

Senate Standing Committee on Environment and Communications
Answers to Senate Estimates Questions on Notice
Supplementary Budget Estimates Hearings October 2016
Communications Portfolio
Department of Communications and the Arts

Question No: 1

Program 1.1

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Topic: Caretaker letter sent to nbn co

Senator Dastyari, Sam asked:

Senator DASTYARI: Is there a form letter that comes from PM&C that every departmental secretary, like you, then sends out to everybody?

Dr Smith: It is pretty much a summary of the caretaker conventions. It is a pretty standard letter.

Senator DASTYARI: You may want to take this on notice. Is there a reason we could not have a copy of that letter?

Dr Smith: I would like to take that on notice, thanks.

Senator DASTYARI: Sorry, Dr Smith, I am new to all this. Is that standard procedure?

Dr Smith: I would have to check in terms of the department prior to my tenure. But I am sure it is with many departments and I imagine it is with our department.

Answer:

It is standard practice for the Secretary to write to all portfolio agencies immediately prior to, or at the beginning of, the caretaker period to remind them of the caretaker conventions.

The letter sent to NBN Co on 28 April 2016 is attached.



Australian Government

Department of Communications and the Arts

Dr Heather Smith PSM

Secretary

Mr Bill Morrow
Chief Executive Officer
NBN Co Limited
Level 11
100 Arthur Street
North Sydney NSW 2060

Dear Mr Morrow *B:11*

In anticipation of the next federal election, I am writing to all portfolio entities to provide guidance on the application of the caretaker conventions.

It is important to note that the caretaker conventions do not commence until the House of Representatives is dissolved. The caretaker period continues until the result of the election is clear or, if there is a change of government, until the new Government is appointed.

In summary the conventions are that the government avoids:

- making major policy decisions that are likely to commit an incoming government;
- making significant appointments; and
- entering into a major contract or undertaking.

In addition there are established practices associated with the conventions that are directed at protecting the apolitical nature of the public service and avoiding the use of Commonwealth resources to advantage a particular party.

The conventions and practices have been developed primarily in the context of the relationship between Ministers and their departments (and, by extension since the commencement of the *Public Service Act 1999*, executive agencies). The relationship between Ministers and other bodies, such as statutory authorities and Government companies, varies from body to body. However, those bodies should observe the conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements, in which case I ask that you inform me prior to making your decision.

Responsibility for observing the conventions ultimately rests with agency heads or in cases where they are involved, Ministers. The Department of the Prime Minister and Cabinet has published guidance for the handling of business during the caretaker period which is published at <https://www.dpmc.gov.au/pmc/publication/guidance-caretaker-conventions>.

Applying that guidance, nbn should avoid entering significant contracts during the caretaker period. In considering the significance of contracts, nbn should take account of the dollar value of the commitment (including the impact of not proceeding), whether the commitment is a routine matter or is politically contentious, and whether the commitment requires ministerial notification.

In nbn's case, the company should limit itself to normal business activity. The caretaker conventions also extend to advertising and dissemination of publications which may be considered controversial. nbn has an awareness raising role and therefore communication and promotional activities that are business as usual for the company may continue during the caretaker period. Where a member of the Government attends an event, the company should ensure that it invites the Opposition spokesperson, member, or candidate, as appropriate. The level of resources dedicated to events should be consistent with a reasonable use of Commonwealth resources. Please provide the Department with an up-to-date list of activities scheduled by nbn that may fall into the caretaker period.

Nbn should continue to provide factual material to Ministers if requested during the caretaker period. In addition, nbn should also continue to maintain the existing processes of sharing information with Shareholder Departments, including information required for the preparation of the review of nbn's Corporate Plan and the development of incoming government briefs, as well as routine information such as the weekly rollout reports.

As per the Government Business Enterprise Governance and Oversight Guidelines, the Government expects nbn to establish and maintain a code of conduct for directors, employees and contractors. The nbn Board must ensure that nbn, in undertaking its business, avoids activities that could give rise to questions about its political impartiality.

You may also be aware that the Parliamentary Budget Office (PBO) has been established to provide independent and non-partisan analysis of the financial implications of policy proposals. During the caretaker period, authorised members of political parties and independent members of Parliament can request the PBO to develop costings for publicly announced policies. Under section 64KA of the *Parliamentary Service Act 1999* the PBO can request nbn's CEO to give information to it if necessary, to enable the PBO to develop costings to meet these requests.

I also draw your attention to the Guidelines on Pre-election Consultation with the Opposition. These guidelines are distinct from the caretaker conventions. They were first tabled by Prime Minister Fraser in 1976 and presented, in the current form to the Senate in 1987. They are reproduced for convenience at page 11 of the Prime Minister and Cabinet Guidance on Caretaker Conventions.

The arrangements in the Guidelines take effect from the date of the announcement of the election or the expiry of the House of Representatives. The Guidelines also set out the nature of the matters that can be discussed.

The Guidelines provide that on request of a Shadow Minister, the Minister may give approval for the Shadow Minister to have discussions with appropriate officials of agencies, including nbn.

Any request for consultation must be made through the Minister's office. If a Shadow Minister approaches nbn directly, they should be informed that the request must be directed to the Minister in writing. Please notify me if nbn is contacted by the Opposition. I also ask that you let me know of approved consultations so that the Department has the opportunity to attend in order to assist with the consultation.

Please ensure that all relevant officers in nbn are aware of the caretaker conventions, as set out by the Department of the Prime Minister and Cabinet in the *Guidance on Caretaker Conventions*. The Guidance includes advice covering the internet, social media and electronic communications during the caretaker period.

Responsibility for nbn observing the conventions ultimately rests with you as the agency head. However, nbn should consult closely with the Department on any decision where there is likely to be a significant level of public interest.

The Department of the Prime Minister and Cabinet is able to provide caretaker advice, however, it would appreciate all contact with a portfolio being channelled through one or two people nominated in the relevant Portfolio Department, to make the process more manageable from its perspective. Your enquiries should go through Richard Windeyer, Acting Deputy Secretary, Infrastructure and Consumer Group, unless there is a particular issue you would like to discuss directly with me.

Yours sincerely

Heather Smith

28 April 2016

Cc: Dr Ziggy Switkowski, Chairman