



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SELECT COMMITTEE ON PRIVILEGES 2022

(Reference: **Inquiry into possible contempt of the Assembly: Imposition of prohibition notice by WorkSafe ACT**)

Members:

**MR J HANSON (Chair)
MS J CLAY (Deputy Chair)
MR M PETTERSSON**

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 25 OCTOBER 2022

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**Secretary to the committee:
Mr Max Kiermaier (Ph 620 72031)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Amended 20 May 2013

The committee met at 9.00 am.

GENTLEMAN, MR MICK, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services

THE CHAIR: Mr Gentleman, thank you very much for appearing today. I appreciate it. This is the final hearing of the Privileges Committee into the estimates hearings. You will not need to say your name when you speak, because you are the only one appearing. Can I make sure you are aware of the privileges statement and you are aware of its requirements and so on.

Mr Gentleman: I certainly am.

THE CHAIR: These proceedings are being broadcast and being transcribed for Hansard. We have an hour of these hearings and before we go to questions, do you have an opening statement.

Mr Gentleman: No, happy to go to questions, and if there is anything that needs clarifying afterwards I will provide that to the committee.

THE CHAIR: Yes, thanks very much. I want to make sure you are aware of the submissions that have been provided to the committee online and you are aware there have been ones from OLA, from the Speaker and from the estimates committee themselves. I want to turn to that submission from the estimates committee. It is a tri-partisan committee, one Liberal, one Labor, one Greens member. They have said in their submission:

It is the belief of the Estimates Committee that Minister Gentleman may have used his position as Minister for Industrial Relations and Workplace Safety to influence, suggest, or pressure the WorkSafe Commission to issue a Prohibition Notice to interfere with the Committee's ability to conduct hearings in person with online available in exceptional circumstances

The Estimates Committee is of the believe that both the WorkSafe Commissioner and Minister Gentleman interfered with the Estimates Committee and the interference was improper.

That is an assertion made in the submission. Do you want to respond to that? Do you have any comments?

Mr Gentleman: Thank you, Chair. Yes, I refute that assertion. I have already placed on the public record that my office sought advice from the independent WorkSafe Commissioner. A number of people raised concerns with my office regarding estimates and this included both public servants and ministerial officers and I felt it prudent to seek advice. I noticed too, as you referred to submissions to this committee, that the commissioner appeared before you yesterday and basically said the same thing—that I did not interfere with the estimates committee and did not ask the WorkSafe Commissioner to interfere.

THE CHAIR: Right. If you look at the email that was sent from your office, it was taken as a complaint by the WorkSafe Commissioner. She acknowledged that it was taken as a complaint. The email says the minister has serious concerns and it lays out in its attachments all your concerns and the remedy that you were seeking. How do you not see that that was a direction—or certainly a quasi-direction—to WorkSafe? It was not just of a general nature, was it?

Mr Gentleman: Well, Mr Hanson, the positions that were put to me by senior public servants and other ministerial officers were those that I relayed in that email. Once again, I would say that WorkSafe is independent and I would draw the committee to the Work Health and Safety Act 2011. In particular, schedule 2 states the commissioner is not subject to the direction of anyone else, including me, and must act independently in relation to particular investigations or particular regulatory action. The WorkSafe commissioner must act independently and is not subject to the direction of anyone else in exercising her function under the act.

THE CHAIR: Well, I agree they must; it is a matter of whether they did. That is the question. In the same act—2.23 independence of the WHS commissioner and ministerial directions—it says:

(3) A direction given under subsection (2) must be of a general nature and not direct the WHS commissioner in relation to a particular investigation or particular regulatory action.

But your email from your office was not of a general nature. It was very specific in outlining that you had concerns—not just the staff, but they were your concerns. It outlined in specific detail the concerns you had and the remedy you were seeking. That then led to a chain of events. But for that email, none of this would have happened. So it was the email from your office that led to this whole chain of events happening. So how can you not say that there was an influence from you over these events and the actions of the commissioner and her inspectors?

Mr Gentleman: Well, I reiterate that that email was a request for advice. There was no direction in the email. It was a request for advice because I had ministerial officers and senior public servants put to me that they had concerns about the operation of the estimates committee. I relayed those concerns from my office in that email.

THE CHAIR: But the WorkSafe Commissioner acknowledged yesterday she did not just take that as advice, she took it as a complaint. She responded to your office to say it had been referred to the complaints department. The email itself said you had serious concerns, you were not just saying—it was not just relaying the fact that people had raised those concerns to you, “... can you advise?” It was saying you had concerns. It outlined all of those concerns you had and all the remedies you were seeking. So it might have said can you seek advice, but—the way it was written, the way it was received, the way it was acknowledged and acknowledged back to your office to say it had been sent to the complaints department—it was not treated as a simple advice, nor was the email, it could be argued, constructed as just seeking advice.

Mr Gentleman: Again, I would say it was certainly seeking advice, nothing other. I

can categorically say I did not direct the WHS Commissioner to investigate or take any regulatory action, including issuing a prohibition notice, as I have never done this. The commissioner acts completely independently. In briefings to me, the commissioner shows her independence and in dealings with the commissioner I have always seen her independence and given her that aspect to be able to work independently from government. You would have seen too that over workplace visits, for example, that her and I have attended together there has never been any invitation or request from me for her to act in a certain way. She has always acted independently, and that is the law that she works under.

THE CHAIR: Sure. But if you have received an email from the minister's office, outlining the minister has serious concerns, outlining what those concerns are and the remedy they are seeking and that is then passed onto a WorkSafe inspector who then comes to this building and imposes on the Assembly and the committee what appears to be the desires of the minister. I am not saying that in the email you said you are to impose a prohibition notice but the actions that you were seeking, was the outcome essentially provided to you by the WorkSafe inspectors. Can you not see the email that was written from your office, the actions that you took, have influenced WorkSafe in providing an outcome that was the one you were seeking?

Mr Gentleman: No, I disagree, Mr Hanson. I have put it very clearly. The WorkSafe Commissioner has put it very clearly as well. She said yesterday as well that any correspondence to her office with issues relating to work safety is taken as a complaint, whether it is from any person across the ACT, be it a PCBU, an employee or anybody else. She also noted yesterday that there were concerns from senior public servants and ministerial officers put to her apart from my email, Mr Hanson. My email, I will say once again, from my office was simply a position put forward from other officers in the Assembly and senior public servants.

THE CHAIR: No, it was not. Because it said that the minister has concerns. It says that the minister has serious concerns, does it not? It is just not true.

Mr Gentleman: Well, it is.

THE CHAIR: The complaints that may or may not have been made by senior bureaucrats were not what instigated this investigation. They are not referenced in the communication that was provided to the inspector. It was the communication from you—it seems it was your email, from your office—that led to this and they were described as serious concerns.

Mr Gentleman: Mr Hanson, you are incorrect. I will provide you with that information that the concerns were put to my office from senior public servants, that was what initiated the email. It did not initiate from some concoction from my office, Mr Hanson. It was put to me that senior public servants and ministers had concerns about the safe operation of the estimates committee.

THE CHAIR: So you did have concerns and it was your concerns which were articulated to WorkSafe.

Mr Gentleman: Mr Hanson, I will say again: concerns were raised in my office from

senior public servants and other ministerial officers about the operation of the estimates committee. Those concerns were relayed in that email, seeking advice from the commissioner.

THE CHAIR: What do you say about the fact that your directions under the subsection must be of a general nature and not in relation to a particular investigation? Would you not say that this email was very specific in outlining the concerns that you had and the remedies you were seeking, particularly in light of all the attachments it provided and was, in particular, related to a particular investigation? It was not general, was it? It was not a general direction.

Mr Gentleman: It was not a direction, Mr Hanson, and I refute that allegation. It was not a direction. It was seeking advice, as it says quite clearly in the email.

MS CLAY: Minister, you say you heard from senior public servants about their concerns. I am interested to know did you suggest they lodge a complaint or did you suggest any of the other ways that they might be able to take up their WHS concerns?

Mr Gentleman: No, my portfolio holds that responsibility. If public servants ask me for advice on their concerns then it is appropriate that my office seeks advice from WorkSafe and other senior public servants that work in that directorate.

MS CLAY: So you were lodging that on their behalf?

Mr Gentleman: Lodging the request for information, yes.

MS CLAY: The complaint, yes, okay. And when you sent—

THE CHAIR: Did they make a complaint or were they seeking advice?

MS CLAY: Just let me—yes when you sent the email—

Mr Gentleman: Well, my office sent the email, yes.

MS CLAY: Your office sent the email and also there was an initial phone call as well between your office and the WorkSafe commissioner?

Mr Gentleman: Yes.

MS CLAY: When you had those, in what capacity were you holding those? What was the hat you were wearing when you did that?

Mr Gentleman: Manager of government business. You will see that in the correspondence, the signature block at the bottom is manager of government business. The estimates committee had written to me as manager of government business suggesting how they would hold hearings over the estimates period, and it was my responsibility to respond back to them as the representative of government in this position.

MR PETTERSSON: So what were the WHS concerns raised by senior public servants

and ministerial colleagues?

Mr Gentleman: The concerns were in general in relation to the change of the format of estimates committee from previous hearings in a COVID-safe manner where, if you will recall previous hearings, they had been held online and there were no requests for people to attend those hearings in person. The estimates committee wrote to me and said they would like to hold those hearings in person and that ministers and senior public servants would attend in person over the period.

Also there was a change to the way the schedule would run. Previously it was run through the outputs in the estimates documents and previously when we had in person hearings you would have groups of senior public servants and ministers there for that particular output. They were always held in this room and we would have people waiting for other output classes that were due to go next waiting outside in the anteroom. Then there would be a period of changeover. The estimates committee requested all persons attend in person and that they would not be going through output classes, that it would be a general question. So you could have, as I have said, large amounts of people either in this room or waiting outside.

MS CLAY: Minister, are there any other calls or conversations or pieces of correspondence between you and the WorkSafe Commissioner, between your staff and her staff, between you and her staff, or between her and your staff. Is there anything else other than what we have in the records.

Mr Gentleman: The only other call that occurred was after the initiation of this. There was a call from the commissioner to my office with a concern about a threat to her safety. I responded to that call by calling her and offering her assistance in a wellbeing way and any assistance with police. There was a threat to her life. It was quite extraordinary, I thought. I believe she mentioned this yesterday. That was the only other call.

MS CLAY: She did mention it and it sounds like a really stressful time for her and the staff.

Mr Gentleman: Yes, yes.

MS CLAY: Minister, we have not seen a submission from you, which I was quite surprised at. I am wondering if you could perhaps give us your notes of that call and if you could perhaps give us your—you have seen the evidence, if there is anything in that evidence you have that somebody else does not have if you could perhaps submit that to this committee.

Mr Gentleman: Sure.

MR PETTERSSON: Following the correspondence between you and the estimates committee, I wanted to go to the very first pieces of correspondence. It was your office that did it; why did your office request that you appear before the estimates committee with officials remotely?

Mr Gentleman: That was the way we operated previously. During the COVID period

of course we all appeared remotely. We thought this was probably the best way, to continue in that fashion to be safe and that was why I made that request.

MR PETTERSSON: You appeared remotely before committee hearings throughout the COVID-19 pandemic?

Mr Gentleman: Yes.

MR PETTERSSON: Were there any problems raised with those remote appearances?

Mr Gentleman: No they seemed to work quite well. The estimates committee went through its process, it provided a report to the Assembly, government responded to that report and, of course, the budget went forward. I could see that that could occur again. It was quite efficient, I thought, at the time.

MR PETTERSSON: Did you find it unusual that the estimates committee was so reluctant to allow you to appear remotely?

Mr Gentleman: Yes, I did. I think when you see that indeed all of the ACT government's functions have been either remote or a hybrid model over the last couple of years, I thought it odd that they would ask for all people to appear in person. I offered in my correspondence ways through that but there was no direct response to that until we actually met in person with the committee on their request.

MR PETTERSSON: You are the minister responsible for various different directorates. Are there operational concerns with the directorates you are in charge of and, in particular, COVID concerns?

Mr Gentleman: Certainly. If you were for example to have large groups of people in an area where COVID transmission occurred you could take out quite a number of senior public servants, bureaucrats and ministers, for example, in the one instance. So if you were looking at a business continuity situation, if this were to occur, then you could take out a large swathe of that operational performance from ACT government.

THE CHAIR: One of the things I have observed is that there are operations happening in this building. Indeed, on the day you raised the concerns to the WorkSafe commissioner, there was the community day that was conducted by the estimates committee without complaint and operated safely. There were other committee hearings occurring and the Assembly was sitting. I have provided you with a photo. My understanding is it was posted on the day that you sent from your office the concerns to the WorkSafe commissioner. That is a photo of you with 18 people which is coincidentally the number of people allowed in this room.

This is indicative of the sort of activity that was happening at that time within ACT government by yourself and by other ministers. It seems that there was a preparedness and a willingness for ministers, including yourself, to be in close proximity all together with people indoors without masks on to get photo ops and other activities going on, but for the estimates committee to operate in an environment where there would be social distancing and masks and so on. It looks like the estimates committee was singled out of all of the activities happening in around this town at that time. Can you explain

that discrepancy.

Mr Gentleman: Thank you Mr Hanson. I raised concerns that had been raised with me. I will reiterate that. In relation to the event the event venue had a COVID-19 safety plan. This included a risk assessment and mitigation strategies as well. It was a short event. I believe I wore a mask and took it off for the photograph. The event was staged in a room about 10 times the size of this room. So I felt that event was safe and indeed it was provided to me that a COVID-safe plan was in place. I am interested though Mr Hanson as to who provided this evidence to the committee.

THE CHAIR: It was on LinkedIn.

Mr Gentleman: No, no, who provided this to you.

THE CHAIR: Well I was alerted to it that it was on LinkedIn.

Mr Gentleman: So you have provided the advice to the committee. The evidence.

THE CHAIR: No I was aware of it as a piece of evidence.

Mr Gentleman: Well, I would ask the committee to consider Mr Hanson's position if, as he said yesterday to the commissioner, this committee is the one that will be acting as a court, as a jury, if you like, yet we find a juror providing evidence himself to the committee. I think you need to consider that in this—

THE CHAIR: I appreciate your commentary, Mr Gentleman, but I think what we are looking for as a committee is consistency, is intent, as to why this all occurred. One of the issues raised is why your actions were taken and the consistency of those. As I look at that photo of you with 18 people in very close proximity with no masks on I do not understand why you have taken the action that you have and I am just asking for an explanation. Why you can—

Mr Gentleman: Yes, well I will provide the details of that event and I will reiterate again that my request to the commissioner was for information and that request had proceeded from interest put to my office from senior public servants and other ministers.

THE CHAIR: Right. The notes of the official phone call that was made said that there was no dial in for estimates and raised concerns that there had been no risk assessment, no consultation. Is that right? Because my understanding is the estimates committee had said there would be provision for those people that were unable to attend the estimates for a variety of reasons that they would be able to dial in—that it was a presumption that people would attend but there were reasons why people could dial in if they were unable to for the reasons that were specified. And to say that there was no consultation, it seems that there had been quite a bit of consultation between you and the estimates committee.

Mr Gentleman: No, in relation to consultation that is a position under the WHS Act in regard to providing their COVID-safe plan to those attending the committee. There is a requirement for the committee or for anyone with a COVID-safe plan to consult with those people that will be attending the event.

THE CHAIR: Right. And they had not been in consultation through you. Is it reasonable that the committee would consult with everybody that is attending or would it be done through the responsible minister?

Mr Gentleman: We offered to do it through me. Dr West in my directorate had offered the committee in that private meeting to consult with members that would be attending.

MS CLAY: So you understand minister that members of the estimates committee are not able to contact the public service directly?

Mr Gentleman: Yes, yes.

MS CLAY: Yes.

Mr Gentleman: That is why we made the offer.

MS CLAY: Yes so, if the criticism is that there was no consultation, that consultation should have been done through your office?

Mr Gentleman: Certainly in regard to the COVID-safe plan yes we offered that.

MS CLAY: Yes and what was the response? Did they forbid you from consulting?

Mr Gentleman: No there was no response.

MS CLAY: So you did not consult?

Mr Gentleman: The only consultation I did after the private hearing was to write to ministers and their officers in regard to what had occurred in that private meeting where an agreement was made to go forward with the hybrid model.

MS CLAY: I am just a bit confused that you have lodged a complaint with the WorkSafe commissioner on the grounds that there was—

Mr Gentleman: No, I did not. I will refute that again.

MS CLAY: It was taken as a complaint by the WorkSafe commissioner. You lodged some information with the WorkSafe commissioner.

Mr Gentleman: A request for information, yes.

MS CLAY: Correspondence and part of the grounds of that was that there was no consultation with the public servants and the only means of consultation with the public servants was through your office and your office had not done that.

Mr Gentleman: I see, yes.

MS CLAY: I do not understand why you took this action over here to go direct to the commissioner from your office to the commissioner but you did not take this action

over here to conduct the consultation that you say was required.

Mr Gentleman: Okay so there are two aspects of consultation. The first one is the committee would consult with ministers and staff in how their operation would occur in the estimates period. That did not occur. They simply wrote to us and said this is what is happening. In the other matter of me consulting with ministers and the staff on a COVID-safe plan that the committee would have in place we offered to do that yes. They are two separate matters.

MS CLAY: You offered to do it, but you did not in fact undertake that consultation?

Mr Gentleman: Yes, we did. Yes, yes.

THE CHAIR: You did. So there was consultation?

Mr Gentleman: Yes after the committee and I met with Dr West in a private meeting and we agreed on how the estimates process would go forward—that it would go forward in a hybrid model—we made an offer to the committee that we would consult on their behalf to the whole of the public service their COVID-safe plan so it was in place ready for the estimates hearings. In the finalisation of that meeting I wrote to my ministerial colleagues advising we had reached agreement on a hybrid plan.

MS CLAY: So there was consultation with the public servants?

Mr Gentleman: In regard to the matters of that meeting yes. I had written to my senior colleagues and said we had agreed on a way forward, a hybrid plan.

MS CLAY: Am I being a bit obtuse here? Have I missed a point?

THE CHAIR: No, no, you are not.

MS CLAY: So I am just confused because the original—the notice from the original phone call and the original email lay out quite clearly that the primary grounds of concern here are the lack of WHS consultation with people required to come. I believe the original Friday prohibition notice was issued in large part on that basis. But we have just heard that actually there was consultation with the people who came and that it happened through your office which was involved at both steps have I—

Mr Gentleman: But that was later, that was later.

MS CLAY: Okay so when did the consultation with the witnesses happen?

Mr Gentleman: The only consultation that happened on my behalf was that that was agreed by the committee. That was the process by which the hearings would take place in a hybrid matter where I wrote my ministerial colleagues and said we had agreed on this process forward and Dr West had offered to consult on the committee's WorkSafe plan in response to that agreement.

MS CLAY: Okay I—

Mr Gentleman: But that was after. That was after this initiated. This is when we had the private meeting with the committee.

MS CLAY: Yes, that is all right, I might leave it there and we might take on notice a chronology. I think the difficulty here, Minister, is that we do not have a chronology and written information on this.

Mr Gentleman: I will reiterate I put my concerns that had been raised with me from ministers and public servants in my letters dated 8 and 11 August.

MS CLAY: Thank you.

MR PETTERSSON: Madam Speaker made an observation yesterday in her evidence that she viewed the estimates committee and you as ships passing in the night in that you both were talking about a hybrid model but seemingly could not agree on what the hybrid model was. In your opinion, what was the difference between what you were proposing and what the estimates committee was proposing?

Mr Gentleman: Initially the estimates committee was not proposing a hybrid model. My understanding is they wanted everybody to appear in person. That was the correspondence put to us. My response was—and I had advised them, I think—a hybrid model would work. Initially we wanted online of course as that was how estimates committee used to operate.

We had been operating as I said virtually for two years, along with previous estimates committees and annual report hearings. My office asked for logon details and this has become a matter of course during diary scheduling as well. So in response to the estimates corro on 4 August it made it clear that mask wearing in the hearings was not compulsory. The leader advised medical information would need to be disclosed to the committee to then determine arrangements for attendance, noting that remote attendance was a possibility but not guaranteed. So I was concerned about that. On 11 August, the committee said that WebEx boards would be used as an exception where required. On 12 August the last working day before estimates was due to commence the committee advised that WebEx equipment may be available for use. So at no time did I feel confident I think at that point that the committee was ready in a COVID-safe manner to proceed with in person hearings.

MR PETTERSSON: Then the meeting you had in person with the committee in which Dr West attended?

Mr Gentleman: Yes.

MR PETTERSSON: The committee has stated that they are of the belief that you misrepresented the outcome of that meeting. Do you have any response to those claims?

Mr Gentleman: Well certainly. I simply wrote to my colleagues and advised them of the outcome of the meeting, which is that we had agreed on a hybrid model. I think that is reflected in evidence that that is what actually occurred. We appeared in a hybrid manner quite successfully I thought. The committee hearings went forward in a different room but the committee hearings went forward. There were fewer people than

originally expected to turn up. People were online. I thought it was quite effective. Their committee went forward, produced its report, the government responded, the budget debate has occurred.

MS CLAY: So this is the email of 16 August.

MR PETTERSSON: Yes.

MS CLAY: Yes. So on that the committee has said that your email misrepresented the agreement and that they had not reached an agreement. I am just wondering if you knew that the email you sent that said we have reached agreement with the committee, did you get any information back that that was not the agreement at the time?

Mr Gentleman: No.

MS CLAY: Okay so they never told you that that is not what they had agreed?

Mr Gentleman: No.

MS CLAY: No? Okay.

Mr Gentleman: My understanding from that meeting was that we had agreed on a way forward. As I mentioned Dr West had provided assistance. And can I say to this committee? At each time that I met with the committee I was offering assistance at all times. As the manager of government business I was offering any assistance I could to that committee to go forward with their estimates hearings. Anything that I could provide to them I offered.

MS CLAY: Did you think maybe it would be easier if the committee sent out their own email? Or you thought that that was best to come from you?

Mr Gentleman: Well I am manager of government business responsible for communicating with ministerial colleagues and we were at a point where these hearings had been delayed for quite some time. In that meeting that point was put to me and this is one of the reasons why we offered to assist the committee as much as possible to go forward with their hearings. Therefore I wrote to my ministerial colleagues advising the outcome of that committee meeting and that this was the way forward. We can start hearings very shortly.

THE CHAIR: Minister, do you have any documentary evidence of complaints raised to you by public servants?

Mr Gentleman: I do not think so. I will check if you like and come back to the committee with that.

THE CHAIR: Right. Can you. So the concerns that were raised were raised by public servants and your ministerial colleagues, or—

Mr Gentleman: Yes, senior public servants and ministerial colleagues.

THE CHAIR: And what was the nature of their concerns?

Mr Gentleman: As I mentioned earlier in my comments, it was about the operation of the hearings in a COVID-safe manner.

THE CHAIR: Right okay. The question was sort of raised before but you did not respond: if a public servant or someone you were going to be directing to attend had concerns, why were they not making their complaints a proper complaint to WorkSafe? I mean, it seems a bit odd that they would complain to the minister and then the minister would make the complaint.

Mr Gentleman: Well Mr Hanson I will reiterate. These were asking for information. They were not complaints. They were asking me to provide information to them and, through that process, we asked the WorkSafe Commissioner for that information.

THE CHAIR: Right.

Mr Gentleman: It was a request for information, I will reiterate, that was made after requests for information to me.

THE CHAIR: Because if you look at the email again that was sent and it was receipted, it says, “I will forward your email to the compliance and enforcement team. This team manage complaints to our office.” Then when you look at the actions within WorkSafe at every step it is forwarded to the inspectors and the inspector’s supervisor as a complaint. To go back to that point you do not acknowledge that it was viewed and received and responded back to your office as a complaint.

Mr Gentleman: Well as I said, Mr Hanson, it was a request for information put to me and therefore a request for information to the commission. The commission deals with that, as they do, as an independent authority and I believe they provided that information to you yesterday.

THE CHAIR: So the request for information though you have no documentary evidence or you will go back and see if there is any documentary evidence?

Mr Gentleman: Yes I will check for you. Certainly.

THE CHAIR: Okay all right.

MR PETTERSSON: The OLA’s submission raises doubts that workers were directed to attend the estimates hearings. Do you believe and did officials believe that they had been directed to attend these hearings?

Mr Gentleman: Certainly. So the correspondence to us was that ministers and senior officials would be—they do use the term requested—requested to attend in person to the committee. I think everybody understands the operation of hearings and those matters over many years in this Assembly so a request from the committee is certainly a direction to attend. You would not reply to the committee and say thanks for the request but I am not coming. Indeed you may be found in contempt I would imagine if you did not attend after a committee requested you to attend. So we see the request from

committee certainly as a direction, yes.

THE CHAIR: My understanding is it is not the case. There is a request and then the next step if someone does not attend, under standing orders, is for the committee to compel a witness. A request is not compelling anyone. There is nothing that says that people do not attend—if someone chooses not to attend they choose not to attend. It would then be for the committee to compel or direct. So your statement that a request is a direction I think needs some clarification at the very least.

Mr Gentleman: Well I think Mr Hanson you have given us just now the decision tree. You would be requested to attend, if you did not attend, you would then be—

THE CHAIR: No, no, but—

Mr Gentleman: You just said it yourself, Mr Hanson. This is the line of the decision. You would be requested to attend. If you did not attend you would be compelled to attend.

THE CHAIR: No, no you are wrong because what I am saying is that you said the request is a direction. What I am saying is that there is a request. It is not a direction. A request occurs and it would only be if someone then said I am not attending that the committee would then have, as an option, the decision to direct. To say that a request is a direction is skipping a step and is simply not true.

Mr Gentleman: I do not agree with you, Mr Hanson. I think any minister that responded to a committee and said well I am not going to attend, the decision tree would then forward down to we will compel you to attend. We all know that. It is a matter of—

THE CHAIR: You are making an assumption. That is an assumption. That is not consistent with the standing orders.

Mr Gentleman: Well it is consistent with every committee hearing that I have attended. Where I have been requested to attend I have attended because I know if I do not attend I would be compelled to attend. And therefore we simply say yes, you have requested me to attend, I will certainly attend.

THE CHAIR: If that is the message that you are sending that a request is a direction and that was the message you were sending across the government be it to your colleagues or to public servants, that is an error. That is not true. A request is not a direction.

MR PETTERSSON: Did the communications you received from the committee use language that was loaded with assumptions in regard to the attendance of officials and ministers?

Mr Gentleman: Certainly. It is consistent with every other estimates hearing request to attend. We all know how important estimates hearings are and indeed government processes as well. And of course it is a matter of importance I think that all of us respond to those requests as they are put. Certainly as Mr Hanson has said it is a request but the

imputation is that you will attend. I do not think at any point I have refused to attend a hearing. Even sometimes when I have been unwell I have still attended, sometimes remotely. I think every minister and every government official sees that request as an important part of government business and Assembly business as well.

MR PETTERSSON: You were invited to be here today. Do you want to be here today?

Mr Gentleman: Well there are other important things I could be doing but of course it is important to have this discussion so that this committee can be sure as they go forward making decisions and making recommendations to the Assembly of these hearings. There should there be some clarity, I think, in forward years. Now if this committee, as Mr Hanson has suggested, feels that a request by a committee to attend is only a request and not a compulsion then that would be of interest to my colleagues, I think. But I think, as I have reiterated, we all feel that if you are requested to attend by a hearing a committee then you will attend.

MS CLAY: Minister, the request to attend, does that just go to ministers or does that go from the Assembly to officials? It was my impression that the request goes to ministers and the ministers choose who to bring.

Mr Gentleman: Certainly I think the request from memory said ministers and senior government officials so in—

MS CLAY: Is there a direct request from the Assembly to officials or does the direct request go from the Assembly to ministers and it is up to ministers to bring—

Mr Gentleman: It usually says ministers and officials.

MS CLAY: Okay. So officials see that direct request?

Mr Gentleman: Yes, they would view it, yes. Yes, I think if you look at past practice you will see that ministers are requested to attend. Senior officials are requested to attend. We generally choose, depending on the aspect of the hearing which officials would attend as well. But quite often, I would say in the last number of estimates hearings, the committee has asked for all relevant directorate officials to attend. We have found certainly in the last couple of years prior to COVID that if I have ESA for example I will have the whole gamut of ESA from senior officers, commissioners, right down to—not to policy personnel for example but action personnel. They are either in this room or just outside. Questions will be put to aspects of the portfolio and individual officers and senior officials will be asked to vacate the chair here and move back into the waiting area and that officer would pick up their name tag and come in here. So at any one time we have quite a number of senior officials and officers in the room.

MS CLAY: Yes great. There are a number of people. I am struggling to understand how there can be a direction to somebody without that person being named or their position being named. They could not possibly be directed if it is a request to a generic category of officials of which there might be 10 or 100, but that is simply how I view it.

Mr Gentleman: I have been advised, too, that the committee officials for estimates

sent emails directly to public servants asking them to fill in witness lists for officials.

MR PETTERSSON: It has been put to me that the minister could turn up to an estimates committee by themselves with no officials and that it is their choice to bring officials along. In your experience, is it the wish of committee members and other members who appear for all relevant officials to be available so they can question them directly?

Mr Gentleman: Yes indeed. As I have just said the committee has made it very clear that they wanted all minister and senior officials to attend in person in their first correspondence. It is past practice that would be what occurred. If you look at previous estimates hearings before COVID, as I said, this room would be quite full, officers would interact, depending on the question put to the minister or officials and they would all be in this room—indeed, during COVID times where we have held hearings virtually, officers were asked questions. Sometimes directly from the committee to the minister and then the minister would ask that officer to respond to the question directly. But yes they certainly wanted information from all of those officers.

THE CHAIR: Minister, the email that you sent and the phone call that preceded it from your office set off a chain of events that then led to two prohibition notices being imposed on this Assembly. Have you looked at Madam Speaker's legal opinion that she sought? She circulated it to all members.

Mr Gentleman: Yes.

THE CHAIR: The way this has played out obviously has been problematic. I think that by virtue of the fact that we are here would suggest that. Have you reviewed your actions and the way this has played out? I am looking forward in this circumstance to make sure this sort of event does not happen again. We do not want to be in this position where estimates is disrupted. Nor, I am sure you would agree, do we want to be in a position where the privilege committee has to inquire into these sort of matters again. Have you looked at this as an issue and looked at potential ways that it could have been handled differently or different remedies to make sure that as a path forward—and I am looking here now moving forward rather than picking over what has happened—that we do not have this sort of circumstance occurring again?

Mr Gentleman: I will respond with two hats Mr Hanson, One is the manager of government business. At all times as the manager of government business I offered the estimates committee my assistance. At all times. Is there a way we can move forward to ensure that we can hold these hearings in place in a safe manner? As the minister for workplace safety and industrial relations I will always stand up for the safety of workers across the Territory, whether it is in a construction site, an education setting, or indeed, here in the parliament. I think it is important that everyone gets to go home safe at the end of every day. With that in mind it will always be my preeminent position to maintain safe workplaces.

I feel we can do both, Mr Hanson. I think the outcome from the discussions with the committee, certainly in the private meeting where we agreed on a hybrid model, meant that we could do both—we could have an in depth set of hearings from the estimates committee and we could keep people safe in a COVID-safe manner at the same time.

You can do it. You can walk and chew gum. So, Mr Hanson, I think that in the future we can certainly find a way to ensure from my position and from the scrutiny of government practice that we can do both. I would put to you that whilst you have questioned me in this manner to see if there is any way forward that we can make this easier should we then ask those people on the estimates committee, is there a lesson they have learned as well that could make this smoother into the future? Because there may be other instances where we see another COVID flare up or something of that matter where we want to keep people safe. I think it is important that we do that if we can do it in a way that we both—we all agree that we need to have these hearings. It is a matter of keeping government scrutinised and we all agree on that. Let us do it in a safe way that we all agree.

THE CHAIR: All right. Scrutiny obviously was of the view that what they were doing was being done in a safe way.

Mr Gentleman: Estimates.

THE CHAIR: Although there was a view from scrutiny from their evidence that they felt that the scrutiny of the budget was best done where possible through face to face hearings. Do you acknowledge that when it comes to the operation of the estimates committee and how it operates, on the presumption that all things being equal in terms of COVID-safety, that they are the ones that determine how that should occur? I mean their decision for face to face was within their—assuming that they were safe and I am saying that there is a dispute about that. But assuming that it was safe it was their call and that was how they felt was the best way to operate. Do you acknowledge that?

Mr Gentleman: Certainly, that was what was put to me.

THE CHAIR: Right.

MS CLAY: Minister you made some comments to the media when all of this was playing out and some of those comments did not really match up with what was happening. I am interested both in why you chose to talk to the media about something that was very much before a committee and on foot and also why you made some statements that did not match up with what was in actual fact occurring. In the radio interview that got quoted the most you said that you had heard from people who were scared because they would have 40 witnesses crammed into a room. I do not know any room here where we hold hearings that has a capacity limit of 40. Do you remember that interview?

Mr Gentleman: Yes. Very well. Yes.

MS CLAY: Yes. First of all, why did you choose to make a media comment when this was playing out?

Mr Gentleman: Thanks for the question. It is very important. The interview occurred with a request from the station to talk about the McKellar call-in. It was not to do with the committee hearings or WorkSafe at all. At the end of the interview the host raised with me what had happened in the Assembly. I understand the estimates committee and the Speaker had put out media releases in days prior to that interview and that journalists

may have been backgrounded regarded these matters. So this generated media interest. I answered questions regarding what had already been put into the public domain by the committee and the speaker and the letters from the estimates committee indicated that all senior officials supporting a portfolio would be required. I believe someone had said to me that in some portfolios this could be up to 40 people because of the number of directorates a portfolio can span and the number of officials in it. Having this outcome also put in jeopardy the directorate's business continuity plan if an outbreak did occur in a session and the concerns regarding how hearings would be conducted as raised within the ministry and by public servants as I have said earlier.

MS CLAY: Sure. It may well be that a public servant was worried about 40 people crammed into a room but you attend hearings here regularly and you know our COVID-safe plan. I am sure you are intimately involved with that and across the detail and you know the room limits posted on all our doors. None of those room limits are 40. They are 18 and 21. So I am interested that you chose to repeat something said by somebody who does not work in this building that does not match up with the way we conduct our hearings here.

Mr Gentleman: I was simply relaying the concerns that were put to my office.

MS CLAY: But you knew that—did you know that they were not correct? Did you stop and think “Forty? We do not have 40; the room limits are actually 18 and 21”? Did you process that?

Mr Gentleman: No, I was simply responding to those concerns that were put to my office.

MS CLAY: Sure. You also said in the same interview that COVID numbers were at a record high and they were not actually at a record high. They were at a pretty low point at that point. Why did you say that COVID numbers were at a record high?

Mr Gentleman: The Chief Health Officer I think relayed just earlier in that timeline the numbers we had of COVID incidents in the ACT. We were still in a pandemic. We had of course COVID-safe plans in place and concerns were raised with my office about the attendance. So I was relaying those concerns.

MS CLAY: Sure. Were you aware that we have evidence that actually COVID numbers were at the lowest point—

Mr Gentleman: These are the same concerns that I relayed to the committee.

MS CLAY: Yes sure. I understand you are relaying those concerns but were you conducting that interview on behalf of public servants or were you conducting that interview as a minister or manager of government business. You were speaking for the government and you made some statements that just do not actually match up with other points. Did you subsequently realise that you had made statements that were not correct?

Mr Gentleman: Well as I said the statements to the press were raised by the journalist. My understanding is that this is because the Speaker and the committee had put forward

media releases and backgrounded journalists prior to that. The interview was of course about McKellar shops. The journalist chose at the end of the interview to ask questions about the estimates committee and I simply responded to those with the concerns that were put to my office.

MS CLAY: Sure. But the concerns that were raised with you were not factually correct. We do not cram 40 people into a room here and we did not have COVID numbers at the highest point. So I understand that people said that to you, that of course they are worried. Everybody was really worried, and understandably so. But I would have thought, as you are in a number of capacities and portfolios you would have known that that is simply not how we had been conducting business and that was not correct. I am just wondering—you instead repeated those comments to the media as if they were true. Instead of telling the person who had raised them with you, I understand your concerns but actually it is not going to be quite like that, here is how it is.

Mr Gentleman: Yes okay. I will take on board those comments, Ms Clay. I will just go back to whether you thought that we were in a COVID-safe situation. I will reiterate that in the week of 11 August the Chief Health Officer extended the declaration of the public health emergency due to the uncertainty of the epidemiological situation. The week before ACT Health had issued communications encouraging mask wearing and social distancing. The risk of COVID-19 was still present in the community. Concerns regarding the hearings had been raised with me and that also went to concerns about the business continuity plans of directorates as well. So I am relaying again those concerns put to me and the COVID situation that was in place at the time.

THE CHAIR: To follow on from that point though the concerns that were put to you about 40 people in one room were not true. So if that was in fact a concern that was raised to you, by that stage you would have known that was not true and that has never been the case in this building. Did you respond to the individual that had raised that concern to you that we are going to have 40 people in a room to say, “No, no. That is not true. That is not the case. The room limit is 18”?

Mr Gentleman: I will have to check with my office to see whether we responded in that manner. I will come back to the committee and advise.

THE CHAIR: Right. But surely if public servants were raising issues with you and you had been having the engagement, you are aware of the operation of this building, you had consultation occurring in detail with the estimates committee—if there had been a concern raised to you that you knew was not true, that was not a legitimate concern, surely you would have said to that public servant: “No, no, that is not the case. This is the reality.” It appears from the radio interview that you have taken the concern of a public servant whoever that was and then used that false concern to legitimise your position, knowing as you would have at that point on the radio that the concern was not true.

Mr Gentleman: Mr Hanson, there was nothing that said once the room limits were reached people would not be required in the corridors. There was nothing from the committee in correspondence that gave comfort that the numbers of officials would be limited. It was a general call for all staff to be available, ministers, senior directorates, all staff to be available in person.

THE CHAIR: All right.

MR PETTERSSON: The committee has received legal advice provided by the Speaker. It has received legal advice provided by WorkSafe. Has the government sought legal advice separate to that of WorkSafe on the validity of the prohibition notices?

Mr Gentleman: Yes. I have sought advice from the Solicitor-General. I will provide that to the response to the committee as a submission after this particular hearing.

THE CHAIR: Okay that would be good. Noting that we are on a timeline as well, Minister, for things.

Mr Gentleman: Yes indeed. As I said to the estimates committee, I am here to provide as much assistance as I can to them. The same with this committee as well.

THE CHAIR: Sure. Thanks very much. Thanks very much for attending today, Minister, appreciate it. There are a couple of follow ups. There is the legal advice; if you are able to provide that that would be good.

Mr Gentleman: Yes. I will provide a submission yes.

THE CHAIR: The other one was if you have any documentary evidence of complaints being made to your office. You said that you would follow up and provide those to us. That would be useful. Were there any other follow ups?

MS CLAY: Yes, I have a couple. When the consultation happened with the public servants—so your office conducted consultation with public servants—the chronology.

Mr Gentleman: This was the correspondence from me to ministers yes.

MS CLAY: To public servants.

Mr Gentleman: To ministers.

MS CLAY: No, to public servants. So when—you said that you spoke—we need all the documents about when you spoke to public servants about the hearings and what consultation you undertook with the public servants.

Mr Gentleman: Yes. That was a response from Dr West during the private meeting that we would certainly on behalf of the committee write to public servants, yes.

MS CLAY: Yes, great. We need a chronology and it is quite hard to piece together—the notes from any other conversations you have had with WorkSafe or staff.

Mr Gentleman: I do not think there were any others, yes.

MS CLAY: And the details of the complaints from the public servants. Great.

THE CHAIR: Awesome. Okay. If you can get that to us—

Mr Gentleman: They were not complaints. Again I will reiterate there were requests for advice to my office which I then wrote or asked the commissioner's office for advice.

MS CLAY: Sure. My apologies. Details of requests for advice.

THE CHAIR: All right. If someone says, "I have serious concerns," is that a complaint or is that asking for advice?

Mr Gentleman: I think if someone writes at the bottom their email, I seek advice on these matters, that is a request for advice, Mr Hanson.

THE CHAIR: All right. Okay. So there are some follow ups there. You will be sent a draft transcript as well for you to check over and then we will be in touch if we have any further requests for information.

The committee adjourned at 10.02 am.