

Chapter 2

Management of the Listing Process

At [the] national level, the list of threatened species and ecological communities is a critical and potent document: to a large degree it determines allocation of conservation funding; it focuses environmental impact assessment processes on a select group of organisms; and its length and dynamism charts trends in the state of Australian biodiversity.¹

2.1 The committee heard a range of concerns about the following aspects of the process for listing threatened species and ecological communities:

- lengthy delays between nomination and listing of species and communities;
- the lists are incomplete, inaccurate and are not reviewed;
- heavy reliance on public nominations;
- problems with listing where there is insufficient data;
- taxonomic bias in the lists;
- duplication and inconsistency between the EPBC Act lists and state/territory lists (and the IUCN² Red List of Threatened Species);
- lack of emergency listing provisions (noting that they are proposed to be introduced as part of EPBC Act reform legislation³); and
- the role of the Threatened Species Scientific Committee (TSSC).

2.2 This chapter focusses on the listing processes under the EPBC Act. However, coordination with state and territory lists is also considered where relevant. It is also noted that many of the problems with the EPBC Act listing process are also relevant to state and territory listing processes—such as taxonomic bias and issues with insufficient data for some species.

Timeliness in the listing process

2.3 Many submitters complained of lengthy delays between nomination and listing of species and communities.⁴ For example, the Save the Bilby Fund described

1 Professor John Woinarski, *Submission 48*, p. 6.

2 International Union for Conservation of Nature and Natural Resources (IUCN), Red List of Threatened Species™, see further: <http://www.iucnredlist.org/>

3 SEWPAC, *Submission 143*, p. 7.

the listing process under the EPBC Act as 'grindingly slow'.⁵ The Humane Society International (HSI) felt that the long time from the point of nomination to actual listing was 'frustrating'.⁶

2.4 Submitters pointed out that delays in listing can have significant consequences.⁷ In particular, as Birdlife Australia observed that 'a failure to list species can increase the risk that they are not considered at the time of new development proposals'.⁸ HSI were also concerned that while a species is under nomination, the species can 'continue to decline and their conservation status can become more threatened'.⁹ Others were worried that delays in listing can mean delays in securing resources for recovery.¹⁰ Some submitters also argued that an efficient listing process is important simply because 'early intervention dramatically improves the likelihood of achieving population recovery'.¹¹

2.5 The National Parks Australia Council pointed out that:

Timeliness of the listing process compares very unfavourably with the emphasis on timeliness for the approvals process. Whereas the department reports in detail on time taken to assess approvals within the tight timeframes of the [EPBC] Act, there is not even a report on the length of time it takes to approve a listing of a species.¹²

2.6 The committee's own analysis of data provided by the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC)

4 Australasian Native Orchid Society and the Australian Orchid Council, *Submission 4*, pp 4–5; Mr Rob Brewster, *Submission 13*; Zoo and Aquarium Association, *Submission 27*, p. 1; ANEDO, *Submission 137*, p. 5; Friends of Tootgarook Wetland Reserves, *Submission 17*, p. 2; Clarence Valley Conservation Coalition, *Submission 38*, p. 7; Dr Peter Kyne, *Submission 51*, p. 2; Dr Greg Clancy, *Submission 52*, p. 2; Lawyers for Forests, *Submission 70*, p. 11; Professor Hugh Possingham and Associate Professor Michael McCarthy, *Submission 127*, p. 3; Colong Foundation for Wilderness, *Submission 43*, p. 8; Mr Philip Rance, *Submission 105*, p. 1; Earth Learning Inc, *Submission 124*, p. 5; Associate Professor Michael McCarthy, *Committee Hansard*, 20 February 2013, p. 28; Wildlife Disease Association Australasia, *Submission 117*, p. 2; Nature Conservation Society of South Australia, *Submission 150*, p. 5.

5 Save the Bilby Fund, *Submission 16*, p. 4.

6 Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 22; see also Associate Professor Michael McCarthy, *Committee Hansard*, 20 February 2013, p. 28.

7 Colong Foundation for Wilderness, *Submission 43*, p. 9.

8 BirdLife Australia, *Submission 82*, p. 13.

9 Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 22; see also Associate Professor Michael McCarthy, *Committee Hansard*, 20 February 2013, p. 28; Dr Peter Kyne, *Submission 51*, p. 2; Earth Learning Inc, *Submission 124*, p. 3.

10 Nature Conservation Society of South Australia, *Submission 150*, p. 5; see also Threatened Plant Action Group, Nature Conservation Society of South Australia, *Submission 157*, p. 6.

11 Zoos Victoria, *Submission 42*, p. 4.

12 National Parks Australia Council, *Submission 142*, p. 12.

indicates that since 2007,¹³ of the 43 species that have been listed or upgraded via the public nomination process, the average time between the date of nomination and the date of listing (or change of category) was almost two years. The timing of listing of ecological communities since 2007 appears also to be around two years.¹⁴

2.7 In answers to the Committee's questions about delays in the listing process, SEWPAC responded that, when determining whether a species or ecological community is eligible for listing as threatened under the EPBC Act, the TSSC:

... undertakes a rigorous scientific assessment of the species or ecological community's threat status against criteria set out under the EPBC Act. Timeframes for the completion of assessments are recommended by the Threatened Species Scientific Committee and determined by the Minister. Timeframes vary depending on the complexity of each nomination. When comprehensive information is available, the assessment may be completed as quickly as within four months. The most complex nominations tend to be those relating to ecological communities. Assessment timeframes for these nominations can take up to two years depending on the quality of information and data available.¹⁵

2.8 SEWPAC further explained that the TSSC can request that the Minister extend the assessment period, explaining that:

Extension requests can be due to a number of reasons, for example if the Threatened Species Scientific Committee is waiting on additional studies or data to better inform its assessment. Section 194P of the EPBC Act requires that the total length of all extensions of the assessment completion time must not be longer than five years. The Minister can also extend the decision time after receiving the advice from the Threatened Species Scientific Committee, to enable further information to be considered.¹⁶

Emergency Listing

2.9 The lengthy listing process led to calls for 'emergency listing' provisions.¹⁷ As outlined in Chapter 1, in March 2012, the Environment and Communications Legislation Committee reported on the *Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011* (Emergency Listings Bill).

13 That is, after amendments made to the EPBC Act by the *Environment and Heritage Legislation Amendment Act* (No. 1) 2006 which made changes to the listing process.

14 SEWPAC, *Answers to questions on notice*, Question 137, *Supplementary Budget Estimates*, October 2012, at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ec_ctte/estimates/supp_1213/sewpac/program_5-1.pdf (accessed 4 March 2013).

15 SEWPAC, *Answers to questions on notice from public hearing 15 February 2013*, p. 7 [Q. 6].

16 SEWPAC, *Answers to questions on notice from public hearing 15 February 2013*, p. 7 [Q. 6].

17 Friends of Tootgarook Wetland Reserves, *Submission 17*, p. 2; Mr Craig Thomson, *Submission 64*, p. 2; Lawyers for Forests, *Submission 70*, p. 11; ANEDO, *Submission 137*, p. 5; Threatened Plant Action Group, Nature Conservation Society of South Australia, *Submission 157*, p. 6; Ms Sera Blair, *Submission 67*, p. 4.

During that inquiry, the committee heard support for an emergency listing process and concerns about the delays in the nomination and listing process.¹⁸ The committee gave in principle support to the emergency listing provisions of the Emergency Listings Bill and noted the government's intent to introduce similar legislation into the Parliament.¹⁹ The Hawke review also recommended that the Environment Minister be given the power to make emergency listings of threatened species and ecological communities under certain circumstances.²⁰

2.10 During this inquiry, SEWPAC reiterated its intention to implement emergency listing provisions for threatened species and ecological communities 'to allow for faster protection of species and ecological communities that are under immediate and substantial threat'.²¹

2.11 However, at the time of drafting this report, this legislation had not yet been introduced. The submission from SEWPAC states that 'amendments to the EPBC Act are proposed to be introduced to Parliament in 2013'.²² However, in the Federal Budget in May 2013, the government announced that it made a decision to delay the introduction of relevant amendments to the EPBC Act until 1 July 2014.²³

2.12 The TSSC also confirmed its support for the option of 'emergency listing' during this inquiry.²⁴

Vulnerable ecological communities

2.13 Several submissions noted that, under the EPBC Act, only ecological communities listed as critically endangered or endangered receive full protection as matters of national environmental significance. Several submissions expressed support for the Hawke recommendation that the EPBC Act be extended to protect *vulnerable* ecological communities – noting that, otherwise, there was little point in nominating ecological communities for listing as vulnerable.²⁵

18 Senate Environment and Communications Legislation Committee, *Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011*, March 2012, pp 17–21 and 30.

19 Senate Environment and Communications Legislation Committee, *Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011*, March 2012, see recommendations 1 and 2, pp 25 and 30; see also SEWPAC, *Submission 143*, p. 7.

20 Hawke review, recommendation 16.

21 SEWPAC, *Submission 143*, p. 7.

22 SEWPAC, *Submission 143*, p. 7.

23 Australian government, *Budget 2013-14*, at: http://www.budget.gov.au/2013-14/content/bp2/html/bp2_expense-22.htm (accessed 30 July 2013).

24 TSSC, *Answers to questions on notice*, received 26 February 2013, p. 2.

25 See, for example, Associate Professor Mark Lintermans, *Submission 60*, p. 2; WWF-Australia, Attachment 2, p. 6; see also Hawke review recommendation 14.

2.14 The government has agreed to amend the EPBC Act to protect ecological communities in the vulnerable category,²⁶ but, again, at the time of writing, legislation had yet to be introduced to implement the Hawke recommendations.

Accuracy and review of lists

2.15 The committee received evidence lamenting the fact that the EPBC lists are out-of-date, incomplete, inaccurate and not reviewed on a regular basis.²⁷ The Australian Wildlife Conservancy submitted that:

The fact that the [EPBC] lists are consistently out of date and do not reflect the latest, widely available scientific knowledge represents an embarrassing failure of public policy and administration.²⁸

2.16 The World Wide Fund for Nature-Australia (WWF-Australia) suggested that:

The list of species and ecosystems actually threatened is likely to be much larger than the official EPBC Act lists due to process delays, lack of reviews of the existing lists... but also lack of knowledge.²⁹

2.17 The consequences of having out-of-date lists were also highlighted by several witnesses. For example, Dr Andrew Burbidge pointed out that:

Having the list as out-of-date as it is has serious ramifications for a whole range of issues. It is very unhelpful to industries that are doing environmental impact assessment planning, because they are surveying for species that probably should not be on the list and they are not surveying for species that should be on the list.³⁰

2.18 The committee heard that a recent expert-driven review of the current status of Australian bird species identified many inaccuracies in the EPBC list.³¹ The review compared the current status of Australian bird species according to IUCN Red List³² criteria. As Professor John Woinarski summarised:

26 SEWPAC, *Submission 143*, pp 7–8.

27 See for example, Mr Ian Wheatland, Mr Kai May, Dr Katherine Phillips and Mrs Nina Kriegish, *Submission 34*, p. 4; Lawyers for Forests, *Submission 70*, p. 12; BirdLife Australia, *Submission 82*, p. 13; WWF-Australia, *Submission 81*, p. 7; Dr Andrew Burbidge, *Submission 46*, p. 2; Professor John Woinarski, *Submission 48*, p. 6; Friends of Grasslands, *Submission 86*, p. 4; Associate Professor Mark Lintermans, *Submission 60*, p. 3; Ms Sera Blair, *Submission 67*, p. 4; Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 7.

28 Australian Wildlife Conservancy, *Submission 162*, p. 6.

29 WWF-Australia, *Submission 81*, p. 7.

30 Dr Andrew Burbidge, *Committee Hansard*, 7 March 2013, p. 1.

31 Garnett, S. T., Szabo, J. K., and Dutson, G. *The action plan for Australian birds 2010*, CSIRO: Melbourne, 2011. See also BirdLife Australia, *Submission 82*, p. 13 and Appendices 1–4; Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 7; Professor John Woinarski, *Submission 48*, pp 6–7; Dr Andrew Burbidge, *Submission 64*, p. 2.

32 The IUCN Red List is discussed in further detail later in this chapter.

That assessment identified 54 bird species and subspecies that merited listing as threatened but were not listed as threatened under the EPBC Act; 22 bird species and subspecies that were listed under the EPBC Act that no longer (if ever) merited listing; and 88 bird species that were listed under EPBC Act and were found to still merit listing (although only 45 of these were assigned the same conservation status category). This is a pronounced mis-match, and strongly indicates that conservation attention is not being directed towards the species most in need of it.³³

2.19 One of the authors of this review, Professor Stephen Garnett from Birdlife Australia, told the committee that the review 'showed a much more dismal picture' for Australian birds than you would get from the EPBC Act lists:

...the EPBC lists for birds does not reflect current thinking about their threat status, and, of course, if they are not on the list they do not trigger the EPBC Act and they do not get funding, so extinction risk is higher. But there are also quite a few species on the list that should not be. Of course, they are the more common ones and so are more likely to be picked up in surveys and delay development, so waste a great deal of departmental and developer resources for no conservation benefit.³⁴

2.20 It seems a similar problem exists for mammals. Dr Burbidge submitted that he had reviewed the listed Australian mammals in the process of drafting 'The Action Plan for Australian Mammals 2012'. He informed the committee that 'initial evaluations of the status of Australian mammals indicate that approximately 80 changes to mammal listings are required'.³⁵ Dr Burbidge remarked that:

The current list of threatened mammals under the EPBC Act was inherited from the *Endangered Species Protection Act 1992*, which in turn inherited the list developed by the then Ministerial Council in the 1980s. It has never been reviewed.³⁶

2.21 For these reasons, many submissions proposed that systematic reviews of the EPBC Act lists should be conducted. WWF-Australia and others suggested these reviews could be conducted by taxonomic groups—such as birds, mammals, reptiles, amphibians, fish and so on.³⁷ For example, Professor Woinarski agreed that:

The national threatened species list should be overhauled at regular intervals, with such overhaul achieved most effectively by a series of rolling systematic reviews of major components of Australian biodiversity.³⁸

33 Professor John Woinarski, *Submission 48*, pp 6–7.

34 Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 7.

35 Dr Andrew Burbidge, *Submission 46*, p. 2; Professor John Woinarski, *Submission 48*, pp 6–7.

36 Dr Andrew Burbidge, *Submission 46*, p. 2.

37 See, for example, WWF-Australia, *Submission 81*, p. 7; Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 7.

38 Professor John Woinarski, *Submission 48*, p. 8.

2.22 Similarly, Associate Professor Mark Lintermans proposed that:

Mandated formal reviews of conservation status at regular intervals would ensure that species are in appropriate categories, and such formal reviews should be enough evidence for recategorisation to occur (i.e. a formal renomination is not required).³⁹

2.23 The committee notes that some states undertake regular reviews to update their lists. For example, the Northern Territory (NT) government advised that their threatened species list is formally reviewed every 4–6 years, with each review taking at least a year to complete.⁴⁰

2.24 In response to questions on notice about the accuracy of the EPBC Act lists and whether there is any system of regular reviews of the lists, SEWPAC outlined the reactive nature of listing process:

Listings or reviews of threatened species and communities are driven by receipt of nominations...Any person may submit a nomination.

Dependent upon available resources existing threatened species and ecological communities listings under the EPBC Act are reviewed if new information, such as significant changes in threat status, distribution, abundance or taxonomic changes is received about a particular item in a nomination or from states and territories.

Reviews are triggered if new information is provided on significant change.⁴¹

2.25 The TSSC also acknowledged the fact that the EPBC threatened species list has not been reviewed:

Changes to the list currently occur mostly through state partnerships and nominations by the public, however the list has not been systematically overhauled for more than a decade, largely due to a lack of resources.⁴²

2.26 The capacity and resourcing of the TSSC to undertake such reviews is considered further later in this chapter in the discussion on the role of the TSSC.

2.27 Another mechanism suggested to ensure the EPBC lists are kept up to date was the reinstatement of section 185 of the EPBC Act (which was removed in amendments to the EPBC Act in 2006).⁴³ That section imposed a statutory obligation on the minister to 'take all reasonably practical steps' to keep the lists up to date.

39 Associate Professor Mark Lintermans, *Submission 60*, p. 3.

40 Department of Land Resource Management, NT Government, *Submission 159*, p. 4.

41 SEWPAC, *Answers to questions on notice from public hearing* 15 February 2013, p. 2 [Q. 2].

42 TSSC, *Answers to questions on notice*, received 26 February 2013, p. 1.

43 *Environment and Heritage Legislation Amendment Act (No. 1) 2006*, section 359; see also Senate Environment, Communications, Information Technology and the Arts, *Report on the provisions of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006*, pp 45–46 and 78.

2.28 In recommending the reinstatement of section 185, the Australian Wildlife Conservancy argued that 'there is no valid reason why the lists of threatened species and ecological communities cannot be kept up to date'.⁴⁴

2.29 HSI similarly expressed concern about the removal of section 185, arguing that since its removal 'all impetus for relatively quick assessments and listings of larger numbers of threatened ecological communities was lost'.⁴⁵

2.30 The submission from SEWPAC disagreed with this assessment:

In recent years, the Department has accelerated listing of threatened ecological communities at a landscape or ecosystems scale and this provides additional protection for component species...There are now 59 threatened ecological communities listed under the EPBC Act, most of which are part of the strategic move to a landscape or systems-level protection for many threatened species, including the first ever marine community (Giant Kelp Forests).⁴⁶

2.31 SEWPAC further submitted that, since amendments to the EPBC Act in 2006, 25 ecological communities have been listed, compared to only 14 listings in the previous seven years since the start of the EPBC Act in 2000.⁴⁷

Public nomination process

2.32 While public participation in the listing process was generally supported,⁴⁸ the heavy reliance on public nominations for listing threatened species and communities was often criticised as a reactive, 'ad hoc' approach.⁴⁹ It was pointed out that:

...listing depends on someone submitting an application. Often the professionals with the requisite knowledge to complete the application are so overwhelmed they don't have the time to do it, so an endangered species can remain unlisted for years.⁵⁰

2.33 Associate Professor Lintermans described the current listing approach as 'passive, rather than a strategic approach':

44 Australian Wildlife Conservancy, *Submission 162*, p. 6.

45 HSI, *Submission 88*, p. 8; see also Earth Learning Inc, *Submission 124*, p. 2.

46 SEWPAC, *Submission 143*, p. 4.

47 SEWPAC, *Submission 143*, p. 4.

48 Colong Foundation for Wilderness, *Submission 43*, p. 8; Nature Conservation Council of NSW, *Submission 134*, p. 2; ANEDO, *Submission 137*, Attachment 1, p. 7; BirdLife Australia, *Submission 82*, p. 14.

49 See, for example, Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 7; Wildlife Disease Association Australasia, *Submission 117*, p. 2; BirdLife Australia, *Submission 82*, p. 13.

50 Friends of Tootgarook Wetland Reserves, *Submission 17*, pp 1–2; see also Mr Ian Wheatland, Mr Kai May, Dr Katherine Phillips and Mrs Nina Kriegish, *Submission 34*, p. 4; Mr Craig Thomson, *Submission 64*, p. 2; Mr Jeremy Tager, *Submission 89*, p. 3.

...each nomination is considered in isolation, and without formal nominations to recategorise a species they may remain in their existing threat category for many years, even though expert opinion suggest their conservation status should be amended. For example, the National Trout Cod Recovery Team assessed Trout cod as meeting the criteria for Critically Endangered in the mid-2000s, but the species is still only listed as endangered.⁵¹

2.34 Dr Andrew Burbidge observed that:

The process for nominating and evaluating species is highly bureaucratic. The nomination form for proposing a species for the list puts a lot of people off. Once they look at it they find it far too detailed and too complicated to fill in the answers.⁵²

2.35 Others claimed that nominations for ecological communities are even more challenging:

Too few public nominations for ecological communities are received. Nomination of an ecological community is generally beyond the capacity and knowledge of most nongovernment organisations...⁵³

2.36 For this reason, it was suggested that the 'onus of proof' should be shifted off the public:

Public nominations should be accepted even if the public individual or group cannot find all the information for the nomination. The onus to assess the status of the ecological community should be on DSEWPAC once it is nominated, to consult relevant experts and literature rather than placing the onus on the nominating public as at present.⁵⁴

2.37 HSI, which itself has been responsible for a significant proportion of nominations, lamented the fact that the lists are primarily updated through a public nomination system:

...the nominations process relies on the public to put forward nominations. The problem with that is that it relies on the public and volunteers generally or organisation like ourselves to prepare the nominations, which take some time to prepare and a great deal of resources, particularly if you want to put in a properly researched and substantive nomination.⁵⁵

2.38 HSI concluded that:

51 Associate Professor Mark Lintermans, *Submission 60*, p. 3.

52 Dr Andrew Burbidge, *Committee Hansard*, 7 March 2013, p. 1.

53 Earth Learning Inc, *Submission 124*, p. 3.

54 Earth Learning Inc, *Submission 124*, p. 5.

55 Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 22; see also HSI, *Submission 88*, p. 7; and Associate Professor Mark Lintermans, *Submission 60*, p. 3.

The reality is that this process will take decades before a comprehensive representation of all MNES [matters of national environmental significance] can be achieved. It is not good conservation.⁵⁶

2.39 In the same vein, Associate Professor Lintermans submitted:

The current approach to listing threatened species under the EPBC Act relies on assessment of nominations; a passive rather than a strategic approach. ...The passive approach to listing also means that many species that are eligible for listing remain unlisted. It is not a trivial task to gather the information required for a nomination, and many interested people do not have the time or support from employers to prepare nominations.⁵⁷

2.40 The difficulties of making a nomination was acknowledged by the TSSC:

...the EPBC nomination process is technically demanding and community groups, especially Indigenous peoples, report that they feel disenfranchised as has been pointed out by the Indigenous Advisory Committee. At a recent joint meeting, representatives of the Indigenous Advisory Committee and the TSSC asked DSEWPaC staff to investigate a less-complicated 'Expression of Interest' nomination process for community groups, but the problem remains of resourcing the development of evidence required to assess the case for listing.⁵⁸

2.41 The committee notes that, in addition to public nominations, it is possible for the TSSC itself to nominate species and ecological communities for inclusion on the proposed priority assessment list.⁵⁹ Indeed, according to information provided by SEWPAC, the TSSC has nominated 11 potential threatened species since 2007.⁶⁰

2.42 There were also complaints about the 'priority assessment' process. The listing process was refined in 2006 to introduce the ability for the minister to determine 'conservation themes' and a dedicated assessment period, and the introduction of the 'proposed priority assessment list' (PPAL) and the 'finalised priority assessment list' (FPAL). HSI was critical of these provisions:

...you are by no means guaranteed to be considered by the Threatened Species Scientific Committee; it has to first get onto the FPAL, the Finalised Priority Assessment List, to then be considered by the Threatened Species Scientific Committee. We feel that this is a barrier to a number of

56 HSI, *Submission 88*, p. 7.

57 Associate Professor Mark Lintermans, *Submission 60*, p. 3; see also Clarence Environment Centre, *Submission 63*, p. 4.

58 TSSC, *Answers to questions on notice*, 26 February 2013, p. 2.

59 EPBC Act, para. 194G(2)(b).

60 SEWPAC, *Answers to questions on notice*, Question 137, Supplementary Budget Estimates, October 2012. Note that the TSSC does not appear to have nominated any ecological communities.

species being listed and therefore their conservation status being improved. Therefore, those amendments should be repealed.⁶¹

2.43 Mr Jeremy Tager agreed:

Each year they consider a number of species for priority listing. This is effectively a pre-listing screening process....It is clear, if not quantified, that a large number of species which could or should be considered for listing aren't.⁶²

2.44 The committee notes the explanation from the then Department of the Environment and Heritage at the time of the 2006 amendments that the amendments were 'designed to address the problems being experienced as a result of the ad hoc nature of the current process':

At the moment, nominations are dealt with as they are submitted, regardless of merit and regardless of whether other species should be accorded greater priority. This means valuable resources...may be tied up dealing with nominations that have little merit, or do not deserve priority attention or, if successful, would result in little conservation benefit. That is neither a sensible nor optimal way to develop a list of our most threatened and priceless species.⁶³

2.45 The department described the PPAL/FPAL process as a strategic framework 'to ensure that efforts are focused on the most important issues, and that the 'highest priority tasks are undertaken in the context of a well-planned and manageable work programme'.⁶⁴

2.46 In response to questioning during this inquiry as to how many species get rejected during the PPAL/FPAL process, representatives from SEWPAC explained:

It is difficult to give an overarching figure, because it will vary from year to year...Some years most of them will go through and be listed on the priority assessment list, and some years it may be half to two-thirds. It really does vary depending on the lists and the quality of the nominations that we get. There is a bit of a filtering process, so, in the first instance, the regulations outline what those nominations need to have in them, and some

61 Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 22.

62 Mr Jeremy Tager, *Submission 89*, p. 3.

63 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Environment and Heritage Legislation Amendment Bill (No. 1) 2006 [Provisions]*, November 2006, p. 50.

64 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Environment and Heritage Legislation Amendment Bill (No. 1) 2006 [Provisions]*, November 2006, p. 50.

of them do not need those regulation checks. We also get frivolous ones and so on, and some those will get culled out through the process.⁶⁵

2.47 In answers to questions on notice, the department advised:

We have received 116 nominations for species since the amendments to the act in 2007. Twenty-six of these nominations have been rejected. Of these 26: seven failed the regulations under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and were considered ineligible; 13 were not considered a priority by the Threatened Species Scientific Committee; and six were rejected due to insufficient data.⁶⁶

2.48 It was suggested that an even more systematic approach to listing is required. For example, HSI suggested that the Commonwealth should review all possible candidates for listing and provide the resources to achieve this within five years.⁶⁷ Associate Professor Lintermans similarly suggested that strategic reviews might also help overcome the problem of reliance on public nominations:

An improvement on current arrangements would be the commissioning of strategic or overarching national reviews of the conservation status of particular groups. This would provide an opportunity to also assess relative priorities for conservation or recovery action between species in a group, as well as identifying species or communities that are near-threatened. Such strategic overviews should be conducted at least every 10 years. There has not been an overview of the conservation status of Australian freshwater fish since Wager and Jackson (1993) prepared their action plan, and one is sorely needed.⁶⁸

Sufficient data for listing

2.49 The committee also received evidence expressing concern about situations where potentially threatened species are not being considered for listing because of a lack of information.⁶⁹ For example, Professor Woinarski observed:

The reliability, utility and comprehensiveness of threatened species lists are much influenced by the level of information available for species, and the manner in which constraints on that information level is considered. Regrettably, there is relatively little (relevant) information available for most Australian plant and animal species: we know little of their total

65 SEWPAC, *Committee Hansard*, 15 February 2013, p. 68; see also SEPWAC, *Answers to questions on notice*, Question 137, *Supplementary Budget Estimates*, October 2012, at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ec_ctte/estimates/supp_1213/sewpac/program_5-1.pdf (accessed 4 March 2013).

66 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 2 [Q. 2].

67 HSI, *Submission 88*, p. 7.

68 Associate Professor Mark Lintermans, *Submission 60*, p. 3.

69 WWF-Australia, *Submission 81*, p. 7; Professor John Woinarski, *Submission 48*, pp 7–8; HSI, *Submission 88*, p. 8; Invasive Species Council, *Submission 140*, p. 10.

population size, or the rate of their decline (or increase); in many cases, species remain undiscovered or unnamed.⁷⁰

2.50 Similarly, the Nature Conservation Council of New South Wales (NSW) expressed concern that:

The data required to make a proper assessment of whether a species or population should be listed often does not exist, in large part due to consistent under-funding of relevant State agencies.

Serious under-resourcing means that even when limited data indicates that further research is required which would likely support the listing or upgrading of threatened flora and fauna, the required work is rarely undertaken.⁷¹

2.51 HSI told the committee it had encountered the problem of lack of data during the nomination process for a number of shark species:

HSI has been told that 'insufficient data' is available on the population size or to quantify any decline to enable further assessment and listing under the EPBC Act, despite all international indicators suggesting the same shark species are in decline...With the Threatened Species Scientific Committee failing to even consider species without detailed local information, for many species it may be too late by the time enough data has been obtained...⁷²

2.52 Noting that 'lack of information should not by default preclude potentially threatened species from being listed', Professor Woinarski suggested that the Western Australian process for listing 'short-range endemics' may provide an appropriate model for the protection of poorly-known species at a national level under the EPBC Act. That is:

...a poorly-known, restricted-range species is protected until and unless it can be proven to be more common or widespread than indicated by the current knowledge base.⁷³

2.53 Some suggested that a new category of 'data deficient' be added to the EPBC lists, as per the IUCN Red List.⁷⁴ However, Professor Woinarski observed that most Australia species may qualify as data deficient, which would be an 'unhelpful outcome'.⁷⁵ However, others argued that a 'data deficient' list could 'increase awareness and encourage people to gather and report information on such species'.⁷⁶

70 Professor John Woinarski, *Submission 48*, p. 7.

71 Nature Conservation Council of NSW, *Submission 134*, p. 2; see also National Parks Association of New South Wales (NPA NSW), *Submission 145*, p. 11.

72 HSI, *Submission 88*, p. 8.

73 Professor John Woinarski, *Submission 48*, pp 7–8.

74 Professor John Woinarski, *Submission 48*, p. 7; Earth Learning Inc, *Submission 124*, p. 6.

75 Professor John Woinarski, *Submission 48*, p. 7.

76 Earth Learning Inc, *Submission 124*, p. 6.

2.54 Another proposal was to improve the application of the precautionary principle, as set out in subsection 391(2) of the EPBC Act:

We also suggest better application of the precautionary principle in the assessment of nominations as considerable burden of proof problems can exist with providing evidence of species decline due to an absence of data...The fact that nobody seems to know suggests the species has declined and an absence of data does not mean the species is not under threat, only that conclusive proof cannot be provided...the precautionary principle is not being applied where a strong likelihood of decline appears evident.⁷⁷

2.55 Professor Woinarski agreed:

While the EPBC Act asserts a commitment to the precautionary principle, the mechanism to apply this principle for the consideration of the threatened status of poorly-known species remains unresolved. In such cases, the onus of proof may be poorly placed, and species threatened with extinction may be ineligible for listing because of neglect, ignorance or lack of interest.⁷⁸

2.56 However, the NSW Council of Freshwater Anglers disagreed with the use of the precautionary principle, instead recommended that:

...where lack of scientific certainty exists in respect of serious concerns as whether a species is likely to undergo decline or as to key threatening process or similar issues, that Scientific Committees should have power to recommend key research programmes, and have a budget to commission urgent critical research.⁷⁹

2.57 In response to questions about the application of the precautionary principle where there is insufficient data on a particular species, the Chair of the TSSC told the committee that it is:

...very concerned about the issue of data deficiency, as is the minister. In fact, at our next meeting we are having a briefing from a legal expert about the options under the present legislation. When the committee advises the minister that a species that has been proposed for listing is data deficient, it takes a risk assessment approach and advises the minister of whether or not it thinks there are serious concerns.⁸⁰

2.58 It was also observed that there are other responses available where listing is not possible. SEWPAC pointed out that:

The Commonwealth can bring a range of different tools to bear on those problems of providing protection for threatened species, vulnerable species

77 Threatened Plant Action Group, Nature Conservation Society of South Australia, *Submission 157*, pp 6–7; see also HSI, *Submission 88*, p. 8.

78 Professor John Woinarski, *Submission 48*, p. 7.

79 NSW Council of Freshwater Anglers, *Submission 125*, p. 3.

80 SEWPAC, *Committee Hansard*, 15 February 2013, p. 67.

or even a species that have not yet or do not necessarily require listings, the great mass of biodiversity.⁸¹

2.59 By way of example, although the snubfish dolphin was rejected for possible listing in 2011 on the basis of insufficient data,⁸² this had triggered a range of work, including the funding of research under the National Environmental Research Program and the Australian Marine Mammal Grants Program 'to try to fill those gaps as quickly as possible'.⁸³

2.60 It was also pointed out that, in many cases, a precautionary approach to data deficiency would be impractical. For example, Professor Walker from the TSSC observed that many invertebrates would be considered to be data deficient, and if the precautionary principle were invoked, this would result in an immense number of species potentially needing to be declared protected.⁸⁴

2.61 Professor Walker also argued that:

...many of those species that are data deficient are likely to remain so forever. There are certain kinds of species—animals and plants—in fresh water, marine and terrestrial habitats for which we are never likely to have hard data. So we must come to grips with this notion of data deficiency and develop better means for dealing with sparse datasets.⁸⁵

2.62 In answers to question on notice, SEWPAC advised that since 2007, six threatened species nominations (out of 116 nomination) have been rejected as they were considered to be 'data deficient'.⁸⁶ At least one of these—*Sphyrna mokarran* (*great hammerhead*)—has subsequently been renominated and is now under assessment.⁸⁷ SEWPAC noted that:

If a lack of information was the reason for a decision not to include a species or ecological community on a list the nominator was typically advised of that fact and it was noted that a new nomination may be submitted if new data becomes available.⁸⁸

81 SEWPAC, *Committee Hansard*, 15 February 2013, p. 65.

82 See for example, concerns raised by Mr Jeremy Tager, *Submission 89*, p. 4.

83 SEWPAC, *Committee Hansard*, 15 February 2013, p. 67; see also the Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, *2011 Finalised Priority Assessment List announced*, Media release, 14 September 2011, available at: <http://www.environment.gov.au/minister/burke/2011/mr20110914b.html> (accessed 26 February 2013).

84 Professor Keith Walker, TSSC, *Committee Hansard*, 15 February 2013, p. 68.

85 Professor Keith Walker, TSSC, *Committee Hansard*, 15 February 2013, p. 68.

86 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 2 [Q.2].

87 SEWPAC, *Answers to questions on notice*, Question 137, Supplementary Budget Estimates, October 2012.

88 SEWPAC, *Answers to questions on notice*, Question 137, Supplementary Budget Estimates, October 2012.

2.63 Finally, SEWPAC advised that:

The Threatened Species Scientific Committee (the Committee) is aware of the issues around data deficiency when considering the eligibility of species or ecological communities as threatened. The Committee's current approach is that, when advising the minister that a species or ecological community is not eligible for listing because of a lack of information or data, the Committee takes a risk assessment approach. It advises the minister as to whether or not it thinks there are concerns, such as the existence of a threat that is still operating on a species. If there are concerns, the Committee may make suggestions on how the data gaps that prevent it meeting listing criteria can potentially be filled.⁸⁹

2.64 In this context, the committee notes the need for increased surveys, monitoring and research relating to threatened species and ecological communities in Australia. This is discussed further in Chapter 6.

Taxonomic bias in the lists

2.65 Several submissions were also concerned about 'taxonomic bias' in threatened species lists: that is, the lists are dominated by better-known groups such as birds, mammals, amphibians and trees. On the other hand, plants, fish and invertebrates are under-represented.⁹⁰

2.66 Mr Andrew Heaver championed the cause of invertebrates in his submission:

...invertebrate species are disproportionately under-represented on the threatened species lists. The Australian Museum suggests that insects account for approximately 75% of all animal species...yet they do not form a similar proportion of listed animal species: of animals recognised as "Endangered" under Commonwealth legislation, 126 are vertebrates (mammals, birds, reptiles, amphibians and fish) and only 17 are "other" (invertebrate) animals.⁹¹

2.67 Mr Heaver continued:

Although some invertebrate species are incredibly common and widespread, many are likely to be subject to similar threats as vertebrates. It is therefore likely that many Australian invertebrate species are threatened in a real sense, but not a legal sense (and therefore unprotected).⁹²

2.68 It was suggested that lack of data compounds this taxonomic bias:

A clear challenge is that listing processes (understandably) require a certain degree of information to be available on a species, its distribution and

89 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 7 [Q. 6].

90 Professor John Woinarski, *Submission 48*, p. 7; Lawyers for Forests, *Submission 70*, p. 11; Mr Andrew Heaver, *Submission 119*, p. 3; NPA NSW, *Submission 145*, p. 11; Threatened Plant Action Group, Nature Conservation Society of South Australia, *Submission 157*, p. 7; TSSC, *Answers to questions on notice*, received 26 February 2012, p. 1.

91 Mr Andrew Heaver, *Submission 119*, p. 3.

92 Mr Andrew Heaver, *Submission 119*, p. 3.

ecology, population trends, etc. For many deserving species this is going to be an insurmountable challenge, especially given that many unique invertebrate life-forms have not yet been given a species name and described scientifically, let alone had their ecology, distribution and population trends evaluated. Invertebrate biodiversity is so substantial that it is exceedingly improbable that such information will ever be available for all known invertebrate species in Australia.⁹³

2.69 The TSSC acknowledged this problem:

...like most other national and international threatened species lists, the EPBC list of threatened species is biased in favour of 'iconic' species such as mammals, birds, reptiles and flowering plants, while less familiar species, like invertebrate animals and non-flowering plants, are rarely considered in the current listing process. These 'infrastructural' species have a vital role in supporting ecological communities and ecosystems, and are a vital component of 'biodiversity'.⁹⁴

2.70 And as discussed earlier, the TSSC noted that:

...invertebrate animals are 95 percent of all animal biodiversity, but very few invertebrate are listed as threatened species, even though it is likely that many species would qualify for listing if nominated.⁹⁵

2.71 However, the committee notes that invertebrates and other lesser known species are likely to be better covered by the increased use of ecological communities' listings in recent years.

Marine species

2.72 In relation to marine species, the Australian Fisheries Management Authority (AFMA) told the inquiry that the existing threatened species listing process under the EPBC Act do not effectively account for the biological characteristics of marine species. AFMA told the committee that threatened species provisions of the EPBC Act:

...reflect the historic focus on threats to high order terrestrial species such as mammals, and are less appropriate for marine fish due to clear biological and reproductive differences.⁹⁶

2.73 AFMA continued that:

This issue is acknowledged in the EPBC Act itself under s180, which provides for the making of regulations that specify criteria for native species of marine fish....While the EPBC Act clearly provides for the development of specific assessment criteria to direct the nomination and

93 Mr Andrew Heaver, *Submission 119*, p. 3.

94 TSSC, *Answers to questions on notice*, received 26 February 2012, p. 2.

95 TSSC, *Answers to questions on notice*, received 26 February 2012, p. 2.

96 AFMA, *Submission 148*, p. 8.

assessment process for the listing of marine fish this has not occurred in the 13 years since the legislation was enacted.⁹⁷

2.74 AFMA noted that, in the absence of regulations under s180, it has relied on the Commonwealth Fisheries Harvest Strategy Policy (HSP) released in 2007, which states that:

...if a stock biomass is at or below a biomass limit (BLIM), the default for which is 20 per cent of the unfished biomass, the risk to that stock is considered unacceptably high, and targeted fishing ceases. While a stock is above BLIM there is no expectation that the species would be added to the list of threatened species. It would be appropriate to build this policy into regulation...⁹⁸

2.75 AFMA concluded that there is a 'need for biologically appropriate criteria to be developed and implemented to ensure, effective and efficient application of the listing process to marine fish'.⁹⁹

2.76 The committee notes this issue was considered by the Hawke review, which recommended that the Commonwealth government integrate the HSP framework with the threatened species listing process for marine fish.¹⁰⁰ While the government agreed in principle to this recommendation, it felt that the link between the HSP and the threatened species listing process should remain a policy matter and not be legislative. However, it would consider developing guidelines as part of the review of the HSP in 2012. The committee notes that this review is currently underway and is expected to be completed in early to mid-2013.¹⁰¹

Duplication and inconsistency with states and territories

2.77 Several submissions highlighted the need to reduce inconsistencies between the national EPBC Act list of threatened species and ecological communities and the

97 AFMA, *Submission 148*, pp 8–9.

98 AFMA, *Submission 148*, Attachment 2, p. 2.

99 AFMA, *Submission 148*, p. 9.

100 Hawke review, recommendation 41.

101 See further: Department of Agriculture, Forestry and Fisheries, *Review of the Harvest Policy Strategy and Guidelines* at: www.daff.gov.au/fisheries/domestic/harvest_strategy_policy/review (accessed 22 April 2013); and Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, www.environment.gov.au/epbc/publications/pubs/epbc-review-govt-response.pdf (accessed 27 November 2012), pp 74–75.

various state and territory lists.¹⁰² As the National Farmers' Federation (NFF) submitted:

One of the major issues confronting land managers is the confusion that abounds between threatened species and ecological communities at the state and territory level compared to the federal jurisdictional level. For example, while an individual species or ecological community may be listed on both the state/territory and federal lists, these are very likely to have different scientific definitions, different geographic coverage and different thresholds that determines if a landholders needs to refer and subsequently apply for an approval under the relevant jurisdictional legislation.¹⁰³

2.78 Ms Wellbelove from HSI agreed:

...you have the federal system but each state also lists species differently. In our view, that does deliver a complicated system. Some species are listed in some states but not others. Our preferred approach is that everything on the federal list should also be listed at the state level to ensure there is connectivity.¹⁰⁴

2.79 It is noted that the Hawke review recommended that the Commonwealth, state and territory governments move to a single national list of threatened species, including marine species and ecological communities, through accreditation of state and territory processes for listing endemic species.¹⁰⁵

2.80 The EPBC Act reforms, as announced in August 2011, propose to establish 'a single national list of threatened species and ecological communities to reduce inconsistencies between jurisdictions'.¹⁰⁶ During this inquiry, there was considerable support for this sort of approach.¹⁰⁷ For example, the NFF felt that a national list 'would solve much of the existing confusion for landholders and others seeking to comply with their legal obligations'.¹⁰⁸

102 See for example, Dr Peter Kyne, *Submission 51*, p. 2; Clarence Environment Centre, *Submission 63*, p. 4; Yarra Ranges Council, *Submission 69*, p. 3; Dr Jasmyn Lynch, *Submission 74*, p. 1; PGV Environmental, *Submission 166*, p. 2; WWF-Australia, *Submission 81*, p. 7; Professor Hugh Possingham and Associate Professor Michael McCarthy, *Submission 127*, p. 3; BirdLife Australia, *Submission 82*, p. 13 and Appendices 1–4; see also ANEDO, *Committee Hansard*, 15 February 2013, p. 46; BirdLife Australia, *Submission 82*, p. 13.

103 NFF, *Submission 167*, p. 1.

104 Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 25; see also Mr Brendan Sydes, ANEDO, *Committee Hansard*, 15 February 2013, p. 46.

105 Hawke review, recommendation 5.

106 The Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities, *Reforms better for the environment, better for business*, media release, 24 August 2011, <http://www.environment.gov.au/minister/burke/2011/mr20110824.html> (accessed 21 November 2012).

107 See, for example, NFF, *Submission 167*, p. 1; see also Ms Alexia Wellbelove, HSI, *Committee Hansard*, 15 February 2013, p. 25.

108 NFF, *Submission 167*, p. 1.

2.81 However, it was also pointed out that the problem was not just one of multiple and inconsistent lists of threatened species, but also multiple and inconsistent criteria and processes for listing, as well as different approaches to protection and management across jurisdictions.¹⁰⁹

2.82 For example, Dr Peter Kyne opined that:

Listing processes, and in particular threatened species categories and criteria need to be consistent between state, territory and Commonwealth legislation to ensure a consistent approach, consistent listings, and consistent management.¹¹⁰

2.83 As Mr Brendan Sydes from ANEDO told the committee, it is important to compare 'apples with apples' in terms of what is listed in each jurisdiction.¹¹¹

2.84 The NFF agreed that while it supported one consolidated national list:

...it is not just the one list; it is the issue of different geographic coverage for the same species, the issue of different thresholds for the same species...and ...the difference in how they are described scientifically.¹¹²

2.85 However, as Dr Jasmyn Lynch remarked:

Achieving consistency in the process and protocols for listing of threatened species and ecosystems, nevertheless, is not straightforward. Currently, although most Australian authorities claim to use the IUCN Red List categories and criteria for extinction risk to categorise taxa at risk of extinction, the various jurisdictions are inconsistent and variable in applying the categories and criteria, and have inconsistent approaches to data deficiency, transparency and accountability.¹¹³

2.86 The committee heard that cooperative arrangements have been entered into between the Commonwealth and state governments in recent years in an attempt to address inconsistencies between lists and listing processes.

2.87 In its submission, SEWPAC stated that:

...in recent years the Department has developed partnership agreements with most jurisdictions to streamline EPBC Act listing of species that have already been assessed by state departments or scientific committees.¹¹⁴

2.88 For example, the Queensland Minister for Environment and Heritage Protection submitted that:

109 See, for example, Mr Brendan Sydes, ANEDO, *Committee Hansard*, 15 February 2013, p. 46; BirdLife Australia, *Submission 82*, p. 13.

110 Dr Peter Kyne, *Submission 51*, p. 2.

111 Mr Brendan Sydes, ANEDO, *Committee Hansard*, 15 February 2013, p. 46.

112 Ms Deborah Kerr, NFF, *Committee Hansard*, 15 February 2013, p. 4.

113 Dr Jasmyn Lynch, *Submission 74*, p. 2.

114 SEWPAC, *Submission 143*, p. 4; see also SEWPAC, *Committee Hansard*, 15 February 2013, p. 63 and SEWPAC, *Annual Report 2011-12*, pp 246–247.

In 2010, the Commonwealth and Queensland governments signed a Memorandum of Understanding (MOU) to address the misalignment of threatened species lists. The MOU provides for more effective communication, a coordination of listings assessments and facilitates discussion on a single listing process.¹¹⁵

2.89 Similarly, the NT Government noted that:

Under an MOU with the Australian Government, the NT notifies SEWPAC of any changes in listing of species endemic to the NT and sends supporting information for each change. This may then be considered for change in the national threatened species list under the EPBC Act.¹¹⁶

2.90 SEWPAC elaborated in answers to questions on notice that the MOUs between the Commonwealth and 'several state and territories' addressed:

- Reducing duplication of effort with species assessments;
- Strengthening intergovernmental cooperation between scientific committees; and
- More efficient sharing of information, with a partnership approach to protecting the environment and species conservation.¹¹⁷

2.91 The committee is aware that the SEWPAC *Annual Report 2011-12* explained that under the agreements:

...species that are endemic to a particular state or territory are first assessed in the relevant jurisdiction, before national assessment by the TSSC for their eligibility for listing under the EPBC Act. Assessments for 103 species assessed through these partnership agreements were completed in 2011-12.¹¹⁸

2.92 SEWPAC further advised that the government is committed to address 'the need to make the lists of all Australian jurisdictions centrally available'.

The government is consulting with state and territory governments regarding the introduction of a harmonised national list and ways to tackle existing misalignment of threatened species lists. It is anticipated that this work will also develop national standards that may eliminate differences, but not all, in species profiles and listing advices.¹¹⁹

2.93 The Chair of the TSSC recognised that aligning the lists is a 'very sensible and appropriate thing to do':

...it is extremely important to align those lists as much as possible. It is extremely confusing to the general public to have misaligned lists, and I

115 Minister for Environment and Heritage Protection Queensland, *Submission 130*, p. 9.

116 Department of Land Resource Manager, NT Government, *Submission 159*, p. 4.

117 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 6 [Q. 5].

118 SEWPAC, *Annual Report 2011-12*, pp 246–247.

119 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 6 [Q. 5].

think misalignment reduces the credibility of the listing process...a great deal of care and attention is being given to harmonising the standards across jurisdictions in Australia. I have no evidence that that is going to lead to any lowering of standards.¹²⁰

2.94 However, Dr Lynch expressed concern that:

Suggestions that a single national list would suffice, rather than the current system of listings at state and national level, disregards the large size and diverse environments of this country and the consequent potential variability across the ranges of taxa in their ecology, genetic diversity and abundance. It also raises the complication of how to deal with taxa that are threatened in only part of their range rather than at the national level.¹²¹

2.95 The Chair of the TSSC acknowledged this problem:

It will be challenging regarding some widely distributed species, which may of course have a different status when listed on the state scale than when listed on the nation scale.¹²²

2.96 However, representatives of SEWPAC told the committee that there has been considerable progress 'behind the scenes' on this issue of inconsistencies in the lists and listing processes:

We are working in the first instance on some of the broad parameters around what we think should be in there—some of the key principles. They are things such as listing criteria and the common adoption of things such as the IUCN criteria ... We think that work is progressing well. Giving effect to it down the track will require legislative reform, probably in all jurisdictions. But it is probably worthwhile stating that we have been doing a lot of work behind the scenes for quite some years towards getting more consistency in our lists.¹²³

2.97 However, Professor Helene Marsh, Chair of the TSSC, also advised that sometimes there are good reasons for differences between the EPBC Act list and state or territory lists:

...given that the [EPBC] Act is really focusing on matters of national environmental significance, we have to think about what is appropriate for the Commonwealth to be doing and what is appropriate to be done in the other jurisdictions.¹²⁴

2.98 She also told the committee that it may often be appropriate for a species to only be listed on a state list rather than a national list. She pointed out that, for example, the dugong has:

120 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 63.

121 Dr Jasmyn Lynch, *Submission 74*, p. 2.

122 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 63.

123 SEWPAC, *Committee Hansard*, 15 February 2013, p. 63; and see also p. 64; see also SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 6 [Q. 5].

124 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 66.

...a very broad range across Northern Australia. It is not listed federally and it is listed in Queensland as vulnerable. I think both of those listings are correct. There are quite secure populations in Western Australia, whereas the situation on the urban coast of Queensland is very different.¹²⁵

Listing populations

2.99 In this context, ANEDO pointed out that one strength of NSW threatened species legislation is that a *population* of a species may be listed 'if it is facing a very high risk of extinction in NSW in the near future'.¹²⁶

2.100 While there is no direct power to list populations under the EPBC Act, the committee notes that, under the EPBC Act, the definition of species includes sub-species and distinct populations.¹²⁷ In order to list a population under the EPBC Act, the minister can make a determination under section 517 of the EPBC Act that a distinct population of biological entities is a species for the purposes of the EPBC Act.

2.101 The problem of how to deal with species that may have regional populations that are declining rapidly, was apparent during this committee's recent inquiry into koalas.¹²⁸ In the end, the minister made a determination under section 517 of the EPBC Act that the combined koala populations of Queensland, New South Wales and the Australian Capital Territory were a 'species' for the purposes of the EPBC Act.¹²⁹

2.102 The Chair of the TSSC described the EPBC Act as a 'bit clunky' in this regard:

...we could not under the [EPBC] Act justify listing the whole species throughout its range as vulnerable, so listing it by its most genetically valuable areas of greatest conservation concern was going to trigger a more powerful response...the minister had to establish a separate 'species' under the EPBC Act in order to list the koala...maybe some reform to the [EPBC] Act would be appropriate so that a less-clunky mechanism could be used to achieve the same result.¹³⁰

2.103 In response to questioning on whether the EPBC Act needs more granularity in this area, departmental representatives told the committee that they were not considering any amendments to allow for the listing of subpopulations of species:

125 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 63.

126 *Submission 137*, Attachment 1, p. 29.

127 EPBC Act, s. 528.

128 Senate Environment and Communications References Committee, *The koala—saving our national icon*, September 2011, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ec_ctte/completed_inquiries/2010-13/koalas/report/index.htm

129 See *Determination that a distinct population of biological entities is a species for the purposes of the Environment Protection and Biodiversity Conservation Act 1999*, 27 April 2012, at: <http://www.comlaw.gov.au/Details/F2012L00960> (accessed 4 March 2013).

130 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 65; see also Professor Keith Walker, TSSC, *Committee Hansard*, 15 February 2013, p. 66.

...the fundamental construct of the EPBC Act...is the differentiation between Commonwealth responsibilities for matters of national significance compared to issues that the states may be able to deal with under their legislation. If we potentially start to unpick that then we start to unravel a bit of the underlying premise of the whole act. I guess the koala example is one that indicates that the provision that is already in the act does still allow for the listing of some populations of species, even if it is a clunky approach to doing so.¹³¹

IUCN Red List

2.104 Several submissions also compared the EPBC list to the IUCN Red List of Endangered Species.¹³² However, it was observed that the EPBC Act list contains:

...quite different species to the lists of Australian threatened species developed under the guidelines of the International Union for the Conservation of Nature. These, refined over a 50 year period and applied globally, differ little from the criteria used for EPBC listing. Some species that merit listing under these criteria aren't listed under the EPBC Act; some species listed under the EPBC Act don't merit listing under the criteria. The difference would appear to be due to administrative inefficiency.¹³³

2.105 Birdlife Australia submitted that, in the preparation of environmental accounts, the Australian Bureau of Statistics 'has had to use the IUCN Red List data because the EPBC Act data is too outdated'.¹³⁴

2.106 To resolve listing delays, it was suggested that state and Commonwealth threatened species lists should adopt the threat status of species on the IUCN Red List of Endangered Species 'rather than duplicating the expensive and slow listing process'.¹³⁵

2.107 However, when asked to compare the process for listing under the EPBC Act to the IUCN listing process, Professor Stephen Garnett from Birdlife Australia observed that there needs to be a 'greater level of caution' for EPBC listing:

....the EPBC process is more rigorous...it has to be, because of the legal implications...IUCN listing can take a more precautionary approach, but I think the two processes can be aligned a lot more closely. There is not that

131 SEWPAC, *Committee Hansard*, 15 February 2013, p. 66.

132 IUCN, Red List of Threatened SpeciesTM, at: <http://www.iucnredlist.org/>. See for example, Friends of Tootgarook Wetland Reserves, *Submission 17*, p. 1; Dr Jasmyn Lynch, *Submission 74*, p. 2.

133 Wildlife Disease Association Australasia, *Submission 117*, p. 2; see also BirdLife Australia, *Submission 82*, p. 13.

134 BirdLife Australia, *Submission 82*, p. 13.

135 Professor Hugh Possingham and Associate Professor Michael McCarthy, *Submission 127*, p. 3.

much difference between them in the information that is made available for the IUCN listing and the EPBC process.¹³⁶

2.108 The committee notes that the criteria for listing under the EPBC Act are broadly similar to the IUCN criteria. The Chair of the TSSC told the committee:

This listing process is based on clear, explicit, objective criteria, which are set out in the act and which in turn are comparable to the internationally established criteria used by the International Union for Conservation of Nature. A species can meet any one of five of these internationally recognised criteria to be eligible for listing as threatened.¹³⁷

2.109 SEWPAC told the committee that the TSSC is made aware of the conservation status of species on the IUCN list that are nominated for assessment under the EPBC Act. However, SEPWAC pointed out that:

...although the threatened categories and criteria under the EPBC Act are similar to those used by the IUCN, the scope of both assessments is very different: the EPBC Act prioritises species at risk in the Australian environment, whereas the IUCN prioritises species that are globally at risk.¹³⁸

2.110 Professor Stephen Garnett pointed out that the IUCN list has a category of 'near-threatened' – for species that are not currently vulnerable but 'that are likely to become vulnerable if actions continue'.¹³⁹ The committee notes that the category of 'vulnerable' in the EPBC Act covers species facing a high risk of extinction in the wild.¹⁴⁰ Under the IUCN criteria, 'near threatened' species are those that do not qualify for listing as critically endangered, endangered or vulnerable, but are likely to qualify for a threatened category in the near future.¹⁴¹

2.111 Professor Garnett suggested that including a 'near threatened' category in the EPBC list could be 'very helpful' and 'useful innovation' as it gives some advance warning of potential problems for a species:¹⁴²

Nationally, we see greater scope for NT [Near Threatened] within the EPBC Act as a flag for potential developments, particularly for sites where development could push taxa from NT into threatened categories if conducted inappropriately. Thus the presence of NT taxa at a site would not preclude development but would be accounted for in any management.¹⁴³

136 Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 8.

137 Professor Helen Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 62.

138 SEWPAC, *Answers to questions on notice from public hearing*, 15 February 2013, p. 8 [Q. 7].

139 Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 9.

140 See EPBC Act, s. 179(5).

141 IUCN, *IUCN Red List Categories and Criteria*, p. 15, at : http://jr.iucnredlist.org/documents/redlist_cats_crit_en.pdf (accessed 30 July 2013).

142 Professor Stephen Garnett, BirdLife Australia, *Committee Hansard*, 20 February 2013, p. 9.

143 BirdLife Australia, *Answers to questions on notice from public hearing*, 20 February 2013, p. 5.

2.112 The committee notes that there is a 'near threatened' category under some state legislation, such as the Queensland *Nature Conservation Act 1992*.¹⁴⁴ However, the committee further notes that the Hawke review rejected the addition of a 'near threatened' category to the EPBC Act, reasoning that it 'is not likely to provide significant conservation outcomes'.¹⁴⁵

The role of the Threatened Species Scientific Committee

2.113 The TSSC is a statutory committee established under section 502 of the EPBC Act. The TSSC has a number of functions set out in the EPBC Act including to:

- advise the minister in relation to recovery plans, threat abatement plans and approved conservation advice;
- advise the minister (on the minister's request or on the TSSC's initiative) on the amendment and updating of the lists for threatened species, threatened ecological communities, and key threatening processes; and
- advise the minister, at his or her request, on matters relating to the administration of the EPBC Act.¹⁴⁶

2.114 In performing its listing functions, the TSSC may seek expert advice as the TSSC considers appropriate.¹⁴⁷

2.115 The current Chair of the TSSC, Professor Helene Marsh, told the committee that the TSSC is:

...a group of 10 independent experts appointed by the minister to provide advice about conservation matters defined in the EPBC Act. The scope of our membership covers many disciplines, and our expertise is deliberately broad, but we have common expertise in conservation biology, which enables us to provide as comprehensive as possible consideration of all components of Australia's environment and biodiversity.¹⁴⁸

2.116 The importance of the independence of the TSSC was emphasised in many submissions.¹⁴⁹ However, several submitters suggested that the TSSC's resourcing should be increased and that it should be better supported in its role.¹⁵⁰

144 Minister for Environment and Heritage Protection Queensland, *Submission 130*, p. 9; and see *Nature Conservation Act 1992* (Qld), s. 79.

145 Hawke review, p. 161.

146 EPBC Act, s. 503. See further TSSC, *Submission 154*, pp 1–2.

147 EPBC Act, s. 194R.

148 Professor Helene Marsh, TSSC, *Committee Hansard*, 15 February 2013, p. 62.

149 Colong Foundation for Wilderness, *Submission 43*, p. 8; see also BirdLife Australia, *Submission 82*, p. 14; Mr Greg Miles, *Submission 72*, p. 1.

150 See, for example, WWF-Australia, *Submission 81*, p. 7; and see also Threatened Plant Action Group, Nature Conservation Society of South Australia, *Submission 157*, p. 7; Dr Peter Kyne, *Submission 51*, p. 2.

2.117 The Invasive Species Council went so far as to suggest that the TSSC should be a 'statutory authority with power to make determinative listing decisions rather than simply advising the Minister'.¹⁵¹

2.118 The Australasian Bat Society queried whether the TSSC, which is 'relatively small and voluntary', should be better resourced given its workload.¹⁵² Similarly, Mr Jeremy Tager expressed concern in his submission that:

The Threatened Species Committee, because it is under-resourced, can only consider a limited number of potential species for listing...It is clear, if not quantified, that a large number of species which could or should be considered for listing aren't.¹⁵³

2.119 Dr Andrew Burbidge observed that the TSSC was limited in its capacity to undertake reviews of the EPBC list:

...the voluntary Threatened Species Scientific Committee members find it difficult to keep up with the current workload generated by public nominations, let alone undertake comprehensive reviews of the list. Such reviews need to be commissioned externally and conducted by respected experts in the particular taxonomic group.¹⁵⁴

2.120 Professor John Woinarski suggested:

As with the IUCN Red List, such threatened species list reviews should be undertaken or coordinated by relevant experts, rather than through government (or inter-governmental) processes.¹⁵⁵

2.121 In the same vein, Dr Peter Kyne believed that the TSSC:

...needs to be expanded to cope with the number of EPBC listing proposals. Instead of a single group, the TSSC should be comprised of several subcommittees organised around taxa (plants, birds, mammals, fishes etc), which reports to an overarching TSSC.¹⁵⁶

2.122 The TSSC agreed that many of the problems with the timeliness and accuracy of the EPBC listing process as outlined in this chapter could be 'efficiently addressed' by the 'formulation of specialist, scientific, expert working groups'. The TSSC pointed to model provided by the IUCN, which has a number of Specialist Groups:

...the members of which work pro bono, are charged with the task of regularly reviewing the status of species in various ecological or taxonomic groups and developing recommendations for listing as appropriate.¹⁵⁷

151 Invasive Species Council, *Submission 140*, p. 10; see also Mr Greg Miles, *Submission 72*, p. 1.

152 Australasian Bat Society, *Submission 110*, p. 15.

153 Mr Jeremy Tager, *Submission 89*, p. 3.

154 Dr Andrew Burbidge, *Submission 46*, p. 3.

155 Professor John Woinarski, *Submission 48*, p. 8.

156 Dr Peter Kyne, *Submission 51*, p. 2.

157 TSSC, *Answers to questions on notice*, received 26 February 2013, p. 2.

2.123 The TSSC suggested that:

In the Australian context, similar groups could additionally be charged with reviewing Expressions of Interest from the public and assembling the evidence required for listing nominated species or ecological communities. We believe that many of our academic colleagues and others with specialist knowledge would welcome involvement in tasks of this nature on a pro bono basis, along the lines developed by IUCN.¹⁵⁸

Committee view

2.124 The committee commends SEWPAC and state and territory governments for their work in recent years to progressively harmonise the lists of threatened species across jurisdictions, and supports the continuation of this work. The committee notes that this is also consistent with recommendations made by the ANAO, as discussed in the previous chapter, that the national list of threatened species and ecological communities be aligned with state and territory lists.

Recommendation 1

2.125 The committee recommends that the Commonwealth, state and territory governments prioritise their work towards reducing duplication and inconsistency between the *Environment Protection and Biodiversity Conservation Act 1999* list and state and territory lists of threatened species and communities, consistent with the aim of achieving a harmonised national list capable of accommodating regional or geographic listings within or across individual states. The committee further recommends that the Commonwealth, state and territory governments work to establish uniform and integrated processes for the future listing of threatened species and communities.

2.126 The committee also recognises the hard work of SEWPAC and the Threatened Species Scientific Committee (TSSC) in assessing species and communities for listing under the EPBC Act. Nevertheless, the committee considers that there is room for improvement. The committee was troubled by the evidence received that the TSSC is under-resourced. The committee is also particularly concerned by the evidence received that the list of threatened species and ecological communities under the EPBC Act is out-of-date and inaccurate. This evidence is disturbing given the importance of the lists as a tool for decision-making under the EPBC Act; for allocating and prioritising government funding; and as a public indication of the state of Australia's biodiversity.

2.127 The committee acknowledges calls for a more strategic, systematic approach to the listing process. While the committee supports the retention of the current public nomination process, the committee notes the evidence received that the nomination process is too detailed, too complicated and maybe overwhelming for many community groups. The committee therefore welcomes the TSSC's proposal for a less complicated, 'expressions of interest' process, and suggests that the department give serious consideration to this proposal.

158 TSSC, *Answers to questions on notice*, received 26 February 2013, p. 2.

Recommendation 2

2.128 The committee recommends that the Department of Sustainability, Environment, Water, Population and Communities investigate a less complicated 'expressions of interest' process for the public to nominate threatened species and ecological communities for further consideration of their potential to be fully nominated by expert groups operating on a pro bono basis, as suggested by the Threatened Species Scientific Committee.

2.129 The committee also considers that there is an urgent need for a formal, systematic review of the current list of threatened species under the EPBC Act. The committee believes this process could be enhanced by increasing the resourcing available to the TSSC. In particular, the committee was persuaded by proposals for the establishment of a series of specialist scientific working groups to support the work of the TSSC. If necessary, amendments to the EPBC Act should be made to facilitate this process.

2.130 Initially, the primary role of these groups could be to conduct reviews of the EPBC Act threatened species list by taxonomic groups (such as birds, mammals, reptiles, amphibians, fish and so on) within five years. A good starting point would be recently developed action plans—such as the Action Plan for Australian Mammals and the Action Plan for Australian Birds, as discussed earlier in this chapter.

2.131 The groups could also have an ongoing role to support the TSSC in assessing public nominations. The committee considers that this increased resourcing would also help to address the delays in the listing process.

Recommendation 3

2.132 The committee recommends that the Department of Sustainability, Environment, Water, Population and Communities establish specialist scientific sub-groups to support the work of the Threatened Species Scientific Committee.

Recommendation 4

2.133 The committee recommends that the Threatened Species Scientific Committee, and specialist sub-groups, supported by the Department of Sustainability, Environment, Water, Population and Communities, commence systematic reviews of the *Environment Protection and Biodiversity Conservation Act 1999* threatened species list, to be undertaken by taxonomic group, to be completed within the next five years and to continue to be undertaken at not less than five yearly intervals.

2.134 The committee acknowledges concerns that there is insufficient data for some potentially threatened species which are therefore unable to be considered for listing. The committee suggests that the TSSC should be given power to recommend that the minister fund research programs for species or communities which are found to be ineligible for listing under the EPBC Act due to data deficiency. Further, the minister should be required to respond to such recommendations.

Recommendation 5

2.135 The committee recommends that the *Environment Protection and Biodiversity Conservation Act 1999* be amended to give the Threatened Species Scientific Committee power to recommend that the Environment Minister fund research programs for species or communities which are found to be ineligible for listing under the *Environment Protection and Biodiversity Conservation Act 1999* due to data deficiency or geographical location, and that the minister be required to respond to the Threatened Species Scientific Committee's recommendations.

2.136 In addition, the committee urges the Commonwealth government to fast-track the introduction of the proposed emergency listing provisions. These provisions were recommended by the Hawke review in October 2009 and then again by this committee in March 2012. However, at the time of writing, legislation to implement the amendments to the EPBC Act, as recommended by the Hawke review, still had not been introduced.

Recommendation 6

2.137 The committee recommends that the Commonwealth government introduce into Parliament the proposed amendments to the *Environment Protection and Biodiversity Conservation Act 1999* relating to 'emergency listing' of threatened species and communities as a matter of high priority.

2.138 The committee acknowledges evidence that the current approach to listing threatened populations of the EPBC Act is less than ideal, as was demonstrated by the difficulties in listing of koala populations. Although that listing was achieved, the committee agrees with evidence that the current process is 'clunky' and could be improved. Again, this would help align the EPBC Act with legislation in other jurisdictions, such as New South Wales, which allow for the listing of threatened populations of species.

Recommendation 7

2.139 The committee recommends that the Commonwealth government amend the *Environment Protection and Biodiversity Conservation Act 1999* to allow for the listing of *threatened populations* of species in a manner consistent with the objective of harmonising listings and listing processes with state and territory governments.