



Reforming Victoria's biosecurity legislation

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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. It is a not-for-profit charitable organisation, funded predominantly by donations from supporters and philanthropic organisations.

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Summary

The discussion paper presents a clear vision for a stronger, streamlined and inclusive Biosecurity act. The Invasive Species Council supports the directions outlined for the first phase of reforming the existing legal framework into the new act. Overall, it is a positive first stage and we are very supportive of the reform agenda, as we see the importance and need for modernised laws that will protect Australia from the increasing threats of invasive species and diseases. There are some specific areas that require more attention during this initial phase of the reform, and these are outlined in this submission.

Recommendations

1. Incorporate best practice biosecurity principles as core to the new legislation.
2. Develop stronger environmental focus to elevate its importance and value as equal to agricultural and other components of the biosecurity system, including a science based advisory function and MoU between environment and agriculture agencies.
3. Ensure that there are strong objects in the new act to achieve actual outcomes and promote effective collaboration with traditional owners and Aboriginal people’s heritage and values.

4. Ensure that the Biosecurity Reference Group becomes a statutory committee in legislation to ensure that changing governments do not abolish it in the future.
5. Consider statutory positions such as a chief environmental biosecurity officer and science advisory committee role for more responsive and effective environmental biosecurity decision making.
6. Develop a General Biosecurity Duty in the new Act in line with other jurisdictions.
7. Consider a permitted list approach to replace the current prohibited list approach for weed species.
8. There should be a legal requirement written into the legislative framework to prepare a State of Biosecurity report every 4 years, to report on the progress of Victoria on the reform program and function of the biosecurity system.

Introduction

The Invasive Species Council welcomes the opportunity to provide a submission into the reform of Victoria's Biosecurity legislation and in particular the discussion paper published for this stage of the process.

Invasive species and loss of habitat are the major threats causing extinctions and declines of Victorian biodiversity, and invasive pests and diseases are also very expensive threats to agriculture and trade. Unfortunately, the numbers and impacts of invasive species in Victoria are growing. We welcome the progress and commitment to reforming and strengthening Victoria's biosecurity laws to better prevent the introduction of new harmful species, eradicate newly established species, and more effectively contain and control established threats.

1. Reforming Victoria's biosecurity legislation - Discussion Paper August 2022

The discussion paper provides a good structure for discussion of the different components that will be used to develop and draft the new act, and we have followed its structure here, beginning with feedback on the paper itself as suggested.

The Invasive Species Council supports the overarching goals and motivation of reforming Victoria's biosecurity laws, and recognises that consolidating legislation into a single act will facilitate a system wide approach, and enhance the ability to quickly and transparently make decisions when managing biosecurity risks and incidents. Many national legal reforms, institutional initiatives and wide ranging strategies have been developed since the current suite of relevant legislation was enacted. Further detail is out of scope for this stage, but examples include the updated objectives of the Intergovernmental Agreement on Biosecurity following the 2017 review, a national Biosecurity Strategy 2022-2032 released several months ago, and various jurisdictions have updated and modernised their own biosecurity laws and related frameworks. Therefore greater flexibility and responsiveness are positive outcomes that should result from the reform of Victoria's legislation and these are well articulated in the discussion paper. It is positive to see that Victoria is recognising the work that has been done in other jurisdictions, and is willing to learn from these experiences in the development of its own legislation.

It is good to see the high priority given to real recognition of Aboriginal people and their culture in developing co-governance and partnership in decision making, and this must be followed with real

outcomes, programs and commitments, rather than simply inclusion without a plan of how to achieve it in practice.

It is positive that Victoria is communicating and recognising the part that the state plays in the national biosecurity system, and incorporates links with interstate trade and new forms of movement that must be monitored, managed and regulated between jurisdictions as well as international trade.

Acknowledgement of marine biosecurity risks is another positive step to a more holistic approach to biosecurity. While this to date has been partly covered by the Fisheries Act 1995, it is positive to see this is being considered for inclusion into the new Act, and recognising that it has not been given the appropriate attention this increasingly important aspect of biosecurity requires.

We support the direction to include the Catchment and Land Protection Act 1994 and the biosecurity related parts of the Fisheries Act 1995, and Aboriginal Heritage Act 2006. These should not be overlooked as they represent important issues - primarily the impact by established invasive species preventing First Nations people from utilising their land or effectively managing it in traditional ways.

We support the inclusion of the precautionary principle as a concept for biosecurity along with the greater focus on a more preventative approach. We support the approach taken by Queensland and Tasmania in writing the precautionary principle into legislation as part of their recent reform activities, and hope to see similar outcomes in Victoria's draft legislation. The discussion paper includes areas and topics for discussion at a later date and we look forward to engaging further on these matters at the appropriate time.

Some areas of concern in the discussion paper include the lack of focus on environmental biosecurity, and how the new legislation can strengthen protections for wildlife and threatened species in the face of the ongoing extinction crisis. The 2022 State of the Environment Report clearly shows that invasive species are the number one threat to Australia's biodiversity and the leading cause of extinction, and this was also reflected in Victoria's State of the Environment Biodiversity Update 2021 report, that invasive plants, predators and herbivores are increasing in abundance and range and are the major threat to most threatened species. This reform process is an opportunity to solidify protecting the environment into legislation and committing to stronger systems, collaboration, and investment to address this threat.

The discussion paper states that the Victorian system has to date successfully protected its industries, environment and people against the impacts from pests and diseases. While this is generally true (for primary industry and people) we are of the view that more could be done to prevent the high numbers of invasive animals and weeds that have entered Victoria and caused significant environmental damage under the existing legislative framework. Omitting examples of areas where the system has not achieved adequate protection, risks missing the opportunity for honest and transparent consideration required to fix them. Acknowledging where things have gone wrong allows a productive dialogue and sets up the reform to achieve meaningful outcomes to strengthen the system, which will be better prepared to prevent future incursions or establishment.

There remains a far greater focus on agricultural biosecurity in the discussion paper. For example, the case studies that demonstrate the legislation's role underpinning the system function only includes significant incursions or risks to agricultural production, rather than a balanced perspective including environmental invasive impacts.

As mentioned on page 6 of the discussion paper, an Aquatic Deed is currently under development. Once agreed, this will need to be adopted into legislation. In light of this example, preparing future amendments that are known to be coming in the near future as part of the current drafting would go

a long way to reducing the timeframe of revision. The discussion paper does explore a streamlined structure that can facilitate more efficient revision of subordinate legislation, and we look forward to seeing what Victoria proposes in this area further down the reform process.

It is disappointing to see that the key topics and initial consultation was focused on farmers, businesses, industry groups and government stakeholders. The Invasive Species Council would like to know what environmental or community groups were also consulted, and whether this approach will continue throughout the consultation on the reform. The scope of the reform should also be clearer about what is intended specifically where “environmental protection” and “wildlife management” is deemed out of scope of this reform. This is unclear at this stage as invasive species impacts are the greatest threat to Australia’s biodiversity, and wildlife management cannot be separated from invasive species management. Without stronger legal protections, these threats will continue to take a backseat to protecting agriculture and trade.

2. What does reformed biosecurity legislation look like?

Developing a stronger biosecurity system that effectively focuses on prevention and represents its interests equally is always a return on investment. This results in better protections for the environment, job creation, confidence in markets, and higher quality agricultural goods.

Strong best-practice biosecurity laws

As outlined in the discussion paper, consolidation of the currently disparate legislative instruments that deal with biosecurity and invasive species is a primary goal of the reform agenda. Bringing together significant policy, rights, obligations and powers into a primary biosecurity act will improve the consistency of application, and be better able to respond to the increasing scale and complexity of threats. Victoria will benefit by having a single logical legislative framework upon which the subordinate regulations, policies and procedures can be built from or enhanced. As one of Victoria’s most important environmental and social laws, the new biosecurity act should include the following best practice principles.

- 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.
- 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. It is often the only feasible intervention for many species that are hard to detect or contain or that may spread rapidly, especially in aquatic environments.
- Timely action is crucial: The likelihood of success reduces, and the eradication and containment 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.
- 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.
- 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 organisms must be assessed and treated consistently, including all species, subspecies, 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, 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 Australians should not inherit impacts or costs of avoidable failures in today's environmental biosecurity.

Additionally, legal frameworks ideally include measures to promote meaningful engagement of the community in biosecurity processes, transparency in decision-making and open legal standing to enforce biosecurity laws.

Recommendation:

1. Incorporate best practice biosecurity principles as core to the new legislation. This includes a focus on prevention, early action on incursions, and science based assessments.

Stronger environmental focus

It is reassuring to see the inclusion of environmental protection in the discussion paper and included as a theme for why reforming the biosecurity legislation is important.

However, it is our view that the scope should be extended to include additional environmental priorities, primarily the matter of some species native to Victoria that have spread outside their natural range and could have adverse impacts on the environment. This very serious issue of invasive native species is not currently adequately addressed by Victorian policy, regulation and practice and will require significant development and should be considered within the scope of the new legislation.

Inclusion of best practice elements of environmental law such as the precautionary principle, intergenerational equity, ecological sustainability and community involvement in decision making should also be considered during the drafting of the new Act. The precautionary principle is essential because of the high levels of uncertainty about invasive species impacts in the natural environment, the long timeframes over which invasions occur and the often-limited management options.

Independent science based advice and decision making is critical to properly preparing and responding to incursions or threats from invasive species. While priority pests and diseases known to affect agriculture are well studied and their implications understood, the same cannot be said of environmental pests and diseases. Often an invasive species will enter Australia, and its potential impacts remain unknown until observed in the wild. An example is that of the Polyphagous Shot-hole borer currently under eradication in Western Australia. While its impact on native forests is known to be extensive in Canada, there has been little to no research or investment into understanding what its threat will be to Australian forests if it spreads outside of urban Perth.

An independent scientific advisory committee could be established to advise the Minister or delegate on the administration of the new Act, and in particular contribute to risk assessments, provide advice to decision makers on eradication and control, and could generally enhance the ability to understand the implications of environmental invasives before they arrive in Victoria.

Maintaining sole administrative responsibility for biosecurity decisions with the state minister for agriculture also compromises the ability of the minister for environment to manage the

environmental concerns. In line with the Intergovernmental Agreement on Biosecurity (IGAB) a Memorandum of Understanding should be established between the environment and agriculture departments to ensure effective and timely communication is facilitated in matters that affect both portfolios. Without such a formal relationship, cooperation will be dependent on positive personal relations between senior officers and/or ministers, something which often does not occur.

Effective inclusion of aspects of the Wildlife Act should be considered in regard to impacts from invasives, and prioritising the public interest above other concerns. There is a lack of action on some environmentally harmful invasive species with economic or social value. Feral deer, for example, are protected for the benefit of hunters under the Wildlife Act rather than managed as a highly damaging environmental and agricultural pest species – despite one of the species, sambar, being listed as a potentially threatening process.

Recommendation:

2. Develop stronger environmental focus to elevate its importance and value as equal to agricultural and other components of the biosecurity system, including a science based advisory function and MoU between environment and agriculture agencies.

3. How can reformed legislation clarify biosecurity roles and responsibilities?

We support the overall direction of incorporating industry and communities to take a greater role in managing biosecurity risks. It is good to see that there are avenues to achieve this explored in the discussion paper.

Inclusion of Traditional Owners and Aboriginal people in legislation

We support the Victorian government's intent to use the Self-Determination Reform Framework principles in developing an inclusive model for this legislation. Consolidating or closely linking with the Aboriginal Heritage Act 2006 will be important to achieving this, and more clearly recognising both the impacts on traditional owners by invasive species as well as their role in management.

Safeguarding natural habitats and cultural connections to land is a principle that should be enshrined in the new Act, including the development of relationships and collaboration incorporating traditional knowledge and culture. It is critical that this is properly articulated with real outcomes and mechanisms to achieve the desired goal, and not as a symbolic gesture. As an example, New Zealand has been reforming their legislation across a range of social and environmental portfolios to properly include Maori co-governance (decolonising) with measurable, practical methods and outcomes. While New Zealand has the legal power established through the treaty of Waitangi, Victoria has the potential to follow this path in the development of new legislation - particularly in areas with such importance to the rights and culture of First Nations people and in light of a commitment from the Victorian government to develop a treaty with Victorian Indigenous people.

Inclusion of statutory positions and statutory committees

The ability of Australia to respond to, and manage, environmental biosecurity has been enhanced by the establishment of the Chief Environmental Biosecurity Officer position and resourcing within the Australian Government, along with the formation of the Environmental Invasives Committee to facilitate national and state and territory decision making, prioritisation and collaboration.

An independent scientific advisory committee as discussed above, could be established at the state level and its powers written into the new Act. This scientific advisory function would be able to contribute to the National Environmental Biosecurity Response Agreement (NEBRA) and National Management Group (NMG) decision making, in regards to Victoria's contribution and priorities. While the process currently allows for expert advice to be utilised, in practice these decisions are usually made internally by government representatives. Strengthening this by requiring expert contribution for response decisions will greatly enhance the biosecurity system in Victoria, and lead by example to other jurisdictions.

Recommendations

3. Ensure that there are strong objects in the new act to achieve actual outcomes and promote effective collaboration with traditional owners and Aboriginal people's heritage and values.
4. Ensure that the Biosecurity Reference Group becomes a statutory committee in legislation to ensure that changing governments do not abolish it in the future.
5. Consider statutory positions such as a chief environmental biosecurity officer and science advisory committee role for more responsive and effective environmental biosecurity decision making.

4. What new tools for managing biosecurity risk should be included in legislation?

We support the focus on improving the traceability and assurance mechanisms that will support the ability of Victoria to respond to emerging threats and support the state's biosecurity system's ability to adapt to a changing environment.

Enhancing the ability of industries and affected communities to manage biosecurity risk and be responsible in the event of a breach of conditions to permits, licences and certifications is admirable. However this approach mainly applies when the impact is financially measurable and the responsible parties have the capacity and ability to co-regulate the risk with the government. Environmental incursions or responses are different, in that there is no immediate source of funding or incentive for funding as industry. It is imperative that in designing the co-regulation with partners into aspects of the legislation such as traceability and compliance, appropriate mechanisms are also developed for environmental risks and responses to non-compliance. For example, the deliberate release of an invasive fish species under this model would not necessarily result in the fishing industry paying for eradication, or the suspension of licence for the perpetrators. The model suggested in the discussion paper would not work for impacts from environmental invasive species, and an equivalent should be developed to ensure compliance penalties and effective deterrents are consistent.

General Biosecurity Duty

A broad ranging duty of care is important because there is no practical way of regulating all actions that could lead to negative impacts. The irresponsible actions of a few could impact generations. A legal obligation needs to be complemented by public education programs that motivate a personal responsibility and a serious approach to biosecurity. Individuals and organisations who are responsible for activities that pose a biosecurity risk should have greater legal responsibility for managing them. This general biosecurity duty means they must take all reasonable steps to ensure they do not spread a pest, disease or contaminant. This has become enshrined in law in many states' biosecurity legislation.

This can take the form of a responsibility for managing biosecurity risks that are under individuals control; and recognise and minimise biosecurity risks to the best of their ability within their industries, homes, or places they visit.

Not complying with the general biosecurity duty is now an offence under state legislation (NSW, QLD, TAS). The Invasive Species Council supports the intent of Victoria to include a General Biosecurity Duty in the new act.

Including this in the legislation also aligns with the 'shared responsibility' principle that has been written into the Australian Biosecurity Strategy 2022-2032, and state and territory strategies at various levels (e.g ACT Biosecurity Strategy, draft NSW Biosecurity and Food Safety Strategy). While other jurisdictions have applied this concept for more than 5 years, it has been poorly applied in practice. There needs to be significant communication to build public awareness of their obligations, and guidance provided by the government on how it applies in common scenarios in order for the general public to be properly aware of how the duty relates to their actions. While the concept is positive and has potential for success, it needs to be well implemented in order to achieve the goals set.

Collaborations

Biosecurity has traditionally been a domain of government, with the Australian Government taking responsibility for people and goods entering the country, and states and territories managing pest animals, weeds and pathogens within their borders.

Increasingly, it is recognised that effective biosecurity requires all Australians to take responsibility. In line with the themes articulated by Victoria in the Biosecurity Statement, and discussion paper for the legislative reform, industries, businesses and the community can work to support government efforts. Each and every Australian should be regarded as a partner in our biosecurity system and encouraged to assist, which has been touched upon with the General Biosecurity Duty.

Collaboration and partnership were a strong theme in the Beale 2008 Biosecurity review and was also emphasised in the 2017 IGAB review.¹ This approach has been formally adopted through the updated 2019 Intergovernmental Agreement on Biosecurity and the National Biosecurity Strategy 2022-2032. Industry, businesses, Aboriginal and Torres Strait Islander peoples and community partners have immeasurable skills and resources, albeit some with limited capacity, and are willing and eager to be more involved.

The Decade of Biosecurity (<https://biosecurity2030.org.au/>) initiative seeks to ensure that by 2030 there is a strong understanding of biosecurity by all Australians and greater involvement in biosecurity surveillance across the country. The goal of the initiative is to actively engage all Australians in building a stronger national biosecurity system. The objectives are:

1. Biosecurity is well understood by the entire Australian community.
2. Broad involvement in general biosecurity surveillance: all communities, sectors and regions.
3. A strong, connected biosecurity collective fosters a mission of shared biosecurity responsibility.
4. Major biosecurity participants agree to a set of priorities for sustaining biosecurity investments.
5. Establishment of sustainable investment mechanisms for essential biosecurity with funding contributions from government and non-government sources.

¹ Roger Beale et al., 'One Biosecurity: A Working Partnership.'

The Decade of Biosecurity has three main 'pillars' - collaboration and partnerships, communication and engagement, and sustainable funding. A 3-year Decade of Biosecurity implementation plan is currently being developed, including consultation to seek the views of interested parties, and will be finalised by the end of 2022.²

The Decade of Biosecurity 2021-2030 initiative is currently supported by all state and territory ministers, federal, state and territory biosecurity agencies and founding partners: the Invasive Species Council, Animal Health Australia, Centre for Invasives Species Solutions, Plant Health Australia, National Farmers' Federation, National Landcare Network, Landcare Australia and NRM Regions Australia.³

The Decade of Biosecurity implemented at the state level can help drive greater awareness and partnerships and foster the spirit of co-design and collaboration.

Permitted listing approach

Weed prevention requires actions at the national and internal borders, between states and territories as well as between geographic regions. Weed species that have already been introduced require risk management to prevent further spread, along with changes to distribution of native plant species, through human changes to the environment, movement of host material, or climate change. Unless assessed as a low risk, these plant species must be prevented from spreading to new areas.

Under the current Catchment and Land Protection Act 1994, noxious weeds are listed and are subject to legislative controls. However, under the existing weed management structure, serious environmental weed species are often not declared under this act and therefore not addressed. The current method of listing species is a 'prohibited listing', which allows for only a miniscule fraction of the world's plant taxa. In consolidating functions and powers from the CALP Act into the new Biosecurity Act, we recommend that this be updated and modernised to ensure effective listing and declaration of weeds of environmental significance is performed. This may be a focus of development of subordinate legislation, and the Invasive Species Council looks forward to providing more detailed feedback to this part of the reform process.

Only a small subset of the 30,000 or so exotic plant species in Australia have been assessed for their invasive risk in Victoria, and only about 120 are declared noxious weeds. Rather than banning just a few high priority species, Victoria needs to move to a permitted list approach, which prohibits the introduction of plants into Victoria unless they have been assessed as 'safe' (at low risk of becoming invasive). This includes plants native to Australia but not indigenous to Victoria. There will also need to be a mechanism to regulate the trade and planting of species native to a part of Victoria that may be invasive in other parts of Victoria.

We recommend a permitted list for the use and trade of plants in Victoria, rather than a prohibited list, in which all taxa are prohibited from entry, use or trade, unless proven to be low risk. Such a scheme is in place in Western Australia. The CALP Act list for declared animals appears to be more in line with a permitted list, listing a very high proportion of all vertebrate fauna of the world as 'restricted' in Victoria.

In bringing together the disparate legislative instruments into the new Biosecurity Act to cover weed species, including environmental, native and potential weed species, there is an opportunity to move

² Biosecurity Collective, Decade of Biosecurity project summary July 2022.

³ Biosecurity Collective, 'Decade of Biosecurity 2021-2030.'

to a permitted list to address this. (Including the Catchment and Land Protection Act 1994, environmental objectives of the Flora and Fauna Guarantee Act 1988, National Parks Act 1975 and Sustainable Forests (Timber) Act 2004).

In order to reinforce the preventative and precautionary approaches (and the benefits of invasion curve based planning and prioritisation) Victoria should identify more high risk species and place mandatory controls on their use/keeping, movement and sale. The contradiction between the CALP Act approach and the management of invasives for biodiversity protection can be seen by comparing the CALP Act noxious weeds list (119 taxa) and the 'advisory' lists prepared by DSE, which refer to 600-odd species with the potential to impact on biodiversity and other values. While these lists are not prepared using the same level of detail used to assess CALP Act weeds, and have no regulatory status, they nonetheless provide a guide for public land managers and others and identify which species present significant risks.

Some good work has already been done to assess and strengthen Victoria's management of the risk posed to the environment by invasive weeds. An advisory list was prepared in 2018, providing general advice to conservation managers on the relative risks posed by different environmental weeds and the relative urgency of managing them across Victoria's natural ecosystems. The environmental weeds documented in this list were ranked to indicate priority for control or management in native vegetation, based largely on the 'stage' of the invasion process for each species, the impact of the species on native ecosystems, and the species' rate of spread.

State of Biosecurity reporting

A legislated requirement to prepare a State of Biosecurity report every 4 years would be an effective tool for measuring and reporting progress and success, as well as identifying areas for improvement or increased focus. This function could be an ongoing role for the Biosecurity Reference Group that has been established to advise on the reform process. This advisory body would present an invaluable resource and function for Victoria in the future, including beyond the reform of the legislative framework and should be written into the legislation as a statutory committee to prevent it from being abolished through changing governments and priorities. Preparing a State of Biosecurity report would enhance the transparency of the system and monitor performance, as well as publish the progress towards the goals of the Biosecurity Statement for Victoria, and the subsequent Biosecurity Strategy that will be developed. A State of Biosecurity report will also set out detailed information on how biosecurity is managed in Victoria will incorporate the various roles played by government, industry and communities. Emerging issues can be identified and recommendations made through the report to assist in meeting the long term goals and provide ongoing performance measurement.

Recommendations:

6. Develop a General Biosecurity Duty in the new Act in line with other jurisdictions.
7. Consider a permitted list approach to replace the current prohibited list approach for weed species.
8. There should be a legal requirement written into the legislative framework to prepare a State of Biosecurity report every 4 years, to report on the progress of Victoria on the reform program and function of the biosecurity system.

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