

Responses to Questions taken on Notice

Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas

Hearing Date – Wednesday, 29 June 2022

QUESTION (p5)

The Hon. JOHN GRAHAM: Would you be happy to table the contract?

AMY BROWN: I will take it away and be provided with advice as to what can be tabled today. I know that there's a Standing Order 52 that's due to be returned imminently. Certainly it will be captured within that. I'm not sure about the ability for us to duplicate, but we'll go as quickly as we can.

ANSWER

Documents relating to the recruitment process are being returned to the Legislative Council as a part of the Standing Order 52 request made on Wednesday 22 June.

QUESTION (p5 - p6)

The Hon. DANIEL MOOKHEY: After the three months, is he entitled to a payment upon termination for no cause?

AMY BROWN: I cannot — it depends on the circumstances and the details of the contract, which I will provide to you.

The Hon. DANIEL MOOKHEY: What's the maximum he could be paid in the event that he's terminated, under any circumstance?

AMY BROWN: I will take it on notice. That's a complex contractual matter and I'm not that —

The Hon. DANIEL MOOKHEY: No, Ms Brown, it's not that complicated. I'm putting it to you quite directly. It's standard in executive contracts, private sector and public sector —

AMY BROWN: These are not standard contracts, Mr Mookhey.

ANSWER

The specific circumstances of amount payable for termination of contract would depend on the nature and timing of the termination and the agreed terms of the contract. Documents relating to the recruitment process are being returned to the Legislative Council as a part of the Standing Order 52 request made on Wednesday 22 June. Mr Barilaro has since withdrawn from the role and has not sought any compensation.

QUESTION (p6)

The Hon. DANIEL MOOKHEY: Sorry, of course. Secretary, given that you signed this contract —

The Hon. COURTNEY HOUSSOS: Nine days.

The Hon. DANIEL MOOKHEY: — nine days ago, surely you can tell us whether or not you agreed to a clause that entitled Mr Barilaro to a payout in the event that he is terminated for no cause after the probationary period.

AMY BROWN: I think my answer remains as before. There's no clause akin to the 38-week payment clause that is in general GSE contracts. Mr Mookhey, I sign a lot of contracts, including with STICs and various other arrangements within government. I don't know the detail of every single clause, but we can provide it.

The Hon. ROBERT BORSAK: Ms Brown, I'm listening to this; just a quick one. If there's nothing there akin to 38 weeks in the contract and he's only going to get one week within the three-month period for non-performance, then isn't it true to say that if he's sacked after three months he gets the balance of his contract paid out — three years and nine months?

AMY BROWN: I would need to take that on notice because, again, it depends on the circumstances.

The Hon. ROBERT BORSAK: You should know that; you signed the contract.

AMY BROWN: It depends on the circumstances. If we're talking about performance management against KPIs, for example, those grounds would be different to a —

The Hon. ROBERT BORSAK: What I'm asking you to consider is that the Government simply decides to remove him.

ANSWER

The specific circumstances of amount payable for termination of contract would depend on the nature and timing of the termination and the agreed terms of the contract. Documents relating to the recruitment process are being returned to the Legislative Council as a part of the Standing Order 52 request made on Wednesday 22 June. Mr Barilaro has withdrawn from the role and has not sought any compensation.

QUESTION (p7)

The Hon. COURTNEY HOUSSOS: Has the application for a visa been lodged?

AMY BROWN: I would have to take that on notice because my operational team deal with that.

ANSWER

The visa application process had commenced, but was not complete, for the appointment to the Senior Trade and Investment Commissioner to the Americas.

QUESTION (p12)

AMY BROWN: Yes. Fortunately, I have just been given the answer by my team. This is relevant to the questioning from before as well. The New York lease commenced on 1 September 2021. The cost is US\$88,000 per year. The square metreage is 103.7 square metres. It was taken as a shell, and it took six months minimum to do the fit-out to make it a useable office space.

The Hon. PENNY SHARPE: How much did the fit-out cost?

AMY BROWN: I will get my team to find that out. As you say, Ms Sharpe, it is in the Australian Consulate in New York and has been occupied since May 2022, when the fit-out has been

completed.

The CHAIR: The milestone report here does suggest that there was going to be an official launch of the New York office back in late November 2021. Are you aware of that time frame?

AMY BROWN: I was not aware that was originally the time frame. Although, given we wanted to progress the rollout of the network further, it doesn't surprise me that that ambition was created.

The CHAIR: And that the construction was to be complete, obviously, by that stage as well?

AMY BROWN: Given it took six months to fit out, I'm surprised about that component of it. I can get more information, if you like.

ANSWER

The lease for the New York office was taken as a shell, and an entire fit out was required, including lighting, air conditioning, furniture and other aspects of building fit out.

The fit out took 6 months, which is standard for this type of project within a highly secure building. Following the hearing, final invoices have been received for the fit out and the total cost is confirmed as AUD\$943,260 (comprising of construction AUD\$865,593 and IT AUD\$77,667), this cost included design, project management, IT and fit-out works. The lease for the building is USD \$82,298 per annum or USD \$6858 per month, excluding outgoings.

The office space is located within the Australian Consulate in New York and has been occupied since May 2022.

QUESTION (p14 – p15, p19)

The Hon. ROBERT BORSAK: You did? Okay. Thank you. Who actually told you to do that?

AMY BROWN: A decision of the Government was made that included an instruction to me to —

The Hon. ROBERT BORSAK: By who?

AMY BROWN: I'll just finish answering the question — to unwind all contracts for those yet to commence.

The Hon. ROBERT BORSAK: But by who?

AMY BROWN: It was a decision of the Government.

The Hon. ROBERT BORSAK: It didn't come from a computer voice. Someone must have told you. Who instructed you to do that?

AMY BROWN: Well, it was a decision of the Government, so I could actually —

The Hon. PENNY SHARPE: How did you get it?

The Hon. ROBERT BORSAK: Yes, how did you get the instruction?

The Hon. PENNY SHARPE: Was it an email? Was it a text? Was it a phone call?

AMY BROWN: I'll need to take advice on whether or not I can disclose the mechanism, but government decisions are generally made —

AMY BROWN: I did not have a conversation with Mr Barilaro —

The Hon. DANIEL MOOKHEY: His office?

AMY BROWN: — about the decision of Government. The reason I'm struggling a bit is I need to take advice about whether the mechanism is a Cabinet-in-confidence matter.

The Hon. DANIEL MOOKHEY: In the first paragraph you say, "We've now had confirmed instructions to commence the preparation of legislation." Who gave you those instructions?

AMY BROWN: It is what the decision of government said.

The Hon. DANIEL MOOKHEY: Yes, but who told you to prepare it? You said you had confirmed instructions to commence the preparation of legislation. Were you asked to do so by a Minister's office?

AMY BROWN: No, I had read the decision.

The Hon. JOHN GRAHAM: Did you have any other discussions with Ministers or Ministers' offices about those instructions?

AMY BROWN: I might take that on notice. I did meet with the Deputy Premier's office after the decision of government was made to talk about practicalities.

ANSWER

The NSW Government confirmed to Investment NSW the change in policy direction regarding the appointment of Senior Trade and Investment Commissioners in late September 2021, previous evidence to the Inquiry has confirmed the mechanism of this approval. Amy Brown had a meeting with Joseph Brayford from the Deputy Premier's office on 1 October 2022 to discuss the practicalities of implementing the government's decision.

QUESTION (p22-23)

The CHAIR: With the first round — in terms of assessing people against various requirements, as I understand it, I have something in front of me which is called the "panel interview rating". The candidate names are not here but there are various qualities that they are ranked against, one of which is to work collaboratively, and a couple of the applicants in the first round exceeded that quality. Another one is influence and negotiate. Those two applicants exceeded that quality. Another one is deliver results. They exceeded that quality. Another one is manage and develop people and they met those qualities. I assume Mr Barilaro undertook this same rating?

AMY BROWN: He did, yes.

The CHAIR: Did he exceed all of those as well? Did Mr Barilaro exceed the work collaboratively quality?

AMY BROWN: I will take that on notice. I believe that we are providing a copy of the panel report.

What I can tell you is that he was the first ranked candidate against the criteria.

The CHAIR: And just to check as well, did he exceed the manage and develop people quality?

AMY BROWN: I will take it on notice.

ANSWER

Documents relating to the recruitment process are being returned to the Legislative Council as a part of the Standing Order 52 request made on Wednesday 22 June.

QUESTION (p24)

The Hon. DANIEL MOOKHEY: Yes, and then thereafter there was a recommendation to the State offices remuneration tribunal, was there not, relating to you?

AMY BROWN: Me and three other secretaries all at the same time.

The Hon. DANIEL MOOKHEY: When did that happen?

AMY BROWN: I will take it on notice. It is publicly available. I just don't — I've got a lot of dates in front of me.

ANSWER

The Statutory and Other Offices Remuneration Tribunal issued its determination regarding the Secretary of the Department of Enterprise, Investment and Trade on 20 February 2022. The remuneration package was made effective from the date of the Secretary of the Department of Enterprise, Investment and Trade's appointment, being 31 January 2022.

QUESTION (p28)

The Hon. COURTNEY HOUSSOS: And who were his referees?

AMY BROWN: I will take that on notice, if that's okay.

The Hon. PENNY SHARPE: You don't know who — did you deal with the referee check on Mr Barilaro?

AMY BROWN: No, I did not. That's the recruiter's job.

The Hon. PENNY SHARPE: Was Gary Barnes one of the referees for Mr Barilaro?

The Hon. WES FANG: Chair, the question has been taken on notice.

AMY BROWN: I'll take it on notice because, partly, it's confidential recruitment information but, secondly, I don't know it.

...

The Hon. DANIEL MOOKHEY: Sorry, the question that Ms Houssos asked was: Did Secretary Barnes provide a reference to former Deputy Premier Barilaro for this job?

AMY BROWN: As I didn't conduct the reference checks myself, I'll have to take it on notice.

...

The Hon. DANIEL MOOKHEY: Sure, and I accept that. Having now established that you read the reference checks, did Secretary Barnes provide a reference?

AMY BROWN: I'll take it on notice.

ANSWER

Candidates were asked to provide a 360 review (a manager, a direct report, a stakeholder). Documents relating to the recruitment process are being returned to the Legislative Council as a part of the Standing Order 52 request made on Wednesday 22 June.

QUESTION (p32)

The Hon. PENNY SHARPE: Can you give the Committee the weightings of each criteria? I assume that they're in that process.

AMY BROWN: I think you'll be provided with this, as per your order that we're compiling as we speak.

ANSWER

Any decision to employ an overseas trade employee must be based on the person's appropriateness for the role concerned, having regard to the nature of the role and the person's qualifications, skills and experience.

QUESTION (p34)

The Hon. DANIEL MOOKHEY: You are aware that that ministerial code of conduct says that no former Minister can obtain a job in relation to any matter for which they had portfolio responsibility within 12 months?

AMY BROWN: I would need to take advice on that.

The Hon. DANIEL MOOKHEY: Well, you're invited to take advice on that. That is a point that the Premier has himself identified. What steps did you take to ensure that the Minister's application wasn't prohibited by grounds of the Premier's own ministerial code of conduct?

AMY BROWN: It was for the previous Deputy Premier, then private citizen, to satisfy himself that he had complied with all obligations under his previous and continuing ministerial code of conduct.

ANSWER

The clause in the Ministerial Code of Conduct (Part 5, 24(1)) that requires a Minister to obtain the advice of the Parliamentary Ethics Advisor if they wish to accept an offer of post-separation employment within 18 months after ceasing to hold office, if the employment relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, does not apply to any offer of post-separation employment by the State of New South Wales or any agency

representing the State (Part 5, 24(2)). Given this, there was no prohibition on the employment and no steps were necessary.

QUESTION (p34)

The Hon. DANIEL MOOKHEY: Secretary Brown, do you accept that the moment you sign the contract you are validating the fact that it's an appointment that legally can be made?

AMY BROWN: No.

The Hon. DANIEL MOOKHEY: Do you wish to take advice on that?

AMY BROWN: I mean, it's an offer to take a certain role with Investment NSW between Investment NSW and an individual. It is not verifying everything that happened prior to that moment in time in somebody's previous personal and professional capacity. I don't think that's what signing an employment contract entails, but I am happy to take advice.

ANSWER

Investment NSW undertook all necessary due diligence. Applicants are responsible for disclosure to their previous employers if required. The clause in the Ministerial Code of Conduct (Part 5, 24(1)) that requires a Minister to obtain the advice of the Parliamentary Ethics Advisor if they wish to accept an offer of post-separation employment within 18 months after ceasing to hold office, if the employment relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, does not apply to any offer of post-separation employment by the State of New South Wales or any agency representing the State (Part 5, 24(2)).