

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

Office of the Legislative Assembly



Mr Jeremy Hanson CSC MLA
Chair
Select Committee on Privileges
Legislative Assembly for the ACT
London Circuit, Canberra City, ACT 2601

Submission—Office of the Legislative Assembly

Dear Mr Hanson,

In response to your letter of 18 August 2022, please see attached the Office's submission to the Select Committee on Privileges.

Yours sincerely,

Julia Agostino
Acting Clerk

1 September 2022

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1. Scope

- 1.1. To assist the committee in its deliberations, this submission sets out:
- (a) the unique features of the Assembly precincts as a workplace and the Assembly's approach to work health and safety during the pandemic;
 - (b) an account,¹ in the form of a chronology, of the relevant events associated with the serving of two prohibition notices (N-5068 and N-5078—see Attachment A) by WorkSafe ACT on the Speaker of the Legislative Assembly for the Australian Capital Territory; and
 - (c) matters that the committee may wish to consider.

A note on privilege

- 1.2. The term 'parliamentary privilege' is sometimes misunderstood.
- 1.3. The 'privileges' that are enjoyed by parliaments in the Westminster tradition, are the powers and immunities that attach to legislative chambers, their committees, and their members to ensure that they are able to carry out their functions unhindered.
- 1.4. As the most direct embodiment of the will of electors and the body from which executive government is formed (and to which government is responsible), parliaments represent electors (and air their grievances), consider and make laws, and scrutinise and hold executive government to account. The powers, privileges and immunities of parliament recognise the singular and central nature of these functions in our democratic scheme and have evolved over centuries of dispute between the legislature, the Crown/executive government and, on occasion, the courts.
- 1.5. With certain minor exceptions, the powers, privileges and immunities of the Assembly, its committees and its members are the same as those of the Australian House of Representatives.² Through s 49 of the Australian Constitution, the House of Representatives itself is given the powers, privileges, and immunities of the UK House of Commons as they existed at the time of the establishment of the Commonwealth.
- 1.6. Among their privileges, parliaments have the protection of the freedom of speech,³ the power to investigate and punish contempts, the power to make rules and orders concerning the conduct of their business, and the power of inquiry (including the power to call for papers, persons, and records), which is regarded as essential to the parliament's function of holding executive government to account.

¹ The account does not include matters that may have arisen in the course of a committee proceeding (and that were not authorised for publication) or matters that were the subject of procedural advice to the Speaker or other members.

² *Australian Capital Territory (Self-Government) Act 1988* (Cth), s 24. Unlike the Senate or the House of Representatives, the Assembly is unable to fine or imprison a person.

³ Article 9, *Bill of Rights 1688*

- 1.7. While the privileges of parliaments are sometimes conceived as being exceptions to the normal operation of the law (for example, freedom of speech provides an absolute immunity for things said or done as part of ‘proceedings in Parliament’ from external impeachment that could, in other settings, give rise to civil or criminal action), they are not a wholesale immunity from the law.
- 1.8. **On this, it is critical to state upfront that there has never been any suggestion that the *Workplace Health and Safety Act 2011* (the WHS Act) does not apply to MLAs, the Office or their staff. However, neither does the WHS Act operate in such a way as to cast aside the powers, privileges or immunities of the Assembly, its committees, or its members.**
- 1.9. To abrogate the Assembly’s privileges, express statutory provision is required; that is, plain words, in statute, clearly limiting or altering the powers, privileges and immunities, as they are known to exist at law, must be present. As noted in Odgers’ Senate Practice:

It is ... a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words. Section 49 of the Constitution provides that the law of parliamentary privilege can be altered only by a statutory declaration by the Parliament.⁴

- 1.10. This view is given support by a joint opinion, in 1985, of the Commonwealth Attorney-General and the Commonwealth Solicitor-General:

Whatever may be the constitutional position, it is clear that parliamentary privilege is considered to be so valuable and essential to the workings of responsible government that express words in a statute are necessary before it may be taken away In the case of the Parliament of the Commonwealth, s. 49 of the Constitution requires an express declaration.⁵

- 1.11. Although it would need to be tested in the courts, there is every likelihood that it is ‘beyond power’ for the Work Health and Safety Commissioner (the commissioner), or an inspector of WorkSafe ACT, to use a power prescribed under the WHS Act to put a stop to a proceeding of an Assembly committee. This proceeds on the basis, among other considerations, that:
- (a) in inheriting the powers, privileges and immunities of the House of Representatives, the Assembly has the power of inquiry;⁶
 - (b) the Assembly has the power to make standing rules and orders regarding the conduct of its business⁷ and has established a range of committees, by resolution and pursuant to standing orders, to exercise the inquiry power on the Assembly’s behalf; and

⁴ Odgers’ Senate Practice, 14th Edition, p 69.

⁵ Ibid, p 69.

⁶ *Australian Capital Territory (Self-Government) Act 1988* (Cth), s 24

⁷ *Australian Capital Territory (Self-Government) Act 1988* (Cth), s 21.

- (c) the Assembly has an exclusive jurisdiction to decide matters related to its own proceedings (sometimes called exclusive cognisance).
- 1.12. In addition, any attempt to adduce evidence before a court relating to a ‘proceeding in Parliament’ (for example, the conduct of a committee hearing) would be met with the absolute privilege that arises by reason of Article 9 of the *Bill of Rights 1688* (UK)⁸ and s 16 of the *Parliamentary Privileges Act 1988* (Cth).
- 1.13. There is no provision in the WHS Act that expressly alters or limits any of the powers, privileges or immunities of the Assembly, its committees, or its members in such a way as to give legal force, by administrative fiat, to a prohibition on Assembly committee proceedings.
- 1.14. Were it otherwise, a key aspect of responsible government—the obligation of accountability of the government to the parliament and the efficacy of the inquiry power—could be easily circumvented by the executive and administrators under all manner of pretexts.
- 1.15. However, even were it accepted that there is a power as a matter of law for WorkSafe ACT to essentially injunct ‘proceedings in Parliament’, in considering whether any breach of privilege or contempt of the Assembly has occurred and in order to determine whether an ‘improper’⁹ interference in the affairs of the Assembly has occurred, it is open to the committee to examine the integrity of the decision-making process that attended the exercise of that power.
- 1.16. Relevant considerations here might include:
- whether due consideration was given to the effect that the exercise of the power might have on the performance by the Assembly and its committees of their parliamentary functions;
 - whether the use of the power was reasonable and proportionate in the circumstances;
 - the degree of diligence and good faith that were applied in ascertaining the facts that were relied upon to support the exercise of the power; and
 - whether any external or improper influence was brought to bear in exercise of the power.
- 1.17. The Office makes no submissions as to the propriety of the conduct of the commissioner, or any other person.

Legal matters

- 1.18. Given the significance of these matters and the potential impacts on the operation of responsible government and the separation of powers, the committee may also wish to request that the Attorney-General seek the considered legal view of the ACT Solicitor-General to help inform the committee’s deliberations and public discussion.

⁸ Article 9 states ‘That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’.

⁹ Standing order 277(a) provides that ‘A person shall not improperly interfere with the free exercise by the Assembly or a committee of its authority, or with the free performance by a Member of the Member’s duties as a Member’.

- 1.19. Pursuant to standing order 238, it is also open to the committee to request that the Speaker engage a person to provide specific legal advice to the committee.

2. Assembly's WHS arrangements

- 2.1. The Assembly has, throughout the pandemic, taken its duty of care and responsibilities for workplace health and safety very seriously.
- 2.2. While the Assembly's WHS arrangements do not fall within the terms of reference of the committee, they are briefly touched upon in this submission to place on the record the steps that have been put in place by the Assembly to manage COVID-related WHS risks since the beginning of the pandemic.
- 2.3. A unique feature of the Assembly workplace vis-à-vis the WHS Act is that, based on legal advice from the Government Solicitor's Office, all 25 Members of the Legislative Assembly and the Clerk are considered 'persons conducting a business or undertaking' (PCBUs),¹⁰ and all have certain duties for ensuring the health and safety of 'workers' in the Assembly.
- 2.4. The Head of Service and Directors-General may also have particular duties in respect of their staff working in the Assembly precincts such as Directorate Liaison Officers, officials providing briefings to ministers, or officials appearing before Assembly committees in the course of their work in the ACT Public Service.
- 2.5. While there have been a range of different strategies, policies, plans, and assessments developed to address WHS risks or hazards associated with COVID, the Assembly's COVID Safe Plan (the plan) (Attachment B) was developed to provide an overarching framework to guide the Speaker, ministers, non-executive MLAs,¹¹ the Clerk, their staff, and others in the Assembly workplace to operate effectively and safely during the pandemic.
- 2.6. The Speaker, MLAs, their staff, and staff of the Office have all been constructively and positively engaged in considering WHS risks, their impacts on occupants of the precincts and those entering the precincts, as well as the internal controls that ought to be implemented to eliminate or minimise risks. Feedback from these groups has been incorporated into successive revisions of the plan.
- 2.7. The plan and associated risk assessments in the plan are also guided by and draw from:
 - relevant provisions of the WHS Act;
 - principles of effective risk management;
 - feedback provided by the Standing Committee on Administration and Procedure (the committee of the Assembly responsible for the internal governance of the Assembly);¹²
 - feedback provided by the Assembly's Health and Safety Committee (HSC), which includes staff and PCBU representatives from each the ACT ALP, Canberra Liberals, ACT Greens, and the Office;¹³

¹⁰ WHS Act, s 5. Neither the Assembly, nor an Assembly committee could properly be regarded as a PCBU.

¹¹ All are regarded as PCBUs under the WHS Act and have a primary duty to ensure a safe and healthy workplace.

¹² See standing order 16

¹³ There is also a standing invitation to the relevant union to participate.

- feedback from staff involved in the performance of particular tasks and functions about relevant risks and the controls that are needed to manage them effectively; and
 - elements of the Office's business continuity program.
- 2.8. The plan includes eight pages of detailed risk assessments and associated controls that are in place to eliminate or minimise risks in relation to a large number of both specific and general hazards that have been identified since the pandemic began. The plan has evolved as public health advice has been revised and as key risk drivers have changed.
- 2.9. The Office participated in CMTEDD's COVID-19 Assurance Program in 2021 to ensure that the Assembly had tailored responses in place that aligned with whole-of-public sector arrangements for managing the response to COVID. At Attachment C is the finalised assessment report received from CMTEDD confirming the Assembly meets the requirements of the program.
- 2.10. The plan, and the risk assessments contained in the plan, have been the subject of ongoing consideration and endorsement by the:
- (a) Speaker;
 - (b) Standing Committee on Administration and Procedure;
 - (c) Assembly's HSC; and
 - (d) Office's Executive Management Committee (EMC).

3. Chronology of events

- 3.1. In the lead up to the issuing of two prohibition notices by an inspector of WorkSafe ACT, the Office was generally aware that there had been a disagreement between the Minister for Industrial Relations and Workplace Safety and the Select Committee on Estimates 2022-2023 (the estimates committee) concerning the conduct of estimates hearings.
- 3.2. It is understood that a series of letters had been exchanged between the Chair of the estimates committee and the Minister for Industrial Relations and Workplace Safety as to how the committee ought to conduct its proceedings; in particular, whether ministers and senior officials might attend remotely or in-person.
- 3.3. The estimates committee would be in a position to furnish the privileges committee with correspondence and other information relevant to the privileges inquiry.

First visit by inspectors

- 3.4. The Office became more directly involved in the matters the subject of the committee's inquiry when, on Friday 12 August 2022, two inspectors from WorkSafe ACT presented at the Assembly Precincts, apparently acting on a complaint by an unspecified person or persons.
- 3.5. The inspectors proceeded to demand the production of certain documents from the Clerk.
- 3.6. The Clerk provided the inspectors with a copy of a draft revision of the Assembly's COVID Safe Plan (Attachment B) that the Speaker had provided to the Standing Committee on Administration and Procedure at its meeting of 1 August 2022 for its consideration.
- 3.7. The plan contains a series of detailed risk assessments and associated controls relating to a wide range of activities that take place in the Assembly precincts.
- 3.8. The inspectors were particularly interested in the proceedings of the Select Committee on Estimates 2022-2023 and how it intended to undertake its public hearings program. The Clerk explained that he did not have any authority over the proceedings of the committee and nor was he authorised to speak with any third-party about what the committee's internal deliberations might have entailed.
- 3.9. During the inspection, the inspectors purported to require that the Clerk make members of the estimates committee available to the inspectors in order to question them.
- 3.10. It is understood that being finished with their meetings for the day, two of the MLAs on the estimates committee had left the precincts already and that only one of its members remained.
- 3.11. On being advised of this, the inspectors reprimanded the Clerk for 'permitting' the other two MLAs to leave the precincts.
- 3.12. The remaining MLA serving on the estimates committee then met with the inspectors. That member will be in a position to advise of the interaction that they had with the inspectors and any subsequent interactions that they may have had.

- 3.13. Throughout the course of the Clerk's interactions with the inspectors, he had emphasised on several occasions that parliamentary privilege was potentially enlivened by the sorts of demands that were being made and the prospect that had been conveyed by the inspectors that they could shut down the work of the committee if they were not satisfied that certain risk assessments and consultations with 'affected workers' had been performed. The matters raised by the Clerk did not appear to be of concern to the inspectors.
- 3.14. On a number of occasions, and in response to queries about consultations with 'affected workers' and risk assessments, the Clerk attempted to draw the inspectors' attention to the Assembly's COVID Safe Plan and the risk assessments contained in it. It was unclear whether the inspectors did, in fact, examine the plan in any detail.
- 3.15. The Clerk asked the inspectors for more information about the complaint that had been made and the inspectors indicated that the Clerk would have to make an FOI application.
- 3.16. Following the conclusion of the inspection, one of the inspectors placed a phone call to a person that the Clerk believed was a supervisor in WorkSafe ACT seeking, the Clerk understood, additional guidance about how the inspectors ought to proceed.
- 3.17. A short time after this telephone conversation, a verbal prohibition notice was issued by one of the inspectors. This was followed up later that day with a written prohibition notice pursuant to s 195 of the WHS Act. As the committee would be aware, the notice (N-5068) purported 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.

- 3.18. The apparent basis for forming the reasonable belief, pursuant to s 196(1)(a) of the WHS Act, is stated in the notice is as follows:

... 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.

3.19. Pursuant to the s 196(2) of the WHS Act, the notice purported to require that certain measures be implemented including:

1. *Undertak[ing] a risk assessment in relation to face-to-face hearings or committee meetings at the Legislative Assembly of the Australian Capital Territory.*
2. *Develop[ing] 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[ing] with all workers who are, or are likely to be, directly affected by the activity.*
4. *Provid[ing] evidence of the risk assessment, control measures, and consultation process having been undertaken.*

Offsite estimates committee meeting

- 3.20. It is understood that members of the estimates committee were made aware of the issuing of the prohibition notice on the afternoon/evening of Friday 12 August 2022.
- 3.21. On the morning of Monday 15 August 2022, the estimates committee, in light of the existence of the prohibition notice and in an abundance of caution, met at a venue outside of the Assembly precincts.
- 3.22. The estimates committee would be in a position to advise the privileges committee on the purpose of that meeting, the effects that the actions of WorkSafe ACT had on its proceedings, and other relevant considerations.

Correspondence with the Commissioner

- 3.23. It is understood that the Speaker wrote to the commissioner via email at approximately 8am on Monday 15 August 2022 setting out her concerns about the legality of the action that WorkSafe ACT had taken, the potentially contemptuous nature of its actions and a request that the notice be withdrawn.
- 3.24. It is understood that the Speaker provided all members with a copy of that letter on the morning of Monday 15 August 2022.

Second visit by inspectors

- 3.25. On Monday 15 August 2022, three inspectors from WorkSafe ACT presented at the precincts requesting to meet with the Clerk at approximately 9.45am (at which time the Assembly was sitting and the Clerk is expected to be available to MLAs in order to advise on Assembly practice and procedure).
- 3.26. The Clerk asked directly if the inspectors were there to advise that the prohibition notice would be, or had been, withdrawn and the inspectors said that they were not there for that purpose.

- 3.27. The inspectors advised that they were there to ascertain if any further action had been taken by the Speaker in relation to the prohibition notice, viz whether the matters set out at paragraph 3.19 above had been attended to.
- 3.28. The three inspectors met with the Clerk, staff of the Office and a senior member of the Speaker's staff. At the meeting, the Clerk and parliamentary officials reiterated that issues of parliamentary privilege and possible contempt of the Assembly were enlivened by the serving of the prohibition notice in terms that purported to prevent all of the Assembly's committees from meeting or conducting hearings.
- 3.29. The Clerk sought to draw the attention of the inspectors to the wording in the notice that was regarded as being particularly problematic. However, the inspectors indicated that they had not brought a copy of the notice with them.
- 3.30. The inspectors indicated that all of these considerations were not pertinent to their function in attending the Assembly precincts and that such matters would need to be dealt with elsewhere.
- 3.31. The inspectors indicated that there had been 'some confusion' as to the scope of the prohibition notice in that it was claimed that the notice was not intended to prevent all meetings and hearings of Assembly committees, only those that took place in-person. Assembly officials pointed out that the terms of the notice were clear and did not make any such distinction. It was also pointed out to the inspectors that, in any event, a notice that purported only to restrict in-person meetings would still engage the Assembly's privileges. The inspectors said words to the effect that this was not a matter for them to consider.
- 3.32. The Clerk asked whether, given the issues associated with parliamentary privilege, the inspectors had sought legal advice prior to the issuing of the prohibition notice. The inspectors indicated that they had not sought legal advice but had consulted with their supervisor.
- 3.33. The Clerk indicated that he had provided a copy of the Assembly's COVID Safe Plan to the inspectors on the afternoon of Friday 12 August 2022 and that a number of specific risk assessments were contained in that document, including those relating to the conduct of committee proceedings and the way in which consultations were conducted. The inspectors advised that they did not bring a copy of COVID Safe Plan with them.
- 3.34. The Clerk, staff of the Office and the Speaker's senior staff member observed that the COVID Safe Plan and the risk assessments in the plan had been endorsed by the Office, the Speaker, the Standing Committee on Administration and Procedure and the Assembly's Health and Safety Committee, all of which had been consulted. Inspectors were queried as to whether those arrangements were not considered as being adequate in satisfying various duties under the Act and/or the matters alluded to in the prohibition notice.
- 3.35. Inspectors indicated that assessing the adequacy of controls was a matter for individual 'businesses' but that they had formed the view that a number of steps had not been taken to properly assess possible hazards and that there was a requirement to consult with 'affected workers'.

- 3.36. On several occasions, it was put directly to the inspectors whether they had read through the assessments within the COVID Safe Plan. On each occasion, the inspectors declined to answer that question, instead stating words to the effect that they had ‘read through the COVID Safe Plan’—they would not be drawn on whether they had specifically examined the risk assessments, or the consultation arrangements contemplated in the document and whether or not they were considered adequate.
- 3.37. The inspectors took issue with the plan being in a draft form (with March 2022 being the last time that the plan had been formally endorsed). It was pointed out to inspectors that the plan remained with draft revisions in place from July as it had been presented to the Standing Committee on Administration and Procedure on 1 August 2022, party whips (who sit on the committee) had been asked by the Speaker at that meeting to consult with their party room colleagues and that that process had not concluded.
- 3.38. After a period of time, it was suggested that perhaps the usefulness of the meeting had reached its limit and there was general agreement on this point.

Speaker’s statement to the Assembly

- 3.39. At approximately 10.15am, Monday 15 August 2022, the Speaker made a statement in the Assembly Chamber on WorkSafe ACT’s actions, the implications for parliamentary privilege and the possibility that a contempt of the Assembly had been committed.
- 3.40. The Speaker advised that she had sent a letter to the commissioner outlining her concerns and requesting the withdrawal of the prohibition notice. The Speaker advised that the commissioner had not responded to her letter.
- 3.41. Later, the Assembly resolved to establish a select committee on privileges to inquire into the relevant matters.
- 3.42. It is understood that the commissioner has, as at the time of writing this submission, not addressed the concerns raised by the Speaker, nor responded to the Speaker’s letter. It is understood that the commissioner made a statement to the media in general terms about the issuing of the prohibition notice.

Second prohibition notice

- 3.43. Following the visit by the WorkSafe ACT inspectors, the Speaker’s statement in the Assembly, and the establishment of the privileges committee, the Speaker received a second prohibition notice (N-5078) on Monday 15 August 2022, a day on which a special sitting of the Assembly had occurred.

3.44. The new notice was essentially in the form of a clarification that it was only in-person hearings by Assembly committees that WorkSafe ACT now purported to prohibit. The new notice stated that:

You [that is, the Speaker] are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

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 works and others [i.e. witnesses appearing before the committee].

3.45. The new notice also included the following additional narrative in support of the inspector's 'basis of belief', pursuant to s 196(1)(a) of the WHS Act:

A review of the current Risk Register provided by the workplace as part of the overarching COVID-Safe Plan- 10th Assembly' document identified that the document provided is in draft-state, with the previous version/approval being considered by the WHS committee on 8 March 2022. Further review of the section 'Exposure risks-committee hearings/meetings' fails to demonstrate that the risk has been adequately assessed, or confirm that the Hierarchy of Control has been applied.

3.46. For the complete notice, see Attachment A.

Third visitors by inspectors

3.47. On Friday 19 August 2022, two inspectors (who had not previously attended the Assembly) from WorkSafe ACT met with the Acting Clerk, Executive Manager, Business Support, and a senior member of the Speaker's staff.

3.48. The inspectors commented that appropriate control measures appeared to be in place such as use of sanitiser, social distancing and room capacity limits.

3.49. The inspectors noted they had received a risk register (Attachment D) which encompassed a risk assessment and requested confirmation that proposed attendees of the estimates hearings had been consulted. The committee may be interested to compare this risk register with the risk register contained in the Assembly's COVID Safe Plan (provided to WorkSafe ACT on 12 August 2022) in terms of the assessments and applicable internal controls that appear in both documents.

3.50. The inspectors noted a reference to fresh air intake being increased and enquired as testing that had been undertaken. Ms Turner, Executive Manager, Business Support offered to provide a copy of an Air Quality Assessment the Office had commissioned. This was provided to WorkSafe ACT by email on 19 August 2022.

- 3.51. A brief discussion ensued regarding consultation on the risk assessment with attendees for the estimates hearings and that some respondents raised the possibility of virtual attendance. The inspectors advised that to meet the consultative requirement of the Prohibition Notice, they required evidence that the feedback was taken into consideration.
- 3.52. The Office has confirmed that at some time before midday, the estimates committee notified the inspectors that it had considered the feedback.

Withdrawal of prohibition notice

- 3.53. At 11.55am on 19 August 2022, the Assembly received confirmation from WorkSafe ACT that the risk associated with Prohibition Notice N-0000005078 had been remedied and it was lifted.

4. Matters for consideration

Possible interference or influence

4.1. The Assembly's contempt power is conferred by s 24 of the Self-Government Act. Importantly, however, the Assembly does not have the power to fine or imprison a person.¹⁴ Standing order 277 governs the operation of the Assembly's contempt power. The following are matters that may be treated as contempts by the Assembly and may be relevant to the committee's investigation and deliberations:

- **Standing order 277(a)—Interference with the Assembly**

A person shall not improperly interfere with the free exercise by the Assembly or a committee of its authority, or with the free performance by a Member of the Member's duties as a Member.

- **Standing order 277(b)—Improper influence of a Member**

A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a Member in the Member's conduct as a Member or induce a Member to be absent from the Assembly or a committee.

- **Standing order 277(d)—Interference with Members**

A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, on a Member on account of the Member's conduct as a Member.

Entry to the precincts

4.2. The committee may wish to consider whether, by issuing a prohibition notice on the Speaker on a day when the Assembly was sitting (Monday 15 August 2022), provisions of standing order 277(f) were in any way enlivened. Standing order 277(f) provides that:

A person shall not serve or execute any criminal or civil process in the precincts of the Assembly on a day on which the Assembly meets except with the consent of the Assembly or of a person authorised by the Assembly to give such consent.

4.3. The committee may wish to explore whether WorkSafe ACT acquitted its obligations under s 164(2)(c) of the WHS Act and whether, as soon as practicable or at any time since, WorkSafe ACT notified 'any health and safety representative for workers carrying out work for th[e]

¹⁴ However, it would be open to the Assembly to make statutory provision for the criminal offence of contempt of the Assembly, adjudicated by the courts, were that its wish.

business or undertaking' following its exercise of the power of entry on the three separate occasions its inspectors entered the Assembly precincts.

Prohibition notice requirements

4.4. Under s 195(1) of the WHS Act, a prohibition notice may be issued if an inspector 'reasonably believes' that:

(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 or imminent 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.

4.5. In doing so, the 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 matters that give, or will give, rise to the risk have been remedied.

4.6. As noted, the prohibition notices were served on the Speaker of the Legislative Assembly to remedy the various deficiencies claimed by WorkSafe ACT. For example, the second notice states that:

You [that is, the Speaker] are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

Conducting committee hearings at the Legislative Assembly of the Australian Capital Territory, at which participants attend in person.

4.7. The Speaker cannot, on any conception, be regarded as 'a person who has control over the activity' (i.e. the proceedings of the Select Committee on Estimates 2022-2023 or over any other committee of the Legislative Assembly) as provided for at s 195 of the WHS Act. Nor can the Speaker be regarded as the person who 'carries on' the activity in the manner contemplated in the notices.

4.8. Each committee is delegated its powers and functions by the Assembly, by way of a resolution of the plenum. No power is conferred by the Speaker under the standing orders, or any other sources of law, in a way that could be construed giving the Speaker the capacity to exercise 'control over the activity' (that being the proceedings of an Assembly committee) as specified at s 195(1)(a)-(b).

4.9. Given this, the committee may wish to explore whether the prohibition notices, the subject of the committee's inquiry, were issued in manner that complied with the requirements of the WHS Act / were legally coherent vis-à-vis the statutory framework provided for under the Act.

Prohibition notice versus an improvement notice

- 4.10. The committee may wish to consider why WorkSafe ACT decided to serve a prohibition notice on the Speaker (among the more consequential powers available to inspectors under the WHS Act), rather than an improvement notice.
- 4.11. Under s 191 of the WHS Act, an improvement notice may be issued if an inspector reasonably believes that a person is contravening a provision of the Act or has contravened a provision in circumstances that make it likely that the contravention will continue to be repeated.
- 4.12. In such an event, an inspector may issue an improvement notice requiring the person:
- remedy the contravention;
 - prevent a likely contravention from occurring; or
 - remedy the things or operations causing the contravention or likely contravention.
- 4.13. While privilege issues would still potentially have been enlivened depending on the terms of an improvement notice, the use of this less disruptive approach would at least have left Assembly committees free to attend to the relevant matters in a cooperative manner with WorkSafe ACT while continuing with the performance of their parliamentary functions.
- 4.14. It may also be queried by the committee why—when the concerns expressed by WorkSafe ACT appear to have been solely related to the Select Committee on Estimates 2022-2023—did WorkSafe ACT seek to prohibit the conduct of hearings and meetings of *all* of the Assembly’s committees and not only the hearings and meetings of the estimates committee?

Workers ‘directed’

- 4.15. In both the prohibition notices issued by WorkSafe ACT, the following assertion is stated as a fact:
- Workers have been directed to attend this planned activity [i.e. the estimates committee hearings] face-to-face only, without alternative options being provided that are readily available to control and eliminate the risk [emphasis added].*
- 4.16. The implication here is that the committee ‘directed’ or compelled witnesses to attend before it.
- 4.17. While the estimates committee can provide additional detail to the privileges committee on the nature of its correspondence with the Minister for Industrial Relations and Workplace Safety concerning its public hearing program, committees do not, as a matter of course, ‘direct’ or compel witnesses to attend. They invite witnesses to attend.
- 4.18. The power of Assembly committees to compel the attendance of witnesses is by way of a summons pursuant to standing order 264A(a), which provides that ‘a witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether

or not the witness was previously invited to appear) only where the committee has decided that the circumstances warrant the issue of a summons’.

- 4.19. The summons power of committees has only been used on two occasions since the establishment of the Assembly in 1989.
- 4.20. In the event that no summons power was utilised by the committee, it would be factually wrong for WorkSafe ACT to have stated in the notice that ‘workers have been directed to attend this planned activity’ (unless, of course, the direction emanated from an alternative source of authority).
- 4.21. The committee may be interested to inquire as to:
 - the factual basis for WorkSafe ACT’s contention that ‘workers were directed to attend’;
 - the steps that WorkSafe ACT took to verify that workers were directed to attend;
 - whether the notion that ‘workers were directed to attend’ was relied upon by WorkSafe ACT to support a reasonable basis of belief, pursuant to s 195(1) of the WHS Act, that there was an ‘immediate or imminent exposure to a hazard’; and
 - whether the reasonable basis for belief that there was an ‘immediate or imminent exposure to a hazard’ could be properly sustained if there is no evidence of workers having been directed to attend.

Education and awareness

- 4.22. The committee may wish to consider whether more work needs to be done in improving education and awareness across the ACT Public Service about key tenets of the Territory’s form of parliamentary democracy, including in relation to the separation of powers and the powers and privileges and immunities of the Assembly, its committees, and its members.

Memorandum of understanding

- 4.23. The committee may wish to consider the utility of the development of a memorandum of understanding between the Speaker and the Work Health and Safety Commissioner in relation to the exercise of its powers under the WHS Act within the Assembly precincts (similar in nature to the MOU between the Speaker and the AFP).
- 4.24. It could also consider whether there ought to be legislative provision requiring the development of such an MOU in such a way as to ensure that the powers, privileges and immunities of the Assembly, its committees and its members are not breached.
- 4.25. In addition, it would be open to the committee to consider whether there was value in the Assembly considering, by way of continuing resolution, a consensus position on the conventions that ought to apply in relation to interactions between executive government agencies

(including statutory bodies), the Assembly, its committees, its members, and the Office of the Legislative Assembly on matters of this kind.

Attachment A—Prohibition notices



PROHIBITION NOTICE

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

Information

Notice number N-000005068

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.

WORKSAFE.ACT.GOV.AU

MAIL
PO Box 158 Canberra ACT 2601

EMAIL
worksafe@act.gov.au

PHONE
02 6207 3000

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

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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

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PO Box 158 Canberra ACT 2601

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02 6207 3000

PROHIBITION NOTICE

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

Information

Notice number N-000005078

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: 196 London Circuit suburb: Canberra state: ACT postcode: 2601

Method of service: Email

Served on: Joy Burch

Date of issue: 15/08/2022

A verbal instruction was issued on:

15/08/2022 10:08 AM

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:

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 and others.

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))

Inspectors requested evidence of a risk assessment being undertaken in relation to the planned activity 'Estimates 2022-23 Hearings', from both the Deputy Chair of the Committee, as well as the Clerk of the Legislative Assembly. Neither persons could provide a copy of a risk assessment, or demonstrate knowledge of a risk assessment.

having been conducted in relation to the planned activity. Further, the Clerk of the Legislative Assembly could not demonstrate knowledge of a risk assessment having been conducted generally in relation to hearings and/or committee's undertaken at the Legislative Assembly of the Australian Capital Territory, stating that it's up to each committee, which are run differently and independently.

Inspectors requested evidence of consultation being undertaken in relation to the planned activity 'Estimates 2022-23 Hearings' from the Deputy Chair of the Committee, who advised that consultation occurred through letters that were sent out to Ministers in relation to the activity. When Inspectors reviewed a copy of the supplied letters, it was identified that the letters did not capture the nature of consultation in line with section 48 of the Work Health and Safety Act 2011.

A review of the current Risk Register provided by the workplace as part of the overarching COVID-Safe Plan- 10th Assembly' document identified that the document provided is in draft-state, with the previous version/approval being considered by the WHS committee on 8 March 2022. Further review of the section 'Exposure risks-committee hearings/meetings' fails to demonstrate that the risk has been adequately assessed, or confirm that the Hierarchy of Control has been applied.

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))

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.

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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 (and participants) 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

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The inspector recommends that you:

Review the following information:

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Review of this *Work Health and Safety Act* notice

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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.

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WorkSafe ACT contact details

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Email: Worksafe@act.gov.au

Phone: (02) 6207 3000

Fax: (02) 6205 0336.

Translating and Interpreting Service

Phone: 131 450

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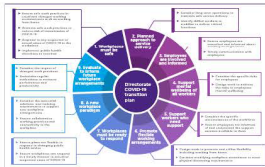
EMAIL
worksafe@act.gov.au

PHONE
02 6207 3000

Attachment B: COVID Safe Plan (As provided to WorkSafe inspectors)

See email attachment.

Attachment C: COVID-19 Assurance Program report



COVID-19 WHS Assurance Program: report - Office of the Legislative Assembly

Agency:	Office of the Legislative Assembly (OLA)
Date of assessment	December 2021
Key contact name:	Emma Rogers / Michelle Polkinghorne
Key contact role:	Manager, HR and Entitlements / Senior payroll and HR officer

Background:

In early October 2021, the Deputy Director-General, Workforce Capability and Governance (WCAG), Dr Damian West requested Directors General to lead a COVID-19 Assurance Program for their directorate. This program required directorates to review their COVID-19 WHS arrangements using an assessment tool based on the ACTPS COVID-19 Safety Transition Plan policy; and provide a response to Workplace Safety and Industrial Relations (WSIR) in order to provide a collated report to the Head of Service.

The Head of Service wrote to all agency heads offering the opportunity for agencies to utilise the available resources and undertake a self-assessment as well. This report is for agency head use and has not been provided to Head of Service.

The resources to support completion of the assessment tool, were available via the [COVID Assurance website](#)

The self-assessment required consideration of whether the agency has met, partially met, or not met each of the elements of the transition plan policy and provide a description of the evidence they have reviewed to inform their rating.

Scope of the review:

The evaluation considered the agency response in meeting requirements as:

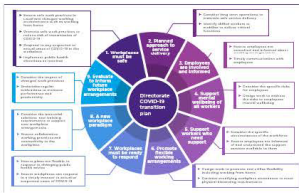
- Appears appropriately considered
- Appears appropriately considered, but could be strengthened; or
- Appears not yet considered/addressed.

This report provides a narrative on the evidence found, evaluation of the requirement and comments for consideration by the agency.

Any questions on the report can be directed to WSIR@act.gov.au

Review of agency response

Office of the Legislative Assembly (OLA) provided a comprehensive response using the assessment tool and self-assessed their actions as meeting the requirements of 21 of the 23 policy requirements. Items 2b and 9 were self-assessed as meeting the requirements to some extent.



COVID-19 WHS Assurance Program: report - Office of the Legislative Assembly

The review of the response supported the self-assessment findings and indicated that OLA has considered and identified risks to workers during COVID-19 across a range of working and operational environments. A summary of the review is provided in the table below.

The review of the OLA COVID-19 response noted that a comprehensive approach appears to be in place, and is being reviewed, monitored and reported on to ensure the safety of staff and continuity of services. Key highlights of the OLA response include:

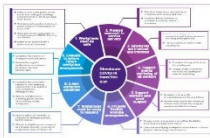
- OLA does not have a transition plan as such, but has a COVID-19 Plan in place, that is reviewed and updated in response to changing health advice.
- A risk register is incorporated in the Assembly’s COVID-19 plan document and was reviewed on 16 November 2021.
- Confirmation was provided that safety measures including physical distancing, mask wearing, check in processes, and cleaning and hygiene measures are in place
- OLA has actions in place to manage the risks for vulnerable workers.
- OLA has systems and processes in place to manage workplace exposures.
- There are a range of communication processes in place to ensure staff are aware of their responsibilities, staff are updated and informed as situations change or new guidance is provided, and staff have access to necessary resources and supports.
- The OLA Consultative Committee provides a more formal avenue for staff consultation in addition to having HSR and union representation on the WHS committee and consultation through team meetings.
- OLA have acknowledged there is work to be done on future workplace operations and arrangements and also not the difficulties in carrying out this work due to limited WHS resourcing.

It is recommended that OLA consider the following in their workforce planning approach:

- Ongoing scenario planning for situational risks relating to COVID-19 (e.g. what if a member of the assembly contracts COVID-19?)
- Review of staffing requirements to support WHS and COVID specific risks (such as fatigue management).

Overall assessment

Based on the evidence described to the review team, OLA appears to have demonstrated their compliance with the requirements of the ACTPS COVID-19 Transition Plan Policy with policy requirements being appropriately considered / addressed in the response.



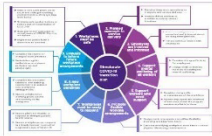
COVID-19 WHS Assurance Program: report - Office of the Legislative Assembly

Principle	Policy Requirement	Narrative on evidence found	Requirement verified
Workplaces must be safe	1a. Directorate/agencies must consider their workforce and work arrangements and modify workplace attendance arrangements to ensure physical distancing in the workplace	The response demonstrated that adequate arrangements have been put in place to ensure workplaces are safe.	Appears appropriately considered/addressed
	1b. Risk assessments must include existing identified risks as well as any unintentional risks as a result of the control measure implemented	The Assembly's Covid-19 plan includes a risk register that was reviewed by the Health and Safety Committee (HSC) on 16 November 2021. Risks cover a large range of risks identified in connection with functions, tasks, activities performed in the precincts, along with strategies/internal controls for managing those risks	Appears appropriately considered/addressed
	1c. Measures are in place that align to current social and public health guidelines and requirements for managing COVID-19	The response provided evidence that there are a range of measures in place that align with public health guidelines and requirements.	Appears appropriately considered/addressed
	1d. Promote advice to workers on safe work practices, controlling against the transmission (hygiene measures)	Promotion of safe work practices was evident in the response as well as the use of ACTPS guidance material.	Appears appropriately considered/addressed
	1e. Managers must ensure workers understand their responsibilities in ensuring safe workplaces	The Speaker and Clerk regularly email all staff to remind them of their health and safety responsibilities in the workplace. Regular training on health and safety focused themes is provided to staff including raising awareness of EAP. OLA Exec performance and development plans include health and safety.	Appears appropriately considered/addressed



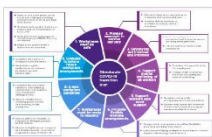
COVID-19 WHS Assurance Program: report - Office of the Legislative Assembly

A planned approach to service delivery	2a. Long term business operations are considered to ensure efficient and sustainable management of safety of workers and others.	The response noted that <ul style="list-style-type: none"> The Assembly agreed to amend its sitting pattern and committee hearings in light of covid-19 restrictions. the strategic priorities for the Assembly are outlined in the health, safety and wellbeing plan endorsed by the Health and Safety Committee at its September meeting 	Appears appropriately considered/addressed
	2b. Actively identify workers with skills able to be utilised and mobilised to deliver critical functions in other directorates/agencies	Occurred in 2020 but not in 2021. Reliance on workers self-selecting as opposed to actively identifying workers with skills capable of being deployed to critical functions.	Appears appropriately considered, but could be strengthened
Employees are involved and informed	3a. Employees or their representatives are consulted about the transition plan	Managers and staff are encouraged to discuss any changes to working arrangements and discuss any concerns raised. OLA Consultative committee is available for addressing any issues raised.	Appears appropriately considered/addressed
	3b. Communication methods are in place to provide effective and timely information	The Speaker and Clerk send regular email communication to all staff providing information on such things as home based work (HBW) assessments, reporting to managers/supervisors, mental health and wellbeing, ergonomics, staying home if unwell, physical distancing, EAP promotion etc.	Appears appropriately considered/addressed
Support mental wellbeing of all workers	4a. Mental wellbeing risks have been included in risk plans	Mental wellbeing risks are documented as part of the Assembly's health and safety risk register and also documented as part of the HSC health, safety and wellbeing plan.	Appears appropriately considered/addressed
	4b. Measures are in place to maintain employee wellbeing and encourage access to wellbeing supports	The response noted a number of examples <ul style="list-style-type: none"> Additional wellbeing seminars were offered to staff during lockdown . Managers are encouraged to regularly reach out and check on the wellbeing of their staff whilst working from home. 	Appears appropriately considered/addressed



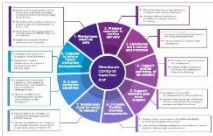
COVID-19 WHS Assurance Program: report - Office of the Legislative Assembly

		<ul style="list-style-type: none"> Lifeline has previously been engaged to run Accidental Counsellor sessions and will be facilitating another session in the first quarter of 2022. CIT has also been engaged to regularly conduct de-escalation training. 		
Support workers who need support	5a. Special circumstances among the workforce (such as vulnerable workers, those with caring responsibilities, those recovering from illness or injury) are identified and understood	Managers were provided with information regarding vulnerable workers including the ACT Gov checklist to discuss and implement any reasonable adjustments for staff who identified as a vulnerable worker.	Appears appropriately considered/addressed	
	5b. Workers are informed of the support services available to them	Staff have been made aware of the availability of information on the intranet site such as EAP information and factsheets. Support links for family violence have been provided to all staff and managers are encouraged to discuss flexible working arrangements with staff with caring responsibilities.	Appears appropriately considered/addressed	
Promote flexible working arrangements	6a. Flexibility has been designed into work to allow working from home where necessary and appropriate	Flexible working arrangements are implemented in accordance with enterprise agreement.	Appears appropriately considered/addressed	
	6b. Attendance at the workplace is managed and monitored to ensure current public health guidelines are followed	Managers are encouraged to discuss leave arrangements with staff to ensure they have regular breaks from work. Fatigue has been identified as a risk under the health and safety risk register and is monitored by the HSC. The Assembly buildings permits many staff to have their own office. For staff required to share an area their work spaces are at least 1.5m apart and are designated desk and hot desking is not utilised within the buildings.	Appears appropriately considered/addressed	



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	6c. Security, health considerations, IT and remote working capacity have been considered when designing flexible work approaches	Staff are required to complete a home based work checklist and form when proposing to work from home. This is discussed with managers and approved by senior executive/member.	Appears appropriately considered/addressed	
Workplaces must be ready to respond	7a. changes in advice from the Head of Service can be implemented in a responsive manner	The Speaker and Clerk are regularly updates regarding changes to health advice and or any matters relating to Assembly operations and changes communicated to staff.	Appears appropriately considered/addressed	
	7b. Arrangements are in place to respond to suspected or actual cases of COVID-19 exposure in workplaces	The Assembly's Covid-19 plan identifies the process in responding to suspect or actual cases of Covid-19. This aligns with ACT Government guidance.	Appears appropriately considered/addressed	
	7c. The transition plan is flexible to respond and adapt to changes in public health advice and requirements	The Assembly's Covid-19 plan is reviewed and updated in response to any changes in the public health advice and requirements. This is then communicated to all staff.	Appears appropriately considered/addressed	
A new workplace paradigm	8a. Directorate/agencies must consider the need for changes to industrial arrangements and training of staff	Flexible working arrangements are implemented in accordance with the enterprise agreement. Staff are consulted in relation to any changes to industrial employment arrangements.	Appears appropriately considered/addressed	
	8b. Directorate/agencies are ensuring workers remain connected to the workplace and colleagues.	As part of the working from home arrangements there is a requirement for managers to detail how they will keep in contact with their staff.	Appears appropriately considered/addressed	
	8c. Working arrangements continue to support employees to work flexibly and collaboratively, including where employees are working from home	Staff provided with remote access or laptop packages and new staff provided with remote IT inductions. Staggered team rostering is in place.	Appears appropriately considered/addressed	
Evaluate to inform future	9. The impact of changed work practices has been considered for	PLA acknowledge there is a lot of work to be undertaken in this space, including considerations for strategic and business unit plans.	Appears appropriately	



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workplace arrangements	integration into current and future operating environments		considered, but could be strengthened	
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Attachment D: Risk assessment agreed by estimates committee and provided to WorkSafe

See email attachment.