

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

Committee: Environment and Communications References
Inquiry: Australia's faunal extinction crisis
Question No: 1
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Completion status of the 90 cases reviewed by the ANAO
Hansard Page: 3
Question Date: 25 August 2020
Question Type: Spoken

Senator Hanson-Young asked:

CHAIR: There's probably an argument either way on that. If you want to be clear that the wrong decision is not being made then you'd want to make sure. Out of these 90 cases, could you take on notice to get back to this committee where each of them is up to now in terms of their stage? It's my understanding that they weren't all complete, so that would be helpful.

Mr Larsen: Of course we can do that, yes. We can do that insofar as we have the information. I'll undertake to make the best inquiries we can and get back to you with the best information that we have .

Answer:

Of the 90 approval decisions reviewed by the ANAO, 88 have been approved with conditions, one has been approved without conditions, and one has been refused approval.

The stage and status of each of these decisions is available on the Department's website at <http://epbcnotices.environment.gov.au/referralslist/>.

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Committee: Environment and Communications References
Inquiry: Australia's faunal extinction crisis
Question No: 2
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Additional drafting instructions given to the OPC
Hansard Page: 3
Question Date: 25 August 2020
Question Type: Spoken

Senator Green asked:

Senator GREEN: Sure. In an answer from the department to a question on notice—we've received a few of them back from you now—with regard to legislation, we were told that draft instructions were given to the OPC on 19 June 2020 and that further additional drafting instructions were given to the OPC on 6 July. Why was there a need for additional instructions?

Mr Tregurtha: As we moved through developing the legislative package, I'm sure there were issues that arose or developments where, in discussion with the minister's office, we decided to issue further instructions around—

Senator GREEN: Was it the minister who advised that the department contact the OPC with further instructions?

Mr Tregurtha: I don't know off the top of my head, I'll have to take that on notice.

Answer:

1. It is not unusual to provide several tranches of drafting instructions as part of a legislative development process.
2. No.

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Committee: Environment and Communications References
Inquiry: Australia's faunal extinction crisis
Question No: 3
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Policy document for the conflict of interest register
Hansard Page: 4-5
Question Date: 25 August 2020
Question Type: Spoken

Senator Green asked:

Senator GREEN: On reform, then, one of the glaring omissions that the ANAO report found was that the department does not have an established conflict of interest register. Have you got one now?

Mr Larsen: Yes, we do.

Senator GREEN: When was that introduced? When did you begin that process?

Ms Croker: We began that process, essentially, as soon as we got the final ANAO report. I don't have the exact date. But I can confirm that we have implemented a new mandatory conflict of interest declaration process and register across the division for all staff.

Senator GREEN: For all staff?

Ms Croker: In the Environmental Approvals Division.

Senator GREEN: Is there a policy document that sits on top of that conflict register? Is there something that you can table to explain how the register works and who it covers?

Ms Croker: I don't have anything to table.

Senator GREEN: You can take that on notice, and we can put those questions on notice to you.

Ms Croker: Thank you. We can do that .

Answer:

The Environment Approvals Division conflict of interest process requires all staff in the Division to complete a conflict of interest declaration annually. This declaration must be updated whenever a new conflict occurs or a change in circumstances arises that could affect an existing conflict of interest declaration.

This process currently operates under the former Department of the Environment and Energy's Conflict of Interest Policy (attached). Following Machinery of Government changes on 1 February 2020, the Department of Agriculture, Water and the Environment is finalising a revised conflict of interest policy. Once this policy is finalised, the Environment Approvals Division's conflict of interest process will then operate under that policy. The Division's approach will be reviewed at that time to ensure consistency.



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Conflict of Interest Policy

Why is managing conflicts of interest important?

We manage conflicts of interest to ensure:

- we uphold high ethical standards
- we meet legal obligations
- we manage risk appropriately
- that fraud does not occur
- that our decisions are not compromised by bias
- that our decisions are not challenged because of actual or perceived bias
- we maintain the reputation of the Department and the Government.

Who does this policy apply to?

Managing conflicts of interest is everyone's responsibility. **All** Departmental employees are responsible for being aware of and managing conflicts of interest as they arise. From APS1 officers to SES officers, **all** Departmental employees must manage their conflicts of interest. If you are acting in a different role, you must also reassess your potential and actual conflicts of interest.

Contractors are also required as a condition of their contract to advise any potential conflicts of interest arising during the period of the contract.

There may be particular circumstances in which the process to manage conflicts of interest may differ from this policy. For example, for conflict of interest protocols relating to committees, refer to the Department's Committee Management Policy and Committee Management Guidelines. If you are unsure of the process you should comply with, seek advice from the [General Counsel Branch](#).

What is a conflict of interest?

A conflict of interest is a situation where an official or contracted provider has a personal interest (whether financial or non-financial) or an affiliation which could improperly influence or could be perceived to influence the performance of his or her official duties and responsibilities.

There are three kinds of conflict of interest – actual, perceived and potential;

1. **Actual:** A direct conflict between an official's current duties and responsibilities and existing personal interests.
2. **Perceived:** Where it could be perceived, or appears, that an official's personal interests could improperly influence the performance of their duties, whether or not this is in fact the case.
3. **Potential:** Where an official has personal interests that could conflict with their official duties in the future.

A conflict of interest can occur at any time, including situations where there was no previous conflict. As new information arises or as circumstances change it is important to assess whether any conflict of interest has arisen.

Situations in which a conflict of interest could occur include during procurement or grants administration, when developing policy or administering regulation, when making recruitment

decisions, as a result of outside employment, activities, memberships or relationships, or even in the way the Department conducts its business, such as when we regulate ourselves.

What are my obligations?

All APS employees and contractors have an important duty to uphold and promote the positive reputation of Australia, the Government and the Department. This reputation can be compromised by a real or perceived conflict of interest. For this reason, the APS Code of Conduct, under the *Public Service Act 1999*, requires that an APS employee must:

- behave honestly and with integrity in connection with APS employment
- take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment
- not improperly use inside information or the employee's duties, status, power or authority:
 1. to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
 2. to cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

Under the *Public Governance, Performance and Accountability Act 2013* every APS employee is an official and has an obligation to disclose their interests and avoid and manage any conflicts of interest in their work.

There may be serious consequences if conflicts of interest are not disclosed as required under the PGPA Act. An official may be subject to employment sanctions under the Public Service Act if they fail to disclose a material personal interest that relates to the affairs of their Department. Employment sanctions may include fines, imprisonment and loss of employment.

If you are unsure if there is a conflict of interest you should talk to your manager and if necessary seek advice from the [General Counsel Branch](#).

What do I need to do?

Step 1: Be aware

The first step to managing conflict of interest is to be aware that they can occur. You must regularly assess and review your personal interests to ensure they are not in conflict with official duties. When you have considered potential conflicts of interest in your work, you can record this in your performance agreement and performance discussions in ESS, or in a conflict of interest register (see below).

You must also take reasonable steps to avoid conflicts of interest. What is 'reasonable' will vary from situation to situation. When starting a new role or beginning new duties it is important to reassess whether you have a conflict of interest.

Step 2: Declare and seek guidance

If you believe you have a conflict of interest you must let your manager know as soon as practicable, fill out a conflict of interest declaration and provide a copy to your manager. All conflicts must be declared regardless of whether they are actual, perceived or potential. This is an important factor in ensuring that appropriate and reasonable steps are taken to manage the conflict.

Declaring a conflict of interest may not always remove the perception of a conflict of interest, but it does allow the Department to manage the situation in a professional and ethical manner. This helps

protect the Department, the integrity of the Department's processes and decision making, as well as your reputation.

Step 3: Manage

Once a conflict of interest is declared, measures must be taken to manage the conflict and limit the extent of any potentially damaging perceptions of the conflict of interest. For example, by not taking part in particular work where there is a known conflict.

You should discuss the matter with your manager including:

- the nature of the conflict
- any sensitivities or privacy issues it raises and how these can be managed
- any management action necessary to manage the conflict of interest
- any action you must take to avoid or minimise the conflict of interest.

While avoiding conflicts of interest is generally preferable, in practice there may be some situations in which conflicts of interest cannot be wholly avoided and need to be managed in a way which will withstand external scrutiny. All conflict management strategies you or your manager develop should address the conflict of interest in proportion to the type of conflict and the risk it poses in your work. Where you are unsure if conflict can be avoided or if proposed strategies to manage the conflict are appropriate, you should seek legal advice from the [General Counsel Branch](#) on the best steps to take.

You must also advise your manager if the circumstances giving rise to the conflict of interest change and amend your conflict of interest declaration as needed. If you change position or manager within the Department, you must advise the manager in your new area, in writing, of any existing conflict of interest situation.

Step 4: Record

Conflict of interest declarations must be saved as an official record in the Department's record management system. This ensures that evidence of the declaration is available should the conflict of interest be investigated.

For multiple conflicts of interest or if you work on large pieces of work (such as a program, procurement, or grant) which are complex and give rise to multiple conflicts, a specific conflict of interest register may need to be established. A conflict of interest register is simply a document which outlines who has a conflict of interest, the reason for the conflict existing, and measures undertaken to manage the conflict.

Who can I contact?

Key contact:

- [General Counsel Branch](#) – for questions and legal advice in relation to conflicts of interest.

Other Contacts:

- [Finance Branch](#) – for guidance on your obligations under the Public Service Act or the PGPA Act.
- [Procurement and Contract Management](#) – for guidance on conflicts of interest arising from procurement or contract management processes.
- [Grants Administration](#) – for guidance on managing conflicts of interest for grant processes.
- [Fraud Liaison](#) – for guidance on reporting fraud.
- [Risk Management](#) – for guidance on managing risks associated with conflicts of interest.

Environment and Communications References Committee
Answers to questions on notice
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Committee: Environment and Communications References Committee
Inquiry: Australia's faunal extinction crisis
Question No: 4
Hearing Date: 25 August 2020
Division/Agency: Department of Agriculture, Water and the Environment
Topic: Stakeholder oversight of the draft legislation
Hansard Page: 6
Question Date: 25 August 2020
Question Type: Spoken

Senator Green asked:

Senator GREEN: I've got further questions. I will put them on notice. Going back to the legislation again, there hasn't been a consultation draft distributed publicly, but have any stakeholders seen the draft legislation?

Mr Larsen: Not to my knowledge—the department certainly hasn't shared draft legislation with any stakeholders.

Senator GREEN: Do you want to take that on notice so you are certain? I wouldn't want you to mislead the Senate.

Mr Larsen: I'm happy to take that on notice and double-check that. In addition to my earlier evidence, the department submitted the final text of the bill for approval yesterday.

Answer:

1. No, the Department did not share the draft legislation with stakeholders.