

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 – 19 July 2022

Question (p.6)

The Hon. DANIEL MOOKHEY: In your opening statement you said you were "copied on one email on 9 September 2021 that attached my initial advice". Did you send your advice to Ms Brown or did you send it directly to the Deputy Premier's office?

CHRIS CARR: I did not send anything directly to the Deputy Premier's office. It would have gone either through – possibly in combination; I would need to check that.

Answer

Mr Carr was blind copied on the 9 September 2021 email, which was sent by the Chief of Staff of the Investment NSW CEO to Mr Brayford and copied the Investment NSW CEO.

Question (p.9)

The Hon. DANIEL MOOKHEY: Do you recall any conversations with Ms Brown in which she sought your advice or requested any information on that around June or July last year?

CHRIS CARR: I think over time, to be clear, the CEO of Investment NSW would, on occasion, ask or discuss how these appointments get made and the overlay of the GSE Act and the GSE regulations. I think, as everybody probably by now appreciates, these are not ordinary public service roles.

The Hon. DANIEL MOOKHEY: Indeed.

CHRIS CARR: They're a little bit –

The Hon. PENNY SHARPE: So we've found out.

CHRIS CARR: In order to therefore get to where these things are done in the way that they ought be done, it is open to the CEO to seek the advice of their lawyer.

The Hon. DANIEL MOOKHEY: And there's nothing inappropriate with that, Mr Carr, just to be clear.

CHRIS CARR: I don't think the question of conversion, though – which I think was your question, Mr Mookhey – had ever come up. But the question as to process and how it gets done, I think, would've come up.

The Hon. DANIEL MOOKHEY: Can I ask you to again search your memory for July last year about whether or not the CEO or the chief operating officer, Ms Braid – did any of them, the chief of staff or anyone else in Investment NSW, but particularly those three, inform you that a request had come from the Deputy Premier's office in July last year for advice on this question?

CHRIS CARR: You've asked me to search my memory for that, Mr Mookhey. I can take that question on notice, if that would assist.

Answer

The email between the Investment NSW CEO and Joseph Brayford that was dated 2 July 2021 was forwarded to Mr Carr at 5.04pm on 3 September 2021, some two months later. Prior to 3 September 2021, Mr Carr was not aware of the existence or contents of that email. Please also

refer to Mr Carr's other evidence in relation to that 2 July 2021 email and its origins.

Question (p.13)

CHRIS CARR: Yes. Whereas I was sent questions in advance, those questions were not particularly raised. There was a question on the Commonwealth's foreign relations Act and a question in relation to the foreign affairs power and the Commonwealth Constitution.

The Hon. DANIEL MOOKHEY: And they sent you questions in advance, you said?

CHRIS CARR: I was sent additional questions in advance, but they weren't discussed on the call because it was —

The Hon. DANIEL MOOKHEY: What were the additional questions?

CHRIS CARR: The additional questions — I'm going to be very careful here because the additional questions, therefore, go to matters of deliberations subsequent.

The Hon. DANIEL MOOKHEY: To be fair, Mr Carr, that's not necessarily the case. But I'll hear you out first and then we'll see. Let's go.

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The Hon. DANIEL MOOKHEY: Mr Carr, I was asking you what were the additional questions you were asked that were not addressed?

CHRIS CARR: Chair, I'm afraid that they go to detail of a meeting invite that would have sent to me a year ago.

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CHRIS CARR: I'm actually saying, Chair, that I'd like to take that question on notice.

Answer

Subsequent to providing evidence, Mr Carr has established that the junior member of the office being discussed was in fact a junior member of the office of the then Premier, not the then Deputy Premier. This reinforces Mr Carr's evidence that he did not know the people involved at the Deputy Premier's office. This also means Mr Carr's interaction with the former Deputy Premier's office is even less than presented at the hearing on 19 July 2022.

Notwithstanding this clarification, in the interests of transparency, the topics raised in advance of the call, most of which were not actually discussed as indicated in Mr Carr's evidence, were:

1. Further information regarding how DFAT Diplomats are employed i.e. under what legislation, and are there differences between political / bureaucratic Cwlth appointees
2. Are individuals employed in the domestic or overseas market i.e. which employment laws apply to them
3. What type of passports do they travel on i.e. what level of diplomatic immunity do they have, if any
4. More information (brief) required on the foreign relations act – if it could be triggered, how specifically? Would the different models have differing risks in terms of potential conflict with the Commonwealth's external/constitutional powers?

Question (P15/16)

The Hon. DANIEL MOOKHEY: Did you keep a written record of the meeting?

CHRIS CARR: What I did was I corresponded back with the chief of staff as to the outcomes of that meeting.

The Hon. DANIEL MOOKHEY: Which chief of staff? The Investment NSW chief of staff?

CHRIS CARR: Yes, the Investment NSW chief of staff.

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The Hon. DANIEL MOOKHEY: I will. I'm very happy to take the Deputy President's suggestion. I am happy, because the Deputy President is right, to put this to Mr Carr. Mr Carr, the correspondence that you just referred to and your summary of the meeting that you had with the chief of staff has not been produced to the upper House. Can you explain to me why not?

CHRIS CARR: I'll take that on notice.

The Hon. DANIEL MOOKHEY: Did you provide those emails to the Department of Premier and Cabinet for production?

CHRIS CARR: I'll take that on notice.

Answer

Documents that are outside the scope of an order and documents that are cabinet in confidence are not required to be produced.

For completeness however, the correspondence referred to was sent to the CEO of Investment NSW, her Chief of Staff and the then Chief Operating Officer of Investment NSW. Separately, the Department of Enterprise, Investment and Trade is producing all documents it is lawfully required to produce in the return to the Standing Order 52 of 22 June 2022.

Question (p.20/21/22)

The Hon. DANIEL MOOKHEY: I am asking, firstly, was Investment NSW at this point in time preparing Cabinet advice?

CHRIS CARR: I think I would want to take that on notice.

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The Hon. DANIEL MOOKHEY: Yes. Did Investment NSW produce the first draft of the Cabinet submission?

CHRIS CARR: I think — and again I want to be careful as to how we characterise or deal with matters —

The Hon. PENNY SHARPE: Mr Carr, just to be clear, it is already on the public record that the Deputy Premier —

The Hon. DANIEL MOOKHEY: Took it —

The Hon. PENNY SHARPE: — took a Cabinet minute to Cabinet to change the nature and the way

that these were appointed in this period of time. I don't think you are stepping outside —

The Hon. DANIEL MOOKHEY: We are not asking you to go into the details.

The Hon. PENNY SHARPE: We are just simply saying: Who prepared the Cabinet minute? Even if it was the Deputy Premier, was it your —

The Hon. DANIEL MOOKHEY: — agency.

CHRIS CARR: So, where I struggle with this, and why I have asked if I can take it on notice, is because you are going to an area where I have provided legal advice and I don't believe that this is the forum or the setting for me to be detailing the legal advice that I've provided.

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The Hon. DANIEL MOOKHEY: Mr Carr, did Investment NSW create the first draft of the Cabinet submission?

CHRIS CARR: Mr Mookhey, respectfully — maybe, Chair, would it help that, on occasion when providing legal advice, and I'm not speaking to specifics but generalities, it is possible for that advice to include formulations that a Minister or others may consider if they wanted to take it forward for Cabinet consideration.

Answer

The initial draft of the Cabinet Submission was prepared by Investment NSW.

Question (p.29/30)

The Hon. DANIEL MOOKHEY: How often have you had requests come from Minister Ayres' office in respect to the STIC appointments of any type since he became the portfolio Minister?

CHRIS CARR: In relation to appointments, it's not something I would do.

The Hon. DANIEL MOOKHEY: How about in general about any matter to do with the STIC —

CHRIS CARR: To do with the STIC appointments? Not much —

The Hon. DANIEL MOOKHEY: What does that mean, Mr Carr?

CHRIS CARR: — if at all. I'd need to go back and check.

Answer

Mr Carr has met with advisors in Minister Ayres' office and has provided general advice as requested on a number of issues. Prior to the appointment of Mr Barilaro, Mr Carr did not provide advice to Minister Ayres or his office in relation to the appointments of any of the STICs.

Question (p.29/30)

The Hon. DANIEL MOOKHEY: Ms Brown tells us that in some form of a conversation with Minister Ayres, which I think you can see — I pushed Ms Brown to give us a time frame; I think the best we got to was sometime in the first week of him taking over the portfolio — he apparently makes the

decision that the conversion isn't a priority; or, at least, in some form of a conversation with Ms Brown that is the conclusion that they reach. Were you advised at that time that it was no longer a priority?

CHRIS CARR: As to the exact time when I was advised of the outcome of that, I would need to take that on notice to confirm because I don't have that detail at my fingertips.

The Hon. DANIEL MOOKHEY: Do you recall, was it sometime in October that you were told to—

CHRIS CARR: I would expect so.

The Hon. DANIEL MOOKHEY: Who told you to cease or delay work on the conversion of the ministerial appointments?

CHRIS CARR: In fairness, having just said that I need to confirm when I was told, I would also need to confirm who told me.

Answer

Mr Carr was advised on 9 November 2022 via an email from the CEO of Investment NSW that there would be no present need for legislation to be drafted.