

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: 2

Program 1.1

Hansard Ref: Page 7, 18/10/2016

Topic: nbn article - Copy of advice sent to nbn

Senator Dastyari, Sam asked:

Senator DASTYARI: Did they then provide a letter to you to give to NBN Co or did they send a letter directly to NBN Co?

Mr Robinson: As Dr Parkinson's letter on this issue said, we conveyed the advice to NBN Co. We consulted with PM&C and then conveyed some advice. This department provided the advice to NBN Co.

Senator DASTYARI: When you say, 'provided the advice', did you provide the advice in writing?

Mr Robinson: Yes, and verbally.

Senator DASTYARI: Verbally it was: 'Don't do this. This is our view. We are going to send you a letter.' Was that it?

Mr Robinson: Essentially, yes.

Senator DASTYARI: Where is that letter now?

Mr Robinson: Which letter?

Senator DASTYARI: The letter that you sent NBN Co.

Mr Robinson: It was in fact an email.

Senator DASTYARI: Can we have a copy of it?

Mr Robinson: I would have to take that on notice.

Senator DASTYARI: Would there be an issue?

Mr Robinson: I would have to take it on notice.

Senator DASTYARI: When was that email sent?

Mr Robinson: On the 27th.

Senator DASTYARI: And there was only one email?

Mr Robinson: Of advice, yes.

Senator DASTYARI: Just to be clear, did you receive a response to that email?

Mr Robinson: I would have to take that on notice.

Answer:

The email is attached. The redacted sections do not relate to advice on the caretaker conventions. The Department received a verbal reply from NBN Co Ltd.

From: Robinson, Ian
Sent: Friday, 27 May 2016 1:51 PM
To: Karina Keisler
Cc: Christopher Willcox; O'Loughlin, Nerida; Talbot, Jo;
Subject: RE: Opinion piece: Ziggy Switkowski [DLM=For-Official-Use-Only]

For Official Use Only

Karina

Thank you for seeking our input on this. Advice is provided below – consistent with the discussions between Nerida O'Loughlin, Bill Morrow and ourselves this morning.

At the outset, we recognise the frustration that nbn's management must be experiencing with recent media reports that are completely at odds with the company's significant rollout progress. In that regard, I note the statement released by the Minister for Communications on 25 May acknowledging that progress.

However, the current caretaker period presents some specific risks for the company in responding to such reports publicly. To assist the company in considering these matters, the Department has consulted with the Department of Prime Minister and Cabinet (PMC) on the caretaker conventions and other issues involved.

PMC has advised that the most relevant parts for the company to consider of the *Guidance on Caretaker Conventions 2016* are that:

- *There are established practices associated with the caretaker conventions that are directed at protecting the apolitical nature of government entities.*
- *The conventions and practices aim (amongst other things) to prevent controversies about the role of the public service distracting attention from the substantive issues in the election campaign.*
- *Government companies should observe the conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements.*

Our (PMC and the Department of Communications and the Arts) collective assessment is that the proposed statement would contravene these conventions and practices and would present real risks to the company if it was issued. Our reasoning is that the statement as currently drafted:

- goes directly to issues of recent political debate in a contentious and potentially inflammatory manner
 - example text: "misinformation about nbn and accusations of underperformance are inexcusable and galling", "the process is a form of political rumourage – the circulation of misinformation to diminish an enterprise for political gain", "information taken out of context for political gain is not in the interest of the public.
- goes well beyond providing factual information during caretaker and would add to controversy and potentially be seen to be favouring one side of the election debate.
- would be, or be perceived to be, distracting from the wider election campaign or raising concerns about the company as not being apolitical.

[REDACTED]

[REDACTED]

A possible exception for issuing the statement in caretaker would be if nbn determines that there are legal obligations or compelling organisational requirements that require a public statement. If that is the case then these obligations / requirements should be explained in the statement. The statement should address these in a manner as far as possible consistent with the practices associated with the caretaker conventions.

We would be more than willing to explore alternative options for the company that would avoid the risks outlined above. For example, making more factual information available about the current rollout status (in a manner that does not add to the political controversy) could be undertaken by the company or indeed by the Minister. Similarly, providing staff with information about whistleblower arrangements within the company and how these are very different than unauthorised release of confidential material could also be useful and appropriate.

Please let us know if you have any questions.

Ian

Ian Robinson

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