

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

Question No: 60
Hearing: Additional Estimates
Outcome: Outcome 5
Programme: Environment Assessment and Compliance Division
Topic: Environment Legislation Amendment Bill 2013 procedure
Hansard Page: N/A
Question Date: 11 April 2014
Question Type: Written

Senator Waters asked:

1. Why hasn't Minister Hunt responded to a request from the Senate Scrutiny of Bills Committee for evidence that the Enviro Legislation Amendment Bill is needed for business certainty?
2. What evidence does the Minister have that the Federal Court's Tarkine case had created any business uncertainty?
3. When will the Government respond to the Committee's request?

Answer:

1. The Minister for the Environment's response to the Senate Standing Committee for the Scrutiny of Bills (the Committee) on the Environment Legislation Amendment Bill 2013 was provided to the Committee's secretariat on 10 February 2014.

The Minister for the Environment's response is available here:

<http://www.aph.gov.au/~media/Committees/Senate/committee/scrutiny/bills/2014/pdf/b01.pdf>

2. The Federal Court judgment in *Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities* [2013] FCA 694 (the **Tarkine case**) has potential implications for approval decisions which have been made under the *Environment Protection and Biodiversity and Conservation Act* (EPBC Act) since January 2007, when amendments to the EPBC Act made it mandatory to consider relevant approved conservation advice in certain circumstances.

The degree of legal risk to each EPBC Act approval since 2007 as a result of the *Tarkine* case would turn on the facts of each individual case, however the Federal Court judgment raises genuine uncertainty as to the legal validity of those decisions. The Environment Legislation Amendment Bill 2013 is necessary in order to provide the assurance to stakeholders that previous decisions under the EPBC Act will not be invalid because of a technicality – that is, the Department did not attach approved conservation advices to a decision brief.

3. As per the response to Question 1.