Senator BULLOCK asked:

Senator Ruston: I suppose the confidence comes from, obviously, the issue that transpired before this review was undertaken. I was not privy to what happened that sparked this particular review, Senator Bullock. The only comment I can probably make is that, having now had the opportunity to have the briefings and the induction—not just to myself but to my staff—we now understand very clearly what needs to be done, how it needs to be done and who needs to be spoken to. I have got a level of confidence that my office will know what to do. If you wish me to get some information in relation to how Minister Joyce feels now, I am happy to do so.

Senator BULLOCK: It might add a little because you were obviously impressed with the induction process. We are really pinning our hopes there that the training that you have been through, taken in the spirit in which you have taken it and applied it as it should be applied, should provide the confidence that people need. I think that is what you are saying in answer to the question.

Senator Ruston: Yes, absolutely.

Senator BULLOCK: Let us see if the minister shares that confidence with you and your enthusiasm for the induction.

Senator Ruston: It gave me confidence. I know it certainly gave my staff confidence. It is an area that sometimes you get a bit scared about, particularly when you have got staff that perhaps have not come from within the public sector. It gives them some confidence to understand that this is actually a process that is there to protect them and not a process that they should be scared of. I am absolutely happy to take that on notice and ask the minister to provide his comments as well.

Answer:

The minister thanks the committee for the opportunity but has no comment to make.
Senator LUDWIG asked:

1. Please list all current legislation, covered by the department's portfolio, which contain a sunset provision/s. For each, please provide:
   a. What work has been done towards preparing for the activation of sunset provisions? If no work has commenced, why not?
   b. Has any consideration been given to delaying or alerting the sunset provisions?
   c. Please provide a schedule or a workplan for the sunset provisions becoming active
   d. When did/will this work begin?
2. Will there be any reviews of or relating to the legislation before or after the sunset provision is enacted? If yes:
   a. When is/was the review due to commence.
   b. What is the expected report date.
   c. Who is the minister responsible for the review
   d. What department is responsible for the review
   e. List the specific clauses or legislation under review caused by the statutory provision.
   f. List the terms of reference.
   g. What is the scope of the review.
   h. Who is conducting the review. How were they selected? What are the legislated obligation for the selection of the person to conduct the review?
   i. What is the budgeted, projected or expected costs of the review?
   j. When was the Minister briefed on this matter?
   k. What decision points are upcoming for the minister on this matter?
Question: 224 (continued)

   l. List the number of officers, and their classification level, involved in conducting the review

   m. Will the report will be tabled in parliament or made public. If so, when?

Answers:

1.

   • *Fisheries Legislation (Consequential Provisions) Act 1991*
   
   • *Wheat Marketing Amendment Act 2007*
   
   • All of the portfolio’s subordinate legislation, unless otherwise exempt.

a.

The portfolio has two Acts (primary legislation) that contain a sunset provision. These Acts are the *Fisheries Legislation (Consequential Provisions) Act 1991* and the *Wheat Marketing Amendment Act 2007*. In both Acts the sunset provision has already taken effect and is spent and therefore no further work is required.

The portfolio has close to 230 pieces of subordinate legislation, of which approximately 200 will automatically repeal after ten years under the *Legislation Act 2003*. The number of subordinate instruments will fluctuate regularly as instruments are created and repealed.

The *Legislation Act 2003* is administered by the Attorney-General’s Department (AGD). The department liaises regularly with the AGD on how to manage, review and prepare for the sunsetting dates of the agriculture and water resources portfolio instruments.

The department has undertaken the following to prepare for the activation of sunset provisions for its subordinate legislation:

   • With the assistance of the Office of Parliamentary Counsel (OPC), identified instruments, on a rolling basis, that are due to sunset within 24 months. AGD has advised that this is the minimum time required to review and make decisions on sunsetting instruments.
   
   • With the assistance of AGD, develop guidance material to assist in assessing and making decisions on subordinate instruments which are to sunset.

At regular intervals OPC repeals spent instruments via the Spent and Redundant Instruments Repeal Regulations. The portfolio contributes items to this Regulation on a case by case basis.
b. Currently, two instruments have been made that delay the sunsetting dates of several legislative instruments subject to sunsetting:

- The Legislative Instruments (Agricultural Export Instruments) Sunset-altering Declaration 2014 was made on 13 November 2014 and re-aligns the sunsetting date of a range of legislative instruments to 1 April 2020.

- The Legislative Instruments (Deferral of Sunsetting—Quarantine Instruments) Certificate 2015 was made on 4 February 2015 and defers the sunsetting dates of three legislative instruments:
  - Quarantine (Christmas Island) Proclamation 2004 and the Quarantine (Cocos Islands) Proclamation 2004 was deferred from 1 April 2015 to 1 April 2016. Both instruments have since been remade with a new sunsetting date of 1 October 2025.
  - Quarantine Service Fees Determination 2005 was deferred from 1 October 2015 to 1 October 2016.

c.

2016

April

<table>
<thead>
<tr>
<th>Timing</th>
<th>Legislation</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/04/2016</td>
<td>Direction No. SSJFDIR 1 - Bycatch Limits (26/10/2005)</td>
<td>The instrument will be left to sunset. Prohibitions previously set out in the directions will now be incorporated within Statutory Fishing Rights certificates.</td>
</tr>
<tr>
<td>1/04/2016</td>
<td>Direction No. SSJFDIR 2 - Prohibition on Shark Finning (26/10/2005)</td>
<td>The instrument will be left to sunset. Prohibitions previously set out in the directions will now be incorporated within Statutory Fishing Rights certificates.</td>
</tr>
<tr>
<td>1/04/2016</td>
<td>Horticulture Marketing and Research and Development Services Act 2000 - Declaration of Industry Export Control Body (29/01/2001)</td>
<td>Instruments will be left to sunset. New declarations have already been made which declare a new horticulture body.</td>
</tr>
<tr>
<td>Date</td>
<td>Legislation</td>
<td>Action</td>
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<tr>
<td>1/04/2016</td>
<td>Horticulture Marketing and Research and Development Services Act 2000 - Declaration of Industry Services Body (29/01/2001)</td>
<td>Instruments will be left to sunset. New declarations have already been made which declare a new horticulture body.</td>
</tr>
<tr>
<td>1/04/2016</td>
<td>Torres Strait Fisheries Management Notice No. 76 (28/11/2005)</td>
<td>Notice will be left to sunset. New instrument to be made.</td>
</tr>
</tbody>
</table>

### October

<table>
<thead>
<tr>
<th>Timing</th>
<th>Legislation</th>
<th>Action</th>
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</thead>
<tbody>
<tr>
<td>1/10/2016</td>
<td>Quarantine Service Fees Determination 2005</td>
<td>Instrument will be repealed in line with the making of the new Biosecurity Regulations.</td>
</tr>
<tr>
<td>1/10/2016</td>
<td>Torres Strait Fisheries Management Notice No. 79 (22/09/2006)</td>
<td>Instrument will be remade prior to sunsetting date.</td>
</tr>
</tbody>
</table>

### 2017

#### April

<table>
<thead>
<tr>
<th>Timing</th>
<th>Legislation</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/04/2017</td>
<td>Honey Levy (No. 1) Regulations, SR 1963 No.17</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Primary Industries (Customs) Charges (Designated Body) Declaration 2003</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 43 (08/02/1995)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 56 (04/05/2001)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 57 (04/05/2001)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>Date</td>
<td>Legislation</td>
<td>Action</td>
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<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 64 (24/12/2002)</td>
<td>Decision yet to be taken.</td>
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<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 65 (08/12/2003)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 66 (08/12/2003)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 71 (18/02/2004)</td>
<td>Decision yet to be taken.</td>
</tr>
<tr>
<td>1/04/2017</td>
<td>Torres Strait Fisheries Management Notice No. 81 (19/12/2006)</td>
<td>Decision yet to be taken.</td>
</tr>
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**October**

<table>
<thead>
<tr>
<th>Timing</th>
<th>Legislation</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/10/2017</td>
<td>Fisheries Management Act 1991 - Fish Receiver Permits Declaration 2007</td>
<td>Decision yet to be taken.</td>
</tr>
</tbody>
</table>

**2018**

**April**

<table>
<thead>
<tr>
<th>Timing</th>
<th>Legislation</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/04/2018</td>
<td>Australian Wine and Brandy Corporation (Exports) Regulations</td>
<td>The department has begun consideration of amendments to the regulations and possible remaking of the regulations.</td>
</tr>
<tr>
<td>1/04/2018</td>
<td>Dairy Produce Regulations</td>
<td>To be considered at a later date, some provisions already considered under the review of the dairy levy poll.</td>
</tr>
<tr>
<td>1/04/2018</td>
<td>Primary Industries (Excise) Levies (Forest Growers) Designated Bodies Declaration 2007</td>
<td>Decision yet to be taken.</td>
</tr>
</tbody>
</table>
The above table notes work undertaken to date.

2.

The department is constantly reviewing legislation it is responsible for, including legislation that contains sunsetting provisions or is captured under the sunsetting provisions in the Legislation Act 2003.

Reviews are not always undertaken specifically for the reason of the legislation sunsetting however, there are currently three broad reviews being undertaken which incorporate legislation which is due to sunset over the next 1–5 years.

Between July and September 2015 the department undertook a review of its export legislation. In December 2015 the government agreed to the improvements recommended in the review and the department is now in the process of developing legislation to implement the improvements recommended in the review. The portfolio’s export legislative instruments have a deferred sunsetting date of 1 April 2020 and it is intended that the improved legislation will be in place prior to the 1 April 2020 sunset date.

Dairy Australia and Australian Dairy Farmers, with the assistance of the department, recently completed a review of legislation which included legislative instruments due to sunset in the next 2–3 years. The outcomes of this review can be found on the dairy levy poll process review webpage.

The department assisted the Treasury in its recent review of the Horticulture Code of Conduct. Although the review did not directly impact portfolio legislation with sunsetting provisions, it did assist the Treasury review legislation it is responsible for prior to its 1 April 2017 sunsetting date.

As noted above the department is continually taking action to review its legislation to ensure it remains effective for its purpose. Many of the questions from 2.1. to 2.13 are not relevant to the day to day business of the department reviewing its legislation and to attempt to provide this level of detail would be a significant diversion of the department’s resources.
Senator LUDWIG asked:

Since the change of Prime Minister on 14 September 2015:

1. List all legal costs incurred by the department or agency

2. List the total cost for these items, broken down by source of legal advice, hours retained or taken to prepare the advice and the level of counsel used in preparing the advice, whether the advice was internal or external

3. List cost spend briefing Counsel, broken down by hours spent briefing, whether it was direct or indirect briefing, the gender ratio of Counsel, how each Counsel was engaged (departmental, ministerial)

4. How was each piece of advice procured? Detail the method of identifying legal advice

Answer:

Agencies are required (under the Legal Services Directions) to report legal services expenditure figures to the Office of Legal Service Coordination (OLSC). Those figures are required to be reported by 30 August each year. To require the department and its portfolio bodies to review and provide detail of all legal services and legal services expenditure for this period may amount to an unreasonable diversion of departmental resources.

Legal expenditure for each portfolio agency is detailed below and has been calculated consistently with the methodology for calculating legal expenditure for the OLSC.

1-3 For the period 14 September 2015 – 31 January 2016, the department and relevant portfolio agencies spent (including GST) as follows:

- Department of Agriculture
  - $672 422 on legal services from the Australian Government Solicitor
  - $80 148 on legal services from private law firms
  - $1 131 470 on internal legal services
Question: 225 (continued)

- Australian Fisheries Management Authority (AFMA)
  - Nil on legal services from the Australian Government Solicitor
  - $2 134 on legal services from private law firms
  - $233 661 on internal legal services
  - $38 159 on counsel

- Australian Grape and Wine Authority (AGWA)
  - $8 969 on legal services from the Australian Government Solicitor
  - $14 531 on legal services from private law firms

- Australian Pesticides and Veterinary Medicines Authority (APVMA)
  - $61 872 on legal services from the Australian Government Solicitor
  - $13 186 on legal services from private law firms
  - $392 680 on internal legal services

- Cotton Research and Development Corporation
  - Nil on legal services from the Australian Government Solicitor
  - $8 075 on legal services from private law firms

- Fisheries Research and Development Corporation
  - Nil on legal services from the Australian Government Solicitor
  - $14 701 on legal services from private law firms

- Grains Research and Development Corporation (GRDC)
  - Nil on legal services from the Australian Government Solicitor
  - $171 178 on legal services from private law firms
  - $78 261 on internal legal services

- Murray Darling Basin Authority (MDBA)
  - $30 396 on legal services from the Australian Government Solicitor
  - $187 433 on legal services from private law firms
  - $155 376 on internal legal services
  - $870 on counsel
Question: 225 (continued)

- Rural Industries Research and Development Corporation
  - Nil on legal services from the Australian Government Solicitor
  - $19,588 on legal services from private law firms

4. The Department and portfolio agencies all obtain external domestic legal services from legal service providers on the Legal Services Multi-Use List. In addition, internal legal advice is provided by the Office of the General Council in the Department and by in house teams in AFMA, APVMA, GRDC and MDBA. The in house legal teams do not charge for legal advice provided nor does it estimate the commercial value of legal advice provided. To attempt to provide this level of detail may amount to an unreasonable diversion of departmental resources.
Senator LUDWIG asked:
Since the change of Prime Minister on 14 September 2015:

1. How many requests for documents under the FOI Act have been received?
2. Of these, how many documents have been determined to be deliberative documents?
3. Of those assessed as deliberative documents:
   a. For how many has access to the document been refused on the basis that it would be contrary to the public interest?
   b. For how many has a redacted document been provided?

Answer:
For the period between 14 September 2015 and 19 February 2016:

1. 39 requests.
2. Nil.
3. Not applicable.
Question: 227

Division/Agency: Office of the General Counsel

Topic: Freedom of Information

Proof Hansard page: Written

Senator LUDWIG asked:

Since the change of Prime Minister on 14 September 2015:

1. How many FOI requests were received to date.
2. How many of those requests were finalised within the regular timeframes provided under the FOI Act?
3. How many of those requests were granted an extension of time under s 15AA of the FOI Act?
4. How many of those requests were granted an extension of time under s 15AB of the FOI Act?
5. How many of those requests were finalised out of time?

Answer:

For the period between 14 September 2015 and 19 February 2016:

1. 39 requests.
2. 32. The remaining 7 are still within the statutory time period to deal with a freedom of information (FOI) request.
3. Three.
4. Nil.
5. Nil.
Senator STERLE asked:

1. Update on the implementation of the recommendations of the FOI review?
2. Has the department reviewed its FOI policies and procedures?
3. Have procedures been developed to identify and manage complex and sensitive cases?
4. What would be constituted as complex and sensitive case? Provide practical exam.
5. What are the practical measures the department is currently doing to have better communication with the Minister’s office when dealing with FOI procedures?
6. Answer provided by the department about how FOI requests should be handled “The department has discussed the handling of FOI requests with the Minister’s office and will offer further assistance as requests are received”
7. How can the public have confidence that the Minister’s office is capable in handling FOI requests when it appears that procedures in Minister’s office were excluded from the review of FOI policies and procedures?

Answer:

1. All six agreed recommendations have been substantially implemented. As further discussed in responses below, the department has successfully transitioned to decentralised decision making for sensitive and complex freedom of information (FOI) requests. Revised guidance material for processing FOI requests to the department and dealings with the ministers’ offices has been developed. Recommendation three was not adopted because it was superseded by other organisational changes.
2. Yes.
3. Yes. The first assistant secretary of the division most closely connected to the subject matter of the request makes an initial assessment of complexity and sensitivity and nominates an SES decision maker of appropriate experience and seniority.
4. The department relies on the judgement of the decision maker and the subject matter experts to identify complex and sensitive matters.

5-7. The department provides administrative support and FOI expertise for portfolio ministers and is available to provide FOI training and legal advice as required. The department has provided FOI induction and briefing to the ministers.

The department’s approach to sensitive and complex FOI matters ensures that the minister’s office is appropriately informed about upcoming departmental FOI decisions that may generate media or other interests. The SES decision maker determines if ministerial consultation or briefing is appropriate.
Question: 229

Division/Agency: Office of the General Counsel

Topic: Statutory Reviews

Proof Hansard page: Written

Senator LUDWIG asked:

Please list all current legislation, covered by the department's portfolio, which contain a statutory review provision/s. For each, please provide:

1. What work has been done towards preparing for the review? If none, why not?
2. Please provide a schedule or a workplan for the review
3. When did/will this work begin?
4. When is/was the review due to commence.
5. What is the expected report date.
6. Who is the minister responsible for the review
7. What department is responsible for the review
8. List the specific clauses or legislation under review caused by the statutory provision.
9. List the terms of reference.
10. What is the scope of the review.
11. Who is conducting the review. How were they selected? What are the legislated obligation for the selection of the person to conduct the review?
12. What is the budgeted, projected or expected costs of the review?
13. When was the Minister briefed on this matter?
14. What decision points are upcoming for the minister on this matter?
15. List the number of officers, and their classification level, involved in conducting the review?
16. Will the report will be tabled in parliament or made public. If so, when?
The agriculture and water resources portfolio has nine Acts which contain statutory review provisions that require a review of the operation of the Act or part of the Act (not of individual decisions or agreements or plans made under it).

1. **Agricultural and Veterinary Chemicals (Administration) Act 1992**

Section 72 requires the minister to ensure that, at least every 10 years, there is a review of the operation of the following Acts, and any instruments made under those Acts: the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994; the Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994; the Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994; the Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994; the Agricultural and Veterinary Chemicals Act 1994; the Agricultural and Veterinary Chemicals (Administration) Act 1992; and the Agricultural and Veterinary Chemicals Code Act 1994.

At least one of the persons conducting the review must not be otherwise appointed, employed or engaged by the Commonwealth. The review must include a request for, and consideration of, submissions from members of the public. A copy of the review must be tabled in each house of Parliament within 15 sitting days after: (a) for the first review under this section—the tenth anniversary of the commencement of this section; and (b) for later reviews—the tenth anniversary of the day on which the written report of the immediately preceding review was laid before each House of the Parliament. This section was inserted by the Agricultural and Veterinary Chemicals Legislation Amendment Act 2013 and commenced on 1 July 2013.

2. **Agricultural and Veterinary Chemicals Legislation Amendment Act 2013**

Section 4 requires a review of the operation of amendments to be conducted, and the review report to be tabled within 15 sitting days of 1 July 2019. Section 5 provides for a separate review of matters relating to the powers and functions of the Agricultural Pesticides and Veterinary Medicines Authority (APVMA). There is no deadline for the completion or tabling of the review, and the section ceases to have effect five years after the day the Act receives assent. The Act received assent on 29 June 2013.
3. Dairy Produce Act 1986

Section 76 of Schedule 2, Part 2, Division 7 requires the Dairy Adjustment Authority to conduct, during 2002-03, a review and prepare a report to the minister on the adequacy of collections of dairy adjustment levy to fund payments made under the Dairy Structural Adjustment Program scheme, the Supplementary Dairy Assistance scheme and dairy exit payments. The minister must table the report in each house of Parliament within 15 sitting days after the completion of the report. This provision is spent.

4. Horse Disease Response Levy Collection Act 2011

Section 35 requires the minister to ensure that at least once every five years there is a review of whether a levy on manufactured feed and worm treatments is the most appropriate way of raising money to meet the costs of any emergency response to a disease affecting horses. This review is not required if regulations are in force under the Horse Disease Response Levy Act 2011 providing for the working out of an amount (except a nil amount) of levy on a disposal of manufactured feed or worm treatment. If there is not a review in that five-year period, the minister must ensure that one is undertaken as soon as practicable after there are not any such regulations in force. The department intends to report to the Minister within the legislated timeframes.

5. Illegal Logging Prohibition Act 2012

Section 84 requires the minister to cause a review to be undertaken of the first five years of the operation of this Act. The review report must be completed within 12 months of the end of the 5 year period, and must be tabled in each house of Parliament within 15 sitting days of receipt by the minister. Sections 1 and 2 of the Act commenced on 29 November 2012.


Clause 10.1, 10.3 requires the Ministerial Forum to review aspects of the Agreement that is included in the Act. A review of the operation of Lake Eyre Basin Intergovernmental Agreement must occur on a ten yearly basis. In December 2014, the Ministerial Forum (consisting Ministers from SA, QLD the NT and the Australian Government) agreed to bring the review forward. The review will be undertaken in 2016-17.

7. Torres Strait Fisheries Act 1984

Article 19 (2)(c) within the Torres Straight Treaty (Schedule 1 of the Torres Strait Fisheries Act 1984) requires a review from time to time as necessary, and to report and to make recommendation to the Parties on, any matters relevant to the effective implementation of the Treaty, including the provisions relating to the protection and preservation of the marine environment, fauna and flora and in the vicinity of the Protected Zone. No review is currently being undertaken

8. Water Efficiency Labelling and Standards Act 2005

Section 76 requires the Water Efficiency Labelling Scheme (WELS) to be reviewed every 5 years. A review of WELS was undertaken in 2015 in accordance with section 76 of the Act. The review found that the scheme was effective, delivered benefits to Australia and recommended some
minor reforms to improve business processes and reduce compliance costs. The next review is not due until 2020, with preparations likely to begin in 2019.

9. **Water Act 2007**

Section 86AJ of the Act specifies that the minister must cause two independent reviews to be conducted into whether the funding available under the Special Account is sufficient to increase the volume of Basin water resources available for environmental use by 450 gigalitres. The panel conducting the review must present a written report of the review to the minister.

The report of the first review is to be provided by 30 September 2019. The minister must table the response to this report by the time the Treasurer presents the 2020-2021 budget to Parliament. The report of the second review is to be provided to the minister by 30 September 2021. The Minister must table the response to this report by the time the Treasurer presents the 2022-2023 budget to Parliament.

**Q2-15**

The department consistently reviews legislation it is responsible for, including legislation that contains statutory review provisions.

Of the nine portfolio Acts that contain statutory review provisions only two require reviews to be undertaken in the next 24 months, the review of aspects of the Lake Eyre Basin Intergovernmental Agreement will be brought forward to 2016-17 rather than its legislated review date of 2021.

- **Horse Disease Response Levy Collection Act 2011** – the department intends to provide a report to the minister on whether a levy on manufactured feed and worm treatments is the most appropriate way of raising money to meet the costs of any emergency response to a disease affecting horses. The department will undertake the review in consultation with stakeholders and report to the minister prior to end of the review period in November 2016.

- **Illegal Logging Prohibition Act 2012** – A review of the operation of the Act is due to the minister prior to 28 November 2018. The review will be undertaken within the required timeframes. More information will be available on aspects of the review in due course.