



CLERK OF THE SENATE

D16/24661

15 March 2016

Ms Lyn Beverley
Secretary – Senate Select Committee into the Scrutiny of Government Budget Measures
Parliament House
CANBERRA ACT 2600

Dear Ms Beverly

You have asked for advice concerning the options for the committee to pursue regarding whether the use of private emails by the CSIRO is contrary to the Archives Act, national security or some other requirements.

I understand that this issue has arisen at hearings the Committee held in Hobart and Melbourne on 8 and 10 March respectively and while the Hansard of Friday's hearing is not yet available, I have noted this exchange from the Hobart hearing:

CHAIR: On a point of clarification, when you say he provided that feedback to the executive, did he do this by telephone or email? If it was via email, was it via private email or CSIRO email?

Dr Wonhas: There was documentation prepared that covered a lot of the financial and staff impacts, because I think that is often best done in written form. I think, ultimately, that information ended up in the official records of CSIRO. I might also refer to what you have just alluded to regarding use of private emails. Yes, private emails have been used as part of this planning process. (Proof Hansard, page 48 and following)

The CSIRO is an Australian Government Corporate entity which operates under the *Science and Industry Research Act 1949*. As a Commonwealth entity, the CSIRO is subject to the *Archives Act 1983* and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section (3)(2) of the Archives Act states that the archival resources of the Commonwealth consist of records and other material as are of national significance or public interest and relate to, among other things, the development, organisation or activities of the Commonwealth or of a Commonwealth institution.

Furthermore, section 37 of the PGPA Act states that proper records must be kept by Commonwealth entities that properly record and explain the entity's performance in achieving its purposes.

Beneath these legislative requirements, the CSIRO Code of Conduct on the organisation's website states that good recordkeeping practices are required:

2.7 Managing information and intellectual property

CSIRO is bound by legislation and Government policy on the creation, use, sharing, security and destruction of all records. CSIRO owns the intellectual property rights to anything our people create or develop, during the course of their employment with CSIRO. They [staff] will:

- *Maintain complete, reliable and accurate records of the performance of your work related decisions and activities; and*
- *Ensure the proper storage of, and access to, records, including the confidentiality and security of information. [emphasis added]*

While Dr Wonhas from the CSIRO argued at the Hobart hearing that private emails were used so that information stayed within a small group of people and did not cause distress, he also stated that

...any relevant emails and documentation have been transferred to the official records of the organisation so that they are not lost.

Although this subsequent 'capture' of the records originally conveyed by private email may not be contrary to the requirements of the Archives Act (or national security), it looks like dubious administration and may be a breach of the organisation's Code of Conduct by senior staff. Furthermore, it has understandably led to concerns that it may create difficulties for the Senate or its committees to seek information, as the Chair stated at the Hobart hearing:

CHAIR: ...Part of the problem here, Dr Wonhas, is that the Senate has an order for the production of documents relating especially to the 27 January executive meeting and what transpired. Clearly, if private emails have been used, it is going to be very difficult for us to access information. Of course, it is our job to scrutinise these kinds of things to make sure due process is followed. It is very concerning that there is no transparency around this if private emails have been used. (Proof Hansard page 49)

Given the handling of this matter by the CSIRO executive, there are a number of options available to the Committee so it can fulfil its accountability role.

The first step available to the committee is to raise concerns in the report to be tabled in the Senate. A practical way to address this may be for the Committee to consider tabling an interim report which recommends that the Auditor-General investigate how the CSIRO executive has met its record keeping obligations in managing significant restructure. There are also opportunities for individual senators to debate any report that is tabled and to move

further motions ordering the production of documents following earlier orders agreed by the Senate on 24 and 29 February 2016 (and the subsequent statements by Ministers Fifield and Ryan and other senators on 3 March).

Please let me know if I can provide any further assistance to the committee.

Yours sincerely

(Rosemary Laing)