

SUBMISSION

Tasmania's Draft Biosecurity Bill

Joint submission of the Invasive Species Council and Tasmanian Conservation Trust

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About the Invasive Species Council

The Invasive Species Council was formed in 2002 to advocate for stronger laws, policies and programs to keep Australian biodiversity safe from weeds, feral animals, exotic pathogens and other invaders. We are a not-for-profit charitable organisation with over 2000 supporters. Our work is funded almost entirely by donations from supporters and philanthropic organisations.

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Inquiries

Invasive Species Council

Address: PO Box 166, Fairfield VIC 3078 - Australia

Web: invasives.org.au | **Email:** contact@invasives.org.au | **Phone:** 0438 588 040 | **ABN:** 27 101 522 829

Contact: Andrew Cox, CEO

Introduction

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

To this end our joint submission aims to help align the draft bill with our understanding of the legislation required to deliver best practice environmental biosecurity.

Summary of recommendations

Recommendation 1

Rephrase S. 3(b)(ii) along the following lines to achieve greater clarity in the bills purpose and direction 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 and biosecurity matters on biodiversity, the environment and ecosystem function.*

Recommendation 2

Include as an object of the bill: *To educate and engage people about their general biosecurity duty and ways of fulfilling it.*

Recommendation 3

Include in the bill a requirement that science-based, precautionary risk-assessments be conducted and published on all taxa proposed for importation into Tasmania, and on all taxa already in Tasmania thought to be invasive, through a process involving independent expertise, peer review and public consultation. Require that decisions made contrary to risk assessments must be publically reported along with the reasons for those decisions.

Recommendation 4

Specify in the bill that it gives effect to the UN Convention on Biological Diversity.

Recommendation 5

Include in the bill a requirement for the production and periodic review of a biosecurity strategy for Tasmania, making specific provision for drawing on adequate environmental input and public consultation in the strategy's production and review.

Recommendation 6

Include in the bill a new "principles" section between the current sections 3 and 4, specifying the precautionary principle, the prevention principle, and other relevant principles to be taken account of by those administering the act.

Recommendation 7

Include the achievement of "ecological sustainability" as an object of the bill, providing a definition of the term in the interpretations section, and including in the functions section a requirement that those performing functions under the act must have regard to ecological sustainability. Give consideration to removing the awkward cross-reference to the RMPA Act from s.4.

Recommendation 8

Make provision for the State to be liable for an offence under the act, consistent with providing an authentic general biosecurity duty as an expression of shared responsibility.

Recommendation 9

Revise the definition of "environment" in the bill to properly reflect modern understandings of biodiversity, ecology, ecosystem function and resilience, and to help clarify the bill's objects relating to environmental biosecurity.

Recommendation 10

Re-word s.9(1)(d) to read: "all risk analyses, and a list of risk analyses in progress, a list of known incursions and details of incursion responses, pathway analyses, agendas and minutes of the Biosecurity Advisory Committee and its sub-committees, and any explanatory or supporting information and material that the Secretary considers appropriate"

Recommendation 11

Provide in the bill for mandatory periodic "State of Biosecurity" reports, prepared by the Biosecurity Advisory Committee, to be published.

Recommendation 12

Review the definition of invasive pest to ensure that innately invasive non-indigenous species can be defined as invasive and that indigenous species must be shown to be demonstrating invasive characteristics prior to being considered invasive.

Recommendation 13

Require in the bill that when making listing and other relevant decision under the act, The Minister and Secretary must a) always act consistent with Australia's ALOP of maintaining at worst a very low level of risk and b) where biosecurity risks to *Tasmania's natural environment* exist only permit those biosecurity matters that pose risks of an extremely low level (approaching zero risk), and c) make such decisions only following the completion of a risk assessment

Recommendation 14

Provide, in regulations, guidelines and information, for greater definition and guidance of measures that may be considered reasonable and practicable in fulfilling one's general biosecurity duty.

Recommendation 15

Broaden the wording of s.69 (1) to read "a person must not cause a significant biosecurity *emergency, event* or impact".

Recommendation 16

Add a section 71 (1) (d) that reads: "any person who it is reasonable to expect should know of the occurrence or likely occurrence of a biosecurity event", or similar, broad wording.

Recommendation 17

Add, as grounds for cancellation or suspension of biosecurity registration or of a permit, "that an unacceptable biosecurity risk has arisen under the [registration or permit]".

Recommendation 18

Insert the word "contain" in s.(2) (b).

Recommendation 19

Require that the environment sub-committee of the Biosecurity Advisory Committee be consulted where programs address, or pose, a risk to the natural environment.

Recommendation 20

Make explicit provision in the bill for third parties acting in the public interest to appeal decisions, both on the merits of the decisions and on the legality of the decision-making processes.

Recommendation 21

Replace the word “may in s. 265(1) with the word “will.

Recommendation 22

Specify the expertise and experience required to be included on the Biosecurity Advisory Committee and its sub-committees, including inclusion of environmental biosecurity expertise and experience.

Recommendation 23

Require the Biosecurity Advisory Committee to establish an expertise-based environment sub-committee with specific expertise and experience in environmental biosecurity, and a community advisory sub-committee.

Recommendation 24

Define a specified process for decision-making about granting of exemptions under the act, that ensures transparency, accountability, adherence to the risk and evidence-basis of the bill, and requires that the BAC is consulted prior to the granting of any exemption

Recommendation 25

Require that, where environmental biosecurity is at issue, the Minister consult the Minister for Environment in making decisions under the act.



General comments on the draft bill

We are pleased with the direction that the development of the framework is taking. In our submission of May 2016 we urged that a permitted list be established, that the framework be a science- and risk-based one, that all life-forms be encompassed, that a general biosecurity duty be established, and that the legislation cover the marine environment. These things have been provided for in the bill. There remains significant room for improvement of the bill by addressing some of these things in more detail, and by attending to some of the other elements mentioned in our earlier submissions.

Particular attention should be paid to:

- Making more detailed provisions to ensure that precautionary risk management forms the basis of decision-making,
- Ensuring that the administration of the act is transparent and that appropriate reporting provisions are in place,
- Ensuring that environmental biosecurity is clearly front-and-centre in the act's administration,
- That provision is made to ensure that environmental agencies, experts and stakeholders are involved in all relevant decision-making processes.

As framework legislation, the Bill leaves much of the detail to be described in subsequent regulations and guidelines, and provides for a large amount of ministerial discretion in implementing the Act. We understand that there are advantages to such flexible forms of legislation but we feel that in this case there is too much discretion and too little detail, especially given the absence of the promised statutory principles from the bill. Our detailed comments below provide many specific ideas about how to add sufficient detail to the bill to ensure that it provides not only a framework, but an effective one aligned with best practice in biosecurity, attending adequately to the matters outlined above.

We draw your attention to the attached Invasive Species Council document *Environmental biosecurity: Best practice, A guide for Australian Policy-makers* which contains an integrated set of ideas for constructing ideal biosecurity systems. We urge that you refer to this guide in refining the bill and subsequent regulations, guidelines and administrative arrangements. The guide can be found at <https://invasives.org.au/publications/biosecurity-best-practice/>.

One final point: we urge that adequate resources be provided for the initial transition to the new act and its on-going full implementation. The process of "switching on" the new act may take some time and adequate resourcing will ensure minimal delay in implementing the new act.

Detailed comments on the draft bill

Our comments below are each prefaced with a reference to the relevant section of the draft bill, and are presented in the same numbered order as the contents of the bill (omitting sections on which we make no comment).

Page 13 (preceding S.1)

We note and welcome the prominent reference to the environment on page 13 of the bill. Environmental biosecurity is an aspect of biosecurity that has received short shrift in many jurisdictions, and we welcome the prominent environmental reference at the outset of the bill.

S.3 Objects

We support the explicit reference to protecting the environment in **S. 3(b)(ii)** currently expressed as “to protect Tasmania from threats to terrestrial and aquatic environments arising from pests, diseases and other biosecurity matters”. We urge that this object be rephrased along the following lines, and that the interpretation of the term “environment” be modernised (see our comments below), to ensure that the purpose and direction of Tasmania’s biosecurity system is clear 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 and biosecurity matters on biodiversity, the environment and ecosystem function.

We also urge that a further object be inserted in the bill relating to community education and engagement. The Queensland Biosecurity Act (2017) refers to community involvement and capacity building explicitly (s. 5(h); s.12), and we urge that similar explicit reference to helping the community of people sharing responsibility for biosecurity to fulfil that duty should be included as an object of the bill, , along the following lines:

To educate and engage people about their general biosecurity duty and ways of fulfilling it.

Adequate resources will need to be allocated to initiatives and ongoing programs designed to achieve this object, helping to ensure that the new act is embraced by stakeholders as intended. The inclusion in the second reading speech for the bill of a commitment to resourcing of community and stakeholder awareness, education and capacity building programs would be a welcome gesture of good-faith in this regard.

Recommendation 1

Rephrase S. 3(b)(ii) along the following lines to achieve greater clarity in the bills purpose and direction 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 and biosecurity matters on biodiversity, the environment and ecosystem function.*

Recommendation 2

Include as an object of the bill: *To educate and engage people about their general biosecurity duty and ways of fulfilling it.*

S.3(c) We support the intention of providing “a risk-based, and evidence-based, decision-making framework in relation to biosecurity that ...[facilitates timely effective management of risks and impacts and takes account of regional and local differences...]”. However there appear to be no other provisions in the bill that will ensure this intention is fulfilled. Far too much detail is left to be resolved through regulations and guidelines and/or is left to Ministerial discretion. Much more detail is needed in the Bill to ensure that these clauses translate into a tangible system that is risk and evidence based.

We strongly urge that a statutory requirement be provided for conducting systematic science-based, precautionary risk-assessments on all taxa proposed for importation into Tasmania, and on all taxa already in Tasmania thought to be invasive, with full public transparency. Provision should be made to establish an independent, peer-reviewed and transparent process for conducting those risk assessments, entailing public consultation. The bill should require that risk assessment:

- Be based on scientific evidence and independent expertise
- Be consistently applied both to exotic taxa and to invasive and potentially invasive species already in Tasmania.
- Take a precautionary approach towards risks to the natural environment
- Recognise changes through time, to require that risks are assessed over an ecologically relevant time frame taking account of climate change
- Include the likelihood of new genotypes or varieties of an introduced organism combining with existing genotypes to exacerbate the potential for the disease or pest to cause environmental harm.
- Recognise regional ecological differences and different levels of biodiversity (ranging from ecosystem to genetic level).
- Be decided by independent expertise-based bodies or committees that include sufficient independent people with expertise in environmental biosecurity and ecological science

- Be developed through a transparent process, and open to public scrutiny through on-line publication of draft and of final risk assessments and of subsequent decisions.
- Allow for the public to make proposals about taxa warranting risk assessment and about the level of risk that might be accorded to taxa

Additionally, the bill should require that any decisions made that do not accord with risk assessments must be required to be publically reported along with the reasons for those decisions not having been made in accordance with risk assessment.

Recommendation 3

Include in the bill a requirement that science-based, precautionary risk-assessments be conducted and published on all taxa proposed for importation into Tasmania, and on all taxa already in Tasmania thought to be invasive, through a process involving independent expertise, peer review and public consultation. Require that decisions made contrary to risk assessments must be publically reported along with the reasons for those decisions.

S.3(d) This subsection expresses the object of giving effect to related Tasmanian Government strategies, and to intergovernmental agreements. We understand that the approach taken in framework legislation may be to not specify the agreements and strategies that the act will give effect to, but rather to allow flexibility to give effect to various agreements and “biosecurity-related strategies” that are adopted by government from time to time. This flexibility has downsides though, including that those trying to comply with the Act will have to do a desk study periodically as they try to keep up with the latest generation of agreements and strategies in fulfilling their general biosecurity duty (given that relevant strategies and agreements are not specified in the act). It would be preferable to include more specificity in this section, for example referring to the UN Convention on Biological Diversity.

We also note that the draft bill does not require that a biosecurity strategy be prepared, adopted or periodically reviewed. Biosecurity activities that are not guided by strong strategy can be highly inefficient and, worse, ineffective. We therefore strongly urge that the draft bill require the production and periodic review of a biosecurity strategy for Tasmania, making specific provision for drawing on adequate environmental input in the strategy’s production and review.

Mere generic reference to strategies also assumes that various ephemeral government strategies are sound, and are produced through sound, inclusive processes. This may not always be the case. We therefore urge that a requirement be included in the bill that public submissions be sought in preparing draft and final versions of strategies.

On a more specific point, we note that principle 6 of the Tasmanian Biosecurity Strategy is 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” (p. 7)

This principle is not appropriate where environmental biosecurity is concerned as there is no satisfactory method for determining quantitative, especially financial, costs and benefits in relation to the natural environment. The excerpt from our recent submission to the review of the National Environmental Biosecurity Response Agreement (NEBRA) in Appendix 1 of this submission further illuminates the point that environmental biosecurity action must not be made dependent on positive cost benefit analyses except in qualitative terms *vis-a-vis* environmental values, which should be assumed to benefit from environmental biosecurity action.

Recommendation 4

Specify in the bill that it gives effect to the UN Convention on Biological Diversity.

Recommendation 5

Include in the bill a requirement for the production and periodic review of a biosecurity strategy for Tasmania, making specific provision for drawing on adequate environmental input and public consultation in the strategy's production and review.

Missing from the draft bill: Principles

We note the absence of a principles section in the draft bill, despite considerable emphasis on principles in consultation about the framework to date. Specific feedback was sought and given on appropriate principles to be used as a basis for the biosecurity system, and we reasonably anticipated that the bill itself would provide tailored statutory principles forged specifically to reflect modern best practice in biosecurity.

Without strong statutory principles we do not believe the act can work. The appropriate place for a set of principles is in a new section between the current sections 3 and 4 (i.e. following the objects and prior to the functions).

It is especially important that the precautionary principle and the prevention principle be included in the act, and we note in this regard the inclusion of the precautionary principle in the Queensland Biosecurity Act 2017 (s. 5(c)). In addition we offer the following fuller set of principles for translation into statutory principles in the bill:

- **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.
- **A precautionary approach is required:** Invasive species law, policy and practice must reflect the principle that a lack of full scientific certainty should not be allowed to delay action where there is a risk of harm to biodiversity.
- **Protecting the natural environment is core business:** The protection of biodiversity and ecosystem function is core business in any biosecurity or invasive species law and policy.

- **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 legislative, policy and budgetary provision for timely allocation of human and financial resources.
- **Science-based risk assessment:** Risk assessments must form the foundation of decision-making. 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:** Best-practice invasive species law and policy must drive towards clear, measureable 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 Australians should not inherit impacts or costs of avoidable failures in today’s environmental biosecurity.

We note the inclusion of the precautionary principle in the Commonwealth Environment Protection and Biodiversity Conservation Act. Our strong preference is for the precautionary principle to be included in a new principles section of the bill, along with the other principles above. An alternative (though not preferable) approach to embracing the precautionary principle would be to incorporate S.391 (1) and (2) of the Commonwealth EPBC Act into the bill.

Recommendation 6

Include in the bill a new “principles” section between the current sections 3 and 4, specifying the precautionary principle, the prevention principle, and other relevant principles to be taken account of by those administering the act.

S.4 Functions

The requirement in **S.4(b)** to give equal weight in performing functions (including in making decisions) under the act to the objectives set out in schedule 1 of the Resource Management and Planning Appeals Tribunal Act may lead to convoluted and disputed interpretations of the new biosecurity act, for example:

- The objectives of the RMP system are not written with biosecurity in mind. For example, they include to “encourage public involvement in resource management and planning”, not in biosecurity, unless one interprets the (un-defined) term “resource” to include invasive species.
- There are few definitions of terms in the RMPAT Act, and so the question arises as to whether, for example, one should rely on the definition of environment in the new

biosecurity act, or instead feel free to perhaps interpret the term by drawing on common law (given the reference to environment in the RMPAT Act schedule and the lack of guidance in interpreting the term in that act).

- The RMPAT Act contains no explicit principles, whereas the biosecurity act needs a tailored set of principles as outlined above. Therefore to give equal weight to the objectives of the RMP system may risk functions being carried out in conflict to the principles which need to be included in the biosecurity act.

Resource management and planning, though related, is a different area of policy to biosecurity and so mere cross-reference to the objectives of that system is unhelpful. We urge, instead of relying of this untidy reference to a separate act with a distinctly different purpose, that: ecological sustainability be included as an object of in the bill; that the term “ecological sustainability” be defined in the interpretation section, and; that a requirement be included in the functions section that those performing functions under the act must have regard to ecological sustainability. Any further alignment with other acts thought necessary would best be handled through routine policy coordination in drafting the new bill without the need for awkward cross-references between differing acts.

Recommendation 7

Include the achievement of “ecological sustainability” as an object of the bill, providing a definition of the term in the interpretations section, and including in the functions section a requirement that those performing functions under the act must have regard to ecological sustainability. Give consideration to removing the awkward cross-reference to the RMPA Act from s.4.

S.7 Act binds crown.

Though the Bill enshrines a general biosecurity duty, the “Crown in right of Tasmania” is not liable to be prosecuted for an offence under it (see **S7(2)**). It could be seen as inconsistent with the notion of shared responsibility and of a general biosecurity duty, that only private persons and bodies corporate, not bodies politic are liable under the act. This is especially notable in a state like Tasmania where the State is responsible for management of the vast majority of land, and for a very extensive area of coastal waters.

In order to convey to all stakeholders that the general duty authentically applies to all, government and non-government alike, we urge that consideration be given to providing for the State to be liable for an offence under the act. An example of such provision can be found in S.10 of the Queensland Work Health and Safety Act 2011.

A new section making provision for State liability might be appropriate to insert around the current S.236, to complement the other sections there about offences by bodies corporate, employees, and “employees or agents”.

Recommendation 8

Make provision for the State to be liable for an offence under the act, consistent with providing an authentic general biosecurity duty as an expression of shared responsibility.

S 8 Interpretation

The definition of “environment” is quite abstruse in so far as the natural environment is concerned. For example, it includes no reference to biodiversity and yet explicitly includes human-made structures. The Bill thus makes it clear that, say, an electricity sub-station, is part of the environment, while leaving it to the courts to decide whether the genetic diversity of native flora and fauna might be considered so. It may perhaps be labouring the point to say that a cane toad could be construed both as “environment”, and as an invasive species under the bill as currently worded.

The implications of this include for example that a biosecurity impact may not be considered to exist under the Act where genetic diversity of native flora and fauna is affected by a biosecurity event, or even that a case could be made for protecting pest species (feral horses perhaps, or foxgloves) from bio-control agents using the current interpretation of the term “environment”.

Biological diversity is an important element of the environment and is referred to as such in many intergovernmental agreements, statutes and regulations at state, national and international level. Yet biodiversity is not mentioned in the draft bill’s interpretation of the term environment, but only mentioned in passing in section 16 and “thrown to” tangentially via s.4’s reference to the RMPTA Act schedule (which in turn refers to “genetic diversity”).

Given the heavy references to the environment in the draft Future Directions document, we expected that a much better definition of environment would be included, showing deep understanding of modern ecological science. Given that the environmental object of the Bill (as it stands in the draft) depends heavily on the interpretation of the word environment, this definition needs to be brought up to date with modern understandings of biodiversity, ecology, ecosystem function and resilience. Clarifying this interpretation will help to clarify the objects of the bill relating to environmental biosecurity (see our comments on s.3, above).

We support the interpretation of “land” as including coastal waters. This aligns with s.8 (3) that clarifies that the Bill applies to the coastal waters of Tasmania- an important element of the State’s environment requiring protection from biosecurity risks.

Recommendation 9

Revise the definition of “environment” in the bill to properly reflect modern understandings of biodiversity, ecology, ecosystem function and resilience, and to help clarify the bill’s objects relating to environmental biosecurity.

S9. Meaning of biosecurity compendium

We strongly support this section of the draft bill as it provides important elements of transparency in the biosecurity system. In addition to including permitted, prohibited and restricted lists in the compendium, we urge that **s.9(1)(d)** be given more specificity to further increase transparency and enable people to fulfil their general biosecurity duty with adequate information ready to hand. We suggest the following wording for 9(1)(d):

all risk analyses, and a list of risk analyses in progress, a list of known incursions and details of incursion responses, pathway analyses, agendas and minutes of the Biosecurity Advisory Committee and its sub-committees, and any explanatory or supporting information and material that the Secretary considers appropriate

We have previously urged that mandatory periodic "State of Biosecurity" reporting be provided for in the bill. This provision is not in the draft Bill and so we reiterate the importance of such reporting, with reports to be prepared by the (independently chaired) Biosecurity Advisory Committee. Periodic statutory public reporting on progress towards the objectives of the state's biosecurity system should include: risks, impacts, incursions, responses, knowledge gaps, research in progress, performance towards strategic targets; trend analyses, pathway analyses, and horizon scanning information.

Discussion of the particular biophysical data that ought to be collected by government to inform reporting on progress towards strategic outcomes (especially biophysical outcomes such as reduction in the impact of invasive species on the natural environment) is beyond the scope of this submission, however we would welcome the opportunity for dialogue about relevant data for reporting on environmental biosecurity.

Recommendation 10

Re-word s.9(1)(d) to read: "all risk analyses, and a list of risk analyses in progress, a list of known incursions and details of incursion responses, pathway analyses, agendas and minutes of the Biosecurity Advisory Committee and its sub-committees, and any explanatory or supporting information and material that the Secretary considers appropriate"

Recommendation 11

Provide in the bill for mandatory periodic "State of Biosecurity" reports, prepared by the Biosecurity Advisory Committee, to be published.

S. 12 We support the broad definition of biosecurity matter in the draft bill as it allows for regulation of all taxa including subspecies and new varieties and cultivars of existing species.

s.16 The definition of invasive pest pp.41-2 is good but may need editing to clarify two points:

Firstly, **ss(3)(a)** as it stands defines a pest as invasive if before its discovery it was not known in an area, whereas a pest may be innately invasive even though it has been in an area for many years

(and so for example may be invading adjacent areas- for example deer invading more deeply into the world heritage area).

Secondly, **ss (2) and (3)(c)**, taken together as they stand, could arguably see an indigenous Tasmanian species prescribed as an invasive pest, without any requirement that it had changed its range or altered its ecological interactions at all, nor that it was having any adverse effect on the public good (for example native plant species may shift their range in response to poor land management though not being innately invasive nor causing any harm to public good assets).

This is an example of where explicitly tying independent, science-based, precautionary risk assessment processes and outcomes to the decision-making provisions of the bill can aid in the bill's interpretation, administration, governance and effectiveness, avoiding perverse outcomes.

Only those indigenous taxa that are assessed as artificially expanding (or likely to expand) their range and having (or likely to have) a significant negative impact should be able to be prescribed as invasive pests (and only when those taxa themselves are not put at risk by any resulting management action).

Recommendation 12

Review the definition of invasive pest to ensure that innately invasive non-indigenous species can be defined as invasive and that indigenous species must be shown to be demonstrating invasive characteristics prior to being considered invasive.

S.18 Permitted matter

We support the permitted list approach to Tasmania's biosecurity provided for in the draft bill.

We note Australia's appropriate level of protection (ALOP), which was defined with trade and agriculture in mind, not specifically in order to protect the natural environment. We hold that where environmental biosecurity is concerned, the acceptable level of risk is actually lower than that chosen as Australia's ALOP, and might best be described as "the lowest risk achievable in striving to achieve zero risk". Section **18 (1) (a)** is consistent with striving for zero environmental risk.

Section **18 (1) (b)** however allows the Minister of the day to permit a biosecurity risk to Tasmania, so long as the Minister is satisfied on reasonable grounds that the risk is "not significant and is able to be effectively controlled". This approach of relying only on an "objective statutory test" (what the Minister considers reasonable grounds for a listing or decision) ignores the science-based precautionary risk assessments that should underlie decision-making in a modern and effective biosecurity system. We assert that this allows too much Ministerial discretion in-so-far-as protecting the natural environment is concerned.

Further statutory parameters for Ministerial decisions are needed in this section to ensure that in making decisions the Minister must a) always act consistent with Australia's ALOP of maintaining at worst a very low level of risk and b) where biosecurity risks to *Tasmania's natural environment* exist only permit those biosecurity matters that pose risks of an extremely low level (approaching zero

risk), and c) make such decisions only following the completion of risk assessment in line with the statutory process that we recommend in commenting on s.3, above.

While we understand that regulations and guidelines may be developed to flesh out the objective statutory test and the thresholds of significance and/or of risk (i.e. to clarify the parameters around decision-making for permitted matter) we feel that the above addition to this section of the bill is important as a “mark in the sand” to maintain Tasmania’s excellent biosecurity status, and to be seen to be doing so.

In addition to the above, as discussed under s.3 above, and relevant also to **sections 19 and 20**, we assert that the process for assessing risk must be provided for in the bill. We accept that final decision-making based on risk assessments may ultimately rest with a Minister of the Crown. But this decision-making must be preceded by and supported by a risk assessment process that provides sufficient consistency, technical expertise, evidence, transparency and public accountability.

Statutory provision in the bill for a risk assessment process linked to decision-making will ensure that the bill’s explicit object (s.3(c)) of providing a risk-based, and evidence-based, decision-making framework will actually be delivered.

We therefore strongly urge that provisions requiring risk assessment be included in the final bill as a basis for decision-making (see our recommendation number 3, above).

Recommendation 13

Require in the bill that when making listing and other relevant decision under the act, The Minister and Secretary must a) always act consistent with Australia’s ALOP of maintaining at worst a very low level of risk and b) where biosecurity risks to *Tasmania’s natural environment* exist only permit those biosecurity matters that pose risks of an extremely low level (approaching zero risk), and c) make such decisions only following the completion of a risk assessment

S.53 This section about recovery of fees does not make it clear that fee recovery is intended as a way of operationalising the polluter pays and beneficiary pays principles, but merely states that recovery must be reasonable in the opinion of the Secretary. It may be worthwhile at least describing the rationale and philosophy behind this section in the second reading speech for the bill.

S.68 We support the provision for a general biosecurity duty provided that the bill also provides for strong community education and engagement to support and facilitate people fulfilling that duty. Therefore, along with making community education and engagement an object of the bill (see our comments on s.3, above) we urge that greater definition of measures that may be considered reasonable and practicable be spelled out in the regulations, as subordinate legislation, as well as in guidelines and other information. This will help to ensure that people are able to understand the meaning of “...take all reasonable and practicable measures to prevent, eliminate or minimise biosecurity risk...”, without stifling innovation as to how one’s duty might be met.

Recommendation 14

Provide, in regulations, guidelines and information, for greater definition and guidance of measures that may be considered reasonable and practicable in fulfilling one's general biosecurity duty.

S.69 (1) Noting that an environmental impact may follow some years after a biosecurity breach, we urge that the wording "a person must not cause a significant biosecurity impact" in this subsection be broadened along the following lines "...biosecurity *emergency, event* or impact" (our proposed addition in italics).

Recommendation 15

Broaden the wording of s.69 (1) to read "a person must not cause a significant biosecurity *emergency, event* or impact".

S. 71. This section on notification of a biosecurity event is inconsistent with a general biosecurity duty as it limits those required to notify an authorised officer of a biosecurity event to owners/occupiers/managers of relevant premises and to persons who become aware of a biosecurity event in their professional capacity. The section should be broadened to reflect a *general* biosecurity duty, by adding a section 71 (1) (d) that reads: "any person who it is reasonable to expect should know of the occurrence or likely occurrence of a biosecurity event", or similar, broad wording.

Recommendation 16

Add a section 71 (1) (d) that reads: "any person who it is reasonable to expect should know of the occurrence or likely occurrence of a biosecurity event", or similar, broad wording

S.88 We support the potential here to require biosecurity audits as a condition of biosecurity registration. We also support this in regards to conditions on permits (**s. 115**)

S.92 We urge that the grounds for suspension or cancellation of biosecurity registration in **s92 (1)** also include "that an unacceptable biosecurity risk has arisen under the registration". This should also be added to the grounds for suspending or cancelling an individual permit in **s.119**.

Recommendation 17

Add, as grounds for cancellation or suspension of biosecurity registration or of a permit, "that an unacceptable biosecurity risk has arisen under the [registration or permit]".

S.127 We support the provision for declaring biosecurity zones. We urge that consideration be given to adding the term “contain” in **s.(2) (b)** given the importance of containment as a strategy for managing biosecurity risks.

Recommendation 18

Insert the word “contain” in s.(2) (b).

S.135 We applaud the requirement for consultation over government programs provided for in **s.135(1)(a)**. We urge that the environment sub-committee of the Biosecurity Advisory Committee be required to be consulted where programs address, or pose, a risk to the natural environment (see our comments on s.265, below).

Recommendation 19

Require that the environment sub-committee of the Biosecurity Advisory Committee be consulted where programs address, or pose, a risk to the natural environment

S.163 We support the provision for making of emergency biosecurity orders and directions.

S.177 We support the provision for making of control orders.

S.192 We support the provision for issuing of general biosecurity directions and (**s.194**) individual biosecurity directions.

S.202 We understand the provision for accepting biosecurity undertakings as part of the system of tools available to Authorised officers to facilitate and enforce people fulfilling their general biosecurity duty.

S.255 Regarding appeals, we note extensive provision for appeals by private interests in relation to various provisions of the draft bill, and we strongly urge that explicit provision be made in the bill for third parties acting in the public interest to appeal decisions, both on the merits of the decisions and on the legality of the decision-making processes underlying them.

Recommendation 20

Make explicit provision in the bill for third parties acting in the public interest to appeal decisions, both on the merits of the decisions and on the legality of the decision-making processes

S.265 We support establishment of a Biosecurity Advisory Committee (BAC) so long as the wording of **s.265(1)** is changed to read “The Minister ~~may~~ will...”. Consultative and advisory bodies are crucially important in biosecurity governance and this proposed change reflects that importance.

We are pleased to note that the committee may investigate matters on the committees own motion (**(2)(b)**), as well as those matters referred to it by the Minister or Secretary.

We note that **ss(4)** allows that regulations may prescribe expertise and/or representation on the BAC. We urge that more specificity be included in the bill itself about the composition of the committee and its sub-committees, including specifications for inclusion of environmental biosecurity expertise and experience. We note helpful provisions for committee composition included in s.8 of the *Threatened Species Protection Act 1995*, and urge that the biosecurity bill’s provisions relating to the BAC provide similar specificity.

Knowledge and experience in environmental biosecurity, biodiversity conservation, and ecological land and water management should be required to be present on the BAC and its sub-committees.

In order to ensure that adequate expertise and advice is available specifically regarding environmental biosecurity we urge that the bill specify that the BAC must have an environment sub-committee with specific expertise and experience in environmental biosecurity.

A separate, statutory, community advisory sub-committee would complement this expert-based committee, providing an important means of communication between stakeholder representatives and the BAC in forging the BAC’s advice to the Minister. Such a community advisory sub-committee must be required to include representation from community environmental interests and groups, and would provide the BAC with important insights and advice on the needs and capacity of the community in relation to the general biosecurity duty.

Recommendation 21

Replace the word “may in s. 265(1) with the word “will.

Recommendation 22

Specify the expertise and experience required to be included on the Biosecurity Advisory Committee and its sub-committees, including inclusion of environmental biosecurity expertise and experience.

Recommendation 23

Require the Biosecurity Advisory Committee to establish and expertise-based environment sub-committee with specific expertise and experience in environmental biosecurity, and a community advisory sub-committee.

S.274 This section allows the Secretary to exempt any person, class of persons, or occupier etcetera from the operation of the Act, including granting unconditional exemption (with an order having to be published in the Gazette). We can envisage circumstances under which an exemption might be warranted, but we hold that there should be a statutory process for decision-making about granting exemptions, to ensure transparency, accountability, adherence to the risk and evidence-basis of the bill, and to require that the BAC be consulted prior to the granting of an exemption.

Recommendation 24

Define a specified process for decision-making about granting of exemptions under the act, that ensures transparency, accountability, adherence to the risk and evidence-basis of the bill, and requires that the BAC is consulted prior to the granting of any exemption

S.280 Administration of the act is assigned to the Minister for Primary Industries and Water in **S.280 (a)**. We note that this follows a long tradition of biosecurity responsibility being assumed to fit most logically under primary industries and agriculture portfolios. This tradition has been called into question over recent years with several national reviews of biosecurity policy pointing to environment Ministers as having a strong argument for central roles in biosecurity decision-making and administration.

Given the great importance of environmental biosecurity in protecting Tasmania's environmental and nature-based tourism assets, we urge that a subsection be included here requiring that the Minister consult the Minister for Environment where *environmental* biosecurity is at issue. We do note that **ss.(b)** gives departmental responsibility to DPIPW, which comprises both environment and primary industries. We support this departmental responsibility and urge that relevant (environmental) divisions of the department be required to be consulted on matters of environmental biosecurity.

On this note, we were pleased to learn that the steering committee for the project includes members from natural and cultural heritage division as well as a technical reference group.

Recommendation 25

Require that, where environmental biosecurity is at issue, the Minister consult the Minister for Environment in making decisions under the act.

Concluding comments

Tasmania's new biosecurity framework is developing in the right direction, with attention being paid to the environmental side of biosecurity, an intention to base decisions on science and risk, to encompass all taxa, and cover all areas of land, water and sea within the State's jurisdiction.

The draft bill reflects this direction although it leaves too much detail to be defined through regulations, guidelines or through decisions at the Minister's discretion.

Our comments in this submission spell out how the bill can be revised to effectively reflect the directions outlined in consultation to date so that Tasmanians can be confident that the environment will receive best practice protection from biosecurity risks into the future.

Should you wish to discuss this submission or seek further advice about technical matters please use ISC's CEO Andrew Cox on andrewcox@invasives.org.au as the first contact. For discussion with the Tasmanian Conservatino Trust please contact their Director Peter McGlone on peter@tct.org.au.

Thank you for the opportunity to make this submission.



Appendix 1

Excerpt from ISC submission to NEBRA review, regarding cost/benefit analysis in environmental biosecurity

The need for a defensible approach to benefit:cost analysis

Relevant clauses

Clause 6.7(a)

The NBMG may decide, on the basis of advice from the NBMCC, that a national biosecurity incident response will commence if:

- (ii) the benefit:cost analysis indicates that it is cost beneficial (see Schedule 4)

Clause 6.7(e)

To avoid any doubt, the NBMG must decide, on the basis of advice from the NBMCC, that a national biosecurity incident response will not commence if:

- (ii) the benefit:cost analysis indicates that it is not cost beneficial to do so (see Schedule 4)
-

In the absence of any satisfactory method of calculating environment-specific costs and benefits of an eradication of an environmental pest or disease, it is puzzling that clause 6.7 requires an eradication to be cost beneficial. One positive aspect of NEBRA is that it recognises that determining environmental costs in a dollar sense 'can be problematic' and allows qualitative assessments for environmental or social costs and benefits (schedule 4, section 5.4). However, there is no guidance in the schedule about how these qualitative costs and benefits should be assessed and then compared so as to meet the requirement to specify whether an eradication is cost beneficial. Because of the lack of transparency of NEBRA deliberations, no BCAs are publicly available for us to learn how they have been done. Clause 6.7(a)(iii) implies that qualitative and non-economic values must be ignored to meet the requirement for a positive BCA – for example, that the potential extinction of a species must be ignored in decisions about whether to proceed with an eradication unless it provides some economic benefit for humans.

Unfortunately, years of research effort have not yielded a defensible method for environmental benefit:cost analysis (BCA) appropriate for situations such as NEBRA. Even the economic values at

stake known as 'ecosystem services' (eg. pollination services for forestry, climate regulation, new drugs) are typically difficult or impossible to quantify, although they can be considerable. While a BCA provides important information for decisions under NEBRA and should be required, the requirement that an eradication be cost beneficial for outbreaks should be removed in the case of environmental outbreaks. That is, environmental costs and benefits should be described in such an analysis, in ways that reflect their values, without any attempt to derive a quantitative ratio of benefits to costs for invaders with environmental impacts.

Because species and places are irreplaceable, their non-economic values are immense in ways that cannot be reduced to numbers. It is reasonable to start from the assumption that the non-economic benefits of eradicating any pest or disease outbreak deemed to be nationally significant will outweigh the costs, particularly if the costs and benefits are considered over an ecologically relevant timeframe. It is probably also true that the economic costs considered over an ecologically relevant timeframe of ongoing control of an invasive species that is not eradicated will almost inevitably be far higher than the costs of eradication.

NEBRA has great flexibility built into it to allow judgement by the NBMG about whether it is worthwhile proceeding with an eradication (even if all assessments required under clause 6.7 are positive for eradication). Our recommendations about increasing transparency and accountability, among others, are more likely to foster responsible decision-making than imposing an inappropriate quantitative method for environmental BCAs.

The time required to prepare a detailed BCA, particularly in the case of environmental invaders for which there is little readily available information, also causes delays that reduce the chances of success of eradication.

In addition to removing the requirement for a positive BCA, we recommend that Attachment 4A (A National Framework for Biosecurity Benefit:Cost Analysis) be amended to better reflect environmental values, including in the following ways¹:

Section 1(e): The difficulty with determining costs and benefits in the biosecurity context is that environmental values such as ecosystem functions and the services derived from them are characterised by extensive uncertainty, irreversibility and non-linear changes that may generate unpredictable and potentially large negative effects. Only when it will often not be possible to determine whether the aggregate benefits of a proposal exceed the aggregate costs, is a proposal considered to be economically feasible and desirable from a community-wide perspective, ignoring distributional impacts. Where there are numerous choices alternatives, the option combining the greatest likelihood of effective action at least cost and with the apparent greatest net benefit to the community is considered to be optimal and preferred.

Section 2.1(f): In cases for which a BCA is appropriate, choose the appropriate BCA criterion – that is, decide on the decision criterion or combination of criteria, such as (expected) net present value or benefit:cost ratio, and explain this choice, including the technique to be used to illustrate potential environmental harm, eg, number and range of threatened species potentially affected, area of land under threat.

¹ underlines indicate insertions, ~~cross-outs~~ indicate deletions

Section 2.3(d): Determine if it is appropriate to quantify non-market impacts. If so, identify valuation technique(s) (such as environmental asset valuation), noting that in many situations the better or only approach is to quantify environmental impacts in non-monetary ways or to document them qualitatively.

Section 2.6: There is also a need to guard against underestimation of benefits when not all important benefits are accounted for. For example, In the past, the evidence is that potential environmental costs have been underestimated, eg, the travel cost method addresses only some of the values associated with an environmental asset.

Section 3(c): The significance of 'non-market' (environmental and public health) assets impacted, ~~which will require application of environmental valuation techniques,~~ will place greater challenges on the analysis. ... Similarly, the assessment framework will need to take into account whether impacts are restricted to an industry, a sector or are likely to be broader, with potentially whole of economy flow-on implications. Note that impacts that disturb ecological integrity or ecosystem functioning have whole of society and economy effects, even if not immediately apparent or quantifiable.

Recommendation 12

For pests or diseases with national environmental significance, remove the requirement for eradication to be cost beneficial, in recognition that there is no satisfactory method for quantitatively assessing and comparing most environmental costs and benefits. Instead, require that costs and benefits be identified, and proceed from an assumption that an environmental BCA will be positive. Amend Attachment 4A (including as outlined above) to better reflect environmental values.



CONTACT US

- web: invasives.org.au
- email: contact@invasives.org.au



@ISCAustralia



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