

Senate Standing Committee on Environment and Communications

**Inquiry into the Environment Protection and Biodiversity Conservation Amendment
(Emergency Listings) Bill 2011**

Public Hearing – 3 February 2012

Sustainability, Environment, Water, Population and Communities portfolio

The operation of the precautionary principle in the EPBC Act

Senator WATERS: On that very point, is leaving open the gate for emergency listed threatened species consistent with the precautionary principle as required by the act?

Mr Burnett: I do not know how to answer that question because the precautionary principle is part of the principles of ecologically sustainable development, which are picked up in the objects of the act and which, therefore, apply across the board to everything that is under act. I know that that specific section, which you are proposing to amend, in some cases requires the minister to address the precautionary principle in a specific decision rather than just taking it into account. That is more generally as it is in any decision under the act. I do not quite know how to answer the question.

Senator WATERS: The point is, if you do not have the information about whether the species is threatened or not, surely it is a precautionary approach to say, 'Let's give them the benefit of the doubt,' and put them on the list, otherwise we could be doing something terrible and we do not even know. That seems to me to be the ultimate expression of the precautionary principle in practice, which is required under the act through ESD, as you rightly point out. I am trying to understand your concern with that approach.

Mr Burnett: It comes back to balancing competing policies that we were discussing before. Yes, that is a relevant consideration but, as the act currently stands or even when you have a discretionary decision, the minister is equally able to take into account the other elements of ecologically sustainable development.

Senator WATERS: Not on listing species. The economic and social considerations are specifically precluded.

Mr Burnett: I am not sure that is the case.

Senator WATERS: I am positive that is the case.

Mr Burnett: I would need to check that.

Senator WATERS: Perhaps you could take that on notice and confirm that.

Mr Burnett: I will take that on notice. I will not say anything because I am not 100 per cent sure, and I will need to check it.¹

Under subsection 186(2) of the EPBC Act, in deciding whether to list a species as threatened, the Minister may only consider the eligibility of the species for the category concerned (for example, "vulnerable") or the effect that including the species in that category could have on the survival of the native species.

¹ *Committee Hansard*, 3 February 2012, p. 29.

What would be the impact on the capacity of the TSSC under the proposed changes to the Act?

In its response to the Review of the EPBC Act, the Government has proposed replacing the TSSC with a Biodiversity Scientific Advisory Committee (BSAC). BSAC would, in addition to the current work of the TSSC, have the role of advising the Minister on scientific issues relating to biodiversity generally. While this is obviously a wider role, it is not possible to say in advance whether this would have any material impact on the capacity of the Committee to undertake threatened species assessments. It would depend for example on the extent to which the Minister requested advice from BSAC on science-based biodiversity issues.

Following an emergency listing it is proposed that the TSSC be required to make its normal assessment of the eligibility of the species, including calling for public comment, within 12 months of the listing.

Would the TSSC have the capacity to conduct these additional assessments in addition to carrying out its normal assessment duties?

The department expects that in a typical case, a species or ecological community that is assessed as part of an emergency process would have been assessed at a later time in any event. In other words, the main impact of an emergency assessment process on workload is likely to be to change priorities rather than increase workload overall.

The new emergency listing provisions are intended to work in a similar way to those that already exist for the emergency listing of heritage places.

Have the emergency listing provisions for heritage places proved to be successful?

Yes.

Does the EPBC Act take into account a proponents' capability to pay for any financial implications as a result of their project proposal?

Yes. Paragraph 135(4)(b) of the EPBC requires the Minister to consider the desirability of ensuring, as far as practicable, that a proposed condition is a cost-effective means to achieve the object of the condition for both the proponent and the Commonwealth.