

Sitting suspended from 10.04 to 10.18 am.

**Legislative Assembly—work health safety notice
Statement by Speaker**

MADAM SPEAKER (Ms Burch) (10.18): I wish to make a statement concerning the serving of a prohibition notice on me in relation to the conduct of committee hearings and meetings in the Assembly precincts. This notice was served by WorkSafe ACT on Friday, 12 August, pursuant to various provisions in the Work Health and Safety Act 2011.

I understand that the issuing of the notice occurred against the background of a disagreement between the Select Committee on Estimates and a government minister about arrangements for public hearings and whether or not ministers and officials ought to attend in person or remotely in order to effectively manage risks associated with COVID-19. I understand that it was against this background, and acting on a complaint, that work safety inspectors were dispatched to the Assembly precincts and the prohibition order was subsequently issued by WorkSafe.

Members would have seen a copy of the letter that I sent this morning to the Work Health and Safety Commissioner explaining the fundamental constitutional issues that arise in connection with the issuing of the notice, which purports to prevent all committees in this place from conducting meetings or hearings. On these grounds, I have respectfully asked the commissioner to rescind the notice.

On its face, the notice effectively prevents the exercise of the legislative arm of government of its powers of inquiry and substantially and materially inhibits the scrutiny, accountability and representative roles associated with the form of parliamentary democracy that operates in the territory. That this should occur while the Select Committee on Estimates 2022-23 was in the process of inquiring into the annual budget estimates and appropriate bills is very concerning.

As members, you will have seen that the notice purports to prevent all Assembly committees from conducting meetings and hearings in the Assembly precincts. And, while there are legal questions as to the efficacy of the commission's powers in this matter, it was in an abundance of caution that the Select Committee on Estimates this morning met at premises outside of the Assembly precincts to conduct a meeting. This is unprecedented.

As members would be aware, the Assembly has inherent powers of inquiry. This power adheres to the constitutional design of our system of government and can be traced back through section 24 of the Self-Government Act, which establishes general equivalence between powers, privileges and immunities of the Assembly, its committees and its members with those of the Australian House of Representatives, and also section 49 of the Australian Constitution, which gives the House of Representatives the same powers, privileges and immunities as the UK House of Commons at the time of the establishment of Federation.

These powers, privileges, and immunities were amplified by the Commonwealth Parliamentary Privileges Act 1987. The parliament's power of inquiry is essential to the operation of responsible government and resides untrampled in this place. It is a power that has traditionally been delegated to a parliamentary committee and has recognised that our standing orders provide that a committee has the power to call for papers, persons or records. That an agency of the executive would seek to interfere with the exercise of the legislative powers is indeed concerning.

To be clear: it is the ACT executive that is accountable to this place and to the Assembly committees it establishes in order to exercise the inquiry power. It is unlikely that, absent expressed statutory provisions, enactments such as the WHS Act are capable of interfering with the Assembly's inquiry powers, its jurisdiction over the conduct of its own proceedings or its power to make findings of contempt when improper interference in the work of the Assembly or its committees has been found to occur.

I can advise the Assembly that the Work Health and Safety Commissioner has, this morning, not responded to my letter and has not lifted the prohibition notice. As a result, I am in the process of seeking legal advice on the matter and will keep members up to date as the situation unfolds.

Although it is not for me to direct any of the Assembly's committees until legal questions about the prohibition are resolved, it is prudent that the Assembly's committees consider alternative arrangements which might need to be affected to ensure that they are able to continue effectively to exercise their functions. I table:

Prohibition Notice—WorkSafe ACT—

Copy of Prohibition Notice, issued under section 195 of the Work Health and Safety Act 2011, from WorkSafe ACT to the Speaker of the Legislative Assembly for the ACT, dated 12 August 2022.

Copy of letter from the Speaker of the Legislative Assembly for the ACT to the Work Health and Safety Commissioner, dated 15 August 2022.

Thank you, Members.

Legislative Assembly—sitting pattern 2022

MR MILLIGAN (Yerrabi) (10.23), by leave: I move:

That the resolution of the Assembly of 3 August 2022, amending the sitting pattern for 2022, be amended as follows:

Omit all words after "15 August 2022", substitute "with the only items of business being the motion moved by Ms Lee in relation to the Chief Minister; to deal with any matters in relation to the prohibition notice issued by WorkSafe ACT on Friday, 12 August 2022; and for the Assembly to adjourn after consideration of these items."

Question resolved in the affirmative.

Legislative Assembly—work health safety notice

Statement by Speaker

MADAM SPEAKER: Members, today the Chair of the Select Committee on Estimates 2022-23 gave written notice of an apparent serious breach of the privilege in respect of actions taken by the Work Health and Safety Commissioner in purportedly preventing not just the select committee's performance of scrutiny functions but of all Assembly committees.

Under the provisions of standing order 276, I must determine, as soon as practicable, whether or not the matter merits precedence over other business. If, in my opinion, the matter does merit precedence, I must inform the Assembly of the decision and the member who raised the matter may move a motion without notice forthwith to refer the matter to a select committee appointed by the Assembly for that purpose.

As Speaker, I am not required to judge whether there be a breach of privilege or contempt; I can only judge whether it merits precedence. I have considered the matter and am prepared to allow precedence to the motion to establish a privileges commission committee, should Mr Milligan wish to do so. I present the following paper:

Privilege—Alleged breach—Letter from the Chair of the Select Committee on Estimates 2022-2023 to the Speaker, dated 15 August 2022.

Privileges 2022—Select Committee

Appointment

MR MILLIGAN (Yerrabi) (10.25): I move:

That:

- (1) pursuant to standing order 276, a Select Committee on Privileges 2022 be established 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 2022-2023 or breached any other privileges of the Assembly;
- (2) the Privileges Committee shall report back to the Assembly by the last sitting day of October 2022;
- (3) the Committee shall be composed of:
 - (a) Ms Orr MLA;
 - (b) Mr Hanson MLA; and
 - (c) Ms Clay MLA; and
- (4) The chair of the Committee shall be Mr Hanson MLA.

I have noticed that Ms Orr has circulated an amendment to this motion to have herself replaced with Mr Petterson, which the Canberra Liberals will be supporting. There has been an additional amendment circulated by Mr Gentleman, suggesting that point (4) of my original motion be removed, being Mr Hanson not being chair.

The Canberra Liberals will not be supporting Mr Gentleman's amendment to my motion.

MR GENTLEMAN (Brindabella—Manager of Government Business, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services) (10.27): I wish to amend this motion; therefore I move:

Omit paragraph (4)

This is just a technical amendment. It is normal procedure for committee chairs to be chosen from within the committee, and I think that that is the way that this should proceed.

MR HANSON (Murrumbidgee) (10.27): That is not the case. When it is a committee that is formed at the will of the Assembly, it is normally the case that the Assembly will dictate who the chair is, often by saying a member of the opposition or a member of the executive. Indeed, I think that was the case with the establishment of the scrutiny committee and the select committees on estimates and COVID. So it is the protocol.

In this case, I think because of the moving parts and the time required, often what would be said is that there be a member of the opposition, a member of the Greens and a member of the Labor Party, with the chair being a member of the opposition. Whereas, naming names, in the interest of time and the fact that other members of parties are tied up with the estimates committee, is not the protocol. So Mr Gentleman is wrong.

Secondly, when you have a situation where, Madam Speaker, as you just said, there is a dispute between a committee and a government minister and, as you further said, the agency involved is an agency of the executive, to then consider that a member of the government would be the chair of that committee is extraordinary!

So there will be a balance of members from the government, there will be one opposition member and I think it is the precedence of this place and given the matters that will be inquired into by this privileged committee, it would need to be a member of the opposition. I am the member of the opposition that the leader of the party has selected. I am ambivalent about that, but I think that the chair would need to be someone with the necessary seniority. My argument on this point is not necessarily that it should be me but that it would certainly need to be a senior member of the opposition to do this job if it is going to perform the role that I think, or hope, that this Assembly would all agree that it needs to perform.

MR BRADDOCK (Yerrabi) (10.30): I just wanted to let the chamber know that the Greens will be supporting the motion to refer the matter to the privileges committee. The question of privilege has clearly arisen, and the standing orders set out the process for that to be addressed. I wish my colleagues well in the examination of the question, and words cannot express how much I look forward to reading the report when they have completed it. I also welcome their fresh examination of the question and wish them well in their examinations.

As a member of this Assembly and a member of the estimates committee, I would like to put to all members here the importance of working constructively and collaboratively together. This needs to be based on trust, mutual respect and working together in genuine partnership.

I also wanted to thank all the employees of the Office of the Legislative Assembly who were required to give up their personal time and be apart from friends and loved ones over the weekend. I appreciate your counsel and your advice as we respond to this situation.

Going to the amendment moved by Mr Gentleman, I advise that the Greens will be supporting that amendment—not that Mr Hanson does not have a point. We have asked for advice from the Clerk, and we are yet to receive a response as to the application of the Latimer House principles in this situation. Once we have that advice, we will then be able to work with the committee to determine who is best placed to chair that committee.

I will pre-empt the amendment moved by Ms Orr and say that, if she sees that there is a conflict there, of course we will support the substitution of one Labor member for another.

Question put:

That the amendment be agreed to.

The Assembly voted—

Ayes 16

Mr Barr	Mr Gentleman
Ms Berry	Ms Orr
Mr Braddock	Dr Paterson
Ms Burch	Mr Pettersson
Ms Cheyne	Mr Rattenbury
Ms Clay	Mr Steel
Ms Davidson	Ms Stephen-Smith
Mr Davis	Ms Vassarotti

Noes 9

Mr Cain
Ms Castley
Mr Cocks
Mr Hanson
Mrs Kikkert
Ms Lawder
Ms Lee
Mr Milligan
Mr Parton

Amendment agreed to.

MS ORR (Yerrabi) (10.34): I move to amend Mr Milligan's amended motion as follows:

In paragraph (3)(a), omit "Ms Orr MLA", substitute "Mr Pettersson MLA".

Given the speed at which everything happened this morning and following a few conversations, it has been decided that Mr Pettersson is better placed to take on this very important responsibility. This amendment reflects that very simple change.

Amendment agreed to.

