

22 February 2012

Mr Stephen Palethorpe  
Committee Secretary  
Senate Standing Committee on Environment and  
Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600



Via email: ec.sen@aph.gov.au

**Re. Senate Standing Committee on Environment and Communications Review - EPBC Amendment (Emergency Listings) Bill 2011 – Supplementary Information**

Dear Mr Palethorpe,

The Minerals Council of Australia (MCA) welcomes the opportunity to provide supplementary evidence to the Senate Standing Committee on Environment and Communication Review of the EPBC Amendment (Emergency Listings) Bill 2011.

In our appearance before the Senate Committee on 3 February 2012, the MCA said in evidence “there may be controls at the state environmental approval level which need to be considered, or at least factored in, prior to going to a national level in terms of its listing”<sup>1</sup>. This was in support of the 17 December 2011 MCA submission to the Committee which stated: “In some circumstances, while a species or community may not be listed under the EPBC Act, adequate controls may already be in place at the jurisdictional level”<sup>2</sup>. The Committee requested further information regarding the existing controls which are in place and which the MCA was relying on for evidence. Accordingly, the following information has been provided.

**Recognition of Existing Controls**

*State and Commonwealth Threatened/Protected Species Registers*

In particular, the States and the Commonwealth hold separate lists of threatened species which are not necessarily aligned. This was recognised within the Independent review of the EPBC Act<sup>3</sup>. While a comprehensive review of the Commonwealth and States’ threatened species lists is beyond the scope of this response, there are many examples of where a species or community is protected at a Jurisdictional level, but not at the Commonwealth level. Some examples include:

- *Sternula albifrons (little tern)* – listed as Endangered in Queensland<sup>4</sup> but not listed under the EPBC Act.
- *Notomys cervinus (fawn hopping mouse)* - listed as Endangered in Northern Territory<sup>5</sup> but not EPBC Act listed.
- *Petaurus norfolcensis (Squirrel Glider)* – Listed as Endangered in Victoria<sup>6</sup> but not listed under the EPBC Act
- *Thalassarche melanophrys (Black Browed Albatross)* – listed as Specially Protected Fauna in Western Australia<sup>7</sup>, but not listed under the EPBC Act.

<sup>1</sup> Committee Hansard, 3 February 2012

<sup>2</sup> MCA Submission to the Senate Standing Committee on Environment and Communications, 17 December 2011

<sup>3</sup> Report of the Independent Review of the EPBC Act, 1999

<sup>4</sup> [http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/threatened\\_plants\\_and\\_animals/index.html](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/threatened_plants_and_animals/index.html)

<sup>5</sup> <http://www.nt.gov.au/nreta/wildlife/animals/threatened/specieslist.html>

<sup>6</sup> [http://www.dse.vic.gov.au/\\_data/assets/pdf\\_file/0006/103389/Advisory\\_List\\_of\\_Threatened\\_Vert\\_Fauna\\_in\\_Victoria\\_-\\_2007\\_amended\\_11\\_august\\_2009.pdf](http://www.dse.vic.gov.au/_data/assets/pdf_file/0006/103389/Advisory_List_of_Threatened_Vert_Fauna_in_Victoria_-_2007_amended_11_august_2009.pdf)

<sup>7</sup> <http://www.dec.wa.gov.au/content/view/852/2010/>

In some cases, while the specific species may not be protected under State processes, the bioregion or ecological community in which it sites may be protected, for example Threatened Ecological Communities such as Swamp Sclerophyll Forest on Coastal Plains in New South Wales or the *Eucalyptus Calophylla* woodlands on the Swan Coastal Plain in Western Australia.

In the MCA's 17 December 2011 Submission to the Senate Enquiry, the MCA does not suggest that all species or communities are protected in all cases; however existing levels of protection, where they exist, should be accounted for as part of any EPBC Act Emergency listing process to avoid unnecessary duplication or delay in assessment processes.

#### *Existing Emergency Listing Processes*

While an Emergency Listing Mechanism for threatened species does not currently exist in all States, in New South Wales the *Threatened Species Conservation Act 1995 (TSC)*<sup>8</sup> provides for an emergency listing mechanism called "provisional listing" under Part 2, Division 4. This mechanism allows for emergency listing by the NSW Scientific Committee that is expedited without going through the public consultation process. Species may be provisionally listed as either endangered or critically endangered.

In the New South Wales, the "Provisional listing" process has been successful at protecting a number of species<sup>9</sup>. One example includes the *Triplarina nowraensis* (Nowra Heath-myrtle) – which was provisionally listed in August 1996 with a final determination and listing in June 1997. Many other species have been and are currently provisionally listed.

#### **Discovery of a Threatened Species Changing a Mining Practice**

The following example has been provided in response to the Committee Request to provide examples of where a Federally threatened species has been found and led to amendments in the mining plan of operations to ensure the protection of the threatened species.

#### *Consolidated Rutile – Oxleyan Pygmy Perch*<sup>10</sup>

In 2000, the Oxleyan Pygmy Perch (*Nannoperca oxleyana*) was encountered at an existing Consolidated Rutile Ltd (now part of Sibelco) sand mining operation on North Stradbroke Island. The Oxleyan Pygmy Perch was listed as endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and 'vulnerable' under the Nature Conservation Regulation 1994 (Qld), was found at Little Canalpin Creek, located adjacent to one of CRL's areas of operation.

Discovery of the Pygmy Perch led to the company undertaking an extensive risk assessment of the operation's disturbance of the fish's habitat. Based on the outcomes of the assessment which indicated a high likelihood of disturbance, a Significant Species (Fish) Management Plan was prepared which included protection for the entire Little Canalpin Creek ecosystem. Using drilling and groundwater data, mine engineers determined a mine path which minimised the disruption of the perched catchment of Little Canalpin Creek and water impacts during the dredging and tailings management. In addition to extensive additional monitoring and research, CRL instigated a captive breeding program. The program has been successful in creating greater understanding of the Oxleyan Pygmy Perch and assisting the government in developing a recovery plan for the species.

It is hoped the above additional information addresses the Committee's requirements for further information.

Yours sincerely

**CHRIS MCCOMBE**  
**Assistant Director – Environmental Policy**

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<sup>8</sup> <http://www.legislation.nsw.gov.au/viewtop/inforce/act+101+1995+FIRST+0+N>

<sup>9</sup> <http://www.environment.nsw.gov.au/committee/provisionaldeterminations.htm>

<sup>10</sup> Leading Practice Sustainable Development Program for the Mining Industry