Committee will consider whether interference has occurred, and if so, whether that interference was improper.

To assist in its deliberations, the Committee invites you to provide, by 1 September 2022, any information, including documents, which is pertinent to the privilege issues under consideration.

The full details of the terms of reference can be viewed on the Committee’s website at www.parliament.act.gov.au.

The Committee's secretary (Mr Max Kiermaier) may be contacted via email at LAcommitteePrivileges2022@parliament.act.gov.au 6207 2301.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Hanson', with a long horizontal line extending to the right.

Jeremy Hanson CSC MLA
Chair

17 August 2022

Agius, Jacqueline

From: Agius, Jacqueline
Sent: Thursday, 18 August 2022 4:21 PM
To: Speaker; O'Connor, Meaghan
Subject: Letter for Commissioner Agius from Madam Speaker

OFFICIAL: Sensitive

Dear Madam Speaker

Thank you for your correspondence. I have forwarded your email to Senior Director Brooke Grey who will manage this matter and I have asked her to respond to your letter this afternoon.

Kind regards

Jacqueline Agius |Work Health and Safety Commissioner
|Labour Hire Licence Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Speaker <Speaker@parliament.act.gov.au>
Sent: Thursday, 18 August 2022 3:35 PM
To: Agius, Jacqueline <Jacqueline.Agius@worksafe.act.gov.au>; O'Connor, Meaghan <Meaghan.O'Connor@worksafe.act.gov.au>
Subject: Letter for Commissioner Agius from Madam Speaker

Dear Commissioner,

Please find attached correspondence in relation to Prohibition Notices N-000005068 and N-000005078 served on the ACT Legislative Assembly.

Joy Burch MLA
Speaker



Agius, Jacqueline

From: Speaker
Sent: Thursday, 18 August 2022 3:35 PM
To: Agius, Jacqueline; O'Connor, Meaghan
Subject: Letter for Commissioner Agius from Madam Speaker
Attachments: Letter to Speaker - Update on Consultation.pdf; Combined feedback.pdf; OLA COVID-19 Risk Register V2.docx; Letter Commissioner Agius 180822.pdf

Dear Commissioner,

Please find attached correspondence in relation to Prohibition Notices N-000005068 and N-000005078 served on the ACT Legislative Assembly.

Joy Burch MLA
Speaker





Speaker

Ms Jacqueline Agius
Work Health and Safety Commissioner
Worksafe ACT
Canberra Nara Centre
3 Constitution Avenue
CANBERRA ACT 2601

By email: jacqueline.agius@worksafe.act.gov.au

Dear Ms Agius

Prohibition Notice in relation to activities of the Select Committee on Estimates 2022-2023

I am writing to you in relation to Prohibition Notices issued to me under section 195 of the Work Health and Safety Act 2011, on Friday, 12 and 15 August 2022. The latter notice purports to prohibit the Select Committee on Estimates 2022-2023 (the Committee) from holding in person hearings 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.

The Committee has written to me today to advise that it has met the terms of your Prohibition Notice. See attached correspondence.

I ask that you now lift the Prohibition Notice without further delay, and I seek confirmation of the lifting of the notice by 12pm tomorrow, Friday 19 August 2022. This will allow the Committee to notify witnesses and proceed with the important business of scrutinising the budget, to commence from Monday, 22 August 2022.

Please note that I reserve the right to pursue legal action in relation to the issuing of the Prohibition Notice, as per my earlier correspondence.

Yours sincerely

Joy Burch MLA
Speaker
18 August 2022



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022–2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

Ms Joy Burch MLA
Speaker
Legislative Assembly for the ACT
By email: joy.burch@parliament.act.gov.au

Dear Madam Speaker,

Select Committee on Estimates 2022–2023: Update on Consultation Undertaken

I am writing to you in my capacity as the Chair of the Select Committee on Estimates 2022–2023 (Committee).

The Committee met today and resolved to update you on its work health and safety consultations with PCBUs to assist you in your correspondence with WorkSafe ACT.

You will be aware that, out of an abundance of caution, the Committee has written to invited Ministers, Officers of the Assembly, Statutory Office Holders, and yourself to consult on its plans to conduct hearings in the Assembly Chamber. The Committee has seen high levels of participation from its consultation, receiving positive and constructive feedback on hearing safety.

Minister Gentleman has responded representing all Ministers in their capacity as PCBUs. The Minister has provided input to the consultation process for consideration by the Committee. The Minister has requested that supporting officials be allowed to attend hearings online. The Committee will not consider this request until the Prohibition Notice has been lifted. This is because it is the Committee's priority to commence hearings with principal witnesses under its proposed model without the delay the minister's proposal would entail.

The Committee has also requested the Office of the Legislative Assembly to consult with the 26 PCBUs relevant to it and engage with its Health and Safety Committee for comments by affected workers.

A full list of those the Committee has consulted with directly is set out below:

- All ACT Government Ministers
- The Office of the Legislative Assembly
- The Clerk of the Legislative Assembly
- The Director of Public Prosecutions
- The ACT Human Rights Commissioner
- The Auditor-General
- The CEO of Legal Aid ACT
- The Commissioner for Sustainability and the Environment
- The Electoral Commissioner
- The Inspector of Correctional Services
- The ACT Ombudsman
- The Inspector of the Integrity Commission
- The Public Trustee and Guardian
- The Solicitor-General

The Committee has resolved to provide you with all available feedback it has received from these witnesses, which has been provided in a separate attachment along with the Committee's Risk Assessment.

Yours sincerely,



James Milligan MLA
Chair
18 August 2022

Thompson, SamuelR

From: Emy Yoneda <Emy.Yoneda@ombudsman.gov.au>
Sent: Wednesday, 17 August 2022 1:56 PM
To: LA Committee - Estimates
Cc: ACT Ombo; Adele Morey
Subject: RE: [External] Estimates Hearings - Letter from Chair [SEC=OFFICIAL]

Follow Up Flag: Follow up
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OFFICIAL

Hi Samuel

Thank you for your email.

We understand the reasons for the proposed arrangements and will cooperate with the Committee as required. We would like to request that officials be permitted to attend remotely via video conference to ensure the ACT Ombudsman is appropriately supported to answer the Committee's questions.

Could you please let me know if this is possible?

We have no further input into the COVID register.

Thank you

Emy Yoneda

Strategy Officer, ACT Strategy and Coordination | Program Delivery Branch

ACT OMBUDSMAN

OFFICE OF THE COMMONWEALTH OMBUDSMAN

Email: emy.yoneda@ombudsman.gov.au

Website: ombudsman.act.gov.au



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THE ACT LEGISLATIVE ASSEMBLY

Influencing systemic improvement in public administration

I acknowledge the Traditional Custodians of the ACT. I acknowledge & respect their continuing culture and the contribution they make to the life of this city & region.

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, 16 August 2022 7:32 PM
To: Emy Yoneda <Emy.Yoneda@ombudsman.gov.au>
Cc: ACT Ombo <actombo@ombudsman.gov.au>; LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Subject: [External] Estimates Hearings - Letter from Chair

Dear ACT Ombudsman,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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Thompson, SamuelR

From: Commisso, Taylah
Sent: Wednesday, 17 August 2022 7:31 PM
To: LA Committee - Estimates
Cc: Smith, Caroline
Subject: RE: Estimates Hearings - Letter from Chair

Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL: Sensitive

Dear Mr Milligan MLA

The Auditor-General thanks you for your consultation and has no other comment on the proposed arrangements including the Risk Register.

Kind regards
Taylah

Taylah Commisso | Executive Officer to the ACT Auditor-General

Phone: (02) 6207 4280 | **Email:** taylah.commisso@act.gov.au
ACT Audit Office | Auditor-General An Officer of the ACT Legislative Assembly
Nara Centre, Level 4, 3 Constitution Avenue, Canberra | PO Box 275 Civic Square ACT 2608 | www.audit.act.gov.au

The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and pays respect to the elders; past, present and future. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.



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From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, 16 August 2022 7:33 PM
To: Harris, MichaelL <MichaelL.Harris@act.gov.au>
Cc: Commisso, Taylah <Taylah.Commisso@act.gov.au>
Subject: Estimates Hearings - Letter from Chair

Dear Auditor-General,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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Mr James Milligan MLA (Chair)
Select Committee on Estimates 2022-2023
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Via email: SamuelR.Thompson@parliament.act.gov.au

Dear Mr Milligan

Select Committee on Estimates 2022-2023 – Hearing Consultation

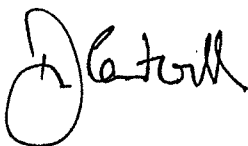
Thank you for your letter of 16 August 2022 seeking feedback about the proposed conduct of the upcoming Estimates hearings in light of WorkSafe ACT's Prohibition Notice.

I have reviewed the information contained in your letter as well as the identified risks and controls in the accompanying COVID-19 risk register. As an Independent Statutory Office Holder and witness at the hearings, I am comfortable that the measures you have outlined including limits on the number of witnesses and moving the hearings to the larger Legislative Assembly Chamber are all positive steps to ensure the ongoing safety and wellbeing of participants. As such, I have no issues of concern with the Committee's proposal.

I understand that the schedule of hearings will be updated in the coming days and as part of this consultation process, wish to advise that I am unavailable next Monday 22 August and Tuesday 23 August 2022 due to pre-existing commitments.

Thank you for the opportunity to provide input to the consultation process.

Yours sincerely



Damian Cantwell AM CSC
Electoral Commissioner

17 August 2022

cc: LACommitteeEstimates@parliament.act.gov.au

Thompson, SamuelR

From: Watchirs, Helen
Sent: Wednesday, 17 August 2022 3:47 PM
To: LA Committee - Estimates
Cc: Budavari, Rosemary; Acton, Jenny
Subject: RE: Estimates Hearings - Letter from Chair

Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL

Hi Samuel

Thank you for letter from Chair of Estimates Committee, James Milligan MLA and offer to consult on your Risk Register.

In relation to the controls for the hazard of lack of mask wearing, we suggest that you clarify signage regarding good hygiene practices by including wording about masks being required unless the person is speaking, that there is a process to apply for an exemption from mask wearing for medical or other reasons, or to make alternative arrangements for remote participation if a person cannot wear a mask. Another control for this hazard would be to ensure that there are supplies of masks available at the entry to the LA building and hearing room.

Please note that my role includes President of the HRC – under s12(2) of the *Human Rights Commission Act 2005* the President is the Human Rights Commissioner.

Regards, Helen.

Dr Helen Watchirs OAM

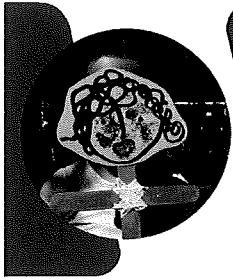
ACT President and Human Rights Commissioner
Level 2, 11 Moore Street
Canberra City ACT 2601

Tel (02) 6205 2222
Fax (02) 6207 1034

The ACT Human Rights Commission's website is at www.hrc.act.gov.au



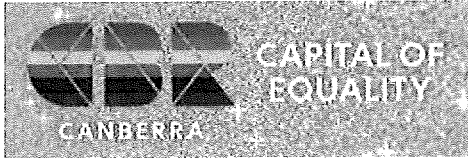
I acknowledge the traditional custodians of the ACT and their continuing connection to land and community. I pay my respects to them and their culture, and to their elders past, present, and future. Artwork by Lynnice Keen, Ngunnawal artist.



Have your say about racism!

Do you know a child or young person with something to say about racism in the ACT?

They can scan the QR code or go to actkids.act.gov.au to answer a short survey and share their views.



From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, August 16, 2022 7:30 PM
To: Watchirs, Helen <Helen.Watchirs@act.gov.au>
Subject: Estimates Hearings - Letter from Chair

Dear Human Rights Commissioner,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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Thompson, SamuelR

From: McAllister, Neil
Sent: Wednesday, 17 August 2022 7:57 AM
To: LA Committee - Estimates
Subject: RE: Estimates Hearings - Letter from Chair

Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL

Dear Samuel

Thank you for inviting to comment on this "issue". I have no concerns about the risk register but, for what it's worth, I have major concerns about the intervention of WorkSafe ACT in the workings of the Legislative Assembly. I have attended a number of estimates and annual report hearings and do not consider that the hearings room or adjacent waiting areas pose any greater COVID exposure risk than any other place where people gather (offices, shops, restaurants, bars, clubs, etc.). I visit a major hospital regularly and I can enter without vaccination proof (which I have) and am only required to wear a mask indoors.

I would have been very happy to appear in-person this week regardless of WorkSafe ACT's fear mongering.

Regards

Neil

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, 16 August 2022 7:41 PM
To: McAllister, Neil <Neil.McAllister@act.gov.au>
Cc: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Subject: Estimates Hearings - Letter from Chair

Dear Mr McAllister,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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FROM THE OFFICE OF THE COMMISSIONER

Our Ref: (TRIM REF)

Mr James Milligan MLA
Chair,
Select Committee on Estimates 2022-2023

By email:

Dear Mr Milligan,

Select Committee on Estimates 2022-2023


Thank you for your letter of 16 August about the sitting arrangements for the Committee's impending hearings.

Whilst I naturally defer to the Committee's views about who should be witnesses and, of course, will be attending myself, I have discussed the issue of their possible attendance with the Commission's CEO (Mr John Hoytink) and Chief Financial Officer (Mr Scott Hickey), having brought to their attention the Risk Register. Each has assured me that, if it could be useful, they would be happy to attend, taking the necessary safety precautions.

Having regard to the complexity in some respects of the Commission's budgetary position, it would be helpful to me if it were possible for Messrs Hoytink and Hickey to attend.

Please let me know if this can be achieved.

Yours sincerely,



The Hon Michael F Adams QC
Commissioner

17 August 2022

Thompson, SamuelR

From: Taylor, Andrew
Sent: Wednesday, 17 August 2022 12:10 PM
To: LA Committee - Estimates
Cc: Hughes, Callum; Toy, Kathryn; Connolly, Helen; Burn, Gregory
Subject: RE: Estimates Hearings - Letter from Chair

Follow Up Flag: Follow up
Flag Status: Flagged

UNOFFICIAL

Thanks...we have no comments and are OK to attend in person...

Cheers
Andrew

ANDREW TAYLOR PUBLIC TRUSTEE AND GUARDIAN

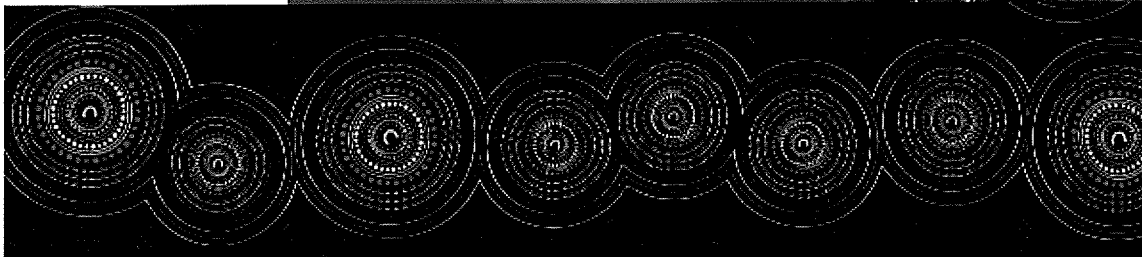
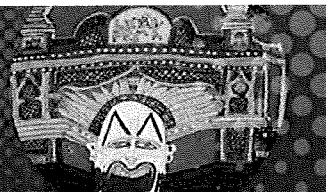


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RENEWAL: PUTTING RIGHTS INTO PRACTICE

20 - 21 October 2022
 Pullman Melbourne Albert Park | Online
www.agacconference.com.au



**We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people
We acknowledge and respect their continuing culture and the contribution they make
to the life of this city and this region**

Artwork by Ngarrindjeri artist Jordan Lovegrove

Due to an increase in the number of staff being impacted by illness, the Public Trustee and Guardian is currently experiencing critical staff shortages.

Whilst every effort is being made to action your requests, things are taking longer to resolve. We thank you for your patience.

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Wednesday, 17 August 2022 9:54 AM
To: Taylor, Andrew <andrew.taylor@act.gov.au>
Cc: Hughes, Callum <Callum.Hughes@act.gov.au>; LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>; Toy, Kathryn <Kathryn.Toy@act.gov.au>; Connolly, Helen <Helen.Connolly@act.gov.au>; Burn, Gregory <Gregory.Burn@act.gov.au>
Subject: FW: Estimates Hearings - Letter from Chair

UNOFFICIAL

Dear Andrew

Thankyou for this advice, and acknowledging your intention to attend next Wednesday 24 August with Callum Hughes.

I take it from your response that you and Callum have no comments on the proposed arrangements and the risk register, but if you do please let us know by 5pm today.

Thanks for letting us know about your availability regarding the call back sessions again, we have advised the Committee on this.

Regards

Kathleen de Kleuver

Committee Secretary | Standing Committee on Justice and Community Safety
Office of the Legislative Assembly for the ACT
P (02) 620 70524 | E LACommitteeJCS@parliament.act.gov.au



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From: Taylor, Andrew <andrew.taylor@act.gov.au>

Sent: Wednesday, 17 August 2022 9:41 AM

To: de Kleuver, Kathleen <Kathleen.deKleuver@parliament.act.gov.au>

Cc: Hughes, Callum <Callum.Hughes@act.gov.au>; Toy, Kathryn <Kathryn.Toy@act.gov.au>; Connolly, Helen <Helen.Connolly@act.gov.au>; Burn, Gregory <Gregory.Burn@act.gov.au>

Subject: FW: Estimates Hearings - Letter from Chair

UNOFFICIAL

Hi again Kathleen

As Public Trustee and Guardian, I will attend the Wednesday hearing in person (along with Deputy PTG Callum Hughes) on Wednesday, 24 August 2022 from 12:15pm to 1.00pm, unless advised otherwise.

I will be interstate when the possible carryover sessions may be heard on Thursday 25th and Friday 26th and will not be accessing emails.

Can I please ask that, should the Committee require carryover sessions on the Thursday and/or Friday, you contact Callum Hughes at PTG on Mob 0402603 804 or by email to callum.hughes@act.gov.au who will coordinate attendance by the other witnesses who are on standby (all copied to this email).

I have attached the witness form I previously sent with details of witnesses for Wed/Thurs and Fri.

Cheers
Andrew

ANDREW TAYLOR

PUBLIC TRUSTEE AND GUARDIAN



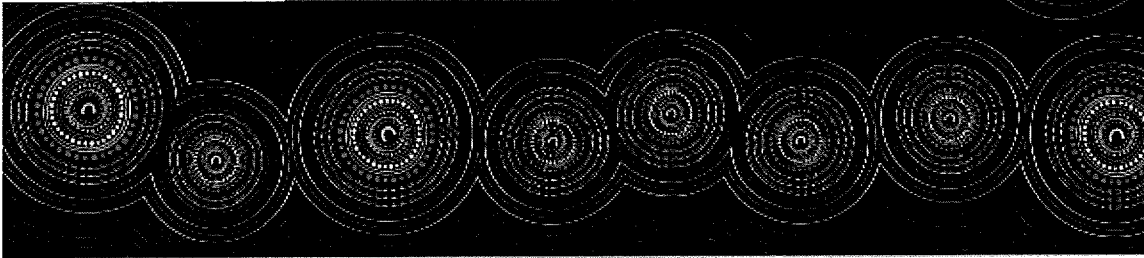
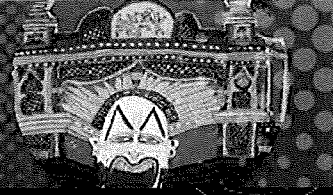
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**We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people
We acknowledge and respect their continuing culture and the contribution they make
to the life of this city and this region**

Artwork by Ngarrindjeri artist Jordan Lovegrove

Due to an increase in the number of staff being impacted by illness, the Public Trustee and Guardian is currently experiencing critical staff shortages.

Whilst every effort is being made to action your requests, things are taking longer to resolve. We thank you for your patience.

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>

Sent: Tuesday, 16 August 2022 7:46 PM

To: Taylor, Andrew <andrew.taylor@act.gov.au>

Cc: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>

Subject: Estimates Hearings - Letter from Chair

Dear Mr Taylor,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch

P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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Solicitor-General for the
Australian Capital Territory

Our Reference

Contact
Peter Garrison
6207 0654
peter.garrison@act.gov.au

17 August 2022

Mr James Milligan MLA
Chair
Select Committee on Estimates 2022-2023
Legislative Assembly for the
Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Via email: committees@parliament.act.gov.au

Dear Mr Milligan

Select Committee on Estimates 2022-2023 – Hearing Consultation

Thank you for your letter of 16 August 2022 and the attached Risk Register.

I am happy to attend a hearing of the Committee in person in accordance with the Committee's proposal. I have no comments on the Risk Register.

Yours sincerely

Peter Garrison AM SC
Solicitor-General



Speaker

Mr James Milligan
Chair, Select Committee on Estimates
ACT Legislative Assembly
By email: lacommitteestimates@parliament.act.gov.au

Dear Mr Milligan

Select Committee on Estimates 2022-2023 – Hearing Consultation

I refer to your letter of 16 August 2022, regarding consultation for the 2022-23 select committee on estimates.

Thank you for providing me with a copy of the committee's risk assessment. I am comfortable with the approach the committee has taken. I wish to advise that from Friday 19 August 2022, I will be absent from the country on CPA business returning on 01 September 2022.

I will be available to the committee from the afternoon of the 1 September.

Kind regards,

A handwritten signature in black ink, appearing to read "Joy Burch".

Joy Burch MLA
Speaker

17 August 2022

www.parliament.act.gov.au

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Thompson, SamuelR

From: John Boersig <John.Boersig@legalaidact.org.au>
Sent: Wednesday, 17 August 2022 1:33 PM
To: LA Committee - Estimates
Subject: RE: Estimates Hearings - Letter from Chair

Follow Up Flag: Follow up
Flag Status: Flagged

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Good afternoon.

We have our COVID protocols in place. It includes outreach and attendance at sites outside our office, which are not inconsistent with your risk register.

No further comment.

John

John Boersig
Chief Executive Officer
Executive

Legal Aid ACT

2 Allsop Street Canberra 2601
Phone: 02 6243 3455
Fax: 02 6243 3423
John.Boersig@legalaidact.org.au
www.legalaidact.org.au

Legal Aid ACT respectfully acknowledges the traditional land owners whose land we are working on today and pay our respects to Elders past and present. We also acknowledge and pay our respects to the Aboriginal people who draw their ancestral lines from this land.

Please consider the environment - do you really need to print this email?

From: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Sent: Tuesday, 16 August 2022 7:35 PM
To: John Boersig <John.Boersig@legalaidact.org.au>
Cc: LA Committee - Estimates <LACommitteeEstimates@parliament.act.gov.au>
Subject: Estimates Hearings - Letter from Chair

Dear Dr Boersig,

Please find attached a letter to you on behalf of the Chair of the Select Committee for Estimates 2022-23.

Regards,

Samuel Thompson

Committee Secretary | Committee Support Office | Parliamentary Support Branch
P (02) 620 50435 | E SamuelR.Thompson@parliament.act.gov.au



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Thompson, SamuelR

From: Reichstein, Megan on behalf of Lewis, Sophie
Sent: Wednesday, 17 August 2022 3:09 PM
To: LA Committee - Estimates
Subject: FW: Estimates Hearings - Letter from Chair
Attachments: Commissioner for Sustainibility - Consultation - 16 August 2022.pdf; OLA COVID-19 Risk Register V2.docx

Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL

To: Mr James Milligan, MLA
Chair, Select Committee on Estimates 2022-23

Dear Mr Milligan

Following receipt of your letter of 16 August 2022, I wish to confirm that I believe that comprehensive consideration has been given in relation to the COVID risks associated with witness appearances at Estimates, and that the necessary preventive procedures have been identified as described in the Risk Register.

I would preference online for simplicity but am not overly worried about COVID under these arrangements.

Kind regards
Sophie



ACT Office of the Director of Public Prosecutions

Our Reference:
Your Reference:

17 August 2022

Mr James Milligan MLA
Chair
ACT Legislative Assembly Select Committee on Estimates 2022-2023

Via email: lacommitteeestimates@parliament.act.gov.au

Dear Mr Milligan

Thank you for your letter dated 16 August 2022 and attached Risk Register, in consultation of in-person appearances at Estimates hearings for 2022-2023.

I confirm that I have read the attached COVID-19 Risk Register, and I am confident that the COVID risks of in-person attendance are appropriately identified and mitigated. Accordingly, I would be happy to appear as a witness at Estimates hearings at the ACT Legislative Assembly in-person.

Yours faithfully,

A handwritten signature in black ink, appearing to be "Shane Drumgold", written in a cursive style.

Shane Drumgold SC
Director - ACT Director of Public Prosecutions

COVID-19 Risk Register: ACT Legislative Assembly Estimates Hearing 2022-23

Location: ACT Legislative Assembly Building
 Date: 16/08/2022

Hazard	What is the likelihood that the harm would occur?	What is the level of risk?	What controls are currently in place?	Are further controls required?	Actioned by	Date Due	Date Complete	Maintenance and review
Transmission of COVID-19 from staff or other attendees who are infected	Staff or other attendees catching COVID-19 (could result in serious illness or death).	Moderate, while infections are declining consequences may be severe, especially if unvaccinated.	Medium, new infections are declining and ACT community has a very high vaccination rate.	Cleaning and disinfecting in accordance with guidance from Safe Work Australia and public health authorities. Frequently touched surfaces including desks, handrails, doors, phones, keyboards etc are regularly cleaned. Desks are wiped clean with surface wipes after each use. Physical distancing – room has markings to keep workers and other attendees at least 1.5m apart. Room occupancy limits consistent with public health directions are in place and signs placed around the precinct advising of these. Alcohol based hand sanitiser is provided at entry points to the building and available in meeting rooms. Posters on good hygiene practices and physical distancing are prominent in Assembly building and hand washing facilities are available in the bathrooms. The Assembly Office has increased fresh air intake into the building through the HVAC system from 30% to 50%.	A reminder by the Chair of the committee that witnesses, and others, practice good hand and respiratory hygiene. Mandated mask wearing except when speaking.	On-going	On-going	On-going
Staff or attendees attending COVID-19 workplace with COVID 19 or other flu like symptoms	Staff or attendees catching COVID-19 (could result in serious illness or death).	Moderate, while infections are declining consequences may be severe, especially if unvaccinated.	Medium, new infections are declining and ACT community has a very high vaccination rate.	Cleaning and disinfecting in accordance with guidance from Safe Work Australia and Health authorities. Frequently touched surfaces including desks, handrails, doors, phones, keyboards etc are regularly cleaned. Staff have been briefed on symptoms of COVID-19 and have been told to stay home if they aren't feeling well. Signage is displayed at entry points reminding staff and building attendees of the importance of staying home when experiencing flu like symptoms. Posters on good hygiene practices and physical distancing are prominent in Assembly building		On-going	On-going	On-going

Hazard	What is the harm that the hazard could cause?	What is the likelihood that the harm would occur?	What is the level of risk?	What controls are currently in place?	Are further controls required?	Actioned by	Date Due	Date Complete	Maintenance and review
				and hand washing facilities are available in the bathrooms. Soap and water for hand washing and paper towel or air dryer for hand drying is available in bathrooms with instructional signs on hand washing. Alcohol based hand sanitiser is available in all staff areas including bathrooms, break rooms, and meeting rooms. If a witness has a health condition that would classify them as vulnerable to risk of exposure, alternative arrangements can be made, including attending remotely. The Office has increased fresh air intake into the building through the HVAC system from 30% to 50%.					
Inadequate arrangements for addressing a confirmed case of COVID-19 in the precinct	Staff or attendees catching COVID-19 (could result in serious illness or death).	Medium, new infections are declining and ACT community has a very high vaccination rate.	Moderate, while infections are declining consequences may be severe, especially if unvaccinated.	Signage is displayed at entry points reminding staff and building attendees of the importance of staying home when experiencing flu like symptoms. Secretariat will maintain a record of all attendees at hearings and approximate timeframes of appearances. If a witness has a health condition that would classify them as vulnerable to risk of exposure, alternative arrangements can be made, including attending remotely. The Office has increased fresh air intake into the building through the HVAC system from 30% to 50% Process as outlined by ACT Health in the case of exposure will be followed.			On-going	On-going	On-going
Lack of mask wearing	Staff or attendees catching COVID-19 (could result in serious illness or death).	Medium, new infections are declining and ACT community has a very high vaccination rate.	Moderate, while infections are declining consequences may be severe, especially if unvaccinated.	Cleaning and disinfecting in accordance with guidance from Safe Work Australia and Health authorities Staff have been briefed on symptoms of COVID-19 and have been told to stay home if they aren't feeling well. Signage is displayed at entry points reminding staff and building attendees of the importance of staying home when experiencing flu like symptoms. Posters on good hygiene practices and physical distancing are prominent in Assembly building			On-going	On-going	On-going

Hazard	What is the harm that the hazard could cause?	What is the likelihood that the harm would occur?	What is the level of risk?	What controls are currently in place?	Are further controls required?	Actioned by	Date Due	Date Complete	Maintenance and review
				and hand washing facilities are available in the bathrooms. Soap and water for hand washing and paper towel or air dryer for hand drying is available in bathrooms with instructional signs on hand washing. If a witness has a health condition that would classify them as vulnerable to risk of exposure, alternative arrangements can be made, including attending remotely. The Office has increased fresh air intake into the building through the HVAC system from 30% to 50%.					
Persistent use of hand sanitiser	Dermatitis	Low, alcohol-based sanitiser has minimal impact and people are familiar with using sanitisers.	Low, people have been using hand sanitisers for a long period and are very familiar with it.	Staff or visitors can wash hands with soap and water as an alternative to hand sanitiser.	Ask staff if they have a history of dermatitis or allergy to alcohol		On-going	On-going	On-going
Poor culture of adhering to social distance requirements	Staff or attendees catching COVID-19 (could result in serious illness or death).	Low, ACT community has a high knowledge and compliance record.	Low, staff and attendees have been adequately informed of requirements – generally a high level of knowledge and compliance in the community.	Cleaning and disinfecting in accordance with guidance from Safe Work Australia and Health authorities Signage is displayed at entry points reminding staff and building attendees of the importance of staying home when experiencing flu like symptoms. Posters on good hygiene practices and physical distancing are prominent in Assembly building and hand washing facilities are available in the bathrooms. If a witness has a health condition that would classify them as vulnerable to risk of exposure, alternative arrangements can be made, including attending remotely. The Office has increased fresh air intake into the building through the HVAC system from 30% to 50%.			On-going	On-going	On-going

Agius, Jacqueline

From: Agius, Jacqueline
Sent: Thursday, 18 August 2022 3:42 PM
To: Grey, Brooke
Subject: FW: Letter for Commissioner Agius from Madam Speaker
Attachments: Letter to Speaker - Update on Consultation.pdf; Combined feedback.pdf; OLA COVID-19 Risk Register V2.docx; Letter Commissioner Agius 180822.pdf

OFFICIAL

Hi Brooke

Noting that Meaghan is on leave could you please deal with this matter?

Stay safe

Jacqueline Agius | Work Health and Safety Commissioner
| Labour Hire Licence Commissioner
Office of the Work Health and Safety Commissioner
GPO Box 158 Canberra ACT 2601

WORKSAFEACT



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Speaker <Speaker@parliament.act.gov.au>
Sent: Thursday, 18 August 2022 3:35 PM
To: Agius, Jacqueline <Jacqueline.Agius@worksafe.act.gov.au>; O'Connor, Meaghan <Meaghan.O'Connor@worksafe.act.gov.au>
Subject: Letter for Commissioner Agius from Madam Speaker

Dear Commissioner,

Please find attached correspondence in relation to Prohibition Notices N-000005068 and N-000005078 served on the ACT Legislative Assembly.

Joy Burch MLA
Speaker



Agius, Jacqueline

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
Categories: Red Category

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Dear Madam Speaker,

Letter **attached**.

Regards,

Aaron Guilfoyle
Special Counsel

T. +61 7 3031 9878

M. 0418 723 811

E. AGuilfoyle@macdonnells.com.au

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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; Joy.Burch@parliament.act.gov.au

Dear Madam Speaker,

Request to withdraw Prohibition Notice N-0000005068

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-0000005068 (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



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