

Environment and Communications References Committee
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Committee: Environment and Communications References Committee
Inquiry: Australia's faunal extinction crisis
Question No: 1
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Draft legislation
Question Date: 26 August 2020
Question Type: Written

Senator Green asked:

1. According to QoN 1 (Hansard p.34). the Department advised that they provided initial drafting instructions to the Office of Parliamentary Counsel on 19 June 2020.
 - a. What did this draft legislation look like?
 - b. Which sections of the legislation did it relate to?
 - c. Can you table this iteration?
2. The Department also said that they provided additional drafting instructions to the Office of Parliamentary Counsel on 6 July 2020.
 - a. What were those instructions?
 - b. Can you please table them.
3. Did the Minister advise the Department to contact the Office of Parliamentary Counsel with further instructions, and what was the nature of that advice?
4. Has Professor Samuel seen any draft legislation?
5. Have any stakeholders seen the draft legislation?

Answer:

1. The Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 was introduced in the House of Representatives on 27 August 2020.

The information and documents sought by the question, being draft legislation prepared by the Office of the Parliamentary Counsel and related drafting instructions, comprise material that is the subject of legal professional privilege. It is a long-standing convention for the Commonwealth to preserve confidentiality over legal advice that it has obtained and not to disclose the content of that advice. Consistent with this convention, the department has not included in its response the information and documents sought, on the basis that release of the information and documents is both contrary to the public interest and would cause harm to the Commonwealth. It is in the interests of the proper administration of the business of government that the executive be able to obtain confidential legal advice, and for the confidentiality of that advice to be maintained and respected so that the operations of government can progress efficiently and effectively. The harm caused from disclosure of these documents is that it may prejudice the ability of the Commonwealth to commission and receive legal advice with respect to the development and drafting or amendment of legislation.

2. See the answer to question 1 above.

3. No

4. No

5. No

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Committee: Environment and Communications References Committee
Inquiry: Australia's faunal extinction crisis
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Australia's faunal extinction crisis – Emergency town water projects
Question Date: 26 August 2020
Question Type: Written

Senator Green asked:

6. What are the emergency town water projects?
 - a. Which towns?
 - b. What kind of projects?
 - c. Is this the expansion of existing projects?
 - d. How many projects are there? What is the cost of these projects?
 - e. Who is funding these projects?
 - f. Is there any federal funding being used?

Answer:

6. The emergency town water projects are EPBC 2020/8655 - Dungowan Dam Project and EPBC 2019/8590 - Operation of Peel River Drought Protection Works.
- a. The main town near EPBC2020/8655 and EPBC 2019/8590 is Tamworth.
 - b. EPBC 2020/8655 involves delivery of a dam and pipeline. EPBC 2019/8590 involves operation of a temporary drought mitigation pipeline.
 - c. No.
 - d. There are currently two projects. The Water NSW website as at 26 August 2020 indicates the Dungowan Dam Project will cost \$480 million. The Peel River Drought Protection Works pipeline was costed by New South Wales at \$39 million.
 - e. The Dungowan Dam Project is jointly funded by the Commonwealth and New South Wales Governments. The Peel River Drought Protection Works are funded by the New South Wales Government.
 - f. Federal funding has been committed for the Dungowan Dam Project.

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Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Statutory timeframes and project information
Question Date: 26 August 2020
Question Type: Written

Senator Green asked:

7. What are the statutory timeframes for providing decisions on projects?

8. In 2018-19, only 5% of decisions were made on time. Is the fast tracking, really just a timeframe closer to the statutory timeframe?

9. In the QoN No.4 (Hansard p.37-38) received by the committee from the DAWE on Friday, the Department has stated they do not have information about the particular cases. However, the committee has received that information from the ANAO.

a. Is it that the department just didn't ask for information about the 79% of approvals that were found to be non-compliant or riddled with errors? Or is this extraordinary finding not a priority for the department or the Minister?

b. When did the department find out about the individual projects?

c. Has the department sought legal advice about these individual projects?

d. Does the department know which project contains what error?

e. If so, is there any effort to fix these errors?

f. Have the proponents been notified of these errors or non-compliance?

g. Does the department intend to notify them of these errors or non compliance?

h. Does the department now have a list of these projects and the issues? When did the department obtain this list?

10. What is the associated cost for each of these projects?

a. What is the estimated associated cost?

11. How many of the decisions relating to these projects were made outside of statutory timeframes? Please provide the time delayed and associated cost.

a. Does the department know how much money the departments delays have cost in project terms?

12. Please provide information about the errors or reason for non-compliance for each of the projects? (i.e. what was the nature of the error/non-compliance for each project)

13. What is the commencement dates for each project of these projects?

a. What is the completion date for each project?

14. Where pre-commencement conditions for these projects monitored?

a. Was there any monitoring for compliance with conditions monitored for any of these projects? Please provide the details for each.

Answer:

7. Following the receipt of a valid referral, the Minister has 20 business days to decide whether the proposed action will require assessment and approval under the EPBC Act.

The Minister makes decisions to approve, approve with conditions or not approve a proposed action. Statutory timeframes for assessments are as follows:

- For assessment on Referral Information, a recommendation report must be finalised within 30 business days of an assessment approach decision – this includes a public comment period on the published draft recommendation report of 10-business-days. A decision must be made within 20 business days of receiving a finalised recommendation report.
- For assessment on Preliminary Documentation, a decision must be made within 40 business days of receiving finalised documentation from the proponent.
- For assessment by Public Environment Reports or Environmental Impact Statements, a decision must be made within 40 business days of receiving finalised documentation from the proponent.
- For assessment by Inquiry, a decision must be made within 40 business days of receiving the inquiry report.
- For assessment by a state/territory process, a decision must be made within 30 business days of receiving an assessment report.

8. The audit report notes that the department's performance statistics improved in 2019-20 primarily due to the \$25 million allocated to the department for congestion busting measures. For example, assessment timeframes have dramatically improved from 19 per cent of key decisions made on time in the December quarter 2019, to 98 per cent on time in the June quarter 2020. Since December 2019, the backlog of overdue key decisions has more than halved and is on track to be cleared by the end of 2020.

9. a. As at 20 August 2020 when the previous answer was provided, the Department had not received that information from the ANAO. The Department now has the list of approval decisions and referral decisions that were examined by the auditors. The Department is committed to ensuring the ANAO recommendations are responded to swiftly and completely. This is a high priority for the Department.

- b. A list identifying the specific 90 approval decisions examined by the ANAO was provided to the Department on 25 August 2020 by the Environment and Communications References Committee and it was published on 27 August 2020.
 - c. The Department has not sought legal advice on the individual projects which the ANAO examined.
 - d. The Department is currently consulting with the ANAO regarding further details of the sample of projects they examined.
 - e. The Department does not intend to re-open past decisions examined under the audit. The ANAO did not recommend the department should do this. Consistent with the recommendations of the ANAO, our focus is on improved future performance.
 - f. The Department has not notified proponents of errors identified by the ANAO.
 - g. The Department does not intend notifying proponents regarding errors identified by the ANAO.
 - h. See response to 9.b. above
- 10. The Department is currently consulting with the ANAO regarding further details of the sample of projects they examined.
 - 11. Please see answer to question 10.
 - 12. Please see answer to question 10.
 - 13. Please see answer to question 10.
 - 14. Please see answer to question 10.

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Division/Agency: Department of Agriculture, Water and the Environment
Topic: Australia's faunal extinction crisis – ANAO report legal advice
Question Date: 26 August 2020
Question Type: Written

Senator Green asked:

15. When was the department first made aware of the contents of the auditor general report (i.e. including that 79% of decisions were non compliant or contained errors)?
16. Following that information, did the department notify the Minister?
 - a. When and how?
17. Following that information, did the department of MO seek legal advice?
18. Which elements of the report did the department seek legal advice on?
 - a. And how many times has the department sought legal advice about key decisions?
19. What was the nature of that advice?
20. Has that advice been provided? Or is that advice still being sought?
21. How much did that advice cost? Please table that information.

Answer:

15. The ANAO provided a Report Preparation Paper (including analysis identifying errors in conditions for 34 from a sample of 43 approval decisions (79%)) to the Department on 23 March 2020.
16. Following receipt of the Report Preparation Paper, the Department did not notify the Minister of the content of the ANAO report. This is consistent with the ANAO's confidentiality requirements.
17. Yes, legal advice was sought on the audit report but not in relation to individual projects.
18. It has been long-standing practice not to disclose information about privileged legal advice. Privileged legal advice provided to the Commonwealth should remain confidential.
 - a. Legal advice is sought on key decisions made under the EPBC Act on a case by case basis.
19. It has been long-standing practice not to disclose information about privileged legal advice. Privileged legal advice provided to the Commonwealth should remain confidential.
20. Yes, the legal advice has been provided.
21. There has been no external legal expenditure in relation to this advice.