

**Senate Standing Committee on Environment and Communications**  
**Legislation Committee**  
Answers to questions on notice  
**Environment portfolio**

**Question No:** 32  
**Hearing:** Additional Estimates  
**Outcome:** Outcome 5  
**Programme:** Wildlife Heritage and Marine Division  
**Topic:** Maules Creek Aboriginal Heritage Protection application  
**Hansard Page:** N/A  
**Question Date:** 07 March 2014  
**Question Type:** Written

**Senator Waters asked:**

On the 4th of November 2013 a number of Gomeroi Traditional Owners submitted to the Department emergency applications for the protection of heritage sites at risk from the Maules Creek development, including sacred burial and ceremonial sites. As at 13 February 2014 the applications had not been processed.

1. Why has assessment of this emergency application taken over 100 days, and is still not resolved?
2. When does the Department expect to make its decision?
3. What is the average timeframe for assessing applications under section 9 and section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984?
4. It is my understanding that as of Monday 10 February 2014 members of the community have evidence from aerial photographs that sites identified in those emergency applications have been bulldozed already. Is the Department aware whether that is true?
5. Please detail how many FTE staff are responsible for managing the Department's responsibilities under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, and how many of these staff were responsible for managing the assessment of the emergency applications.
6. Please detail all contact (dates, and persons contacted) the Department has had with the applicants and the proponents regarding this emergency application since it was received.
7. Will the Department review its internal processes to eliminate this kind of delay for assessment of emergency applications?

**Answer:**

1. A group called the Gomeroi Traditional Custodians (the applicant) has submitted applications for declarations under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act), including an application for an emergency declaration under section 9 of the Act. The applications were submitted in stages, initially on 12 November 2013, and most recently on 21 January 2014. Initially the Minister for Indigenous Affairs was responsible for processing the applications, with the Minister for the Environment being allocated this responsibility in the Administrative Arrangements Order dated 12 December 2013. To date the Minister has not received a complete application and consequently he is unable to consider whether to exercise his discretionary power to make an emergency declaration under section 9 of the Act. On 24 February 2014 the Minister wrote to the applicant's legal representative, the Environmental Defender's Office NSW, to explain the requirements of the Act.

2. Under the provisions of the Act the Department cannot make a decision on an application for an emergency declaration under section 9 of the Act.
3. Last year a review of available records showed that, in the last 10 years, section 9 applications have taken an estimated 222 days to process on average, and section 10 applications have taken an estimated 471 days to process on average. These statistics were provided to Senator Siewart in a response to a question she asked in the additional estimates hearing of 12 February 2013 (question number 68) and are not expected to have changed significantly since then. Each application raises unique issues, so there is no standard or typical timeframe. The Act does not prescribe any timeframes for the Minister's decisions.
4. The Department is unaware of the aerial photographs referred to or whether any sites that the applicants wish to protect have been bulldozed.
5. The Department's work in meeting its responsibility to assist the Minister to process applications under the Act is driven by demand. Consequently the Department does not allocate a fixed number of staff to this work. Processing the incomplete applications related to Maules Creek required time contributions from various staff members between December 2013 and February 2014, with the main contributions coming from four members of staff.
6. Please refer to the following table:

<b>Date</b>	<b>Applicant or proponent</b>	<b>Form of contact</b>
12.11.13	Representative of the applicant	Letter to the Minister via email copied to the Department
20.12.14	Legal representative of the applicant	Phone call to the Department
21.01.14	Representative of the applicant	Letter to the Minister via email copied to the Department
26.02.14	Legal representative of Whitehaven Coal Ltd	Letter from the Department to legal representative in reply to letter of 30 January 2013 to the Minister

7. The Minister is unable to process applications if they are incomplete. The timing of the progress of this matter is in the hands of the applicant.