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Canberra ACT 2600

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13 February 2012

Dear Sir

## **Re: Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011 – Supplementary submission**

HSI would like to take this opportunity to thank the Committee for the opportunity to provide evidence in Melbourne on 3<sup>rd</sup> February 2012. At this hearing, it was requested that HSI take on notice a number of questions. For many of these questions it is difficult to give a precise answer due to the nature of the issue in the time provided, but we hope the following supplementary information is of help in the Committee's further deliberations.

### *1. Do States have emergency listing options under their environmental legislation and are these options being pursued?*

HSI asked the Australian Network of Environmental Defenders Offices (ANEDO) to provide them with this information. They advised that NSW is the only State with an emergency listing process for threatened species, with further detail as follows:

*Victoria:* There are no emergency listing procedures for threatened species in Victoria. The process for listing of species is in the *Flora and Fauna Guarantee Act 1988*. The Minister cannot list a species until it has gone through a full scientific advisory committee process which under the Act can take up to three years. There is provision to make a 'critical habitat determination' to protect critical habitat of any species (not just those listed) and then implement some management arrangements, however those processes are also lengthy and are not suited to emergency situations. Further, no critical habitat determination has ever been made.

*Western Australia:* WA does not have threatened species legislation as such. It has a Wildlife Conservation Act, and flora and fauna can be listed as rare under this Act, however it is not integrated with the development assessment process. The state environment agency does have its own non-statutory lists of threatened species which it takes into account when asked to comment in the context of an EIA, however there is no statutory process for emergency listing, because the listing process depends entirely on departmental discretion. With the absence of threatened species legislation in WA, they rely on Federal controls to ensure that there is a proper transparent process for consideration of threatened species impacts.

*Tasmania:* There are no emergency listing procedures in the *Threatened Species Protection Act 1995*. Under s 32, the Minister can make an interim protection order in respect of habitat for a listed species, or a nominated species which has been accepted by the Scientific Advisory Committee (SAC) for listing, but the SAC approval process is lengthy so wouldn't generally be useful in an emergency situation. An interim protection order (IPO) can prohibit activities, require work to be done or require further permits to be obtained, but the IPO only remains in force for 30 business days on private land (65 business days for Crown land).

*NSW:* The *Threatened Species Conservation Act 1995* (TSC Act) provides for a process for emergency listing of threatened species in Division 4.<sup>1</sup> The NSW Scientific Committee may list a species on an emergency basis by giving it a provisional listing.<sup>2</sup> Generally the Committee is to consider an emergency nomination as soon as practicable, and in any case must generally make a determination about a nomination within 6 months.<sup>3</sup>

Once a determination for provisional listing is published, the TSC Act (Schedule 1 or 1A – endangered and critically endangered species) is taken to have been amended to include the species, until the provisional listing ceases to have effect.<sup>4</sup>

*Northern Territory:* There is no process for emergency listing of threatened species in the NT. The process for listing of threatened species is regulated by the *Territory Parks and Wildlife Conservation Act* (NT), Part IV, Div 2, Subdivision 1.

*Queensland:* There are no emergency listing procedures in the *Nature Conservation Act 1992* (Qld) (NCA). A major criticism of the listing process in Queensland is that it is very slow (many years). However, the NCA allows the Minister, upon being satisfied of certain things, to issue an interim conservation order (ICO) (see s.102). An ICO may prohibit or place controls on a specified threatening process. It is for a limited duration (up to 60 days with possible extension for up to 90 days).

HSI has not separately sought to pursue the option of emergency listing within State / Territory legislation.

2. *How many species you are aware of have been discovered through an EPBC Act assessment? How many threatened species are discovered through other means of research?*

HSI does not have either the information available or ready access to such information to be able to answer this question. All of HSI's nominations have been pursued proactively and not as a result of an EPBC Act assessment discovery, however we rely strongly on peer-reviewed scientific information, and therefore our nominations are often the result of recently published research or change in the conservation status, such as a change in the IUCN listing of a species, which we believe needs to be reflected under Australian federal and/or state/territory environmental legislation.

### **EPBC Act listing process**

3. *How many nominations has your organisation made to list a species or ecological community under the EPBC Act?*

HSI has submitted a total of 94 nominations since commencement of the Act in 2000, consisting of 36 species nominations and 58 ecological community nominations.

4. *How many of these nominations have not been listed under the EPBC Act?*

44 of HSI's 94 nominations, or 47%, have not resulted in a listing under the EPBC Act,

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<sup>1</sup> See EDO NSW factsheet 6.1 *Threatened Species and ecological communities*, available at [http://www.edo.org.au/edonsw/site/factsheet/fs06\\_1.php#\\_ftn21](http://www.edo.org.au/edonsw/site/factsheet/fs06_1.php#_ftn21).

<sup>2</sup> *Threatened Species Conservation Act 1995* (NSW) s 27.

<sup>3</sup> *Threatened Species Conservation Act 1995* (NSW), s 32.

<sup>4</sup> *Threatened Species Conservation Act 1995* (NSW), s 34. Provisional listing will cease via the earliest of – final determination by Scientific Committee to list; not list; or within 12 months of provision listing (s 36).

consisting of 18 species nominations (including 7 pending nominations) and 26 ecological community nominations (including 10 pending nominations).

5. *What is the average time taken for the assessment process to be completed, from nomination through to listing or rejection?*

Accurate data is not available for all nominations; however the following give approximations for recent outcomes:

Species nominations:

Listing – Average time of 41 months, with extremes being 13 and 64 months.

Rejection – Average time of approximately 25 months.

Ecological community nominations:

Listing – Average time of 45 months, with extremes being 30 and 64 months.

Rejection – Average time of 18 months.

HSI suggests that further advice be sought from the Department to obtain further information on average time periods.

6. *Has your organisation used any other method to try and list a species or ecological community under the EPBC Act, e.g. making a direct representation to the minister or the environment department?*

HSI has made direct representations to the Minister regarding a particular nomination only once a formal EPBC nomination has been submitted. We have also sought the advice of the environment department in advance of submitting species and ecological community nominations. HSI has only made direct representations to the Minister with a request for emergency listing for heritage values.

**State and territory listing processes**

7. *How many nominations has your organisation made to list a species or ecological community under state or territory legislation?*

HSI has submitted a total of 61 nominations under State and Territory listing processes, consisting of 25 species and 36 ecological community nominations.

8. *How many of these nominations have not been listed under state or territory legislation?*

A total of 28 of these 61 nominations, or 46%, have not been listed, consisting of 21 species nominations (including 6 pending nominations) and 7 ecological community nominations (including 4 pending nominations).

9. *What is the average time taken for the assessment process to be completed, from nomination through to listing or rejection?*

Accurate data is difficult to obtain or not available for all nominations; however the following give approximations for recent outcomes:

Species:

Listing – Average time of 32 months,

Rejection – Average time of 30 months.

Ecological communities:

Listing – Average time of 30 months.

Rejection – Average time of 55 months.

HSI suggests that further advice be sought from State and Territory Governments on average time periods.

10. *Has your organisation used any other method to try and list a species or ecological community under the state or territory legislation, e.g. making a direct representation to a minister or a department?*

HSI has not used any other methods under state or territory legislation to get a species or ecological community listed.

Should you require any further information or clarification on the above points please do not hesitate to contact me.

Yours sincerely

Alexia Wellbelove  
Senior Program Manager