



9 February 2012

Senator Doug Cameron
Chair Senate Environment and Communications Legislation Committee
Parliament House
Canberra ACT 2600

Re: MCA Submission to the Senate Committee Inquiry – EPBC Amendment (Emergency Listings) Bill 2011

Dear Senator Cameron

The Minerals Council wishes to clarify its position in relation to evidence given before the Senate Environment and Communications Legislation Committee inquiry into the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011 at its hearings in Melbourne on 3 February 2012.

I respectfully request that this representation to you be accepted as additional evidence to the Committee. In a similar vein, we will be making further representations to the Committee in response to questions taken on notice in the course of that hearing.

The specific point of clarification relates to confusion arising from the discourse between Senator Waters and the MCA representatives in relation to proposed amendments to Section 158A. To be very clear, the MCA does not support amendments to Section 158A, as is clearly stated in our written submission to the Inquiry, and underscored in evidence given to the hearing notwithstanding what might appear to be a contradiction to that position.

During the course of questioning, Senator Waters asked whether the MCA "...would support an emergency listing process with those inbuilt failsafe mechanisms against vexatious nominations, and you would be fine for that process to be taken into account in the assessment process as long as it was not post the approval decision." To which Mr McCombe responded: "That is correct. It would need to be undertaken as part of the assessment process."

This is the MCA's policy position as articulated in our written submission to the Inquiry vis:

The MCA recognises the need for an EPBC process for emergency listings; however any approach developed should be science based, transparent and provide a clear process for listing to provide certainty for project proponents.

The subsequent discourse between Senator Waters and Acting CEO Mr Chris Fraser may appear to confuse that position, but rather Mr Fraser was seeking to underscore the statement made by Mr McCombe and not acceding to the position implied in the Senator's questioning. When responding to Senator Waters he has clearly referred back to our submission,

The MCA submission to the inquiry is clear in our opposition to the proposed amendment to Section 158A:

*The EPBC Amendment may seriously and adversely impact on projects operating under a previous EPBC determination, as it is intended that the emergency listing would override existing Section 158A provisions that state that a listing event cannot affect the validity of a primary decision made prior to a listing event (vary, suspend or revoke an existing decision). **This retrospective power would significantly increase the sovereign risk for projects.** Accordingly, the MCA considers the proposed amendments to Subsection 158A (1) paragraph (i) and (j) be removed.*

While the MCA is supportive of an EPBC process for emergency listings we consider it is imperative that there are clear criteria for the identification and listing of species, transparency in relation to the application of the emergency listing process, and certainty that the measure will not be applied retrospectively for projects that have already received a Ministerial approval for their projects or which have been previously determined as 'not a controlled action' under the Act.

Please accept my sincere apologies if we have confused the Committee in the evidence we gave, notwithstanding our best intentions to represent the Council's position with integrity and credibility.

Should the Committee wish to discuss this matter further, please do not hesitate to contact me directly.

Yours sincerely

MITCHELL H. HOOKE
CHIEF EXECUTIVE OFFICER

Cc: Minister Martin Ferguson; Minister Tony Burke; Senator Larissa Waters