

QUESTIONS ON NOTICE: Budget Estimates 2016-17 General Purpose Standing Committee No. 5, Wednesday 31 August 2016

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The Hon. ADAM SEARLE: I am happy to spell them out. The first is: Did your agency pay the legal fees of Mr Grugeon and Mr Chevalley? If so, how much were they? Why did you? More fundamentally, given yesterday's revelations in the Independent Commission Against Corruption [ICAC] report and Mr Grugeon's heavy political involvement, including with your predecessor as Minister who was Minister at the time the prosecution was discontinued, will you commit to an independent and open review of the circumstances surrounding the discontinuation of this prosecution by your agency?

ANSWER

In March 2013 the NSW Industrial Court made orders by consent that the prosecutor was to pay the discharged defendants costs of the proceedings in the sum of \$982,500.

These proceedings were funded by the Attorney General's Core Fund. Decisions to spend money from that Core Fund are not made by the Department.

Legal advice was obtained in relation to the decision to discontinue matters no 956 and 957 in the Industrial Court of NSW. That legal advice is confidential and subject to LPP. The legal advice cannot be disclosed as it could amount to a waiver of LPP in the legal advice which is also relevant to matters which are still before the court. The existence of the legal advice is noted for reasons of transparency and "public interest" so as to make clear:

- (i) that due process has been followed in the consideration of the relevant legal issues leading to the decision to discontinue the prosecution in matters no.956 and 957 in the Industrial Court of NSW
- (ii) that the decision was not based on political considerations.

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The Hon. ADAM SEARLE: Minister, will you commit to having an open and transparent inquiry into the reasons and circumstances surrounding your agency's discontinuation of the prosecution against Mr Grugeon and Mr Chevalley?

Mr ANTHONY ROBERTS: When were those decisions made? Do you have them?

The Hon. ADAM SEARLE: I think it is written on the document.

The Hon. GREG PEARCE: To the extent that you can rely on this document. It is somewhere between 25 October—

The Hon. ADAM SEARLE: I am happy to get the dates but I think it is a matter of record. Your department will have the information about when this occurred. It was 22 October 2012.

The CHAIR: If you choose to take the question on notice the Hon. Adam Searle will undertake to provide the dates in the question to the Minister?

The Hon. ADAM SEARLE: I can tell the Minister that I believe on 22 October 2012 the charges were dismissed against Mr Grugeon and Mr Chevalley in the Industrial Court on the request of prosecutors either employed by or engaged by your agency.

The CHAIR: The Minister can either answer the question or choose to take it on notice.

Mr ANTHONY ROBERTS: I am very happy to take it on notice...

The Hon. ADAM SEARLE: It is of particular interest when parts of the ICAC report are read about why Mr Grugeon gave donations, for example, in relation to Mr Cornwell through purchasing the painting. It is quite clear he did not know Mr Cornwell but he agreed that it was for patronage reasons. One can see a potential implication that arises about whether the actions subsequently of your agency—

Mr SCOT MACDONALD: Is there a question?

The CHAIR: I was just about to ask the Hon. Adam Searle if he has another question?

The Hon. ADAM SEARLE: Minister, can you see that there might be some unease in the community given the juxtaposition of Mr Grugeon's activities in funding Liberal campaigns, including with Mr Hartcher and then the subsequent activities of Mr Hartcher's agency discontinuing the very serious criminal prosecutions against him?

Mr ANTHONY ROBERTS: I am very happy to take it on notice and will come back with it as a matter of urgency.

ANSWER

Legal advice was obtained in relation to the decision to discontinue matters no 956 and 957 in the Industrial Court of NSW. That legal advice is confidential and subject to LPP. The legal advice cannot be disclosed as it could amount to a waiver of LPP in the legal advice which is also relevant to matters which are still before the court. The existence of the legal advice is noted for reasons of transparency and "public interest" so as to make clear:

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ANSWER

The former Minister of Industry, Resources and Energy did not play any role in making the decision to approach the Industrial Court to dismiss the prosecutions in matters 956 and 957.

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The Hon. ADAM SEARLE: According to the Wollongong City Council, as at 1 June Wollongong Coal had failed to provide \$400,000 security in relation to the Russell Vale Colliery emplacement area, which was due at the end of January 2016. Are you aware whether they have met that obligation?

Ms HARGREAVES: I am not. I am happy to take it on notice.

ANSWER

The monies owed to Wollongong City Council appear to remain outstanding. Monies owed to Wollongong Council and other entities will be considered as part of the review into whether Wollongong Coal Limited are fit and proper persons to hold authorisations.

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Mr ANTHONY ROBERTS: I can assure you that rehabilitation is something that this Government is committed to and that I am particularly passionate about. That is why I instigated within the department a review and an audit of those bonds, and I think, Deputy Secretary, they have gone from \$1.1 billion to \$2.1 billion.

The Hon. ADAM SEARLE: Would you be willing to provide to the Committee a copy of that review document? I am happy for you to take it on notice.

Mr ANTHONY ROBERTS: Yes.

ANSWER

The Audit Office of NSW is currently conducting an audit of the NSW rehabilitation system on behalf of the Government and it is anticipated that the Report will be made available around late March/early April 2017. Further information on the NSW Performance Audits can be found at: http://www.audit.nsw.gov.au/ArticleDocuments/298/Performance_Audit_Program_2016-17_to_2018-19.pdf.aspx?Embed=Y

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The Hon. ADAM SEARLE: Returning to the issue of fit and proper person, you are aware that Peabody, the proponent of the expansion of the Wilpinjong coalmine in Wollar in the Hunter Valley, is financially dependent on the United States parent company which has entered chapter 11 bankruptcy proceedings. What steps have you taken to assure yourself, Minister, that the Australian company remains a fit and proper person on a financial basis to hold a mining licence in New South Wales? Are you investigating that matter?

Mr ANTHONY ROBERTS: It is the same issue as Wollongong coal.

The Hon. ADAM SEARLE: Is the regulator investigating that matter as well?

Ms HARGREAVES: In terms of investigation as a result of a community complaint, no, we are not.

In terms of oversighting the title holder and making sure they are continuing their activities in a legal and correct manner, we are.

The Hon. ADAM SEARLE: They have had some difficulties. You do not have a current investigation in relation to Peabody?

Ms HARGREAVES: We do not have a current investigation, no.

The Hon. ADAM SEARLE: According to the publicly available documents, it is financially dependent on the United States parent company that is in chapter 11 bankruptcy. Are you concerned about that and what steps will you now take to ensure that the Australian arm is financially solvent?

Mr ANTHONY ROBERTS: I am happy to take that on notice.

ANSWER

The Department of Industry will continue to monitor activities of Peabody in respect of all of its operations. The Department holds \$57,677,000 in rehabilitation security deposit for Wilpinjong coal. This security deposit is held to cover all rehabilitation and closure activities that may be required in the event that the leaseholder defaults on their obligations. The security deposit will not be released to any mining company until all of the required rehabilitation objectives have been met.

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Ms HARGREAVES: The environmental data portal is close to being released. We obviously had to take a great deal of care to make sure the datasets are clean and reliable and we have included, thankfully, the Chief Scientist and others in that process. That is imminent.

The Hon. ADAM SEARLE: How imminent: days, weeks, months?

Ms HARGREAVES: We currently have a public statement that says the environmental data portal will be released in September. I have no reason to believe at this stage that we will not make that available in September.

The Hon. ADAM SEARLE: How much money was invested in that project?

Ms HARGREAVES: I would need to take that on notice.

ANSWER

The project has spent 67 per cent of the revised budget, i.e. \$2,849,963 out of the revised budget of \$4,229,260.

The original project was funded at \$5,495,700.

This project was co-funded by NSW Department of Finance, Services and Innovation and the NSW Department of Industry on a 50/50 basis.

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The Hon. ADAM SEARLE: In the 2015-16 budget there was no specific allocation for any renewable energy initiative. In the 2016-17 budget there is a commitment, on page 6-3 of Budget Paper No. 3, to supporting renewable energy projects across New South Wales. How much money is in the budget for new renewable energy initiatives this year? What is the dollar figure?

Mr ANTHONY ROBERTS: We can certainly look at how to drive renewables. The fact that we are attracting huge investment in renewables in New South Wales from the private sector is critical.

The Hon. ADAM SEARLE: What is the dollar figure in this year's budget for new renewable energy initiatives?

Mr SMITH: We can take the question on notice, but it is not a simple answer.

ANSWER

In September 2013, the NSW Government released the NSW Renewable Energy Action Plan to guide NSW's renewable energy development and to support the former national target of 20 per cent renewable energy by 2020.

The Plan positions the state to increase energy from renewable sources at least cost to the energy customer and with maximum benefits to NSW. The strategy is to work closely with NSW communities and the renewable energy industry to increase renewable energy generation in NSW. The Renewable Energy Action Plan Annual Report 2015 provides the latest outline of activities and achievements completed to date. Delivering each of these Actions often required a mix of direct and indirect costs across the whole-of-Government, as such any listing of individual agency costs without doing a detailed cross-agency reconciliation would be inaccurate.

For a list of achievements/outcomes under the REAP please see http://www.resourcesandenergy.nsw.gov.au/data/assets/pdf_file/0008/586601/reap-annual-report.pdf.

Additional priorities for 2016-2017 are expected to include; work on an Advanced Energy Strategy to transition NSW to a low emission, affordable and reliable energy future, continued engagement with COAG Energy Council and its numerous working groups including investigation of the impact of emerging technologies and storage on networks, the finalisation of a Power Purchase Agreement (PPA) for output equivalent of up to 50 megawatts of large-scale solar output from NSW projects successful under the ARENA large-scale solar funding round, supporting the Networks Renewed project and providing additional consumer resources and tools to make it easier for consumers to choose new services.

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Mr JEREMY BUCKINGHAM: In relation to ARENA, of the \$1 billion invested in large-scale renewable energy in 2015 only \$15 million was not the result of government-directed projects, supported by the Australian Capital Territory RET, ARENA and the CFC. What will be the impact of the Federal Government's decision to cut \$1.3 billion out of ARENA on renewable energy investment in New South Wales? Does the New South Wales Government support the Federal Government's proposed cuts?

Mr ANTHONY ROBERTS: I will take those questions on notice.

ANSWER

On 13 September 2016, the Australian Coalition Government secured a deal with the Australian Labor Party to reduce ARENA's funding to \$800 million.

The NSW Government will continue to leverage funds from both ARENA and the Clean Energy Finance Corporation under Action 5 of the Renewable Energy Action Plan.

To date, NSW has benefitted from over \$500 million of funding support from ARENA. This has supported over 120 NSW projects and developed supply chains and experience that have helped position NSW as open for business in renewables.

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Ms HARGREAVES: The strategic release framework was announced and, as the Secretary outlined, one of the things we are doing is obviously looking at the different areas based on the geological asset base first and what is happening there. Then we will go through a process of looking at the social, environmental and economic—

Mr JEREMY BUCKINGHAM: I understand the process and I have been keeping my eye on it. When are you revealing this strategic release?

Ms HARGREAVES: If you mean particularly the area as opposed to the framework, because the framework has obviously already been released, the Government is shortly to announce an independent chair for the advisory council. That chair will then look at the materials that we have pulled together around options across the State and will evaluate those based on the social, environmental and economic information that is put before him or her.

Mr JEREMY BUCKINGHAM: You already have options for strategic release that you consider—

Ms HARGREAVES: We have geological information that tells us where we think there is most prospectively.

Mr JEREMY BUCKINGHAM: Where are those?

Ms HARGREAVES: I would have to take that on notice.

ANSWER

NSW parliament passed legislation in October 2015 that made significant amendments to the State's coal laws. A key reform included in the Mining Act 1992 was the establishment of the Strategic release Framework. This Framework provides a process to define coal exploration areas to be released by Government.

Details of the Strategic Release Framework for coal or petroleum exploration were published on the NSW Department of Industry's Resources & Energy website in December 2015.

While there are a number of coal bearing basins across NSW, it is a requirement of the Framework that no new large exploration areas are to be released by Government without the Strategic Release Advisory Board completing the following process and making recommendations to Government:-

- a resource assessment, that considers geological factors such as resource quality and quantity
- a Preliminary Regional issues Assessment which considers social, economic and environmental issues relevant to a potential release area

As neither the recommendations of the Advisory Board, nor the determinations of Government, can be pre-empted it would not be appropriate to provide any further information at this stage.

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The Hon. ADAM SEARLE: Can you provide to the Committee a map showing the contested area or the area that is the subject of negotiations?

Mr SCOT MacDONALD: Point of order: We have in the past had questions like that queried because they are commercial in confidence. This very much sounds to me like it would be commercial in confidence.

The CHAIR: It is not for members of the Committee to make that call. It is for the Minister to decide whether he can or cannot answer the question under that exclusion. Minister, do you or your staff wish to answer?

Mr SMITH: We can provide a map that shows the entire area of the exploration licence and also the area that is not the subject of negotiation.

ANSWER

The project details including a map of the EL and the approved mine development area can be found on the Department of Planning & Environment website -

<https://majorprojects.affinitylive.com/public/a86af1422205f18302ef3aafb59cb191/01.%20Watermark%20Coal%20Project%20EIS%20-%20Main%20Report.pdf>.

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Mr ANTHONY ROBERTS: We are talking about incidents of unlawful entry into privately owned property; unauthorised access being gained by cutting locks on gates; climbing fences and cutting security fences; and activists have refused to leave sites when requested and the NSW Police Force has had to respond.

There have been entries of unauthorised persons onto a site, presenting a potential hazard to both protesters and workers. There have been hundreds of incidents of obstruction, examples include impediments of work programs as a result of obstructed access or equipment being blockaded. It has included numerous incidents of protesters moving into the path of the driver; access gates being obstructed by persons locking onto the gates or persons locking onto equipment that could not be moved; multiple incidents of dragnets being embedded into roads to enable activists to obstruct access by locking onto the device; activists have cut wire on security fences to gain access; locks to gates have been cut; security cameras have been stolen from inside lease sites; activists have hindered emergency access to and from work sites by blockading roads—for example, by trees being cut down across access roads—other equipment missing or damaged from inside lease sites; contractor equipment vandalised or stolen; graffiti on plant and equipment; and branded work vehicles parked in public spaces defaced. As far as offensive conduct, that is, running in front of moving vehicles and diving under moving trucks to lock on—

The CHAIR: Minister, you have previously agreed that you will provide that information to the Committee.

Mr ANTHONY ROBERTS: Yes.

ANSWER

- A protestor attached themselves to a construction structure at the Boggabri coal mine in March 2014, requiring a work shutdown and rescue.
- In May 2014 unoccupied vehicles were placed on a rural arterial road near a coal seam gas site to protest exploration activity on the north coast, causing a road closure and subsequent traffic delays and diversions for business operators and the public.

- An incident at a petroleum drill site near Glenugie during 2013 involved protestors locking themselves onto equipment, trees and structures, and driving a reinforced vehicle through fencing and barricading themselves near a drill rig.
- At the Maules Creek coal mine in November 2014, seven protestors were alleged to have locked themselves to an excavator. At the same mine in February 2015 about 10 protestors are alleged to have locked themselves to equipment to prevent related clearing operations in the Leard State Forest.
- Protestors halted drilling operations at the Metgasco coal seam gas site at Bentley by blocking access to the workplace. Between March and May 2014, protestors blocked the main drive to the planned exploration site, using star pickets with steel spikes.
- A protestor was arrested in October 2014 after climbing a tripod and disrupting haul trucks leaving the Tarrawonga mine site.

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The Hon. ADAM SEARLE: Mr Smith, given the current low price of coal and given the geological problems that were associated with the Caroonna project anyway, why did the Government spend \$220 million buying back the licence from BHP? How was that figure reached, by whom, and did you do any independent verification of the current commercial value of that licence before reaching that agreement?

Mr ANTHONY ROBERTS: Mr Smith will take that question through me.

Mr SMITH: There were multiple parts to that; I will try and answer all. The Government did not provide any compensation for this because it was part of a negotiation in relation to renewal. The Government was mindful that it had had the benefit of the \$100 million paid by BHP many years back and now the Government had changed the policy and did not wish mining to proceed at that location. The Government was also very mindful of knowing that if its predecessor had run a competitive tender process to allocate that right, if it were to essentially tear up that opportunity for which \$100 million had been paid, that would have very serious consequences from the way the industry globally would view New South Wales as a jurisdiction.

The Hon. ADAM SEARLE: But there is no right to a renewal.

Mr SMITH: That is true, but there were only these two locations where the unusual step was taken of running a tender for an exploration right and there were only these two sites where hundreds of millions of dollars changed hands.

The Hon. ADAM SEARLE: A commercial risk.

Mr SMITH: That was the reason that the Government sought to negotiate an orderly exit from that arrangement. The basis on which the amount was determined, I think, was the other part of your question. That was fairly straightforward. The Government looked at the amount that BHP had paid and it reflected what the Government's own cost of capital had been had it not had that \$100 million. Because if it had not received that \$100 million it would have had to borrow the \$100 million, because the Government is the net borrower through that period. It then looked to see if BHP had not given us that \$100 million, that is \$100 million they would not have had to obtain from their various sources of capital.

The CHAIR: I am sorry to interrupt you, Mr Smith, but we are running out of time. Mr Searle, would you be happy to have that answer given on notice?

The Hon. ADAM SEARLE: Of course.

The CHAIR: Could you supply the rest of your answer on notice?

Mr SMITH: Sure.

ANSWER

The BHP refund payment of \$220 million represented the present value of the \$100 million in rents, fees and levies that BHP had paid to the Government since 2006. The Discount rate that was used to calculate the Present Value was a rate between the Governments 10 year cost of borrowing and BHP weighted average cost of capital.

A handwritten signature in blue ink, appearing to be 'AR', located below the text of the answer.

Anthony Roberts MP
Minister for Industry, Resources and Energy