

19 June 2025

**The Honourable Rod Roberts, MLC**  
**Committee Chair, Select Committee on the relationship between the Dural Caravan Incident and the passage of relevant bills through the legislative Council**  
**Parliament House, Macquarie Street**  
**Sydney NSW 2000**

**By Email: [Caravan.Incident@parliament.nsw.gov.au](mailto:Caravan.Incident@parliament.nsw.gov.au)**

Dear Committee Chair

**Summonses to attend the hearing of the Select Committee on the relationship between the Dural Caravan Incident and the passage of relevant bills through the legislative Council**

1. We refer to the summonses served on each of us – the undersigned Ministerial staff – at noon yesterday. The summonses require us to give evidence at the hearing of the Legislative Council's Select Committee on the relationship between the Dural Caravan Incident and the passage of relevant bills through the legislative Council (**Select Committee**) tomorrow morning.
2. Our attendance before the Select Committee to give evidence would be at odds with the principles of ministerial accountability and comity between the Houses of Parliament. Moreover, there is an outstanding inquiry by the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics (Standing Committee) as to the implications of the Select Committee's inquiries on the exclusive cognisance of the Legislative Assembly, principally as a consequence of the Select Committee's inquiries into the information that was before members of the Legislative Assembly at relevant times. In light of recent events, we anticipate that the Standing Committee's inquiry will consider whether the compulsion of ministerial staff to give evidence about the information before members of the Legislative Assembly infringes parliamentary privilege, or otherwise offends principles of our Westminster system of government.
3. In these circumstances, and particularly while the Standing Committee's inquiries are ongoing, we consider that there is a reasonable excuse or just cause for us to not attend the hearing, and we propose not to do so. Given your comments on breakfast radio yesterday as to the motivation for issuing the summonses, – which make it clear we are 'proxies' because our respective Ministers cannot be compelled as witnesses to the Select Committee – we also consider that they have not been properly issued.
4. We therefore respectfully request that you excuse us from attending the hearing on 20 June 2025.
5. We set out our concerns in more detail below.

**Background**

6. On 19 March 2025, the Legislative Council issued terms of reference to establish the Select Committee. When describing the scope of the inquiry of the Select Committee in your speech and in the original terms of reference for the Select Committee, no distinction was drawn between the Legislative Council and the Legislative Assembly.<sup>1</sup> Furthermore, no issue was raised about the personal conduct of any ministerial staff.
7. In April 2025, the Select Committee sought the attendance of Ministers, including the Premier, at its hearings. The responses to those invitations are a matter of public record. In the Premier's response dated 29 April 2024, he explained that:

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<sup>1</sup> Hansard of the Legislative Council dated 19 March 2025 p 47.

- (a) he has provided extensive public comment on the relevant matters, including during Parliamentary Hearings;
  - (b) others, including Commissioner Karen Webb APM, have also made public comment or appeared before the Select Committee;
  - (c) the government has provided information under orders issued under Standing Order 52; and
  - (d) having regard to the information publicly available and already provided to the Select Committee, it is not clear that he would be able to offer any further assistance to the Select Committee.
8. Noting these matters, the Premier respectfully declined the Select Committee's invitation to attend the hearings.
  9. Following this, on 5 May 2025, the Select Committee invited us to attend before the Select Committee to give evidence voluntarily. Those invitations were respectfully declined.
  10. On 28 May 2025, the terms of reference of the Select Committee were revised to replace a reference to "Parliament" with the "Legislative Council". The terms of reference are otherwise broadly the same.
  11. On 29 May 2025, the terms of reference of the Select Committee were discussed in the Legislative Assembly. It was noted that the Select Committee intended to inquire into the affairs and deliberations of the Legislative Assembly in violation of the Legislative Assembly's prerogative to control its own proceedings, and the principle of comity between the Houses.<sup>2</sup> The view was expressed that the Legislative Council ought not be able to compel the attendance of ministerial staff for the purpose of circumventing the convention that Ministers of the Legislative Assembly are not compellable witnesses.<sup>3</sup>
  12. Hansard records that these concerns of members of the lower house were not resolved by the amendments made to the Select Committee's terms of reference. The terms of reference still refer to knowledge of members of the Legislative Assembly, the provision of information to "Parliament" and "parliamentary deliberations". The fact that the Select Committee has continued to press for the attendance of staff of members of the Legislative Assembly at its hearings confirms that the affairs and deliberations of the Legislative Assembly continue to be the subject of its inquiry.
  13. On 29 May 2025, the Legislative Assembly passed a motion to establish an inquiry into these matters. It was specifically contemplated that the inquiry may consider:
 

*"...the appropriateness of requiring staff employed under the Members of Parliament Staff Act to support members in the Legislative Assembly to attend and give evidence before a committee in the other place in circumstances where the Minister has declined an invitation to appear. Concerns arise that the situation has the potential to, in a backdoor way, undermine parliamentary privilege or attempt to undermine parliamentary privilege by requesting the attendance of members of Parliament at committee hearings under section 5 of the Parliamentary Evidence Act".<sup>4</sup>*
  14. Submissions in respect of that inquiry close on 30 June 2025.
  15. Yesterday morning, you confirmed in response to a question from Ben Fordham on 2GB radio that, if the Premier was to attend at the Select Committee hearing, we would not be required to appear. Specifically, you agreed with the proposition put to you by Mr Fordham that:

*If Chris Minns changes his mind and agrees to appear before the inquiry, then you don't need to rope in his staff members with a summons.*

#### **Reasonable excuse or just cause for non-attendance**

16. It is apparent from your public comments as described above that the Select Committee's sole motivation in summoning us is to compel us to give evidence about the information that was before our Ministers during the relevant parliamentary debates in the Legislative Assembly. That

<sup>2</sup> Hansard of the Legislative Assembly dated 29 May 2025 p 2.

<sup>3</sup> Hansard of the Legislative Assembly dated 29 May 2025 p 4.

<sup>4</sup> Hansard of the Legislative Assembly dated 29 May 2025 p 3.

information is protected by parliamentary privilege. The Select Committee, being an upper house committee, is not entitled to inquire into such matters.

17. It is also an established principle of our Westminster Parliamentary system that it is the Minister who is accountable to Parliament and the public for their actions and decisions – not their staff. It is for this reason that ministerial staff are generally not summonsed to appear as witnesses – this is sometimes referred to as the McMullen Principle.<sup>5</sup>
18. Consistent with this principle, the New South Wales Legislative Council Practice states: "*there are few examples of staff of members of the Legislative Council being invited to appear and give evidence before Council committees*". The only precedent for this which is cited in the volume involved witnesses who agreed to attend *voluntarily* (ie without a summons).<sup>6</sup>
19. On occasions in other jurisdictions where a ministerial staff member has declined to give evidence to a parliamentary committee, it has been decided that summonses should not issue to compel their attendance because it would be "unjust"<sup>7</sup> or "untenable"<sup>8</sup> to expose the staff member to a process leading to penalties, jail term or fines, noting also that they act under the direction of a Minister. The same principles apply here. We should not be exposed to the prospect of a warrant issuing or being held in contempt of Parliament when we act under the direction of our Ministers.
20. Furthermore, the principle of comity between the Houses requires that the Legislative Council refrain from:
  - (a) inquiring into the operations and affairs of the Legislative Assembly;<sup>9</sup> and
  - (b) asking staff of members of the Legislative Assembly questions concerning the operation and affairs of that House.
21. The only questions that we would be able to give evidence about go to those very two subjects. It is noteworthy in this regard that the terms of reference make clear that our personal conduct as ministerial staff is not in issue.
22. Having regard to all the circumstances, including the Select Committee's Terms of Reference (as revised), the role of ministerial staff in our Westminster system of government and your comments during the interview on 18 June 2025, it is clear the summonses have been issued for the purpose of:
  - (a) attempting to hold us as ministerial staff to account for the actions or decisions of our respective Ministers;
  - (b) circumventing the prohibition on compelling the attendance of Ministers at hearings of the Select Committee; and
  - (c) inquiring into and asking questions of ministerial staff about the affairs or deliberations of the Legislative Assembly.
23. The inquiry is about the information that was provided to the Parliament by members of the Legislative Assembly when debating amendments to the *Crimes Amendment (Places of Worship) Bill 2025*, the *Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025* and the *Crimes Amendment (Inciting Racial Hatred) Bill 2025*.
24. With respect, we consider that the issue of the summonses in these circumstances is:
  - (a) inconsistent with the above mentioned principles of our Westminster Parliamentary system of democracy;
  - (b) not a lawful exercise of the power to issue a summons under section 4 of the *Parliamentary Evidence Act 1901* (Cth); and

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<sup>5</sup> New South Wales Legislative Council Practice p 804.

<sup>6</sup> New South Wales Legislative Council Practice p 805.

<sup>7</sup> Senate Select Committee for an Inquiry into a Certain Maritime Incident at [7.146]

<sup>8</sup> Senate Committee of Privileges, 49<sup>th</sup> Report into the Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994 (49<sup>th</sup> Report), 5

<sup>9</sup> New South Wales Legislative Council Practice p 849.

- (c) unjust and untenable in the sense that it exposes us to a penal process in circumstances where we act under the direction of our respective Ministers.
25. Whether it is appropriate and permissible to compel ministerial staff to appear at a Parliamentary Committee in these circumstances is an important issue that is presently being considered by the Standing Committee. The outcome of that inquiry may well impact on this process.
26. In any event, we respectfully convey our position that the above matters constitute reasonable excuse for our non-attendance at the hearing on 20 June 2025 and we do not propose to attend. There is precedent that there is a reasonable excuse for not attending where there is doubt as to the scope, appropriateness or lawfulness of the inquiry of the Committee.<sup>10</sup>
27. Further, in the case of Mr Ovadia, he has already informed the Select Committee that he was absent on leave at all relevant times. This is a further reasonable excuse for his non-attendance to give evidence.
28. In light of the above, we invite you not to press for our attendance at the hearing tomorrow. In the event that you instead decide to refer this matter to the President, we respectfully request that you provide the President with a copy of this letter and inform him that we expect a reasonable opportunity to be heard before any finding is made about whether there is a reasonable excuse or just cause for our non-attendance under the *Parliamentary Evidence Act 1901* (Cth).

Yours faithfully

**James Cullen**

**Edward Ovadia**

**Sarah Michael**

**Ross Neilson**

**Tilly South**

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<sup>10</sup> Report of the Legislative Council General Purpose Standing Committee No 1, The Gentrader Transactions dated February 2011 at [1.60].