

Hearing Questions

Transcript QoN pg 4, paragraph 3

The Hon. ADAM SEARLE: It is a matter of public record, in Justice Button's decision, that Ms Connell was the decision-maker. She made that decision pursuant to a delegation she held from you, Minister. Is that correct?

Mr ANTHONY ROBERTS: That is correct.

The Hon. ADAM SEARLE: She also held a delegation from the Director General of Resources and Energy at the time. Is that correct? Would you tell the Committee what were the terms of that delegation?

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

ANSWER

The terms of the delegation are set out in the Instrument of Delegation which is available as an appendix.

Transcript QoN pg 4, paragraph 6

The Hon. ADAM SEARLE: Minister, you said that there was an arms-length decision-making process last year. Do I understand from that that you or your office played no role in the determination made by the Office of Coal Seam Gas that the Metgasco licence should be suspended?

Mr ANTHONY ROBERTS: I will make this very clear: That office operated at arm's length from the department, as it should. Deputy Secretary, would you like to add anything?

Ms HARGREAVES: It is a normal function of the division that, in assessing the suitability and performance of title holders and in the ongoing monitoring of title holders, we review their activities and ensure that they are acting according to the requirements of the act.

The Hon. ADAM SEARLE: Thank you for that. The licence renewal conferred by former Minister Hartcher, which was the approval that was suspended, distinguished between conditions that related to environmental management and those that did not. Is that correct? There were different conditions on the licence holder. Some related to environmental management and some did not.

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

The Hon. ADAM SEARLE: You do not know?

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

The Hon. ADAM SEARLE: Perhaps Ms Hargreaves could enlighten us.

Mr ANTHONY ROBERTS: There may be complex and multiple conditions, so we will take the question on notice.

ANSWER

The conditions of the licence are set out in the PEL 16 licence document which is available as an appendix.

Transcript QoN pg 4, paragraph 17

The Hon. ADAM SEARLE: With respect, Minister, I am not talking about any future court case. I am

talking about a court case that was in the past, and one the Government decided not to appeal. I am talking about the steps taken and the basis upon which your agency made the decision to suspend the licence. Every matter I am asking about is in the published decision of Justice Button of the Supreme Court, so it is all on public record.

CHAIR: Some at this table are in fact lawyers. Minister, if you have doubts about possible legal matters, I suggest that you take the question on notice and refer to your legal team before providing an answer.

Mr ANTHONY ROBERTS: That would be helpful. Thank you.

ANSWER

It is inappropriate to answer this question as it relates to a matter that is now sub judice.

Transcript QoN pg 5, paragraph 4

ANTHONY ROBERTS: These are questions that are directly related to proceedings that will be before the courts.

The Hon. ADAM SEARLE: Mr Chair, with respect, I am talking about the decisions that led to the decision to suspend the Metgasco licence. That court case finished at the end of April. This Government decided not to appeal that decision—to abide by it. Whatever actions may be in the future, and although Metgasco has announced its intention to sue the Government, no initiating process has yet been filed, there is no issue of sub judice, and these are matters that on the public record. The Minister should answer the question.

CHAIR: I take it that you are taking a point of order?

The Hon. ADAM SEARLE: The Minister is foreshadowing an unwillingness to answer the question and I ask that he be asked to answer it.

CHAIR: If it is a point of order I rule there is no point of order. Minister, you should attempt to answer the question as best you can, but if you have any doubts or any worries about the question of sub judice—as I say, we have one very experienced legal professional at this table, but you may not feel comfortable with taking that advice—

The Hon. ADAM SEARLE: I have the public interest at heart, Minister.

CHAIR: We understand that. Minister, you can answer the question or you can take the question on notice or you can indicate to the Committee that you feel that you cannot answer the question.

Mr ANTHONY ROBERTS: I will do to the best of my endeavours to answer every question today, but there are some issues that may require us to take on notice and get further legal advice. Can I ask my Secretary, Mr Smith, to add to that?

Mr SMITH: I just wanted to try to be helpful by explaining that yes the company has not commenced any proceedings against us but they told us that they are going to.

The Hon. ADAM SEARLE: They told the *Sydney Morning Herald* too; it is no mystery.

Mr SMITH: What they have indicated is that they believe that it is matters that related directly to the decision that was overturned by the court, which would be the substance on which they would base a claim against the Government. So the reason I expect the Minister does not want to go into those details is that we know those details are going to be the very things that are challenged and I want to help protect the State's interests to make sure that we do not do anything that will prejudice the manner in which our defence can be conducted.

The Hon. ADAM SEARLE: Sure. I make it clear, Mr Smith, that I am trying to understand your agency's decision-making processes that led us here.

Mr ANTHONY ROBERTS: I fully understand that and I appreciate that and that is why, after seeking legal clarification, we will respond on notice. We will take that on notice.

ANSWER

It is inappropriate to answer this question as it relates to a matter that is now sub judice.

Transcript QoN pg 6, paragraph 3

The Hon. ADAM SEARLE: With respect, Minister, that is not the issue. The issue is: How on earth

did your Office of Coal Seam Gas think it had the power to suspend the licence when it is quite clear that there is no legal power to do so?

Mr SCOT MacDONALD: Point of order: I raise the issue of sub judice. I understand that an action may not have been filed but I think the intention is very clear. I think the sub judice convention applies and the intention is very clear in the paper that there will be action. So I think, Mr Searle, you are at risk of imperilling the work of a future court.

The Hon. ADAM SEARLE: To the point of order: The sub judice rule is only engaged once a legal process is actually on foot and it only does so in certain circumstances. We are well short of that. Even if that were strictly legally correct, that would not prevent a Committee of the Parliament from asking questions should it choose to, but we are a long way from that.

CHAIR: I do not uphold the point of order but I will, once again, put on the record that the Minister may answer the question in any manner that he so wishes. If you wish to take any of this on notice, Minister, because you are unsure, that is perfectly acceptable.

Mr ANTHONY ROBERTS: I reaffirm my position that we will take those questions on notice.

The Hon. ADAM SEARLE: The legislation is also incredibly prescriptive and clear that before you use the suspension power you must provide to the affected party written notice of the cancellation or suspension and the grounds on which it is based; you then must give a reasonable opportunity for that party to make representations and then you have to take those representations into account before you make a decision—22 (6) (a). There is no mystery about it, there is no uncertainty about it, there is nothing grey about it. The Office of Coal Seam Gas took none of those steps before its first suspension on 14 May. So I ask you to tell us why that was the case.

Mr ANTHONY ROBERTS: I refer to my previous answer. We will take that on notice after seeking legal advice.

The Hon. ADAM SEARLE: Perhaps you can tell us how it came to pass that such a significant decision was taken by a government agency without the required legal steps being followed?

Mr ANTHONY ROBERTS: I reject the premise, but I am quite happy to take the question on notice.

QUESTION

Page 9 Para 12

Mr JEREMY BUCKINGHAM: *What is the intended land use of a final void?*

ANSWER

The questions on final voids should be directed to the Department of Planning and Environment (DPE) as this is the lead regulatory agency in approving the final land use as part of issuing the development consent for a mining operation.

QUESTION

Page 9 Para 18

Mr JEREMY BUCKINGHAM: *Can you give an example of one?*

ANSWER

The questions on final voids should be directed to DPE as this is the lead regulatory agency in approving the final land use as part of issuing the development consent for a mining operation.

The Woodlawn Mine was an abandoned mine and is now in use as a bioreactor landfill. This use has provided a significant opportunity for the rehabilitation of the former mine and surrounding areas.

Woodlawn – (metalliferous open cut mine) bioreactor landfill project (Tarago, New South Wales) - currently accepts around 20 per cent of Sydney's putrescible waste, gas is collected and used to generate renewable electricity which supplies over 2,500 households.

The 25 million cubic metre open cut void is now used as a purpose-built bioreactor operated by Veolia which was approved by the NSW Department of Planning and Environment in 2000. Once the void is full (approximately 2035), Veolia is committed to rehabilitating the entire former mine site.

ANSWER

It is inappropriate to answer this question as it relates to a matter that is now sub judice.

Transcript QoN pg 11, paragraph 13

The Hon. ADAM SEARLE: Returning to the Metgasco matter, how did the Office of Coal Seam Gas reach its ultimate decision, as expressed in the suspension notice of 14 May 2014 issued by Ms Connell, and the purported confirmation that followed, given the very glaring open-and-shut legal errors? Will you lead us through the decision-making process of the Office of Coal Seam Gas at each stage? Which level in the organisation? Where was the quality control? Was legal advice sought and provided? I want to try to understand what happened.

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

The Hon. ADAM SEARLE: You are not happy to tell the Committee?

Mr ANTHONY ROBERTS: I have to say that there are some other issues at play. But I am quite happy to take that question on notice. It is a rather lengthy and complex question. I am more than happy to take that on notice and provide the appropriate response.

ANSWER

It is inappropriate to answer this question as it relates to a matter that is now sub judice.

Transcript QoN pg 13, paragraph 1

The Hon. ADAM SEARLE: My question was how could it be that the Director of the Office of Coal Seam Gas could possibly have made this decision when the legislation quite clearly sets out the procedure to be followed, which it was not, and provides a very clear limitation on the suspension power, which was completely ignored by the office? I would like you to tell this Committee and the community how it came to be that that decision was reached on that basis. Please come clean and tell us.

Mr ANTHONY ROBERTS: This is the frustrating part about dealing with a Labor Party that continues to try to rewrite history. It came to be because you had no controls and you had clunky legislation that was not fit for purpose. That is what the issue really comes down to. But again with respect to decisions made by the Office of Coal Seam Gas at that time, I am happy to take them on notice and come back to you.

The Hon. ADAM SEARLE: You would agree that public servants have to follow the law as it is, yes?

Mr ANTHONY ROBERTS: We are blessed in New South Wales with incredible professionals in this area and public servants who without fear or favour in this Government give their Ministers advice. We take that advice from our public servants.

The Hon. ADAM SEARLE: Are you saying that the Director of the Office of Coal Seam Gas gave you advice that her purported suspension was okay? Is that what you are now telling us?

Mr ANTHONY ROBERTS: She made the decision.

The Hon. ADAM SEARLE: But did she tell you beforehand that she was going to do it and on what basis?

Mr ANTHONY ROBERTS: This is exactly what is going to be in the court case, Mr Chair. I am happy to take the questions on notice.

The Hon. ADAM SEARLE: I will be very clear: Your agency purported to exercise the legal powers given by Parliament to you. It did so in a way that was shown to be completely invalid. There are going to be consequences. The public of this State deserves to know how and why that decision was made. Will you tell us?

Mr ANTHONY ROBERTS: I am happy to take these questions on notice and have them checked by the Crown Solicitor's Office, and report back to the Committee. Do I just get the feeling that you are saying that on advice given that a company was in breach of its conditions I should have overturned that advice? It might have happened in the previous Government, but certainly not under me.

The Hon. ADAM SEARLE: No, I asked you very clearly whether the Director of the Office of Coal Seam Gas advised you ahead of her suspension on 14 May that she was going to make that decision and on what basis she was going to make it—that is, did she outline to you the basis for her decision, including the legal basis, and include advice that gave you comfort that it was a legally sound step to take?

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

ANSWER

It is inappropriate to answer this question as it relates to a matter that is now sub judice.

QUESTION

Page 19 Para 11 & 13,

Dr JOHN KAYE: *My question was specifically in respect of fixed charges in bills. You might not have information about this. Do you want to take that on notice? It was not about the total bill; it was about the shift from variable prices. You have answered a question that I did not ask you, which is fine, and I hope you enjoyed doing that. But my question was specifically about the shift from variable pricing to fixed pricing. If you do not have material there could you take that on notice?*

Dr JOHN KAYE: *What percentage for the average consumer are the fixed costs?*

Page 20 Para 1

Dr JOHN KAYE: *My question on notice to you is: Could you please get back to us with your understanding of the shift from variable prices to fixed prices in electricity bills—which you have not addressed at all?*

ANSWER

Information on electricity tariffs is available from a variety of sources, including the Australian Energy Market Commission's price trends report.

QUESTION

Pages 22 Para 6

Bryan Doyle (Duplicated at Supplementary Questions 56 to 64)

ANSWER

See responses to Supplementary Questions 56 to 64.

QUESTION

Page 26 Para 18

Mr JEREMY BUCKINGHAM: *Has the Government had an application for renewal of PEL 452?*

ANSWER

Yes.