



tasmanian conservation trust inc



invasive
species council

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Submission to Future Direction for a new contemporary Biosecurity Legislation Framework (Tasmania)

**Invasive Species Council
and
Tasmanian Conservation Trust**

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Introduction

The Invasive Species Council (ISC) and Tasmanian Conservation Trust welcome the future directions paper and the opportunity to make this submission. The ISC is a national community-based organisation that seeks to reduce the environmental impact from invasive plants, weeds, diseases and other invaders. The Tasmanian Conservation Trust is the longest continuing non-government conservation organisation in Tasmania.

We draw your attention to our submission of April 2016, which describes our views on the proposed biosecurity framework.

This current submission responds specifically to the template questions about the future directions paper, comments on other aspects of the paper, and elaborates on aspects of our earlier submission.

Initial comment

We welcome the prominent references to protection of the environment in the Future Directions paper. This recognises that environmental biosecurity is part and parcel of overall biosecurity, and that biosecurity threats are among the greatest threats to the natural environment. We urge that this balanced view of biosecurity be maintained as it displays a mature and leading approach to biosecurity on Tasmania's part, as urged in our submission of April 2016.

We further commend the emphasis on risk-based decision-making, and the inclusion of transparency mechanisms proposed in the paper.

We urge that greater emphasis be placed on prevention and on the precautionary principle as the Bill is drafted. We urge that specific objects be included in the Bill relating to environmental protection, and to educating, engaging and supporting the community in fulfilling their general biosecurity obligations.

Responses to questions from the consultation template

Template Question 1

The Tasmanian Government intends to create a new Biosecurity Act to implement Tasmania's biosecurity framework. The new Act will be framework legislation. Framework legislation enables rules and regulations to be created which are consistent with the Act's principles and overarching functions. This is different from prescriptive Acts where the detail of exactly how the legal requirements must be met are in the Act itself.

Do you think we have got the right principles and overarching functions for framework legislation relating to biosecurity?

Principles

We support the inclusion of strong principles in the legislation, but it is not possible to discern which principles are being referred to in the consultation question, as the references to principles in the Future Directions paper are muddled:

On page four it is stated that the principles of the framework “are consistent with” the 8 principles in the Tasmanian Biosecurity Strategy.

Then in the diagram on page five there is the line: “Adopt key principles (industry and environmental biosecurity; risk based decision-making)...”. Are these proposed as the only two principles, or cited as examples?

Then on page 6 under the heading “Principle [singular] and Overarching Functions” there is reference made to “three principles”: a general biosecurity obligation, an owner reimbursement model, and “Principles and mechanisms for co-investment and Co-funding” [although these latter principles are not described]. These supposed principles are not the same as those referred to on page four, nor those referred to on page five. Indeed they are listed as functions, not principles, on page 5.

It is not possible to discern the principles proposed for inclusion in the Act.

If principles are to be a keystone of the upcoming legislation, this apparent confusion about the nature and content of principles is worrying.

To help, we offer the following biosecurity principles, for adoption in the new framework legislation:

- **Protecting the natural environment is core business:** The protection of biodiversity and ecosystem function is an integral goal of Tasmania’s biosecurity system.
- **Prevention is smarter than cure:** Preventing new invasive species and new incursions is more effective and cheaper than attempting to address species at later stages of invasion.
- **Timely action is crucial:** The likelihood of success reduces, and the costs rise, the further a species gets along the “invasion curve”. It is therefore crucial to make timely allocation of human and financial resources in biosecurity and invasive species operations.
- **A precautionary approach is required:** A lack of full scientific certainty should not be allowed to delay action where there is a risk of harm to biodiversity.
- **Science-based, precautionary risk assessment:** Risk assessments must form the foundation of decision-making under the Act. Risk assessments must be science-based, independent, transparent and precautionary.
- **All taxonomic groups are included:** All classifications of organism must be assessed and treated consistently, including all species, sub-species, cultivars and variants.
- **A tenure-neutral approach** should be taken to the management of invasive species’ impacts on the natural environment.
- **Effectiveness rules:** The Act’s administration must drive towards clear, measurable outcomes (including biophysical outcomes) and must include means of evaluating and reporting on the effective and timely achievement of those outcomes in the near-term.
- **Future generations matter:** Subsequent generations of Tasmanians should not inherit impacts or costs of avoidable failures in today’s environmental biosecurity.

We make one further point regarding principle 6 in the Tasmanian Biosecurity Strategy. Principle 6 “Cost-Benefit Decision-Making on Control and Eradication” states that “The Tasmanian

Government will only commit public resources to control and eradication programs that provide a cost-effective benefit for the community and the environment". There is no agreed means of quantifying the public good accruing from environmental biosecurity measures. Therefore decisions about environmental biosecurity (and its funding) must be made on a science-based, risk assessment of environmental harm that applies the precautionary principle. Environmental outcomes are public good outcomes and so the default position must be that environmental biosecurity will be funded by government.

This point is also directly relevant to the Principles and Mechanisms for Co-investment and Co-funding alluded to in the paper. On page 7 it is suggested that those principles will be consistent with similar principles in other jurisdictions. Such principles may render cost-benefit analysis a barrier to timely action on environmental biosecurity (given absence of agreed means of quantifying environmental public goods). Therefore decisions about investment and funding in environmental biosecurity should be based on precautionary risk analysis, not on cost-benefit analysis. It is also important that time-critical decisions and actions not be delayed due to cost sharing negotiations, and so such negotiations should take place after the intervention when time is of the essence.

That said, we do urge that risk creators and private beneficiaries of biosecurity measures should be identified where possible and should contribute appropriately to funding biosecurity under the new Act (this latter point is most relevant to non-environmental biosecurity where private interests are more likely to be encountered, as opposed to the public good delivered through environmental biosecurity).

Functions

The proposed functions are clearly outlined on page 5 of the paper. We make the following comments about the functions described on page 5:

- The "General Biosecurity Obligation" (GBO) will require adequate community engagement and education to be successful. We agree in principle with such obligations, and urge that sufficient budgetary provision be made, in an on-going way, to ensure that stakeholders, including environmental stakeholders, and the general public are equipped and informed sufficiently to acquit their obligations.

An emphasis on a preventative and precautionary approach in line with the principle outlined in this submission will help to ensure that the obligation drives a lowering of biosecurity risk.

The GBO could be linked not only to penalties under the Act, but to a system of support for standard good practice in biosecurity, and rewards and incentives for those whose practice exceeds standard good practice, thus encouraging an overall lifting of standards over time.

- "Listing" should place emphasis on permitted (as opposed to prohibited) lists, to enable regulation consistent with Australia's ALOP, allowing into Tasmania only species, subspecies, cultivars or variants that pose only a very low risk to the environment.
- We strongly support the development of "Programs" for prevention, surveillance, control and management of invasive species, and urge that strong environmental biosecurity and invasive species eradication and containment programs be developed. We are strongly supportive of maintaining the fox surveillance and control program. We also urge that a state-wide deer containment program be established.

A further function that should be included under the Act is that of **producing periodic “state of biosecurity” reports** including environmental biosecurity. This is relevant to the overarching function of governance, and will also enable informed continuous improvement in performance in the fulfilment of people’s General Biosecurity Obligation by providing data and analysis about:

- Outputs
- Outcomes
- Trends
- The success or otherwise of various methods and interventions

Template Question 2

One of the principles to be introduced in the new Biosecurity Act is a ‘General Biosecurity Obligation (GBO).’ A GBO recognises that all stakeholders (community, government and industry) have a general duty of care in maintaining the biosecurity status of the state.

How do you feel about the principle of a General Biosecurity Obligation? How can government support people to meet their GBO responsibilities?

See our comment above under “functions” (the GBO is referred to in the future direction paper as both a principle, and a function, which is confusing).

We add that a GBO should not be seen as reducing or defraying Governments’ responsibilities for ensuring strong environmental biosecurity. Instead a GBO properly defines governments’ responsibilities in the context of those of other stakeholders: Governments have especially large responsibilities as representatives and servants of taxpayers, the electorate and the public. In Tasmania the State Government manages the island’s marine waters and the majority of the terrestrial environment. We therefore affirm the wording of principle 8 in the Tasmanian Biosecurity Strategy which emphasises government’s own responsibility in the context of shared responsibility.

Template Question 3

Consultation on the detail of the new Biosecurity Act will occur next year when a draft of the legislation is released for comment. Even once the Act is passed, there will be ample opportunity for stakeholders to have input on the subordinate instruments (regulations, guidelines etc) before they are adopted.

Do you think the Tasmanian Biosecurity Framework (as set out in the Future Directions statement) has all of the necessary functions to manage biosecurity? Are there missing elements which you would like to see included?

See our comments above regarding state of biosecurity reporting.

Other comments on the future directions paper

The Goal and Objectives outlined on page four of the future direction paper are not displayed in the diagrammatic representation of the framework on page five. This leads us to wonder whether it is proposed to include objects within the Act itself. We urge that the objects be included in the Act, to provide direction and drive in its administration and in the practices of Tasmanians seeking to fulfil their general biosecurity obligation. We further urge that the

following object be specified in the Act, clarifying the Act's purpose vis-a-vis environmental biosecurity:

“To prevent the importation or incursion of new environmentally invasive species, and to reduce to a minimum the impact of invasive species on biodiversity, the environment and ecosystem function”

Alternatively (but not preferably) the environmental purpose of the Act could be clarified through the inclusion of a definition of “environment” in the Act to clarify the meaning of the first dot-point objective listed on page four of the future directions paper. Such a definition should be along the following lines:

Environment includes:

- (a) Australian biodiversity – the variety of life indigenous to Australia and her external territories, encompassing ecosystem, species and genetic diversity,*
- (b) ecological processes – the interactions and connections between living and non-living systems, including movements of energy, nutrients and species, and*
- (c) natural and physical resources.*

Given the importance of educating, engaging and supporting the community to fulfil their General Biosecurity Obligation under the new Act, we also urge that an object an object be included in relation to this. Such an object could be worded along the following lines:

“To enable the education, engagement and support of the community in fulfilling their general biosecurity obligation”

Conclusion

We commend the emphases on environmental biosecurity, on transparency, and on risk-based decision making in the future directions paper. We urge that the description of principles be clarified as suggested in this submission, and that the environmental and community education and engagement objects of the legislation be specified in the Bill. We further urge that state of biosecurity reporting be added as a function of the Act.

We strongly urge a clear emphasis be placed on prevention, and on a precautionary risk-based approach to biosecurity throughout the Bill.

We urge that this submission be read in conjunction with our earlier submission of April 2016.

We look forward to reviewing the draft legislation in early 2017 as scheduled, and we thank you for the opportunity to comment on the future directions paper.