



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON PRIVILEGES 2022

Mr Jeremy Hanson CSC MLA (Chair), Ms Jo Clay MLA (Deputy Chair),
Mr Michael Petterson MLA

Submission Cover Sheet

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

Submission Number: 5.4

Date Authorised for Publication: 14 November 2022

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



Office of the Legislative Assembly

Mr Jeremy Hanson CSC MLA
Chair
Select Committee on Privileges 2022
Legislative Assembly for the Australian Capital Territory
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Hanson,

At the public hearing on Monday 24 October 2022, you referenced paragraph 4.2 of the Office's submission concerning whether the serving of the second prohibition notice on a sitting day may have enlivened standing order 277(f). Standing order 277(f) states 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.

This immunity is derived from the UK House of Commons and is also a privilege of the House of Representatives. *Erskine May* (25th Edn, p 295) notes that:

Other acts, besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority, may constitute contempts.

For example, serving or executing civil or criminal process within the precincts of either House while the House is sitting without obtaining the leave of the house is a contempt.

The Joint Committee on Parliamentary Privilege 1998-99 of the UK Parliament noted in its report on this issue that:

Service of court documents such as writs and orders within the precincts of the House on a day when the house is sitting, but not otherwise; has long been regarded as a contempt, as tending to obstruct or impede the House in its functions. The main purpose of this rule nowadays is to

protect members and others who attend either House from service within the House being used for publicity seeking purposes. Such activity would be an abuse of the precincts of Parliament.¹

The rule also applies in the Australian House of Representatives. At page 763 of *House of Representatives Practice* (7th Edn) it is noted:

May also cites in this category of contempt 'serving or executing civil or criminal process within the precincts of either House while the House is sitting without obtaining the leave of the House'. Parliament House is not considered to be an appropriate place in which to serve such documents and, for example, service, or attempted service, on a Member on a sitting day, or on a day on which a Member was to participate in a committee meeting, could be complained of as a contempt.

On 6 October 1922 a complaint was made that a summons had been served on a Member in the precincts of the House while the House was sitting. The Attorney-General expressed the opinion that it was not desirable to proceed further in the case but that 'those entrusted with the service of process of the Court should take steps to have summonses served in the ordinary way, as it is not a desirable practice that service should, under any circumstances, be made within the precincts of this House while the House is sitting.

Against this background, it is open to the privileges committee to consider the serving of the second prohibition order during a sitting day (15 August 2022) as a breach of the Assembly's privileges vis-à-vis standing order 277(g). While the second prohibition notice was an administrative rather than court process, it nonetheless threatened sanction for noncompliance and enlivened the same principles discussed above.

It is also worth noting that while the second notice served on the Speaker by WorkSafe ACT differed to the first notice (i.e. it was less restrictive in that it did not apply to remote meetings and hearings), its terms were such that it is open to the privileges committee to consider that the exercise of the notice interfered with independent performance, by the estimates committee, of its parliamentary roles and functions.

Clarification of the Office's role in relation to witnesses before the estimates committee

At the public hearing of Tuesday 25 October 2022, Ms Clay asked whether there was direct request from the Assembly that officials appear before a committee. The minister gave evidence suggesting that the Office may have sent such requests directly to public servants and witness lists that were to be completed.

I can advise the privileges committee that once a committee determines who it wishes to invite as witnesses to a public hearing, the Committee Office prepares correspondence (in the case of the Select Committee on Estimates 2022-2023) for the Committee Chair to send to each minister and to statutory

¹ Joint Committee on Parliamentary Privilege, HC 214-1 (1998-99 paragraph 334).

officeholders (see attached) which confirms the timing of the statutory officeholders, ministers and their officials to attend.

In addition, the Committee Office sends an email to Departmental Liaison Officers (DLOs) (see attached) asking DLOs to provide details of officials who have been **nominated by ministers/directorates** to attend alongside the minister at a hearing.

Witness forms are utilised irrespective of whether a hearing is conducted remotely or face-to-face.

The Office does not decide which officials appear with a minister. That decision is ultimately made within each minister's office in consultation with directorate officials, a practice that was referred to in evidence by the minister.

Clarification of whether a committee can compel a Member to attend

The Committee received evidence on Tuesday 25 October which indicated that, if a Minister received an invitation to attend and refused that invitation, the committee could compel that Minister to attend.

I remind members of standing order 258 which states:

258. If a committee desires the attendance of a member as a witness, the Chair of the committee shall, in writing, request that Member to attend; should the member refuse to come, or to give evidence or information as a witness to the committee, the committee shall advise the Assembly, and not again request the member to attend the committee.

I trust that clarifies whether a committee can compel a Minister to attend.

Yours sincerely,



Tom Duncan
Clerk of the Legislative Assembly

1 November 2022



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

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

Mr Mick Gentleman MLA
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2601

Dear Minister,

Estimates 2022-23 Hearings

I write on behalf of the Select Committee on Estimates 2022-23, (the Committee), regarding your appearance before the Committee in public hearings for its inquiry into the 2022-23 ACT Budget. The terms of reference are attached.

Based information provided by your office in regards to your availability, the times have been scheduled for you to appear before the Committee:

Portfolio	Date	Time
Minister for Industrial Relations and Workplace Safety	Tuesday 16 August 2022	1.00pm – 2.00pm
Minister for Corrections	Thursday 18 August 2022	9.30am – 10.45am
Minister for Policing & Emergency Services	Thursday 18 August 2022	11.00am – 12.45pm
Minister for Planning and Land Management	Thursday 18 August 2022	1.30pm - 3.00pm

The hearings will be conducted in the Prince Edward Island Committee room.

To ensure that there is adequate time for scrutiny of the 2022-23 ACT Budget, the Committee has set aside time on Thursday 25 August and Friday 26 August in case there is insufficient opportunity to address all issues necessary during the times scheduled above.

This letter confirms this timing for you and your officials to appear before the Committee. Please note that the Committee has decided to depart from the practice of opening statements for these hearings. If you wish to make an opening statement, the Committee asks that you lodge it in writing with the Secretariat at least two full business days before the hearing.

Additionally, I would like to inform you that the Committee has decided to depart from the previous practice of basing the hearings schedule on budget outputs due to scheduling problems this has caused in the past. Instead, the Administrative Arrangements have been used as a guide to determine possible areas for inquiry during each session.

If there are any questions your officials can contact Kathleen de Kleuver on (02) 6207 0524 or at LACommitteeEstimates@parliament.act.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Milligan', written in a cursive style.

James Milligan MLA
Chair
28 July 2022

ATTACHMENT

Resolution of establishment

At its meeting on Thursday, 24 March 2022, the Assembly passed the following resolution:

"That:

1. a Select Committee on Estimates 2022-2023 be appointed to examine the expenditure proposals contained in the Appropriation Bill 2022 2023, the Appropriation (Office of the Legislative Assembly) Bill 2022 2023 and any revenue estimates proposed by the Government in the 2022 2023 Budget and prepare a report to the Assembly;
2. the Committee be composed of:
 - a. one Member to be nominated by the Labor Party;
 - b. one Member to be nominated by the Liberal Party; and
 - c. one Member to be nominated by the Greens; andto be notified in writing to the Speaker within two hours of this motion passing;
3. the Liberal Party Member shall be elected chair of the Committee by the Committee;
4. the Committee shall be established from 1 July 2022;
5. funds be provided by the Assembly to permit the engagement of external expertise to work with the Committee to facilitate the analysis of the Budget and the preparation of the report of the Committee;
6. the Committee is to report by Friday, 9 September 2022;
7. if the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation; and
8. the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders."

From: [LA Committee - Estimates](#)
To: [GENTLEMAN](#); [ACDLO](#); [EPSDD DLO](#); [MPESDLO](#); [CPLO \(AFP\)](#); [CMCD DLO](#)
Cc: [LA Committee - Estimates](#)
Subject: Invitation to Estimates 2022-2023
Date: Thursday, 28 July 2022 1:46:00 PM
Attachments: [image001.png](#)
[Signed invitation - Gentleman.pdf](#)
[Witness form.docx](#)

OFFICIAL

Dear Minister,


Please find an invitation from the Select Committee on Estimates 2022-2023 to appear at the public hearings scheduled from 12 August to 26 August 2022.

Details of when you have been asked to appear are in the attached invitation.

Please send back the completed witness forms one week before the relevant hearing.

If there are any questions, please email LaCommitteeEstimates@parliament.act.gov.au.

Regards,


Administrative Officer | Office of the Legislative Assembly
T (02) 6205 0136



Office of the Legislative Assembly:

Professionalism • Independence • Honesty • Integrity • Impartiality • Transparency

www.parliament.act.gov.au



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

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

Mr Mick Gentleman MLA
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2601

Dear Minister,

Estimates 2022-23 Hearings

I write on behalf of the Select Committee on Estimates 2022-23, (the Committee), regarding your appearance before the Committee in public hearings for its inquiry into the 2022-23 ACT Budget. The terms of reference are attached.

Based information provided by your office in regards to your availability, the times have been scheduled for you to appear before the Committee:

Portfolio	Date	Time
Minister for Industrial Relations and Workplace Safety	Tuesday 16 August 2022	1.00pm – 2.00pm
Minister for Corrections	Thursday 18 August 2022	9.30am – 10.45am
Minister for Policing & Emergency Services	Thursday 18 August 2022	11.00am – 12.45pm
Minister for Planning and Land Management	Thursday 18 August 2022	1.30pm - 3.00pm

The hearings will be conducted in the Prince Edward Island Committee room.

To ensure that there is adequate time for scrutiny of the 2022-23 ACT Budget, the Committee has set aside time on Thursday 25 August and Friday 26 August in case there is insufficient opportunity to address all issues necessary during the times scheduled above.

This letter confirms this timing for you and your officials to appear before the Committee. Please note that the Committee has decided to depart from the practice of opening statements for these hearings. If you wish to make an opening statement, the Committee asks that you lodge it in writing with the Secretariat at least two full business days before the hearing.

Additionally, I would like to inform you that the Committee has decided to depart from the previous practice of basing the hearings schedule on budget outputs due to scheduling problems this has caused in the past. Instead, the Administrative Arrangements have been used as a guide to determine possible areas for inquiry during each session.

If there are any questions your officials can contact Kathleen de Kleuver on (02) 6207 0524 or at LACommitteeEstimates@parliament.act.gov.au.

Yours sincerely,



James Milligan MLA
Chair
28 July 2022

ATTACHMENT

Resolution of establishment

At its meeting on Thursday, 24 March 2022, the Assembly passed the following resolution:

“That:

1. a Select Committee on Estimates 2022-2023 be appointed to examine the expenditure proposals contained in the Appropriation Bill 2022 2023, the Appropriation (Office of the Legislative Assembly) Bill 2022 2023 and any revenue estimates proposed by the Government in the 2022 2023 Budget and prepare a report to the Assembly;
2. the Committee be composed of:
 - a. one Member to be nominated by the Labor Party;
 - b. one Member to be nominated by the Liberal Party; and
 - c. one Member to be nominated by the Greens; andto be notified in writing to the Speaker within two hours of this motion passing;
3. the Liberal Party Member shall be elected chair of the Committee by the Committee;
4. the Committee shall be established from 1 July 2022;
5. funds be provided by the Assembly to permit the engagement of external expertise to work with the Committee to facilitate the analysis of the Budget and the preparation of the report of the Committee;
6. the Committee is to report by Friday, 9 September 2022;
7. if the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation; and
8. the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.”.

From: [Redacted]
To: [Redacted]
Subject: [Redacted]
Date: [Redacted]
Attachments: [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Office of the Legislative Assembly

Integrity • Independence • Accountability • Transparency

www.legassembly.gov.on.ca