

Appendix 3

Australian Government Response to the Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* – Recommendation 16



Recommendation 16

The Review recommends that the Act be amended to give the Environment Minister the power to make emergency listings of threatened species and ecological communities, provided the Minister believes that:

- 1. the native species or ecological community meets the criteria for the listing category for which it is nominated; and*
- 2. a threat to the native species or ecological community is severe and imminent.*

Government response: Agreed in principle

The Australian Government agrees with the intent of this recommendation and will amend the Act to include an emergency listing process for threatened species and ecological communities. The government considers that the criteria on which the minister makes an emergency listing of a species or ecological community should be whether the native species or ecological community meets the listing category's criteria, and whether a threat is both likely and imminent and would result in a significant adverse impact. In contrast to 'severe', the 'significant' test is already central to the EPBC Act and will still achieve the intent of this recommendation.

The Act currently does not cover circumstances where there is the potential for immediate and significant threats to a species or ecological community that is not yet listed. While the Act allows the Threatened Species Scientific Committee to consider nominations additional to those put forward during the listing process, this does not provide emergency protection to respond to an imminent and significant adverse impact to a species or ecological community. A provision exists under the Act for emergency listing of heritage places and Ramsar wetlands. The new provision will operate in a similar way to these existing emergency listing provisions.

The government notes that the process and test for emergency listing must be stringent to avoid any misuse of process or vexatious claims. Consistent with other emergency listing procedures in the Act, the amendment will allow the minister to seek the advice of the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68) wherever feasible, and to consult with relevant state, territory and Australian Government agencies as appropriate.

Similar to the role the Australian Heritage Council takes in heritage listings, the proposed Biodiversity Scientific Advisory Committee will be required to do the usual full independent assessment of the species or ecological community within 12 months of the emergency listing occurring. This assessment will also include recommendation of an appropriate listing category for the species or ecological community in question.