

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 1

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

I refer to comments made by Mr Andrew Mills on 30 November 2016 that the ATO was engaging with the Insurance Commission of Western Australia on the West Australian Bill concerning the Bell liquidation as far back as May 2015. Given this, why did the Assistant Treasurer not become aware of the matter until March 2016?

Answer:

The ATO briefed then Assistant Treasurer Frydenberg's office in May 2015.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 2

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

If you briefed the Assistant Treasurer, are you aware of the Attorney-General also being briefed?

Answer:

The ATO cannot comment on when the Attorney-General may have been briefed on the Bell issues.

Standing Committee on Tax and Revenue

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 3

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Did the ATO raise concerns about the implications of this Bill with Federal Ministers? If so, with whom? Did the ATO seek legal advice on the implications of the Bill? If so, from whom? When?

Answer:

The ATO spoke with Assistant Treasurer Frydenberg's advisors and Treasurers Hockey's advisors about the implications of the Bell Bill.

The ATO sought legal advice from Australian Government Solicitor on the Bell Bill on 7 May 2015, the day after the Bill was introduced into the WA Parliament.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 4

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

When did the ATO become aware of a High Court challenge to the Bill?

Answer:

27 November 2015.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 5

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

5. When the ATO did become aware of the High Court challenge to the Bill, what action did the ATO take?

5a. When did the ATO first brief the Assistant Treasurer on the High Court Challenge? Either verbally, or in the form of Question Time briefs, or Estimates briefs?

Answer:

The ATO engaged in discussions with Attorney General's Department, Australian Government Solicitor and Treasury concerning whether the Commonwealth should intervene in the litigation, and if it did so upon what grounds.

5a. 7 March 2016.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 6

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

6. Did the ATO have any discussions with the Attorney-General directly about the High Court case?

Answer:

Second Commissioner Andrew Mills discussed Bell litigation with the Attorney-General on 7 March 2016.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 7

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Did the ATO advise the Attorney-General of its proposed intervention in the case? If so, when? What was the Attorney-General's response?

Answer:

The ATO advised the Attorney General's Department, Australian Government Solicitor and Treasury in writing of Commissioner's final decision to intervene on 4 March 2016.

Second Commissioner of Taxation Andrew Mills spoke directly with the Attorney General on 7 March 2016, outlining the decision to intervene and reasons behind the decision.

The Attorney General noted the ATO position and commented that he had not made a decision whether he should intervene on behalf of the Commonwealth.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 8

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

When did the ATO contact the Attorney-General to discuss the High Court case, and whether the ATO should intervene?

Answer:

7 March 2016.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 9

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

When did the ATO first contact the Solicitor-General (either directly or through the Australian Government Solicitor) about the High Court challenge?

Answer:

The ATO did not contact the Solicitor-General directly. This was done in the week beginning 21 December 2015 by the Australian Government Solicitor in accordance with long standing legal services directions.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 10

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Why did the ATO contact the Solicitor-General?

Answer:

The ATO did not contact the Solicitor-General directly. This was done by Australian Government Solicitor in accordance with long standing legal services directions.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 11

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the Solicitor-General contacted with the Attorney-General's consent?

Answer:

The ATO cannot comment as this is a matter for the Australian Government Solicitor.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 12

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the Solicitor-General of a contrary opinion to the Attorney-General on the question of whether the ATO should intervene in the case?

Answer:

The ATO has no knowledge of the Attorney-General's opinion on intervention.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 13

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the ATO aware of a conflict between the Attorney-General and the Solicitor-General on this matter?

Answer:

The ATO has no knowledge of the relationship between the Attorney-General and the Solicitor-General on intervention.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 14

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Did the ATO receive any correspondence from the Attorney-General regarding its contact with the Solicitor-General? Can you table that document?

Answer:

No, the ATO did not receive any correspondence from the Attorney-General.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 15

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

When did the ATO first discuss the High Court challenge with your minister, Kelly O'Dwyer? Was it before March 4? What was the nature of those discussions?

Answer:

7 March 2016.

Minister O'Dwyer rang Second Commissioner of Taxation Andrew Mills to obtain an update on the ATO action in relation to the Bell Litigation and to arrange for Second Commissioner Mills to provide a similar oral update to the Attorney-General.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 16

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

The Second Commissioner of Taxation, Andrew Mills, had conversations with Ms O'Dwyer in relation to the litigation on the weekend of March 5-6, is that right? What was the nature of that discussion? Did Ms O'Dwyer direct or instruct Mr Mills at any point that the ATO should not intervene?

Answer:

No. Second Commissioner of Taxation Andrew Mills had a conversation with Minister O'Dwyer on 7 March 2016.

Second Commissioner of Taxation Andrew Mills outlined the legal policy issues in relation to the ATO's decision to intervene. At no time did the Minister seek to persuade or direct us to do anything other than what we had already decided.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 17

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

I note evidence given by Mr Mills during the last Estimates hearing of the Economics Legislation Committee on 19 October. Mr Mills said and I quote, “I do recall a conversation with a staff member of a minister inquiring in relation to it” “It was either the-then Assistant Treasurer or the Treasurer’s office”. Mr Mills said he “would have to double-check”. Can you now provide us with that detail? Which minister’s staff contacted you, when, and what was the nature of that conversation?

Answer:

Between May and August of 2015 the ATO was contacted by advisers from Assistant Treasurer Frydenberg, Treasurer Hockey and the Attorney-General. The ATO was requested to provide information concerning the Commissioner’s position regarding to the proposed Bell legislation.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 18

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Why did the ATO wait until March 8 to seek leave to intervene, which is the last possible date it could have done so?

Answer:

The ATO did not delay to seek leave to intervene. We were drafting documents up until the afternoon of 7 March 2016.

It is by no means unusual in a party filing application on or near the last day for doing so. It simply reflects the everyday reality of modern litigation.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 19

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

What correspondence did the ATO have on the matter with the Australian Government Solicitor?

Answer:

There was voluminous correspondence between the ATO and the Australian Government Solicitor from December 2015 until 8 March 2016 concerning possible intervention by the Commissioner and the appropriate grounds of such an intervention. This time period reflected both the complexity of the facts and legal issues being canvassed.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 20

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the ATO ever instructed not to intervene in the Bell litigation? If so, who by? Was this in writing or oral? On what date?

Answer:

No.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 21

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the ATO ever aware of a direction given by the Attorney-General, or proposed by the Attorney-General, not to intervene in the case?

Answer:

No.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 22

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Was the ATO asked to prepare a regulation that would have modified the Corporations Act to the benefit of Western Australia?

Answer:

No, this is not an area of the law or administration for which the Commissioner is responsible. Corporations Law is dealt with by The Treasury.

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ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

30 November 2016

Department/Agency: ATO

Question: 23

Topic: Bell Group

Reference: Written – 1 December 2016

Member: Julie Owen

Question:

Did the ATO receive advice from the Solicitor-General on the nature of that regulation?

Answer:

No.