

CORRESPONDENCE RECEIVED FROM MR NICK MACDONALD – TUES 18 May 2021

Dear Mr Palethorpe

I write regarding your email, communicating on behalf of the Committee, received at 7:22pm on Thursday 13 May 2021.

Purpose of this email

The purpose of this email is:

- first and foremost, to continue to assist the Committee with its enquiries in a pragmatic manner; and
- second, to respond to some of the matters raised in the Committee's communication – so there is no misunderstanding.

Further information regarding the 23 October 2020 Board Minutes and the 29 October 2020 Board Minutes is set out below, which we hope will address the Committee's concerns. If not, we would be happy to discuss any other practical measures we could adopt that achieve a reasonable and appropriate balance between addressing the Committee's enquiries and respecting the confidential and commercially sensitive nature of the Board's Minutes.

Some preliminary points

It is necessary and appropriate to respond on some of the matters raised in the Committee's communication:

- I made a commitment, but did not make an "undertaking" at the hearing in the sense of the special meaning and consequence of that term for legal practitioners. The Committee may not have intended to invoke that meaning, but I mention the point to ensure that there is no misunderstanding.
- My statements at the hearing have been reproduced, in the Committee's communication, without the full context. In particular, that the statements related to the 23 October 2020 Board Minutes – as relevant to the events of 22 October 2020 and Ms Holgate. The full exchange from the proof Hansard is presented further below, which provides that context.
- As requested by the Committee, Australia Post provided a partially redacted copy of the 23 October 2020 Board Minutes. The redactions are irrelevant to the events of 22 October 2020 and Ms Holgate.
- In addition, Australia Post provided a partially redacted copy of the 29 October 2020 Board Minutes on a voluntary and proactive basis. This was done in an attempt to assist the Committee – as it was at this meeting that the Board confirmed the 22 October 2020 Board Minutes. The redactions are either privileged or irrelevant to the events of 22 October 2020 and Ms Holgate. It is reasonable and appropriate for Australia Post to protect privileged content when voluntarily sharing a document with the Committee.

Exchange at 3 May 2021 Hearing

The following interchange from the proof Hansard reflects the context of the statements made during the hearing in relation to minutes from the 23 October 2020 Board meeting, including the Senator's request that matters that were part of the Board's usual BAU practice be redacted, and my reference to redacting irrelevant information.

Mr Di Bartolomeo: As per normal with a directors-only meeting, as I gave evidence last time, I give a summary of the critical issues that need to be recorded for the minutes. Those minutes are then presented, usually at the next meeting, to the directors.

Senator KITCHING: You don't distribute the minutes prior to the meeting so that people—

Mr Di Bartolomeo: Yes, they are distributed prior to the meeting. But at the next meeting the board then has an opportunity to reflect on the minutes, as they've been recorded, on my memory, and the directors then have an opportunity to either add, subtract or correct anything.

Senator KITCHING: Mr Nutt, did you add anything to those board minutes that reflected your conversations with Ms Holgate?

Mr Di Bartolomeo: Yes, they were in the minutes.

Senator McKENZIE: The question was for Mr Nutt.

Mr Di Bartolomeo: I'm sorry.

Mr Nutt: I apologise, could you repeat that?

Senator KITCHING: I asked if you had added anything to the draft minutes, as they would be at that point, that reflected your discussions with Ms Holgate?

Mr Nutt: No.

Senator KITCHING: As we've discussed, Mr Nutt, in the minutes, it wasn't minuted that you had been given authority by the board to interact with Ms Holgate?

Mr Nutt: No.

Senator KITCHING: Mr Macdonald, I think I've asked you this before but are you able to table those board minutes? I think you last said to me that you were going to think about it. Have you thought about it?

Senator McKENZIE: Can we shuffle chairs so we've got people at the table?

Senator KITCHING: Maybe Mr McIver can go. I might need you, Mr Nutt.

Mr Macdonald: The minutes for the meeting on 22 October have been tabled to this inquiry. I think it was on the last page—

Senator KITCHING: Have we got all of your board minutes?

Mr Macdonald: No, you've got the minutes for 22 October.

Senator KITCHING: Can we have the minutes of the meeting after that?

Mr Macdonald: I believe we took that on notice, and the response to that is due on 7 May.

Senator McKENZIE: But you're here now.

Senator KITCHING: Do you think you could table them?

Mr Macdonald: The subsequent meeting was on 23 October. That dealt with a number of matters that were part of the board's usual BAU practice.

Senator KITCHING: Could you redact those out?

Mr Macdonald: Yes. We could prepare a copy of the minutes with irrelevant content redacted and only the relevant content remaining.

Senator KITCHING: So you're going to do that, and we'll get that before the seventh?

Mr Macdonald: Yes, we will do that promptly.

23 October 2020 Board Minutes

As requested by the Committee, Australia Post provided a partially redacted copy of the 23 October 2020 Board Minutes. The redactions are irrelevant to the events of 22 October 2020 and Ms Holgate. There have been no redactions made for privileged content – and no public interest immunity claim has been made, foreshadowed or indicated.

The Committee has asked about the final dot point of item 1.2 of the Minutes. This irrelevant content was redacted – consistent with the terms of the Committee's request. However, to satisfy the Committee's

enquiry, I can advise that dot point recorded an action to arrange access, for directors, to media update emails. It reads:

“organise delivery of morning media clips (The Daily Post) and afternoon media updates (Daily Media Brief) for all directors that require access.”

29 October 2020 Board Minutes (provided voluntarily and proactively)

Australia Post provided a partially redacted copy of the 29 October 2020 Board Minutes on a voluntary and proactive basis. This was done in an attempt to assist the Committee – as it was at this meeting that the Board confirmed the 22 October 2020 Board Minutes. The redactions are either privileged or irrelevant to the events of 22 October 2020 and Ms Holgate. It is reasonable and appropriate for Australia Post to protect privileged content when voluntarily sharing a document with the Committee.

No question of public interest immunity arises in respect of documents voluntarily produced to the Committee. However, Australia Post acknowledges that the Committee could elect to request a copy of the 29 October 2020 Board Minutes with the privileged content unredacted – in which case the question of public interest immunity would arise and any claim made by Australia Post would need to conform with Senate Standing Orders.

The redacted privileged content is in item 3.1 of the Minutes. Given the Committee’s express interest in that section – and seeking to be pragmatic and helpful – Australia Post is prepared to disclose that redacted content to the Committee:

- The last dot point in item 3.1.1 records that the Board received and discussed *“draft advice from Allens Linklaters, dated 29 October 2020, including a draft response from the Chair to Kingston Reid (each confidential and privileged)”*.
- The last dot point in item 3.1.3 records that the Board noted *“that Australia Post’s legal advisers, Allens Linklaters would be instructed by the Chair on behalf of the Board, as required, with the General Counsel & Corporate Secretary coordinating requests for and delivery of legal advice”*.
- Item 3.1.4 records an action to *“ask Allens Linklaters to finalise their draft advice”*.
- Providing this information does not constitute a waiver of the privilege in the legal advice referred to (cognisant of the now publicised mediation involving the organisation and Ms Holgate, and the related potential for litigation).

Australia Post hopes that this response, and the additional information provided, addresses the Committee’s concerns. If not, as indicated above, we would be happy to discuss other practical measures that may be reasonable and appropriate in the circumstances. We are committed to meeting our obligations to Parliament and assisting the Committee with its Inquiry.

Please do let me, Kristian or David know if you would like to discuss.

Kind regards
Nick

Nick Macdonald

General Counsel & Corporate Secretary, Australia Post

ORIGINAL CORRESPONDENCE – FOR REFERENCE

EMAIL TO MR MACDONALD FROM COMMITTEE SECRETARY – 13 MAY 2021

Dear Mr Macdonald

Thank you to you and your colleagues preparing these answers.

Earlier today the committee considered Australia Post's response to Senator Kitching's request of 3 May 2021 for Board minutes.

The committee noted the undertaking that you made at the hearing:

Mr Macdonald: *Yes. We could prepare a copy of the minutes with irrelevant content redacted and only the relevant content remaining.*

Senator KITCHING: *So you're going to do that, and we'll get that before the seventh?*

Mr Macdonald: *Yes, we will do that promptly.*

The committee is concerned that the redactions have excluded material that may be relevant to the inquiry: "Redactions have been made in respect of irrelevant and privileged content." For example:

1. The final dot point of Item 1.2 from the Minutes of 23 October is redacted while the immediately preceding items are related to the inquiry; and
2. Various points from Item 3.1 are redacted from the Minutes of 29 October which clearly relate to Ms Holgate.

The committee has asked the secretariat to respond on its behalf to insist that Australia Post provide all details from the Board minutes that are relevant to the inquiry including those that are currently redacted.

As the original due date for this information was 10 May I ask that you provide this material to the committee as soon as possible.

Don't hesitate to contact me if you would like to discuss this matter.

Kind regards

Stephen Palethorpe | Committee Secretary