LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON PRIVILEGES 2022
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Mr Michael Pettersson MLA

Submission Cover Sheet

Inquiry into possible contempt of the Assembly: Imposition of prohibition notice by WorkSafe ACT

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IN THE MATTER OF

THE VALIDITY OF PROHIBITON NOTICES ISSUED TO THE LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

JOINT OPINION

A. INTRODUCTION AND SUMMARY

1. On 12 August 2022, an inspector appointed under the *Work Health and Safety Act 2011* (ACT) issued a prohibition notice under s 195 of that Act to the Legislative Assembly of the Australian Capital Territory. The prohibition notice purported to prohibit the Assembly from "[u]ndertaking any hearings or committee meetings at Legislative Assembly of the Australian Capital Territory" until certain actions had been taken. The Work Health and Safety Commissioner subsequently cancelled this notice.

2. On 15 August 2022, the same inspector issued a second prohibition notice under s 195 to the Assembly. The second notice purported to prohibit the Assembly from "[c]onducting committee hearings at the Legislative Assembly of the Australian Capital Territory, at which participants attend in person" until certain actions had been taken. The Office of the Work Health and Safety Commissioner subsequently lifted the notice when it was satisfied that the requirements in the notice had been met.

3. On 15 August 2022, the Assembly resolved to establish a Select Committee on Privileges to examine whether the issuing of prohibition notices amounted to a breach of parliamentary privilege.

4. We are briefed to advise the Speaker of the Assembly in relation to the legal validity of the notices. The question we have been asked, and our answer in summary form, is as follows:

> *Having regard to the powers, privileges and immunities of the ACT Legislative Assembly and the form of government operating in the ACT by reason of the Australian Capital Territory (Self-Government) Act 1988 (Cth), does section 195 of the Work Health and Safety Act 2011 (ACT) authorise an inspector to issue a prohibition notice with respect to the ACT Legislative Assembly?*

Answer: In our view, an inspector does not have power under s 195 of the *Work Health and Safety Act* to issue a prohibition notice to the Legislative Assembly prohibiting either parliamentary debates in the Assembly or the conduct of parliamentary committee meetings.

5. We explain the reasons for our answer below. We will first set out some observations in relation to the role of the Select Committee in considering issues of parliamentary privilege, which inform our approach to this opinion.

6. We also note at the outset that we have only been asked to advise on the application of the *Work Health and Safety Act* (specifically s 195) to the Legislative Assembly in the discharge of its constitutional functions (such as the conduct of parliamentary debates and committee proceedings). We have not been asked to consider the extent to which the Act applies to Members when they are not directly participating in the discharge of those functions.

B. THE ROLE OF THE COMMITTEE

(a) The privileges of the Legislative Assembly

7. The enactment of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) established the Australian Capital Territory as a body politic under the Crown (s 7). The *Self-Government Act* also created a Legislative Assembly for the Australian Capital Territory (s 8), which has power to make laws for the "peace, order and good government of the Territory" (s 22). The Assembly consists of 25 Members, with five Members being elected from each of the Territory's five electorates consistently with the provisions of the *Electoral Act 1992* (ACT).

8. The Legislative Assembly has power to make laws declaring its powers, privileges and immunities (s 24(2)). However, in the absence of any such law, the Assembly and its Members and committees have the same powers as the powers for the time being of the Commonwealth's House of Representatives and its Members and committees (s 24(3)).

9. Each House of the Commonwealth Parliament has the power to declare an act to be a contempt and to punish such act.[1] The rationale for this power is to ensure that the

[1] Laing (ed), *Odgers' Australian Senate Practice* (14th ed, 2016) at 83.

Houses are "able to protect themselves from acts which directly or indirectly impede them in the performance of their functions".[2] In *Erskine May: Parliamentary Practice* (25th ed, 2019), it states (at para [15.12]):

> The House will proceed against those who obstruct Members in the discharge of their responsibilities to the House or in their participation in its proceedings.

10. There is a statutory definition of contempt of Parliament at Commonwealth level. Section 4 of the *Parliamentary Privileges Act 1987* (Cth) provides:

> Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

11. By reason of s 24(3) of the *Self-Government Act*, this statutory definition also applies in the Australian Capital Territory. It should be noted, however, that the Assembly does not have power to imprison or fine a person (s 24(4)).

(b) The Select Committee's inquiry and the making of parliamentary law

12. As noted above, the Assembly has resolved to establish a Select Committee on Privileges to examine the issuing of the prohibition notices. More specifically, the Committee has been asked:

> … 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 …

13. It will be a matter for the Select Committee to decide whether the actions of the inspector in issuing the prohibition notices constituted a breach of parliamentary privilege. More particularly, the Select Committee will decide whether the issuing of the prohibition notices amounted to an improper interference with the free exercise by the Assembly or committee of its authority or functions. As was said in *Stockdale v*

[2] Laing (ed), *Odgers' Australian Senate Practice* (14th ed, 2016) at 83.

Hansard,[3] "the members of each House of Parliament are the sole judges whether their privileges have been violated, and whether thereby any person has been guilty of a contempt of their authority; and so they must necessarily adjudicate on the extent of their privileges".

14. For the purposes of parliamentary law, the determination of the Select Committee will have legal significance. That is because parliamentary law includes law that the Houses of Parliament make themselves by the way that they act.

15. So much was recognised by both the New South Wales Court of Appeal and the High Court of Australia in the *Egan v Willis* litigation.[4] Those cases concerned the refusal by a Member of the Legislative Council of New South Wales to produce certain State papers to the Legislative Council. The Council temporarily suspended the Member and the Usher of the Black Rod escorted the Member out of the Parliament. The Member claimed to have been the victim of an unlawful trespass to the person. The key issue in the case was whether the Legislative Council had power to order the production of State papers. Both the Court of Appeal and the High Court held that it did, on the basis that such a power was "reasonably necessary for the proper exercise by the Legislative Council of its functions".

16. For the purposes of this opinion, the important point that emerges from those decisions is that members of each Court recognised the relevance of the practice of Parliament in determining whether the power existed. In the Court of Appeal, Gleeson CJ referred to the "details of many occasions, going back to 1856, when the Legislative Council has passed resolutions requiring the production to the Council of State papers".[5] His Honour went on to observe:[6]

> Although the legal source of the power of the House of Commons, and other Houses of Parliament, is found either in ancient custom, or in statutes inapplicable to the Legislative Council, when the existence of the power has been justified, the justification has been put upon the basis of necessity.

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3 (1839) 9 Ad & E 1 at 195 [112 ER 1112 at 1186]; see also *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 162.

4 *Egan v Willis* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 195 CLR 424.

5 *Egan v Willis* (1996) 40 NSWLR 650 at 654.

6 (1996) 40 NSWLR 650 at 664-665.

> Such necessity is related both to the legislative functions of parliament and also to the role of the parliament, (including both Houses of Parliament), in scrutinising the workings of the executive.

17. On appeal to the High Court, six of the seven Justices also referred to the practice of the Legislative Council dating back to 1856. Gaudron, Gummow and Hayne JJ expressly stated that such practice was relevant to determining the scope of the Council's powers. Their Honours said:[7]

> In addition, the long practice since 1856 with respect to the production to the Council of State papers, together with the provision in Standing Order 29 for the putting to Ministers of questions relating to public affairs and the convention and parliamentary practice with respect to the representation in the Legislative Assembly by a Minister in respect of portfolios held by members in the Legislative Assembly, are significant. What is "reasonably necessary" at any time for the "proper exercise" of the "functions" of the Legislative Council is to be understood by reference to what, at the time in question, have come to be conventional practices established and maintained by the Legislative Council.

18. Similarly, McHugh J observed that the Legislative Council's power to require the production of documents by Ministers had been recognised over a long period, referring to Journals of the Council and Hansard which "show that between 1856-1857 and 1932-1933, many documents were produced in Returns to Orders for Production".[8] Finally, Kirby J noted that "[e]xtracts from the parliamentary record demonstrate that similar demands [for documents] have been made over virtually the entire history of the Council, at least since the middle of the last century".[9]

19. The current edition of *Odgers' Australian Senate Practice* also recognises the role of Committees in making parliamentary law. It states:[10]

> The Committee of Privileges has reported to the Senate on a number of matters giving rise to allegations that contempts may have been committed. Most of these reports have been presented since the Privilege Resolutions were adopted. The reports, and the action taken on them by the Senate, provide a body of case law showing how the power to adjudge and punish contempts is exercised.

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7 *Egan v Willis* (1998) 195 CLR 424 at [50].

8 (1998) 195 CLR 424 at [106].

9 (1998) 195 CLR 424 at [116].

10 Laing (ed), *Odgers' Australian Senate Practice* (14th ed, 2016) at 87.

20. *Odgers'* explains why it is appropriate for Parliament to make the law in this context. It states:[11]

> The question of what acts obstruct the Houses in the performance of their functions may well be seen as essentially a political question requiring a political judgment and political responsibility. As elected bodies, subject to electoral sanction, the Houses may be seen as well fitted to exercise a judgment on the question of improper obstruction of the political processes embodied in the legislature.

21. This opinion does not consider whether or not the issuing of the prohibition notices by the inspector constituted a breach of the Assembly's privileges. That issue is for the Select Committee to determine. Rather, this opinion considers the legal question of whether the notices were validly issued. However, as will be seen, the constitutional significance of the Assembly is relevant in answering that question.

22. In addition, if the notices were not validly issued, the inspector will have purported to interfere with the workings of the Assembly without any statutory authority to do so. In that event, in our opinion, it would be open to the Select Committee to conclude that the issuing of the prohibition notices amounted to a breach of parliamentary privilege.

C. THE VALIDITY OF THE NOTICES

(a) Scope of the power to issue prohibition notices

23. An inspector appointed under the *Work Health and Safety Act* has power to issue a "prohibition notice".[12] Section 195(1) and (2) of the Act provides:

> (1) This section applies 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.

[11] Laing (ed), *Odgers' Australian Senate Practice* (14th ed, 2016) at 90.

[12] The Work Health and Safety Commissioner has power to appoint certain people as "inspectors" under the *Work Health and Safety Act* (s 156).

> (2) 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 the matters that give or will give risk to the risk have been remedied.

24. As noted above, each of the prohibition notices was issued to the Legislative Assembly of the Australian Capital Territory. The first prohibition notice prohibited the Assembly from "[u]ndertaking any hearings or committee meetings", and the second notice prohibited the Assembly from "[c]onducting committee hearings … at which participants attend in person". Having regard to the terms of the statute, the form of these notices raises two questions of construction. *First*, is the Legislative Assembly a "workplace"? *Secondly*, is the conduct of parliamentary debates in the Assembly or parliamentary committee hearings an "activity"? If the answer to either of those questions is "no", the inspector did not have power to issue prohibition notices of the kind issued to the Legislative Assembly in August 2022.

(b) Power to issue prohibition notices to the Legislative Assembly

(i) Meaning of "workplace" and "activity"

25. The meaning of the terms "workplace" and "activity" must be resolved as a question of statutory construction. As always, the task of statutory construction begins with a consideration of the text itself, read in context (which includes the general purpose and policy of the provision).[13]

26. The term "workplace" is defined in the *Work Health and Safety Act* to mean "a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work" (s 8(1)). This definition is consistent with the broad approach previously taken by the courts to the meaning of "workplace" or "place of work" in other statutory contexts as being "a place where work is done".[14]

27. The term "business or undertaking" is not comprehensively defined in the Act. The Act makes clear that the phrase is intended to be broad, in providing that a person "conducts

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[13] See, eg, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47] (Hayne, Heydon, Crennan and Kiefel JJ).

[14] *George Ball & Sons Ltd v Sill* (1954) 52 LGR 508 (quoted in *Kelly v Pierhead Ltd* [1967] 1 All ER 657 at 660); see also *Gough v National Coal Board* [1959] 2 All ER 164 at 174 (Lord Denning).

a business or undertaking" whether the person conducts the business or undertaking alone or with others, and whether or not the business or undertaking is conducted for profit or gain (s 5(1)).

28. The term "business" may have a number of different meanings.[15] In *Hope v Bathurst City Council*,[16] Mason J (Gibbs, Stephen, Murphy and Aickin JJ agreeing) said that the term "business of grazing" in the statutory context with which that case was concerned denoted "grazing activities undertaken as a commercial enterprise in the nature of a going concern, that is, activities engaged in for the purpose of profit on a continuous and repetitive basis". However, in *Chief Commissioner of Stamp Duties (NSW) v Woollahra Municipal Council*,[17] Mahoney JA observed that "the significance of matters such as continuity, repetition, and the like must … be assessed with care", as "[t]here are bodies to whose activities descriptions of that kind may be applied which do not, in any relevant sense, carry on a business". His Honour referred to Departments of State, courts and local councils as falling within that category.[18]

29. The word "undertaking" may similarly have a number of meanings.[19] As a matter of ordinary language, it relevantly means a "task, enterprise, etc., undertaken" (*Macquarie Dictionary* (online)). Such a construction was adopted in *McLeish v FT Eastment & Sons Pty Ltd*,[20] where the New South Wales Court of Appeal held that the word in the context of the *Electricity Development Act 1945* (NSW) should be construed in the same sense as the words "carry out" or "take in hand" (rather than "enter into a contract" or "give a promise"). It is likely that the word "undertaking", in the context of the phrase "business or undertaking" in the *Work Health and Safety Act*, is intended to capture enterprises which employ people but lack one or more elements of a "business" as ordinarily understood (for example, it lacks continuity, or is not-for-profit).

30. Finally, the term "activity" is not defined in the Act. The ordinary meaning of "activity" is obviously broad. It means a "specific deed or action; sphere of action" (*Macquarie*

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15 *Chief Commissioner of Stamp Duties (NSW) v Woollahra Municipal Council* (1993) 30 NSWLR 280 at 288 (Mahoney JA, Handley and Cripps JJA agreeing).

16 (1980) 144 CLR 1 at 8-9. See also *Hyde v Sullivan* [1956] SR (NSW) 113 at 119 (the Court).

17 (1993) 30 NSWLR 280 at 288.

18 (1993) 30 NSWLR 280 at 288.

19 *Seatainer Terminals Ltd v Commissioner of Taxation (Cth)* (1979) 47 FLR 108 at 127 (Murphy J).

20 (1970) 71 SR(NSW) 178 at 182 (the Court).

Dictionary (online)). In *Chandlers Personnel Group Ltd v Accident Compensation Commission*,[21] while concerned with a different statutory context, the Victorian Court of Appeal (Marks J, Smith and Ashley JJ agreeing) said:

> Activity is a simple enough concept. The activity of a person is what the person does or is doing. In the present context, the predominant activity is the activity which predominates in the area identified. As it is the activity of persons with which the provisions of the Act are concerned, the inquiry must concern essentially what work is done by the persons in that area.

31. Although it is useful to consider the meaning of "business", "undertaking" and "activity", it would be wrong to construe s 195 by looking at each of those words in isolation. Under s 195, an inspector may prohibit "an activity [that] is occurring at a workplace" (or may occur at a workplace). That is a composite phrase which must be construed as a whole. The statutory language is clearly intended to describe a broad class of places, and the activities at those places, which are liable to be the subject of prohibition notices issued under the Act.

(ii) Application to the Legislative Assembly

32. There would be an argument that the Legislative Assembly is a "workplace" within the meaning of the *Work Health and Safety Act*. More particularly, it could be said that the Assembly is a place where work is carried out for the "task" or "enterprise" of governing the Australian Capital Territory. There would also be an argument that the conduct of parliamentary or committee proceedings are the specific deeds or actions that Members carry out in the Assembly, and are therefore "activities" within the meaning of the Act. On that basis, an inspector would have power to issue a prohibition notice to prohibit the carrying on of those activities at that workplace.

33. In our opinion, those arguments overlook the constitutional significance of the Legislative Assembly. Section 122 of the Constitution confers on the Commonwealth Parliament a broad power to "make laws for the government of any territory". In *Berwick Ltd v Gray*,[22] Mason J (Barwick CJ, McTiernan and Murphy JJ agreeing) said that s 122 was wide enough to enable the Commonwealth Parliament "to endow a

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[21] [1993] 2 VR 1 at 6.

[22] (1976) 133 CLR 603 at 607. See also *Queanbeyan City Council v ACTEW Corporation Ltd* (2011) 244 CLR 530 at [4] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

[t]erritory with separate political, representative and administrative institutions, having control of its own fiscus". By enacting the *Self-Government Act*, the Parliament endowed the Australian Capital Territory with those institutions and that control.

34. More particularly, the Commonwealth Parliament "establish[ed] a separate body politic, conferring a significant measure of self-government and establishing representative and democratically elected legislatures".[23] Representative government is "a system of government where the people in free elections elected their representatives to the legislative chamber which occupies the most powerful position in the political system".[24] In the case of the Australian Capital Territory, that chamber is the Legislative Assembly.

35. The Legislative Assembly has power to make laws for the "peace, order and good government" of the Territory.[25] In *Capital Duplicators Pty Ltd v Australian Capital Territory*,[26] Mason CJ, Dawson and McHugh JJ said that "the Legislative Assembly for the Australian Capital Territory, as established and constituted by the Self-Government Act, is a 'new legislative power' authorised by s 122". Brennan, Deane and Toohey JJ said that the Legislative Assembly "has been erected to exercise not the [Commonwealth] Parliament's powers but its own, being powers of the same nature as those vested in the Parliament".[27]

36. The *Self-Government Act* also created a system of responsible government. In *Mann v Carnell*,[28] McHugh J observed that the *Self-Government Act* "make[s] it clear that responsible government exists in the ACT and that it reflects the system of government employed at the Parliament at Westminster in the sense that the executive government sits in one of the houses of the legislature and must enjoy the confidence of a majority of that house to continue in office". His Honour added that "[t]he relationship between the Assembly and the Executive forms part of the Anglo-Australian constitutional tradition which was the background to the creation of a system of responsible

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23 *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 224 (Gaudron J).

24 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 559 (the Court).

25 *Self-Government Act*, s 22(1).

26 (1992) 177 CLR 248 at 265. See also *Queanbeyan City Council* (2011) 244 CLR 530 at [7]-[8] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

27 (1992) 177 CLR 248 at 282, see also 284 (Gaudron J).

28 (1999) 201 CLR 1 at [75], see also [150], [153] (Kirby J).

government in the ACT under the [*Self-Government Act*]".[29] Accordingly, "the actual government of the [Territory] is conducted by officers who enjoy the confidence of the people".[30]

37. We strongly doubt that the Legislative Assembly falls within the definition of a "workplace" in the *Work Health and Safety Act*. The Assembly is clearly not a place where work is carried out for a "business". In our opinion, and although the contrary could be argued, the better view is that the Assembly is also not a place where work is carried out for an "undertaking". As is clear from the discussion above, the Assembly is a constitutional institution responsible for making laws for the peace, order and good government of the Territory and for holding the Territory Executive to account. To describe those functions as a "task" or "enterprise" is, in our view, inapt.

38. Even if the Legislative Assembly is a "workplace", in our opinion, the better view is that the conduct of parliamentary debates or committee proceedings are not "activities" within the meaning of the *Work Health and Safety Act*. Although the word "activities" is broad, we consider that it is highly unlikely that the Legislative Assembly, in using such a general word, intended to include its core constitutional functions, such that they would be capable of being shut down by an inspector appointed under the Act.

39. For these reasons, in our opinion the inspector did not have power to issue prohibition notices to the Legislative Assembly of the kind issued in August 2022.[31] If the Assembly had intended that it would be treated as a workplace in the same way as any other workplace that exists within the Territory, it is likely that intention would have been made more clear in the legislation.

(c) Recent amendments to the Commonwealth Act

40. Our view that the Legislative Assembly is not a "workplace", and the exercise of its functions are not "activities", is supported by recent amendments to the *Work Health*

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[29] (1999) 201 CLR 1 at [82].

[30] *Lange* (1997) 189 CLR 520 at 559, quoting Griffith, *Notes on Australian Federation: Its Nature and Probable Effects* (1896) 17.

[31] For completeness, s 5(5) of the Model Work Health and Safety Bill provides: "An elected member of a local authority does not in that capacity conduct a business or undertaking." The Explanatory Statement for the Work Health and Safety Bill 2011 (ACT) states that "[s]ubclause 5(5) of the model Bill has been omitted in the Bill as it has no application in the Territory". It appears that the legislatures which enacted the model Bill proceeded on the basis that s 5(5) was intended to cover local councils: see, eg, *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Act 2012* (SA), s 4 (definition of "local authority").

and Safety Act 2011 (Cth). Those amendments are not relevant to the construction of the Australian Capital Territory's *Work Health and Safety Act*. Nonetheless, they provide an example of a Parliament making express its intention for laws of this kind to apply to it.

41. On 30 November 2021, the Australian Human Rights Commission's report titled "Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces" was published. In that report, the Commission observed that it was not clear whether a Member of Parliament or a Senator was a "person conducting a business or undertaking" (**PCBU**) within the meaning of the Commonwealth's *Work Health and Safety Act*. The Commission said (at p 65):[32]

> While this means that it is possible that the Department of Finance and parliamentarians each hold PCBU duties under the Work Health and Safety Act, the Commission notes that the status of individual parliamentarians as PCBUs has not been legally tested and that their constitutional status may add complexity to this question. The Commission has therefore recommended legislative amendment to clarify the application of duties under the Work Health and Safety Act to parliamentarians (see 5.3, 'Systems to Support Performance').

42. The Commonwealth Parliament responded to the report by enacting the *Parliamentary Workplace Reform (Set the Standard Measures No 1) Act 2022* (Cth). The Commonwealth *Work Health and Safety Act* expressly provides that the Act applies to an "officer of the Commonwealth" if the Commonwealth is conducting a business or undertaking (s 12(1)(a)(ii)). Before the amendments, the definition of "officer of the Commonwealth" was "[a] person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Commonwealth" (s 247(1)) but did not include a Minister (s 247(2)). A new sub-section (3) now provides:

> (3) To avoid doubt, a parliamentarian is an officer of the Commonwealth for the purposes of this Act in respect of the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of the Parliament.

[32] The Federal Court (Snaden J) appears to have assumed that a parliamentarian is a person carrying on a business or undertaking in *Messenger v Commonwealth* [2022] FCA 677 at [249].

43. The relevant extrinsic material explained that the amendments were enacted in response to the Australian Human Rights Commission's report. The Replacement Explanatory Memorandum for the relevant Bill said (at [15]):

> New subsection 247(3) would clarify that parliamentarians can be 'officers' for the purpose of the WHS Act and that they owe this duty to the workers who are engaged by them to support their work as a parliamentarian. The new subsection specifies the undertaking which parliamentarians are involved in; this is the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of the Parliament.

44. The 2022 amendments make it clear that the Commonwealth *Work Health and Safety Act* applies to parliamentarians. There is nothing in the Australian Capital Territory's Act that expressly deals with either the Assembly or its Members. As noted above, if the Assembly had intended that it would be treated like any other workplace, we consider that it would have made that intention clear. In our view, it did not do by using the generic terms "workplace" and "activity".

(d) Conclusion

45. For the reasons above, in our view, an inspector does not have power under s 195 of the *Work Health and Safety Act* to issue a prohibition notice to the Legislative Assembly prohibiting either parliamentary debates in the Assembly or the conduct of parliamentary committee meetings. It would be open to the Select Committee to conclude that the issuing of the prohibition notices amounted to a breach of parliamentary privilege. More particularly, it would be open to the Committee to find that the notices amounted to an improper interference with the free exercise by the Assembly or committee of its authority or functions, which is a privilege enjoyed by the Assembly by reason of s 24 of the *Self-Government Act*.

Dated: 4 October 2022

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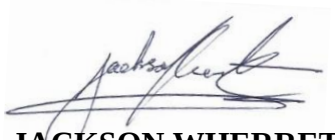

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