

**Senate Environment and Communications
References Committee**
Answers to questions on notice
Environment and Energy portfolio

Inquiry name: Inquiry into Australia's faunal extinction crisis

Hearing date: 23 August 2019

Question No: 1

Question Date: 27 August 2019

Question Type: Written

Question Text:

These questions are in relation to the emails (attached below) released under Freedom of Information

- 15 March from Geoff Richardson to Stephen Oxley 6.55 am (FOI 140419 Document 2 below)
- 24 March from Geoff Richardson to [redacted], 4.50pm (part of FOI 190419 Document 4)
- 22 April 5.46 pm from Stephen Oxley to [redacted] (FOI 190419 Document 8)

In these emails there are 4 instances of sections being redacted and coded S37(1)(a), which according to Section 8.3.1 of the 'Freedom of Information Guidelines: Exemption Sections in the FOI Act' applies 1 in the case where:

This exemption applies to documents where there is a current or pending investigation and release of the document would, or could reasonably be expected to, prejudice the conduct of that investigation in some way or the enforcement or proper administration of the law in a particular instance. Because of the phrase in a particular instance, it is not acceptable for prejudice to occur to other or future investigations: it must relate to the investigation at hand (Re Murtagh and Federal Commissioner of Taxation). If disclosure would affect more than the particular case at hand, consideration should be given to those of an alternative exemption..

1. Can you confirm that in each instance in these emails where this provision has been used; that it has been used to redact information of direct relevance to the compliance action being taken against Jam Land Pty Ltd.

2. If the answer to question 1 was yes in one or more instances, can you confirm that matters of this nature were actually discussed at the 20 March meeting with Angus Taylor or in subsequent conversations with Josh Frydenberg's staff, given these were follow up emails from those discussions

3. Given the department's concern to ensure that investigations were not prejudiced, what if any actions were taken to ensure that the redacted material was not seen by Angus Taylor or anyone else associated with Jam Land Pty Ltd?"

Answer:

1. Yes. The Department can confirm that the S37(1)(a) redactions in the documents referred to are relevant to the compliance investigation on the Monaro. Given the interest of the Committee and because the redacted material relates to information that is now publicly known, all of the redacted text is provided in an attachment below.
2. No. Matters relevant to the compliance investigation involving Jam Land Pty Ltd were not discussed at the 20 March 2017 meeting with Mr Angus Taylor MP or in subsequent conversations with the former Minister for the Environment and Energy, the Hon Josh Frydenberg MP's staff.
3. The Department did not share the redacted material with Angus Taylor or anyone else associated with Jam Land Pty Ltd.

Attachments:

1. S37(1)(a) redacted text from the three documents referred to in this question.

Attachment 1

S37(1)(a) redacted text from the three documents referred to in this question.

Text redacted under S37(1)(a) for FOI 190419 is shown in italics:

- 15 March from Geoff Richardson to Stephen Oxley 6.55 am (FOI 140419 Document 2 below)

“Deb has let Dean know about the meeting.

I have a meeting with Monica Collins on Friday to understand the background to this becoming an issue, which I believe is compliance action/s initiated by NSW around land clearing conducted at one or more properties south of Cooma. I need to understand this to know what Matt and I need to steer very clear of in any discussion with Mr Taylor.

I don't yet know if Monica or Matt Cahill will attend the meeting with Mr Taylor...”

- 24 March from Geoff Richardson to [redacted], 4.50pm (part of FOI 190419 Document 5)

“We will have further discussion with agronomists to better understand any uncertainty with interpreting and applying the minimum condition thresholds that are part of the updated listing (e.g. how areas with non-native species such as clover are assessed). *We will of course be cautious about speaking to any agronomist involved in the particular EPBC Act compliance case.* We are also looking further into the NSW native vegetation regulations and changes that are due to come into effect 1 July, to clarify how non-native annual species are treated in assessments and if there is any substantial difference with the national approach to minimum condition thresholds. I would also note that all the details of these changes and their consequences for individual landowners have not yet been made clear.”

- 22 April 5.46 pm from Stephen Oxley to [redacted] (FOI 190419 Document 8)

“...An action must be planned or undertaken that is likely to have a significant impact on the defined ecological community for those EPBC Act provisions to be triggered.

Since the ecological community was listed in 2000, the Department understands that this has happened only once for agriculture activities, and that is in relation to the current compliance investigation. The reasons for the low regulatory impact on farmers is included in the email below of 13 April 2017.”

“The approved conservation advice, including condition thresholds, was developed in close consultation with experts from NSW agencies to ensure alignment where possible. As noted in previous briefing, this includes the groundcover assessment methodologies that Angus Taylor MP has mistakenly been advised are not aligned. *Both NSW and Commonwealth are pursuing the current compliance case in question because the alleged destruction of high quality native grasslands has triggered both state and national law.* Also in previous briefing we noted that discussion with NSW agencies indicates that they have not yet decided on final process and methodologies for the change in regulations on 1 July 2017. It is important to note that EPBC Act requirements are not intended to fully align with NSW native vegetation regulations. This is because State vegetation laws cover a" native vegetation, while national ecological community listings complement state vegetation laws by providing specific protection to select Australian species andecosystem functions that are at most risk of extinction.