

# Chapter 2

## Regulatory and legislative framework

### Introduction

2.1 Under the Australian Constitution, specific and clear responsibility for the legislative and administrative framework within which natural resources are managed lies with the State and Territory governments. The Commonwealth's involvement in environmental matters focuses on matters of national environmental significance.<sup>1</sup>

2.2 The key Commonwealth environmental legislation is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). One of the objectives of the EPBC Act is to promote a co-operative approach to the protection and management of the environment that involves governments, the community, landholders and indigenous peoples.<sup>2</sup>

2.3 This shared responsibility between the Commonwealth and the States is referred to as cooperative federalism and is reflected in the *Intergovernmental Agreement on the Environment* which was signed by the Commonwealth and all States and Territories in 1992. The purpose of the agreement was to achieve sound environmental management through a system of parallel and complementary legislation.<sup>3</sup>

2.4 Within the framework of cooperative federalism the Commonwealth has been involved in the coordination of national approaches to environmental issues and the States and Territories have been involved in assisting in such strategies. The aims of the cooperative approach include:

- reducing the number of disputes between the Commonwealth and States and Territories over environmental issues;
- providing a better framework for Government and business decision making; and
- providing a better framework for environmental protection.

2.5 Consultation between the Commonwealth, States and Territories has been formalised through ministerial councils, standing committees and a range of consultative committees that also include key industry and scientific representatives.

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1 Department of Environment and Heritage, *Submission 61*, p. 7.

2 Department of Environment and Heritage, *An Overview of the Environment Protection and Biodiversity Conservation Act*, 1999, p. 2.

3 ECITA Reference Committee Report, *Regulating the Ranger Jabiluka, Beverley and Honeymoon uranium mines*, October 2003, p 1.

2.6 As will be apparent in the discussion below, the management of invasive species in Australia is multi-jurisdictional. With regards to the shared responsibility for environmental matters it has been noted that

It is in the interests of both the state and federal governments, therefore, to try to work out cooperative arrangements to environmental regulation wherever possible.<sup>4</sup>

2.7 This chapter provides an overview of the regulatory structure of the three tiers of government: Commonwealth, State and local, before describing the impact of the international regulatory environment. It first examines the Commonwealth's role, then describes that of the States, Territories and local government, before examining evidence in relation to the adequacy of intergovernmental cooperative arrangements. It concludes with a discussion of the international context, which places important limits on Australia's regulatory sovereignty.

### **Constitutional limitations and intergovernmental arrangements**

2.8 The Commonwealth or Australian Government derives its authority from the Australian Constitution. The Commonwealth has no explicit authority to enact environmental laws as the Constitution is silent in this respect. As Ms Renea Leverenz submitted:

In 1897, an environmental pioneer named John Clark petitioned the Constitutional Convention to draft in the Constitution a clause protecting native animals, flora and trees. Despite this and other petitions, Government power to regulate activities relating to environmental protection was left almost entirely absent from the Constitution.

A Senate Committee recently highlighted three clear reasons why environmental protection was not made part of the Constitution:

1. There was little environmental consciousness regarding preservation of the environment at that time.
2. The framers of the Constitution, like the rest of society at that time, would have viewed the natural environment as something to be tamed and exploited – not something requiring protection.
3. If the framers had thought the environment deserved legislative attention, it would likely have been seen as a matter for the States.<sup>5</sup>

2.9 However, there are particular powers that may be able to be used in reference to the environment within the Constitution. The heads of power that may be able to be used to promote environmental law include:

- the trade and commerce power;<sup>6</sup>

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4 G Bates, *Environmental Law in Australia*, 5<sup>th</sup> edition, 2000, p. 73.

5 Ms Renea Leverenz, *Submission 27a*, pp. 20-21.

6 The Australian Constitution, section 51(i).

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- the taxation power;<sup>7</sup>
  - the quarantine power;<sup>8</sup>
  - the corporations power;<sup>9</sup>
  - the external affairs power;<sup>10</sup>
  - the power over Commonwealth instrumentalities and the public service;<sup>11</sup>
  - the power over customs, excise and bounties;<sup>12</sup> and
  - the financial assistance power;<sup>13</sup> and the territories power.<sup>14</sup>

2.10 An important aspect of the Constitution is that if there is inconsistency between Commonwealth law and the law of a State or Territory, the Commonwealth law prevails.<sup>15</sup> Therefore, should it choose to do so, the Commonwealth has the ability to over-ride state laws in areas of constitutional competence.

### **Commonwealth legislative framework**

2.11 The Commonwealth's involvement in environmental protection has been to institute legislation with respect to matters of national environmental significance and fulfilling Australia's international obligations.

2.12 The Commonwealth Government is involved in the development and implementation of national measures and programs to control invasive species. The two main Government departments with responsibility for environmental protection are the Department of Environment and Heritage (DEH) and the Department of Agriculture, Fisheries and Forestry (DAFF).

2.13 DEH has responsibility for managing invasive species which pose a threat mainly to environmental values. Its efforts are focussed on the control and management of established invasive species. Its key legislation is the EPBC Act.

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7 *ibid*, Section 51(ii).

8 *ibid*, Section 51(ix).

9 *ibid*, Section 51(xx).

10 *ibid*, Section 51(xxix).

11 *ibid*, Section 52.

12 *ibid*, Section 90.

13 *ibid*, Section 96.

14 *ibid*, Section 122.

15 *ibid*, Section 109.

2.14 DAFF's responsibility is to manage invasive species which pose a threat mainly to production values.<sup>16</sup> Its key legislation is the Quarantine Act 1908 (the Quarantine Act).

2.15 Most of DAFF's efforts and responsibilities are aimed at protection and response to newly identified invasive species, as distinct from established invasives. In its submission DAFF advised that:

Under current Administrative Arrangement Orders, DAFF has three major areas of responsibility; agricultural, pastoral, fishing, food and forest industries; water, soils and other natural resources; and quarantine.<sup>17</sup>

2.16 DAFF's responsibilities include managing the development and implementation of:

- international agreements and undertakings;
- pre-border and border monitoring, detection and control arrangements; and
- national policies and programs to manage early pest incursions.<sup>18</sup>

2.17 DEH and DAFF work cooperatively. An example of this cooperation is demonstrated through the fact that the EPBC Act and the Quarantine Act require that live specimens be assessed for their potential impacts prior to import. DEH submitted that:

The Departments of the Environment and Heritage and Agriculture, Fisheries and Forestry have worked closely to develop an integrated process for the assessment of specimens. This reduces duplication and streamlines the assessment processes, both for the Australian Government and for the applicant (or potential importer). The agreement of both Departments is required before a live specimen can be imported.<sup>19</sup>

2.18 DEH and DAFF jointly administer the Natural Heritage Trust (NHT) which has the aim of ensuring that the continued sustainable management of Australia's environment is achieved through cooperative input by the whole community to mitigate existing problems and improve land use.<sup>20</sup> The NHT is administered by the Natural Heritage Ministerial Board, which comprises the Minister for the Environment and Heritage and the Minister for Agriculture, Fisheries and Forestry. There are also a number of committees and organisations that oversee and support the Natural Heritage Trust.

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16 Department of Environment and Heritage, *Submission 61*, p. 4.

17 Department of Agriculture, Fisheries and Forestry, *Submission 62*, p. 3.

18 *ibid*, p. 3.

19 Department of Environment and Heritage, *Submission 61*, p. 7.

20 Natural Heritage Trust, *Annual Report 2001-2002*, p. 2.

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2.19 The three key legislative instruments relating to invasive species are:

- *Environment Protection and Biodiversity Conservation Act 1999*;
- *Quarantine Act 1908*; and
- *Natural Heritage Trust of Australia Act 1997*.

These are described in turn below.

### ***Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)***

2.20 The EPBC Act is the principal piece of Commonwealth legislation in relation to environmental protection and biodiversity conservation. It came into effect on 16 July 2000 and, upon its commencement, it replaced a number of Commonwealth statutes which had dealt with aspects of environmental protection and biodiversity conservation but in a less holistic and integrated manner.

2.21 The key purpose of the EPBC Act was to clarify the matter of Commonwealth environmental jurisdiction. The EPBC Act focuses on 'matters of national environmental significance' and seeks to promote the conservation of biodiversity by providing protection for:

- listed species and communities in Commonwealth areas (this includes listed threatened species and ecological communities, listed migratory species and listed marine species);
- cetaceans (all whales, dolphins and porpoises) in Commonwealth waters and outside Australian waters;
- protected species in the Territories of Christmas Island, Cocos (Keeling) Islands and Coral Sea Islands; and
- protected areas (World Heritage properties; Ramsar wetlands; Biosphere reserves; Commonwealth reserves; and conservation zones; and
- wildlife species and wildlife products subject to international trade.<sup>21</sup>

2.22 The EPBC Act provides for:

- the identification of key threatening processes;
- the protection of critical habitat;
- the preparation of recovery plans; threat abatement plans; wildlife conservation plans; bioregional plans; and conservation agreements;
- the issuing of conservation orders; and
- the regulation of exports and imports of live animals and plants, wildlife specimens, and products made or derived from wildlife.<sup>22</sup>

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21 Department of Environment and Heritage website, [www.deh.gov.au/epbc/about/index.html](http://www.deh.gov.au/epbc/about/index.html), accessed 31 August 2004.

2.23 The EPBC Act provides a framework for the management of invasive species by providing for the listing of key threatening processes and the creation of national threat abatement plans (TAPs). Under the EPBC Act there is the provision for threat abatement plans to be made jointly with the States and Territories or with agencies of those States and Territories.<sup>23</sup> Plans are developed in consultation with stakeholders and draft plans are circulated for public consultation for a three month period.<sup>24</sup> Key threatening processes and TAPs are discussed in Chapter 5.

2.24 Section 301A of the EPBC Act also provides for the development of regulations for the control of non-native species.<sup>25</sup> Under the EPBC Act regulations may provide for the establishment and maintenance of a list of species, other than native species, whose members threaten or would likely threaten biodiversity. Regulations may also regulate or prohibit trade in members of a species between Australia and other countries, between States and Territories, and by constitutional corporations.<sup>26</sup> As will be discussed in Chapter 5, evidence presented to the Committee indicated that the Commonwealth has lacked the political will to implement this section of the Act.

2.25 The EPBC Act also establishes a process for the assessment of proposed actions by either private persons, corporations or government and its agencies, that have, will have or are likely to have a significant impact on matters of national environmental significance. These matters are set out in Part 3 of the EPBC Act and include:

- World heritage properties;
- Wetlands of national importance (i.e. declared Ramsar wetlands);
- Listed threatened species and communities;
- Listed migratory species;
- Nuclear actions;
- Commonwealth marine areas; and
- any further matter prescribed by regulation.

2.26 The Department of the Environment and Heritage submitted:

The EPBC Act established a list of specimens suitable for live import (the live import list) and prohibits the import of any species not on this list. The legislation provides for the possibility of a live import being permitted under exceptional circumstances where the Minister is satisfied there is no

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22 *ibid.*

23 *Environment Protection and Biodiversity Conservation Act 1999*, s270B(3).

24 Department of Environment and Heritage, *Submission 61*, p. 8.

25 *Environment Protection and Biodiversity Conservation Act 1999*, s301A.

26 *ibid.*

risk to the environment. The live import list is divided into two parts – Part 1 is a list of specimens that may be imported without a permit and Part 2 is a list of specimens that may only be imported with a permit, often with conditions attached. It is an offence to import a specimen that does not appear on the list, or a specimen on Part 2 without a permit.

An applicant wishing to add a species to this live import list must prepare an assessment report examining the potential impacts on the environment of the proposed import. The draft terms of reference for the report and the draft report are published on the Department's website for public comment, an email to registered stakeholders is sent out inviting comment on both documents, and a letter is sent to the appropriate State, Territory and Australian government Ministers requesting comment on the draft report. A species will be added to the live import list only when the Minister is satisfied that it will not impact on the Australian environment....

Currently there are 62 applications which are being progressed by the applicant (eg development of the assessment report, collating further information relating to their application etc), 36 applications are being progressed by the Department, 11 have been completed, 2 withdrawn and 1 internal amendment to the list relating to the listing of plants has also been completed.<sup>27</sup>

### ***Quarantine Act 1908***

2.27 Under the Quarantine Act the Commonwealth Government has responsibility in relation to pre-border and border monitoring, detection and control arrangements in respect of humans, animals and plants. Measures in the Quarantine Act are implemented by the Australian Quarantine and Inspection Service (AQIS), an operating group within DAFF. AQIS provides quarantine inspection for the arrival of international passengers, cargo, mail, animals, and plants or their products into Australia, and inspection and certification for a range of animal and plant products exported from Australia.

2.28 Border protection is also supported by the Northern Australian Quarantine Strategy (NAQS) which was established 14 years ago. It is also managed by AQIS. The aim of NAQS is to protect Australia from exotic pests, weeds and diseases that could enter Australia from countries to the north. NAQS is discussed in detail in Chapter 6.

2.29 DAFF's involvement in pre-border and border protection is designed to fulfil the Commonwealth's constitutional responsibilities in relation to quarantine matters as well as the provisions of the Quarantine Act. The three key elements to DAFF's border protection regime are:

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27 Department of Environment and Heritage, *Submission 61*, pp. 7-8.

- assessing risks and identifying the policies and measures necessary to address those risks (through the Import Risk Analysis and Weed Risk Assessment processes) managed by Biosecurity Australia;
- implementing those measures at the border (Border Protection) managed by the Australian Quarantine and Inspection Service (AQIS); and
- developing surveillance systems and complementary measures in neighbouring countries (Northern Australia Quarantine Strategy), together with off-shore and overseas inspections, managed by AQIS.<sup>28</sup>

2.30 In its submission DAFF advised that:

The objective of Australian Government biosecurity policies is to prevent or control the entry, establishment or spread of pests and diseases that will or could cause significant damage to human beings, animals, plants, other aspects of the environment, or economic activities. For animal and plant biosecurity, import risk analysis identifies the pests and diseases relevant to an import proposal, assesses the risks posed by them and, if those risks are unacceptable, specifies what measures should be taken to reduce those risks to an acceptable level.<sup>29</sup>

### ***Natural Heritage Trust of Australia Act 1997 (NHT Act)***

2.31 The NHT Act established the Natural Heritage Trust of Australia Reserve, which is dedicated to repairing and replenishing Australia's natural capital infrastructure'.<sup>30</sup> The Act allows the Trust to earn interest and allows for consolidated revenue funds to be paid into the Trust Reserve. Funds from the Reserve are then allocated to projects and programs aimed at providing solutions to environmental issues.<sup>31</sup> The Natural Heritage Trust aims to move the management of natural resources to a more integrated and cohesive approach that:

requires cooperative input by the whole community to mitigate existing problems and improve our land use now and for future generations.<sup>32</sup>

2.32 The Trust is jointly administered by DEH and DAFF. It was established to operate for five years from 1996-97 to 2001-02. The main source of the funds in the Reserve was derived from the first partial privatisation of Telstra. Its operation was extended for a further five years from July 2002. Under the Act funding is provided for programs and projects for natural resource management. The Commonwealth aims to use funding from the Trust as a catalyst, to attract additional and ongoing

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28 Department of Agriculture, Fisheries and Forestry, *Submission 62*, p. 3.

29 *ibid*, p. 4.

30 Natural Heritage Trust, *Annual Report 2001-02*, p. 3.

31 *ibid*.

32 *ibid*.

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investment for environmental and resource management projects and to instigate institutional change which provides the framework for ongoing sustainable use.<sup>33</sup>

2.33 Partnership agreements exist between the Commonwealth and each State and Territory government. Under section 19 of the NHT Act the partnership agreements establish the terms and conditions under which financial assistance is provided from the Trust. It also establishes a framework for cooperation in environmental protection, natural resource management and sustainable agriculture.

The partnership agreements also aim to ensure that state policies and regulatory arrangements for environmental protection and sustainable development are consistent with national objectives and priorities.<sup>34</sup>

2.34 There has been a fundamental shift in the NHT since its extension. It has moved towards a more targeted approach to environmental and natural resource management in Australia, with the second phase of the NHT seeking to deliver:

Important resource condition outcomes including improved water quality, less erosion, improved estuarine health, improved vegetation management and improved soil condition.<sup>35</sup>

2.35 Institutional arrangements for application of the NHT are discussed in Chapter 3.

### **State and Territory legislation**

2.36 The States and Territories have principal responsibility for environmental management. Subject to the constitutional constraints discussed earlier, the States and Territories are free to pass laws on all aspects of environmental protection and a substantial body of environmental legislation has been developed.

2.37 The States and Territories developed their legislation independently and a consequence of this is that different administrative arrangements and responsibilities have been developed in different states and territories. With regard to weed management legislation, WWF Australia submitted that:

Victorian, Tasmanian, Western Australian and the Northern Territory Acts give primary responsibilities to government agencies, whereas the focus for administrative authority in New South Wales, Queensland and South Australia, is on local government agencies<sup>36</sup>

2.38 Recent legislation, such as the Queensland Government's *Land Protection (Pest and Stock Route Management) Act 2002* specifies principles for pest

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33 Natural Heritage Trust, *Annual Report 2001-02*, p. 12.

34 *ibid.*

35 Natural Heritage Trust website, [www.nht.gov.au/about-nht.html](http://www.nht.gov.au/about-nht.html), accessed 30 August 2004.

36 WWF Australia, *Submission 30*, p. 37.

management, including integration, public awareness, best practice and prevention. Such a holistic approach is absent from older statutes which are focussed on protecting primary industry.

2.39 The ACT *Land (Planning and Environment) Act 1991* was noted as being:

... general planning legislation, with no specific weed management focus. For example, the Act includes no weed control categories, control areas are unspecified, and the sale and distribution of declared weeds and contaminated material is not prohibited. It may be due to this lack of strategic focus and detail that the ACT has the poorest record on preventative action.<sup>37</sup>

2.40 Administrative arrangements differ between the States and Territories in relation to the declaration of pest weed and animal species. Most states share common principles in relation to legislation such as declaration mechanisms, for example provisions that allow plants to be proclaimed as 'noxious weeds', 'declared weeds' or 'pest plants'. WWF Australia submitted that:

Cumulatively, this has resulted in over 330 species of declared weeds throughout Australia. Despite this commonality, the resulting regimes differ in a number of ways. The current array of regulatory regimes are further complicated by the fact that in any one State there can be numerous Acts relevant to weeds management.<sup>38</sup>

2.41 In relation to the declaration of pest animals the ACT Government noted that:

No animals have been declared as pest species in the ACT and the regulatory effectiveness in regard to enforcing compliance of controlling a declared pest species is considered to be inadequate. A review of the pest provisions of the [*Land (Planning and Environment) Act 1991*] Act has been programmed.<sup>39</sup>

2.42 State and Territory legislation in relation to noxious weeds and pest animals is fragmented and the regulatory framework for invasive species varies. More contemporary legislation has the benefit of being better integrated with policy development, however, the benefit of this is hindered by the lack of uniformity between states and territories. Concern has also been expressed that there is an absence of reference to environmental protection or application of the precautionary principle in the objects of the Acts.<sup>40</sup>

2.43 As with national legislation, the State and Territory legislation that relates to invasive species is reactive and restricted in its scope. There is lack of early

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37 WWF Australia, *Submission 30*, p. 38.

38 *ibid.*

39 ACT Government, *Submission 44*, p. 9.

40 WWF Australia, *Submission 30*, p. 39.

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intervention measures. The Committee received considerable evidence supporting the need to have measures in place to enable an early response because:

By the time many infestations are noticed, or by the time a plant is regarded as causing a problem, eradication is usually not feasible.<sup>41</sup>

Response options are discussed in Chapter 4.

2.44 The main intervention methods are laid out in emergency response cost sharing arrangements, which are based in cooperative agreements rather than legislation. Discussion on these measures is provided in Chapter 5.

2.45 Some of the key State and Territory legislation is detailed below.

### *New South Wales*

2.46 **Rural Lands Protection Act 1998 and the Rural Lands Protection Amendment Act 2003** – The Act sets out the provisions under which animals, birds and insects can become declared pests. It provides the processes and mechanisms for the control of declared pest species. The Rural Lands Protection Boards are responsible for regulatory aspects of the control of declared pests. The RLP Act imposes legal obligations on owners and occupiers of land to eradicate pest animals declared under the Act. Public land managers are also required to eradicate pest animals. The RLP Boards also assist land holders in relation to vertebrate pests subject to voluntary control.

2.47 **National Parks and Wildlife Act 1974** – Provides the legislative basis for the control of vertebrate pests in NSW.

2.48 **Threatened Species Conservation Act 1995** – The Act lists key threatening processes. European red foxes, feral cats and the invasion of native plant communities by exotic perennial grasses are currently listed as threatening processes.<sup>42</sup> The development and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or extension are prescribed in the Act.

2.49 **Noxious Weeds Act 1993** – The Act provides the legislative basis for the control of weeds in NSW. All weed species listed are classified as Weeds of National Significance under the national weeds program. State and local government funds are applied to control measures at a local level. National Heritage Trust grants have been used on a small number of individual projects.

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41 Department of Conservation and Land Management, *Submission 67*, p. 5.

42 *Threatened Species Conservation Act 1995, Schedule ...3*

## *Victoria*

### **2.50 Catchment and Land Protection Act 1994, Catchment and Land Protection Regulations 2002:**

This Act sets up a framework for the integrated management and protection of catchments, establishes processes to encourage and support community participation in the management of land and water resources, and provides for a system of controls on noxious weeds and pest animals. The Act also establishes the Victorian Catchment and Land Protection Council, Regional Catchment and Land Protection Boards and the Pest Animal Advisory Committee.<sup>43</sup>

2.51 The objective of the Act is to establish a framework for the integrated and co-ordinated management of catchments, to establish processes for the assessment of the State's land and water resources and the effectiveness of land protection measures, to establish processes to encourage and support land holders, resource managers and other members of the community in catchment management and land protection and to provide for the control of noxious weeds and pest animals.<sup>44</sup> Responsibility for the prevention and management of noxious weeds and pest animals rests with land owners. Part 8 of the Act prescribes the measures under which noxious plants and pest animals may be declared and outlines measures for the control of noxious weeds and pest animals. Section 59(2) of the Act states that the Secretary cannot recommend for declaration under Part 8 fish or invertebrate animals. The sale, distribution and interstate movement of declared weeds is prohibited under Section 71. Under Section 63 the Minister may declare a restricted weed if it is a serious threat in another State or Territory, and has the potential to spread within Victoria, and if sold or traded in Victoria would pose an unacceptable risk. Limitations and penalties for the importation, trading, keeping and releasing of pest animals is prescribed in Section 75. The objective of the Regulations is to prescribe the purposes for which an established pest animal may be kept without a permit and the conditions under which an established pest animal may be kept.

2.52 **Flora and Fauna Guarantee Act 1988** - The *Flora and Fauna Guarantee Act 1988* is the key piece of Victorian legislation for the conservation of threatened species and communities and for the management of potentially threatening processes. Predation by red foxes, feral cats (*felis catus*) and the invasion of native vegetation by environmental weeds are listed as threatening processes in Schedule 3.

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43 Victorian Government, Department of Sustainability and Environment, website at: [www.dse.vic.gov.au/web%2Froot%2Fdomino%2Fcm\\_da%2Fnrence.nsf/frameset/NRE+Conservation+and+Environment?OpenDocument](http://www.dse.vic.gov.au/web%2Froot%2Fdomino%2Fcm_da%2Fnrence.nsf/frameset/NRE+Conservation+and+Environment?OpenDocument).

44 Victorian Government, *Catchment and Land Protection Act 1994, Section 4*.

## *Queensland*

2.53 Land Protection (Pest and Stock Route Management) Act 2001 and the Land Protection (Pests and Stock Route Management) Regulations 2003 – Under the Act all Weeds of National Significance are prevented from sale in Queensland and from transportation from interstate into Queensland.<sup>45</sup> The Queensland Weeds Strategy 2002-2006 and the Queensland Pest Animal Strategy 2002-2006 are enshrined in the Act and they create an agreed framework to improve invasive species and native pest management in Queensland. The strategies are subject to 5-yearly review.<sup>46</sup> Land managers have responsibility for managing invasives on their land. Under the Act all local governments must develop a Local Government Area Pest Management Plan (LAGPMP). This is to be done in consultation with state government agencies and other stakeholders by 1 July 2004. The LAGPMP covers all land within the boundaries of the local government area, including land owned or controlled by individuals, industry or the state.

2.54 Fisheries Act 1994 – Provisions in the Act cover the possession and release of noxious and non-indigenous fisheries resources. It also provides for the protection and conservation of fish habitats and the declaration of management plans to regulate taking, possessing or selling regulated fish.

2.55 As discussed later Queensland has almost uniquely delegated pest management to local government which, in part, explains why its key state statute is of an economic nature rather than environmental.

## *Western Australia*

2.56 **Agricultural and Related Resources Protection Act 1976** - This law is intended to be augmented by the proposed Biodiversity Conservation Bill. The objective of the Act is to protect primary industry and resources related to primary industry.<sup>47</sup> Under Section 35 and 36 of the Act plants and animals may be declared and assigned to different categories. Section 37 of the Act allows that once a year the State publishes a list in the Gazette setting out every class of plants and animals that is subject to a declaration under Section 35. Under the Act state government, local government and private land owners are responsible for the control of declared plants and animals on and in relation to their land.<sup>48</sup>

## *South Australia*

2.57 **Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986.** The Act provides for the control of animals and plants for the protection of

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45 Queensland Government, *Submission 43*, p. 6.

46 *ibid*, p. 6.

47 Western Australia, *Agricultural and Related Resources Protection Act*, Section 3.

48 *ibid*, Section 39, 42, 49.

agriculture and the environment, for the safety of the public and for other purposes. The Animal and Plant Control Commission (APCC) is responsible for administering and implementing the *Animal and Plant Control Act 1986* by funding research into pest problems, the development of State-wide and local policies and providing technical advice and enforcement activities. Local control and policy development is provided through Animal and Plant Control Boards. The Boards are based on Council boundaries and comprise one or more Council areas. Boards are responsible for ensuring that the provisions of the Act are carried out and enforced within their locality by monitoring and inspecting to determine the distribution and abundance of proclaimed animals and plants. Landowners are responsible to control proclaimed animals and plants on their own land. Boards have the power to ensure that non-compliant landowners undertake pest control.<sup>49</sup>

### ***Tasmania***

**2.58 Inland Fisheries Act 1995** – Conditions for the entry into Tasmania of any fish species capable of living or breeding in Tasmanian waters is prescribed in the Act. This includes imports for fish bait, aquarium pets and aquaculture. As some fish species have the potential to seriously damage the environment and displace native species, they have been declared controlled fish under the Act. Under the Act it is illegal to import, release, transfer or have possession of yabbies or carp in Tasmania. Furthermore, provisions under the Act allow the Inland Fisheries Service (IFS) to regulate all freshwater fish, crustaceans, amphibian, mollusc, invertebrate and aquatic plant imports. All imports, whether for recreational, hobby or commercial purposes, must have the written authority of the IFS.

**2.59 Weed Management Act 1999** – The purpose of the Act is to minimise the effect of weeds on Tasmania's sustainability of productive capacity, natural ecosystem and biodiversity, to promote a strategic and purposeful approach to weed management, to encourage community involvement in weed management and to promote shared responsibility for weed management.<sup>50</sup> The Weed Management Act provides for the development of a management plan for a specific weed prior to its proclamation as a noxious weed. This is essential if the proclamation of a weed is to result in its long term management.<sup>51</sup> A person must not sell or otherwise distribute any declared weed or anything carrying a declared weed if prohibited to do so by a weed management plan. A person must not import or allow to be imported into the State any declared weed if prohibited to do so by a weed management plan. Under Section 13 notices can be served on land owners requiring them to take measures in regards to specified declared weeds.

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49 South Australian Government website at:  
[www.environment.sa.gov.au/reporting/biodiversity/introduced.html](http://www.environment.sa.gov.au/reporting/biodiversity/introduced.html).

50 South Australian, *Weed Management Act 1999*, Section 5(a)(i-iv).

51 Tasmanian Department of Primary Industry, Water and Environment, [www.dpiwe.tas.gov.au](http://www.dpiwe.tas.gov.au), *The Weed Management Act 1999*.

2.60 **Threatened Species Protection Act 1995** – Under the Act threat abatement plans may be developed in respect of any process which is a threatening process. Plans may be made for flora and fauna and are developed in consultation with the public.<sup>52</sup> The plans must be reviewed within a period of 5 years after being made.<sup>53</sup>

### *Australian Capital Territory*

2.61 **Land (Planning and Environment) Act 1991** – The Act prescribes management objectives for areas designated as public land and requires the development of associated management plans. Authority for the administration of leased rural land is also provided. Under the Act an animal, including a native animal, may be declared as a pest species. However:

No animals have been declared as pest species in the ACT and the regulatory effectiveness in regard to enforcing compliance of controlling a declared pest species is considered to be inadequate. A review of the pest provisions of the Act has been programmed.<sup>54</sup>

2.62 The Act is general planning legislation and it does not have specific weed management focus. The Act does not include weed control categories, control areas are unspecified, and the sale and distribution of declared weeds and contaminated material is not prohibited.<sup>55</sup>

2.63 **Nature Conservation Act 1980** – This Act protects native plants and animals and controls the handling of vertebrate animals. A licence is required to import, keep or sell an animal other than an animal prescribed as exempt. A licence is also required to release an animal from captivity or to import, export, sell or release live fish. The Conservator of Flora and Fauna is required to prepare an Action Plan in response to each declaration of a threatened species or ecological community. The objective is the long term maintenance of viable, wild populations of each species or samples of the ecological community as components of the biological resources of the ACT. If the impact of pest plants and animals is considered to be a threatening process their control is identified as a key management strategy in Action Plans.<sup>56</sup>

2.64 **Fisheries Act 2000** – The Act protects fish species of conservation concern and established authority for fisheries management. It provides for the declaration of noxious fish species. No species has been declared noxious but potential species for inclusion are currently being reviewed.<sup>57</sup>

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52 Tasmanian, *Threatened Species Protection Act 1995*, Section 27.

53 *ibid*, Section 28.

54 ACT Government, *Submission 44*, p. 9.

55 World Wildlife Foundation, *Submission 30*, p. 38.

56 ACT Government, *Submission 44*, p. 9.

57 *ibid*.

2.65 **Animal Welfare Act 1992** – The Act controls activities that impose suffering on animals, including the use of poisons and traps. The Animal Welfare Advisory Committee is established by the Act to provide advice and participate in the development of codes of practice. The codes of practice are of direct relevance to vertebrate pest management as they relate to the destruction of kangaroos and the control of foxes.<sup>58</sup>

### *Northern Territory*

2.66 **Weeds Management Act 2001** – Provides for the prevention of the spread of weeds in, into and out of the Territory and establishes the management of weeds as an integral component of land management. The Act provides for community involvement in the creation of weed plans and ensures that there is community responsibility in implementing weed management plans.<sup>59</sup> The Minister may declare a plant to be a weed or a potential weed. The Minister has the authority to classify a weed as necessary to eradicate, necessary to prevent growing or necessary to prevent introduction of the plant into the Northern Territory.<sup>60</sup> The management of weeds is the responsibility of the land owner or occupier. The Minister has the authority to declare an area as a quarantine area.

2.67 **Territory Parks and Wildlife Conservation Act 2001** – Management of feral animals is prescribed in the Act. The Act states that they are to be managed in a manner that

(a) reduces their population and the extent of their distribution within the Territory; and

(b) controls any detrimental effect they have on wildlife and the land.<sup>61</sup>

Provisions for cooperation with the Commonwealth or a State or another Territory of the Commonwealth or with an authority of the Commonwealth or of a State or another Territory of the Commonwealth in the formulation and implementation of management programs for the control and management of feral animals are prescribed in the Act.<sup>62</sup> The land owner or occupier is responsible for the management of feral animals on their land,<sup>63</sup> however they may receive assistance from the Commission to

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58 ACT Government, *Submission 44*, p. 10.

59 Northern Territory, *Weeds Management Act 2001*, Section 3.

60 *ibid*, Section 7(4)(a)(b)(c).

61 Territory Parks and Wildlife Conservation Act 2001, Section 31(3.)

62 *ibid*.

63 *ibid*, Section 4.9.

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assist them in fulfilling their obligations.<sup>64</sup> Vertebrates that are not indigenous to the Territory are prohibited entrants unless prescribed not to be by the Regulations.<sup>65</sup>

## Local government

2.68 Due to the breadth and volume of local government legislation, policy and programs relating generally to land use, this section only seeks to provide an overview of the scope of power and role of local governments in managing invasive species.

2.69 Local government is the third tier of government in Australia however, it is not recognised in the Constitution.<sup>66</sup> Its power derives from a State Local Government Act:

which generally outlines the system of local governance and grants local authorities certain powers.<sup>67</sup>

2.70 The role of local governments has expanded beyond their traditional role of rates, roads and rubbish to include greater general competence powers.<sup>68</sup> Core amongst these is local government involvement in environmental management.

2.71 Local government is the sphere of government closest to the community. It is responsible for good governance and the care and protection of local communities within a framework of sustainable development. As managers of public land and land use planners, local government is responsible for policy development and implementation of land use planning, as well as regulating a wide range of activities that may impact upon natural resource management.

2.72 The Australian Local Government Association states that:

Local Governments functions, powers and responsibilities are not prescriptive in each State. Local Government must implement statutory responsibilities and operate within State/Territory legislative frameworks and as a land manager in their own right. Councils do have the responsibilities to make policies, undertake planning and deliver services to meet their community's needs. Furthermore, Councils are actively involved in policy delivery, planning and delivery of services, but their specific investment can not be taken for granted.<sup>69</sup>

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64 *ibid*, Section 50.

65 *ibid*, Section 52.

66 Cripps, Binning and Young (1999), *Opportunity Denied, Review of the legislative ability of local government to conserve native vegetation*, p. 19.

67 Australian Local Government Association, *National Local Government Biodiversity Strategy*, p. 14.

68 *ibid*.

69 Australian Local Government Association website at:  
<http://www.alga.asn.au/policy/environment/resourceManagement.php>.

Local government has a key role in translating the policies of Commonwealth and State governments into on-ground projects.<sup>70</sup> Local government performs this role amongst the myriad of legislation from all three tiers of government.

2.73 Local governments have been responsible for a large number of applications for Natural Heritage Trust grants. Many of the:

activities perceived as being non-core activities are only undertaken when Federal or State payments provide the resources under specific purpose programs<sup>71</sup>

2.74 There are a range of functions, powers and responsibilities at the disposal of local governments that can be applied to natural resource management and therefore the management of invasive species. These include:

- *strategic planning* through land use zoning and statutory controls on all freehold land and locally managed open space;
- *administrative responsibility* for state agency coordination through integrated planning, licensing and development concurrence;
- pest, plant and animal *risk control measures*;
- influence over land clearance patterns through *incentive programs* (planning amendments, rate differentials, levies, rural fire management and developer contributions);
- *management of local open space* to restore remnant vegetation and recreate habitat; and
- primary advocate for and *coordinator of local community groups* and interests.<sup>72</sup>

2.75 Local government in Queensland has the broadest powers of any State or Territory. Its powers are as broad as the State Government, although State legislation overrides local government laws and actions.<sup>73</sup>

2.76 In Queensland the management of most established invasive species is the responsibility of land owners. Local government has legislative responsibility for overseeing most of these activities, although state agencies have a compliance role for

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70 Australian Local Government Association website at:  
<http://www.alga.asn.au/policy/environment/resourceManagement.php>.

71 Australian Local Government Association, *National Local Government Biodiversity Strategy*, p. 15.

72 Australian Local Government Association website at:  
<http://www.alga.asn.au/policy/environment/resourceManagement.php>.

73 Cripps, Binning and Young (1999), *Opportunity Denied*, Review of the legislative ability of local government to conserve native vegetation, p. 19.

some species.<sup>74</sup> Local governments have responsibility for keeping their shire or city/town free of declared pests. Local government is responsible for monitoring and enforcement on private land and land it manages. Their power is demonstrated through the fact that under the *Local Government Act 1993* a local government may locally declare a pest species if it is not declared by the state or requires a greater level of control in the local government area.<sup>75</sup>

### *Discussion*

2.77 As was discussed above, Commonwealth, State and Territory responsibilities in relation to environmental matters generally, and in respect to invasive species in particular, are underpinned by the notion of cooperative federalism. However, cooperative federalism is a consensual approach that is reliant on all parties putting agreements into effect within their own jurisdictions in a timely manner.

2.78 The failure of the States and Territories to implement uniform national prohibition on the sale of the 20 Weeds of National Significance; as discussed in Chapter 4, highlights the pitfalls of this approach. WWF Australia submitted that:

Certain jurisdictions, namely the ACT, has legislation that does not even allow the sale of declared weeds to be prohibited.<sup>76</sup>

2.79 While, by comparison, NSW Agriculture submitted that:

State legislation has been, or is in the process of being, changed to fully support these strategies [Weeds of National Significance etc] and local control programs are being applied where the weeds occur. State and local government funds are applied to these control measures at the local level.<sup>77</sup>

2.80 WWF Australia summarised its views as follows:

Given it is over 5 years since the adoption of the National Weeds Strategy which included calls for increased consistency between State laws, WWF Australia has very strong doubts about whether the States have the political will to reform their laws within a reasonable period to construct a solid, nationally consistent, preventative, post-border statutory framework to prevent and control invasive plants.<sup>78</sup>

2.81 The Committee observes that any weak link in the national program of prohibition on trading in pest species represents a major constraint to the effectiveness of the program as a whole. It is self-evident that, to improve their effectiveness, legislation and strategies for managing invasive species need to be better harmonised.

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74 Queensland Government, *Submission 43*, p. 6.

75 *ibid*, p. 8

76 WWF Australia, *Submission 30*, p. 3.

77 NSW Agriculture, *Submission 70*, p. 1.

78 WWF Australia, *Submission 30*, p.4.

Evidence confirms that the lack of coherent and coordinated State, Territory and national controls on the sale of invasive plant species is identified as a major invasion pathway for new weeds.<sup>79</sup> This is discussed in Chapter 4.

2.82 While there is a reasonable level of cooperation between States and Territories on some issues, there is no national approach to dealing with most pest species. In relation to pest animals, the Western Australian Department of Conservation and Land Management submitted that:

The State and Territory agencies have varying amounts of legislation to support their capacity to manage invasive species that might enter each State or Territory or to manage feral populations of species already in the country.<sup>80</sup>

2.83 Management problems are compounded by the fact that in some States and Territories management is the responsibility of primary industry departments while in others conservation departments have carriage of the issue. In relation to pest animals, the Western Australian Department of Conservation and Land Management submitted that:

While there is a reasonable level of cooperation between adjacent States and Territories on some issues, there is no national approach to dealing with most species. This is partly a function of differing priorities (e.g. a pest in one State is of little concern in another, or beyond control already). The problem is also complicated by the nature of the agencies in each State currently responsible for invasive species management – primary industry departments have carriage of this issue in some States, while in others it is the conservation agencies. The level of networking and quality of those networks is affected by these circumstances. Coordinated, national approaches to managing invasive species would be a worthy goal.<sup>81</sup>

2.84 Invasive species do not acknowledge state and territory borders, yet an absence of measures to limit the interstate transport of invasive species, and a lack of nationally coordinated invasive species management legislation, impacts on the ability of States and Territories to effectively manage pest species and also aids the dispersal and potential of species to become noxious in other states.

2.85 Western Australia is perhaps a model for the others to follow in this respect. It has legislated to address the risk posed through items posted from interstate. However, this is currently being challenged. The Department of Conservation and Land Management submitted that:

In the past Western Australian Quarantine Inspection Service has scanned interstate mail for quarantine risk material (QRM) with great success. For example, in 1999/2000 WAQIS inspected 39,410 packages with quarantine

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79 WWF, *Garden Plants that are Invasive Plants of National Importance, Australia Report*, p vi.

80 Western Australia Department of Conservation and Land Management, *Submission 67*, p 19.

81 *ibid.*

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risk material (QRM) and made 182 seizures (honey, seeds, fruit, vegetables, plant cuttings, cannabis, etc). 31,743 parcels were also scanned with 2,664 parcels found to contain QRM.<sup>82</sup>

However, there is an inconsistency between Western Australia's *Plant Diseases Act 1914* (PDA) and the Commonwealth *Australian Postal Corporations Act 1989* (APCA). The PDA states that WAQIS can inspect any vessel or package imported into the State and that we can enter any premises to do so, while APCA states that no-one can open and inspect mail other than customs, federal police and AQIS. Because APCA is a Commonwealth act it overrides the PDA and Australia Post is now refusing to allow inspection of parcel and express post. This matter has been taken up between the Western Australian State government and the Commonwealth government but currently remains unresolved.<sup>83</sup>

2.86 A common theme amongst State and Territory legislation is the responsibility of landowners to manage noxious weeds and pest animals. Yet, penalties for failing to act are not comparable to the cost of management of actions when species become invasive.

2.87 Adding to the complexity of managing invasive species is that the States and Territories have developed local weed and pest animal lists. Such lists are in addition to national lists that have been developed through the National Weeds Strategy, Vertebrate Pests Committee and the like. A lack of synthesis of these lists undermines the ability of the States and Territories to effectively manage invasive species and limits cross border awareness of pests that have the potential to become invasive if they cross borders. Poor legislative coordination hinders the ability to effectively manage invasive species.

2.88 Given that the statutory controls of the States and Territories continue to be inconsistent some years after agreement had been reached on a uniform national approach, the question arises whether Australia would be better served by a more comprehensive and consistent approach under Commonwealth leadership. The main forum in which intergovernmental agreement on invasive species management occurs is in ministerial councils; primarily the Natural Resource Management Ministerial Council and the Primary Industry Ministerial Council. These forums seek to obtain consensus on environmental matters across a spectrum of regulatory and policy matters. An assumption behind the national environmental strategies that have been developed is that State and Territory Governments will ensure that the strategies are implemented. However, there is no mechanism, except for public pressure, to ensure that agreed actions are implemented. Given that moral pressure is proving unsuccessful, the Committee notes that another approach may be required to gain a higher level of compliance. This is discussed further in Chapter 5.

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82 Department of Conservation and Land Management, *Submission 67*, p. 26.

83 *ibid.*

## International legislation and conventions

2.89 In its submission the Department of Agriculture, Fisheries and Forestry stated that:

Australia is involved in international activities regarding invasive species arrangements to ensure that Australia's procedures conform with current international standards and best practice and importantly do not jeopardise our trade in primary products.<sup>84</sup>

2.90 DAFF submitted that this involves dealing with:

- The World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement);
- The United Nations Food and Agricultural Organisation International Plant Protection Convention;
- International Maritime Organisation – International Convention for the Control and Management of Ships Ballast Water and Sediments in relation to invasive marine pests; and
- The Office International de Epizooties (the world animal health organisation) to the extent that it deals with animal diseases and invertebrate pests that infect animals or that act as vectors for microbial diseases of animals.<sup>85</sup>

2.91 The Convention on Biological Diversity is another international agreement that Australia is party to. Its focus is on the use and conservation of biodiversity rather than trade.

2.92 The international agreements and legislation mentioned above are discussed in turn below.

### ***The World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)***

2.93 The SPS Agreement is the most significant international influence over Australia's ability to manage its borders to control entry of invasive species.

2.94 On 1 January 1995 the World Trade Organisation replaced the General Agreement on Tariffs and Trade as the organisation overseeing the multilateral trading system. As a member of the World Trade Organisation Australia has an obligation to manage trade across its borders within the limits not just Australian legislation but also international legislation. One of the fundamental principles of the World Trade Organisation was for member nations to dismantle their tariffs. The World Trade

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84 Department of Agriculture, Fisheries and Forestry, *Submission 62*, p. 3.

85 *ibid.*

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Organisation's role includes providing a forum for trade negotiations, handling trade disputes and monitoring national trade policies. Concerns were raised that countries would use quarantine laws as surrogate tariffs to protect local producers. The World Trade Organisation's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is designed to prevent this and breaches of the SPS Agreement can be met with penalties and trade sanctions.

2.95 The SPS Agreement sets out the basic rules on food safety and animal and plant health standards. On its website the World Trade Organisation states that

...It [the SPS Agreement] allows countries to set their own standards. But it also must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.<sup>86</sup>

2.96 Members must base sanitary and phytosanitary measures on international standards, guidelines or recommendations, where they exist. Measures that are based on international standards, guidelines or recommendations are not presumed consistent, and therefore must be supported by sufficient scientific evidence and an import risk assessment.<sup>87</sup>

2.97 Article 5.7 of the SPS Agreement allows the precautionary principle to be applied as a temporary measure to deal with scientific uncertainty, however, this is only a provisional measure while additional information, on which an assessment can be based, is made.<sup>88</sup>

2.98 The focus of the SPS Agreement is to facilitate trade liberalisation. This is evidenced in Article 5.4 of the SPS Agreement which states that when making assessments on potential imports, members must take into account the objective of minimising negative trade effects. As a member of the WTO, Australia is bound by the SPS Agreement and its emphasis on the importance of free trade. Arguably this could be to the detriment of a nation's biodiversity.

### ***International Plant Protection Convention***<sup>89</sup>

2.99 The International Plant Protection Convention (IPPC) is an international treaty with the:

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86 World Trade Organisation website at:  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm4\\_e.htm#top](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#top).

87 Ms Renae. Leverenz, *Submission 27*, p. 60.

88 World Trade Organisation website at:  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm4\\_e.htm#tp](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#tp).

89 IPPC website at: <http://www.ippc.int/IPP/En/default.htm>.

purpose is to secure a common and effective action to prevent the spread and introduction of pests and plants and plant products, and to promote appropriate measures for their control.<sup>90</sup>

2.100 Australia signed the IPPC on 30 April 1952 and ratified it on 27 August 1952.

2.101 The IPPC plays a key role in facilitating international trade. The WTO-SPS Agreement names the IPPC as the international organisation responsible for phytosanitary standard-setting and the harmonisation of phytosanitary measures affecting trade. The IPPC plays a key role in encouraging countries to ensure that their exports are not the means through which new pests are introduced to their trading partners. Likewise, importing countries strive to ensure that measures they have in place for protection are technically justified, not protectionist measures.

2.102 The IPPC is a legally binding international agreement. WTO members are required to base their phytosanitary measures on international standards developed within the framework of the IPPC. Measures that deviate from the international standards, or that exist in the absence of international standards, must be based on scientific principles and evidence is provided through assessments on the risk to plant health or life. The precautionary principle may be used, but must be reviewed for scientific justification and modified accordingly if the claim is to be legitimately maintained.

2.103 The IPPC includes both direct and indirect damage by pests, including weeds. Provisions of the IPPC cover conveyances, containers, storage places, soil and other objects or material capable of harbouring plant pests.

2.104 One of the principles of the IPPC is that quarantine controls should not act as a quasi-barrier to trade. The least trade restrictive quarantine measures should be accepted. These measures must be scientifically based and applied in a non-discriminatory and consistent manner. If quarantine measures do not stand up to scrutiny, disputes may be taken to the WTO.

### ***International Convention for the Control and Management of Ships Ballast Water and Sediments<sup>91</sup>***

2.105 In response to the threats posed by invasive marine species, the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, in its Agenda 21 called on the International Maritime Organisation (IMO) and other international bodies to take action to address the transfer of harmful organisms by ships. In support for the move for an international approach to this issue the Global Ballast website states that:

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90 IPPC, at:  
[https://www.ippc.int/servlet/BinaryDownloaderServlet/13742\\_1997\\_English.pdf?filename=/publications/13742.New\\_Revised\\_Text\\_of\\_the\\_International\\_Plant\\_Protection\\_Convention.pdf&refID=13742](https://www.ippc.int/servlet/BinaryDownloaderServlet/13742_1997_English.pdf?filename=/publications/13742.New_Revised_Text_of_the_International_Plant_Protection_Convention.pdf&refID=13742).

91 Global Ballast Water Management Programme website at: <http://globallast.imo.org>.

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As shipping is probably the most international industry, the only effective way to address shipping related issues is through a standardised international system.<sup>92</sup>

2.106 In response to this the International Convention for the Control and Management of Ships Ballast Water and Sediments (The Convention) was adopted by consensus at a Diplomatic Conference at the International Maritime Organisation in London on 13 February 2004. The Convention is divided into Articles; and an Annex which includes technical standards and requirements in the Regulations for the control and management of ships' ballast water and sediments.

2.107 The Convention will enter into force 12 months after ratification by 30 States, representing 35 per cent of world merchant shipping tonnage (Article 18 *Entry into force*). At the time of the Committee's inquiry Australia had not become a party to the convention.<sup>93</sup>

2.108 Under Article 2 *General Obligations* Parties undertake to give full and complete effect to the provisions of the Convention and the Annex in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments. Parties are given the right to take, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, consistent with international law. Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

2.109 The Convention also includes provisions that relate to scientific and technical research on ballast water management, monitoring of ballast water management, provisions for surveying and certification of ships, the provision of technical assistance to other parties and other factors.

### ***Office International des Epizooties (OIE)***<sup>94</sup>

2.110 The OIE is the World Organisation for Animal Health. It is an international organisation established to guarantee the transparency of animal disease statues worldwide. Each Member Country undertakes to report the animal diseases that it detects on its territory. The OIE collects and analyses the latest scientific information on animal disease control. This information is then made available to the Member

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92 *ibid.*

93 Department of Foreign Affairs and Trade, *Treaty Database*, 24 August 2004 website at: <http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/AllDocIDs/D06C1FAB1733E7AFCA256EFA0007C15B>.

94 Information in this section is obtained from [www.oie.int/eng/en\\_index.html](http://www.oie.int/eng/en_index.html).

Countries to help them to improve the methods used to control and eradicate these diseases.

2.111 The OIE develops normative documents relating to rules that Member Countries can use to protect themselves from the introduction of diseases and pathogens, without setting up unjustified sanitary barriers. The main normative works produced by the OIE are: the *International Animal Health Code*, the *Manual of Standards for Diagnostic Tests and Vaccines*, the *International Aquatic Animal Health Code* and the *Diagnostic Manual for Aquatic Animal Diseases*.

2.112 OIE standards are recognised by the World Trade Organisation as reference international sanitary rules. The OIE has a mandate under the WTO SPS Agreement, to safeguard world trade by publishing health standards for international trade in animals and animal products.

### ***Convention on Biological Diversity***

2.113 The Convention on Biological Diversity (CBD) was signed in 1992 at the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro and ratified in 1993.

2.114 Australia signed the CBD on 5 June 1992 and ratified the CBD on 18 June 1993.

2.115 The CBD is a comprehensive, binding agreement covering the use and conservation of biodiversity. It requires countries to develop and implement strategies for sustainable use and protection of biodiversity, and provides a forum for continuing international dialogue on biodiversity-related issues through the annual conferences of the parties (COPs).

2.116 The CBD establishes three main goals:

- the conservation of biological diversity;
- the sustainable use of its components; and
- the fair and equitable sharing of the benefits from the use of genetic resources.<sup>95</sup>

2.117 The role of Governments is to provide leadership, particularly setting the rules that guide the use of natural resources, and by protecting biodiversity where they have direct control over the land and water. Governments are required to develop biodiversity strategies and action plans, and to integrate these into national plans for the environment and development.<sup>96</sup>

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95 Convention on Biological Diversity website at,  
<http://www.biodiv.org/doc/publications/guide.asp?id=web>.

96 *ibid.*

2.118 The CBD acknowledges that there is an urgent need to address the impact of invasive alien species. Eradication, control and mitigation of their impacts combined with legislation and guidelines at international, national and regional levels are some of the ways that the CBD is addressing the issue. Article 8 of the CBD has also acknowledged the part invasive species play in the decline of biological diversity.

2.119 The Commonwealth has a responsibility in relation to meeting obligations contained in the Convention on Biological Diversity, in cooperation with the States and Territories under relevant legislation and through relevant programs. Article 8 relates to *in-situ* conservation and states the obligations of contracting parties. The obligations as set out under Article 8(h) are that each Contracting Party shall, as far as possible and as appropriate:

Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species<sup>97</sup>

2.120 The CBD sets out a number of Guiding Principles for Parties to the CBD, other Governments and relevant organisations to follow. These are known as the *Guiding principles for the prevention, introduction and mitigation of impacts of alien species that threaten ecosystems, habitats and species*.

2.121 Parties are encouraged to follow the Guiding Principles. The CBD website acknowledges that contributions to the implementation of Article 8(h) is made by a number of international instruments, including the International Plant Protection Convention, the Office International des Epizooties, the Food and Agricultural Organisation of the United Nations, the International Maritime Organisation and the World Health Organisation.<sup>98</sup>

### *Discussion*

2.122 The increase in international trade has brought with it an increase in the movement of animals and plants, some of which have become invasive. Invasive plants and animals are now a global problem in unprecedented numbers. Ms Renae Leverenz submitted that:

Invasive species being carried in free trade facilitated by the WTO agreements present an undeniable threat to global biodiversity and cause serious damage.<sup>99</sup>

2.123 WWF noted in its submission that international rules prevent the Commonwealth from adopting a strong preventative approach toward invasive species pre-border for species that are not yet present in Australia or not under official control. They advocate strong post-border controls on invasives that cannot be banned at the

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97 Convention on Biological Diversity, Article 8(h) website at:  
<http://www.biodiv.org/decisions/default.aspx?m=COP-06&id=7197&lg=>.

98 *ibid.*

99 Ms Renae. Leverenz, *Submission 27*, p. 59.

border due to international legislation and obligations. WWF also noted, however, that international rules do not impede the Commonwealth from introducing preventative provisions under the EPBC Act to control the inter-State/Territory trade of invasive species that have not yet become environmental problems.<sup>100</sup>

2.124 International obligations require that quarantine laws are not used as quasi-barriers to trade. The challenge for Australia is to find measures which enable Australia to preserve its biodiversity without flouting international obligations, and therefore becoming subject to World Trade Organisation actions.

2.125 In order to maintain Australia's biodiversity and to prevent the 'McDonald's-isation of the environment'<sup>101</sup> there is a need for Australia to find methods for effectively managing invasive species within the framework of legislative controls and obligations that operate both internationally and at a domestic level.

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100 World Wildlife Fund, *Submission 30*, p. 34.

101 Dr Rachael McFadyen, *Committee Hansard*, 14 April 2004, p. 30.