

Chapter 7

Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002

7.1 The Committee's terms of reference require it to determine whether the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 (the Bill) could assist in improving the current statutory and administrative arrangements for the regulation, control and management of invasive species. This chapter provides an overview of the Bill and examines the commentary in the evidence about its strengths and weaknesses.

7.2 It should be noted that the original Bill which underpinned the principal Act, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), was subjected to a comprehensive review by the Senate's Environment, Communications, Information Technology and the Arts Legislation Committee between July 1998 and April 1999. The Committee received over 600 submissions and it conducted public hearings in Brisbane, Sydney, Hobart, Perth, Canberra, Adelaide, Darwin and Melbourne. While several submitters had argued for the Act to specifically address invasive species, the Government members' majority view was that the Government's existing policies and programs already adequately addressed the objective.¹ Neither the ALP, Australian Democrats nor the Australian Greens and The Greens (WA) raised objection to this proposition in their minority or dissenting reports. However, the Bill as examined by the ECITA Legislation Committee was subsequently subjected to substantial amendment prior to its acceptance by the Senate, including the addition of section 301A, dealing with 'Regulations for control of non-native species', as a Government amendment. 'Non-native species' are essentially defined as a species other than native species that represent a threat to Australian biodiversity.

Overview of the Bill

7.3 The Bill was introduced on 19 November 2002 as a Private Senator's bill by the Australian Democrats' Senator Andrew Bartlett to address perceived inadequacies in the current regulatory framework. Senator Bartlett also saw the Bill as a catalyst to further debate about the issue of invasive species.

7.4 The Bill's primary aim is 'to prevent the introduction of further species in Australia and to eradicate or control those already here'.² The Bill proposes to do this by inserting a new 'Division 4AA – Listed invasive species' into Part 13 of Chapter 5

1 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998*, April 1999, p. 144.

2 Senator Andrew Bartlett, Second Reading, *Senate Hansard*, 19 November 2002, p. 6741.

of the principal Act. Chapter 5 is headed 'Conservation of biodiversity and heritage', while Part 13 deals with 'Species and communities'.

7.5 The EPBC Act itself had represented the most fundamental reform of Commonwealth environment laws since the first environment statutes were enacted in the early 1970s. In particular, it improved on previous processes by setting out clear areas of responsibility, identifying specific timeframes for completion, and coordinating State, Territory and Australian Government processes. The Act focuses Commonwealth interests on matters of national environmental significance, put in place a streamlined environmental assessment and approvals process and established an integrated regime for biodiversity conservation and the management of important protected areas.

7.6 Importantly, in the context of the longstanding debate about the appropriate role of the Commonwealth in environmental matters given the omission of 'the environment' from section 51 of *The Constitution*,³ the Act follows the policy of co-operative federalism first articulated in the 1992 Intergovernmental Agreement on the Environment (IGAE) made between the Commonwealth and State governments and with representatives of local government.

7.7 A subsequent COAG meeting in November 1997 resulted in an in-principle endorsement of the *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment* by all Heads of Government and the President of the Australian Local Government Association. The Agreement proposed a framework for comprehensive reform of Commonwealth-State roles and responsibilities for the environment. The EPBC Bill was one result of the Agreement. The following concerns were soon expressed:

There is no question that the Bill is based on a very narrow view of Commonwealth environmental involvement. The COAG Heads of Agreement identified thirty matters of national environmental significance, and there can be no justification for restricting Commonwealth involvement in environmental assessment and approval to a mere six. The six agreed on by COAG for Commonwealth involvement exclude some of the most significant environmental challenges facing Australia today – climate

3 Section 51 of *The Constitution* sets out the legislative powers of the Commonwealth Parliament. As the Department of the Environment and Heritage stressed in its submission: 'Under the Australian Constitution, State and Territory Governments have specific and clear responsibility for the legislative and administrative framework within which natural resources are managed. The Australian Government's involvement in environmental matters focuses on [certain] matters of national environmental significance...' Department of Environment and Heritage, *Submission 61*, p. 7.

change, the clearing of native vegetation..., the loss and degradation of native forests, and the unsustainable use of water.⁴

7.8 Thus, the 'narrowness' of the EPBC Act has long been a bone of contention, based substantially on the range of views on the proper role of the Commonwealth in the modern era in Australia's federal system of government in relation to environmental assessment and approval matters. The ECITA References Committee in the 38th Parliament had undertaken a broad inquiry into the issue of the Commonwealth's environment powers, which concluded with a disjoint between senators who felt that the Constitution should be read expansively and those who felt that a more 'black letter' interpretation should apply.⁵

7.9 The intention of the current Democrats' Bill is to establish a consistent and coordinated national approach to address the problem of invasive species. It seeks to achieve this through the creation of a national structure. In his second reading speech Senator Bartlett argued that invasive species are a national issue not only because of the scope and cost of the problem, but because the majority of invasives arrive in Australia from overseas, which is an area of exclusive federal jurisdiction. He also argued that it is a national issue because it cannot be addressed adequately at a State/Territory level, because invasives know no boundaries.⁶

Provisions of the bill

7.10 For definitional purposes, under the Bill a species is an invasive species if:

- (a) it is a non-indigenous species and it has been, or may be, introduced into Australia and, either directly or indirectly, threatens, will threaten or is likely to threaten, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity; or
- (b) it is a genetically modified species.⁷

The definition of a member of an invasive species is declared to include seeds and germplasms.

7.11 Under the Bill a list of invasive species is to be established by the Minister. The list is to be divided into three categories: species permitted for import, species

4 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998*, April 1999, Minority Report by the Australian Democrats, p. 204.

5 , Report of the Senate Environment, Communications, Information Technology and the Arts References Committee, *Commonwealth Environment Powers*, May 1999.

6 Senator Andrew Bartlett, Second Reading, Senate Hansard, 19 November 2002, p. 6741.

7 Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 (the Bill), clause 266AB.

prohibited from import or certain invasive species already present in Australia. The Bill categorises species currently present in Australia into the following types:

- eradicable;
- substantially containable;
- beyond eradication;
- controlled;
- disregarded as an invasive species;
- exempt from listing.

The Bill then defines what is meant by each of these categorisations.

7.12 The Bill proposes to immediately prohibit the import of the following species categories:

- pasture grasses;
- ornamental plants;
- aquarium fish; and
- any other species as determined by the Minister, if the Minister is satisfied, on the advice of the Invasive Species Advisory Committee, that a species should be deemed to be a prohibited import.⁸

7.13 The Bill goes on to declare that, for the purposes of the latter provision, it is within the discretion of the Minister to prohibit the import of a species (on the advice of the Invasive Species Advisory Committee) if the species is a threat, either directly or indirectly, to the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity.⁹

7.14 The Bill creates a number of strict liability offences, punishable by fines not exceeding 1000 penalty units (currently set at \$110) or up to 2 years' imprisonment, where a person imports or possesses species which are either prohibited or, without a permit, which are categorised as either eradicable; substantially containable; or beyond eradication.

7.15 Subdivision B of the Bill establishes a permit system which allows for the importation of a species for commercial sale, trade or propagation of a non-indigenous species providing that:

- it is not a prohibited import;
- it has been assessed as representing a low risk, in Australia, of threatening, either directly or indirectly, the survival, abundance or evolutionary

8 clause 26AC(2).

9 clause 266AC(3).

development of a native species, ecological community, ecosystem or agricultural commodity; and

- the Minister is satisfied, on the advice of the Invasive Species Advisory Committee, that there are adequate risk management strategies in place to prevent the species from becoming a threat, either directly or indirectly, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem or agricultural commodity; and
- the Minister has granted a permit under Subdivision B for the import of the species.¹⁰

7.16 One of the Bill's key administrative proposals is the creation of an Invasive Species Advisory Committee.¹¹ The composition of the Committee is to be determined by the Minister. The function of the Committee is to advise the Minister on matters relating to the protection of native species, ecological communities, ecosystems and agricultural commodities from invasive species. It is also to advise the Minister on methods and means of protecting the welfare of animals likely to be affected by management decisions relating to invasive species.¹²

7.17 The Committee is to include at least five members who possess scientific qualifications relevant to the performance of the Committee's functions. The membership must include members appointed to represent the following:

- the Australian Quarantine and Inspection Service;
- non-government conservation organisations;
- the scientific community concerned with invasive species;
- the rural community;
- the business community;
- indigenous peoples;
- the Commonwealth; and
- animal welfare interests.¹³

7.18 The Bill stipulates that a majority of the members are not to be persons employed by the Commonwealth or Commonwealth agencies.¹⁴

10 Clause 3, proposed new section 266AC, paragraph (1).

11 Division 1A – clauses 503A to 503B.

12 S503B.

13 clause 503A(4).

14 clause 503A(6).

7.19 Under the Bill, threat abatement plans may be created to provide for the management of invasive species already present in Australia. The Invasive Species Advisory Committee is to advise the Minister on plans.¹⁵

Comment on the Bill

Commonwealth view

7.20 The Commonwealth Environment Minister administers the EPBC Act and his Department, the Department of Environment and Heritage, provided the Committee with a comprehensive submission on the key elements in the Bill. It essentially argued that the proposals were largely redundant as they appeared to duplicate existing law, in particular that the EPBC Act already provides for further regulations to be made to control non-native species:

The EPBC Act provides for strict controls on the import and possession of non-native species and the scope of s301A grants additional powers that may be established and implemented as appropriate.¹⁶

7.21 Section 301A (as discussed in Chapter 5) provides that regulations may:

- provide for the establishment of a list of non-native species which may or would be likely to threaten biodiversity in Australia
- regulate or prohibit the import of species on the list, and the trade of species on the list between Australia and other countries and between State and Territory jurisdictions within Australia
- regulate or prohibit actions involving species on the list
- provide for making plans to eliminate, reduce or prevent impacts of the listed species on Australia's biodiversity.¹⁷

7.22 It went on to add:

The EPBC Act provides for strict controls on the import and possession of non-native species and the scope of s301A grants additional powers that may be established and implemented as appropriate.

Section 301A of the EPBC Act would appear to address much of what is proposed in the Bill.

Legal advice indicates that regulations could be made under Section 301A to control species listed under Section 301A(a) by legislating for offences

15 Subdivision C – clauses 266CA to 26CR.

16 Department of Environment and Heritage, *Submission 61*, p. 17.

17 *ibid.*

relating to the transport or possession of a listed species that would be enforceable under the EPBC Act.

The development of such regulations under Section 301A of the EPBC Act would be a significant challenge. It would require significant resources to be applied by the Department, other Australian government agencies, State, Territory and Local Government agencies, and relevant industry and non-government groups and organisations.¹⁸

7.23 The DEH submission went on to hint that it does not favour the promulgation of such regulations over its current approach to managing invasive species using a combination of statutory and non-statutory methods, because of resource considerations and the impact on a number of national industries such as the nursery and pet fish trade. It added that:

The Department believes that this approach, which includes working with State and Territory jurisdictions and a range of other stakeholders, provides land managers with an adaptive and effective approach to the management of invasive species in Australia.¹⁹

7.24 Additional to the advice in the DEH submission about the Bill's duplication of existing regulations, in her submission, the Australian Government's Gene Technology Regulator, Dr Sue Meek, stressed that the proposed inclusion in the Bill of 'genetically modified species' in the definition of 'invasive species' also appears to be unnecessary:

The Australian environment is currently protected from the risks that may be posed by genetically modified organisms (GMOs) by the *Gene Technology Act 2000* (the GT Act) and corresponding State and Territory legislation. The GT Act requires that a comprehensive, scientifically-based risk assessment be undertaken for every application to release a GMO into the environment.

...This proposed amendment would appear to duplicate in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) the existing requirement in the GT Act for an environmental assessment and approval process for GMOs.²⁰

7.25 The DEH submission also dealt with the GMO issue. Significantly, it stressed that '[t]here is no scientific basis for assuming that all GMOs are "invasive"'.²¹ The Committee notes that, in this respect, the Bill is something of a 'Trojan Horse' in relation to opposition to the use of GMOs in Australia – which is a debate for another day.

18 *ibid.*

19 *ibid.*

20 Gene Technology Regulator, *Submission 60*, p. 1.

21 Department of Environment and Heritage, *Submission 61*, p. 13.

State/Territory government views

7.26 Two State Governments – Western Australia and Queensland - also addressed the need for the Bill, while the ACT Government's submission commented more on its detail rather than its general validity. The Animal and Plant Control Commission of South Australia did not comment on the Bill – it addressed the issue by detailing its regulatory arrangements and stressing the success of its current regulatory framework through, inter alia, implementation through local animal and plant control boards. The Tasmanian Government did not comment on the Bill in its submission.

7.27 In overview, while they recognised the important role of the Commonwealth and the opportunities for improvement of current legislative and administrative arrangements, they shared a concern about the Bill's intention to usurp the States' constitutional responsibility for the movement and control of exotic species within their borders. The Commonwealth role was seen as primarily at the national border,²² perhaps with a role in incursion management – i.e. where the border controls had failed.

7.28 In its submission, the Western Australian Government stated:

The Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 has some merit but falls well short of the level of improvement required. Some sections of the proposed bill are unrealistic, unworkable and/or would create a backlash from some sectors...²³

Its analysis of the Bill's provisions led it to make the recommendation that a review of existing Commonwealth legislation should be undertaken to address the specific items raised in its submission. The Western Australian Government also went on to recommend that the review should consider whether or not, rather than legislative change, management arrangements could be put in place covering the items raised.

7.29 The Queensland Government's submission echoed that of DEH, arguing that the Bill is not required when full implementation of the EPBC Act as it currently stands would enable the Commonwealth to manage both barrier control for invasive species and incursion management. It wrote that:

Queensland believes that many of the powers proposed in the *Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill* already exist in complementary state legislation or within the EPBC Act in its current form. Given Queensland's experience of the EPBC Act in other areas where the Commonwealth has taken pre-emptive and ill advised action (e.g. the declaration of blue grass communities as threatened

22 Under the *Quarantine Act 1908* and the *EPBC Act 1999* the Commonwealth regulates the entry of live plants and animals into Australia, with both statutes requiring that live specimens be assessed for their potential impacts. Department of Environment and Heritage, *Submission 61*, p. 7.

23 Government of Western Australia, *Submission 67*, pp. 20-2.

ecosystems) Queensland has major concerns about the potential administrative problems the proposed Bill will create if implemented. Queensland considers that without a significant increase in resources it is unlikely that the amendments in this Bill would be able to deliver increased action on pests at a national level. Queensland believes that the Bill in its current form will lead to significant duplication and conflict with state legislation.²⁴

7.30 This latter point was pursued by the Committee with representatives of the Queensland Department of Natural Resources, Mines and Energy, Dr Anthony Pressland and Mr Craig Walton. Mr Walton stated that:

We believe it would lead to duplication mostly on the management of established pests, because most state agencies and most states already have actions on those established pests. It most probably would not do that for incursions because that is a totally different issue. In fact, for environmental issues at the moment, there is no way to respond to incursions. It [the Bill] would most probably be a welcome piece of legislation, especially because, unfortunately, at the moment with something like a TAP – a threatened species program – the fire ant people have suggested a TAP process is too slow for a response to an incursion like that...

We just thought, especially for the established pests, that they [the amendments] would be unnecessary... [but] for non-established pests it would most probably be a welcome addition to the suite of legislative schemes that exist at the moment, especially for some of the species, like marine species, that currently do not come under legislative control as good as that.²⁵

7.31 Mr Pressland summarised the Queensland Government's position in the following terms:

We think that a lot of the activities which are mentioned under the amendment bill can in fact be done under the existing bill, under section 301A, without amendment.²⁶

7.32 The Queensland Government's submission made several recommendations, but in particular that:

Full implementation of the *Environment Protection and Biodiversity Conservation Act 1999* in its current form would enable the Commonwealth to manage both barrier control for invasive species of the environment and incursion management. Section 301, if resourced, can also allow some national coordination of management of national pests, but not pests that are better managed by individual states or regions. This should be left to legislation in other jurisdictions.

24 Government of Queensland, *Submission 43*, pp. 24-25.

25 Mr Craig Walton, Committee Hansard, Brisbane, 14 April 2004, p. 7.

26 Mr Anthony Pressland, Committee Hansard, Brisbane 14 April 2004, p. 7.

Section 301 and other sections of the current *Environment Protection and Biodiversity Conservation Act 1999*, if implemented, should allow the Commonwealth to provide adequate national management of invasive species of the environment that are either not covered by state legislation or that need some form of over arching federal legislation e.g. national bans on sale. If this legislation is not to be used in this way States will need to alter current legislation.²⁷

7.33 The ACT Government was strongly supportive of the Commonwealth's pivotal role in facilitating the development of national pest management programs, but was less definitive on its view about the need to respect the existing Commonwealth/State/Territory compact, preferring instead to stress the desirability of consultation between the Commonwealth and the States and Territories prior to its taking action.²⁸

7.34 The Committee had few submissions to its inquiry from local government. The Brisbane City Council welcomed the Bill as a significant step towards the development of appropriate Commonwealth statutory regulation. It noted that:

It is widely accepted that the development of regulatory frameworks assists in increasing the awareness of and impetus for greater energy and resources to be expended on the object of the regulations

A primary concern of Brisbane City Council's as a local government is that neither State nor Commonwealth invasive species legislation adequately reflects the seriousness of the problems they seek to address.²⁹

7.35 The combined submission of the Local Government Association of NSW and the Shires Association of NSW was also generally supportive of the Bill, which it saw as more clearly classifying pest species, regulates their importation and spread, and develops and implements Threat Abatement Plans. It observed that the Bill needed to give greater recognition to local councils, who are: 'the agencies at the "front line" of weed and invasive species management.'³⁰

Community views

7.36 While a certain degree of State and Territory government antagonism to the Bill's intrusion into areas for which they have constitutional responsibility was not unexpected, most community-based submitters were supportive.

7.37 WWF Australia was a strong supporter of the concept of strengthening the EPBC Act as part of its call to transform current arrangements to create a National

27 Government of Queensland, *Submission 43*, p. 26.

28 ACT Government, *Submission 44*, pp. 6-7.

29 Brisbane City Council, *Submission 54*, pp. 6-7.

30 Local Government Association of NSW and the Shires Association of NSW, *Submission 65*, p. 2.

Preventative Framework for Invasive Species.³¹ Its submission recommended that the Commonwealth, in consultation with the States and Territories, should include provisions in the EPBC to control invasive species.³² This statement is a warm endorsement of the Bill, rather than a definitive expression of support for its contents.

7.38 WWF submitted that:

The *Environment Protection and Biodiversity Conservation Act* recognises that cross-border issues, such as the protection of biodiversity and threatened species, require a national approach. The increasing problem, scale and severity of invasive weeds and pests, similarly deserves a statutory national response. Legislation is required to enable the Commonwealth, in cooperation with the States, to take timely, effective, proactive and preventative national action on invasive species. Until a national framework is in place, the slow, uncoordinated and reactive national response to invasive species will continue.

As such, WWF Australia strongly supports either amendments to the EPBC Act or development of regulations under s 301A of the Act, to enact further statutory Commonwealth measures to control non-native species and mitigate against invasive species problems. **The EPBC Act should deal with environmental weeds and pests directly rather than under ad hoc provisions relating to Key Threatening Processes. This enables a more comprehensive, strategic and preventative approach to be adopted.**

If enacted the Bill would result in a positive benefit for the environment and provide more effective control of invasive species...

The importance of including control of non-native species under the ambit of the EPBC Act has already been recognised to an extent by the States: a Commonwealth-State marine pests task force suggests that statutory support for mitigation and control of established populations of marine pests could involve a combination of the EPBC Act and the range of State and Northern Territory legislation. [Footnote: Joint Standing Committee on Conservation (SCC)/Standing Committee on Fisheries and Aquaculture (SCFA) National Taskforce on the Prevention and Management of Marine Pest Incursions. 1999. Report of the Taskforce. Pg.57. Recommendation 4.20 recommends: "that the Commonwealth government explore the option of developing statutory plans to reduce, eliminate or prevent the impacts of introduced marine species on the biodiversity of Australia using s301A of the Environment Protection and Biodiversity Conservation Act 1999. This should be nationally coordinated by Environment Australia, as part of the National System."³³

7.39 WWF representative, Mr Andreas Glanznig, told the Committee:

31 WWF Australia, *Submission 30*, Letter of transmittal.

32 WWF Australia, *Submission 30*, p. 55.

33 WWF Australia, *Submission 30*, pp. 53-54 and footnote on p. 63. Emphasis in original.

...a key threatening process listing and a threat abatement plan are indirect mechanisms to control invasive species. Look at some of the emerging second generation State laws, such as the proposed Biodiversity Conservation Act in Western Australia. They are proposing to shift this indirect control to the direct control of invasive species. That is very much in line with and along the lines of what the Democrats' bill is intending to do as well...I think a good analogy is threatened species legislation. What is interesting there is that the Commonwealth put in place pretty much the first Commonwealth legislation for endangered species. As such, it was able to foster a standardised approach. As State governments came on stream, they were able to nest under that. That is the real opportunity with this Bill or with any regulation or a form of the EPBC Act. You are able to put in place a national statutory framework under which second generation State laws, such as those being developed in WA and the ACT, can nest. Once those second generation State laws are put in place, again, we will have missed the opportunity to foster a very strong and tightly coordinated national statutory framework.³⁴

7.40 The Invasive Species Council reinforced much of what the WWF had submitted, including citing the 1999 Joint Standing Committee on Conservation/Standing Committee on Fisheries and Aquaculture National Taskforce Report on the Prevention and Management of Marine Pest Incursions as having already highlighted the important role of the EPBC Act:

Suffice to say for now that the ISC strongly supports using the EPBC Act as a basis for regulations to control invasive species... If enacted, the regulatory regime proposed by the Bill would have a dramatic and beneficial impact on the environmental problems created by invasive species... We urge the Senate Committee to take advantage of the opportunity presented by the Bill to provide a strong statutory foundation for the management of invasive species, incorporating many of the recommendations contained in this submission.³⁵

7.41 Ms Lucy Vaughan, an environmental lawyer and Secretary of the Invasive Species Council, critiqued the Bill in an article in the July 2003 issue of *Feral Herald*, the Council's Newsletter. Ms Vaughan wrote:

If enacted, there can be little doubt that the Bill would have a dramatic and beneficial impact on the environmental problems created by invasive species... The Democrats should be applauded for introducing the Bill.³⁶

34 Mr Andreas Glanznig, WWF Australia, *Committee Hansard*, Canberra, 26 November 2003, p. 22.

35 Invasive Species Council, *Submission 33*, p.11 and p.6 of Attachment 2.

36 *A Quick Look at the Democrats' Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill(2002)*, Lucy Vaughan, *Feral Herald*, Volume 1, Issue 4, July 2003, p. 14.

7.42 However, she noted that, as with the existing EPBC Act, the Bill appears to stop short of taking an active regulatory and management role in relation to the impact of the 'actions' of private persons, corporations and the States in facilitating the problems brought about by the introduction and presence of invasive species. She added:

In this way, arguably the Bill continues to honour and preserve the articulation of Commonwealth and State roles provided for in the Inter-governmental Agreement on the Environment (IGAE) in much the same way as the existing EPBC Act. The IGAE is perhaps the definitive example of the policy of co-operative federalism (the approach preferred by the current Federal Government) at work.

Whilst the IGAE recognises that the Commonwealth has a legitimate role in respect of national environmental issues, it gives the States primary responsibility for environmental management within their respective jurisdictions. This often leads to the 'hands-off' approach taken by the Commonwealth in relation to many national environmental problems, like invasive species...

Whilst it is almost certain that Australia is not 'politically' ready to adopt the kind of national regulatory scheme for addressing the problem of invasive species proposed by the Bill, the Bill represents an excellent opportunity to raise the profile of this issue not only with all levels of Government in Australia, but also with relevant industry and the general community.³⁷

7.43 The submissions from other peak environmental groups were also generally supportive of the Bill. For example, the Conservation Council of WA submitted that:

The Council strongly supports the measures proposed by the Australian Democrats in the...Bill. In particular, we support:

- the requirement for risk assessment before granting import permits;
- the strict banning of further imports of pasture grasses, ornamental plants and aquarium fish; and
- the creation of an Invasive Species Advisory Committee.³⁸

7.44 Several echoed the WWF comment cited in paragraph 7.38 that there are several provisions in the EPBC Act through which the Commonwealth could address the environmental harm caused by invasive species at a national level, but they are seen as inadequate because they use indirect mechanisms to address the invasive species problem rather than the Bill's distinct and direct focus.³⁹ Obviously, they

37 *ibid*, pp. 12 and 14.

38 Conservation Council of WA, *Submission 59*, p. 6. See also: The Eurobodalla Greens, *Submission 11*, p. 4, Native Fish Australia (SA), *Submission 31*, p. 1; Bendigo and District Environment Council and Bendigo Field Naturalist Club, *Submission 46*, p. 8; The North West Vegetation Forum, *Submission 57*, p. 1.

39 Invasive Species Council, *Submission 33*, pp.3-4 of Attachment 3.

would prefer that invasive species be targeted directly rather than through their indirect impact on, for example, threatened species. DEH highlighted one key flaw with this approach, however: that the introduction of the Bill would lead to there being two types of threat abatement plans – key threatening process threat abatement plans and invasive species threat abatement plans. It noted that a species may be listed as both an invasive species and a key threatening process, leading to two threat abatement plans for the same species. It wrote: 'This duplication would not achieve a better conservation outcome'.⁴⁰

7.45 The Weed Society of Queensland simply saw the proposed amendments as unnecessary, however:

With the development of clear, directed regulations, Section 301 would deliver effective national outcomes without the need to amend the present Act.⁴¹

7.46 Concern was also expressed at the limitation of the Bill to non-native species. The Tasmanian Weed Society, for example, drew attention to problems of: '[t]he increasing popularity of native gardens in Australia has led to a second wave of invasive species derived from Australian plants grown outside their natural range...'⁴² This issue was also addressed by the Indigenous Land Corporation. While being generally supportive of the overall thrust of the Bill, and suggesting several amendments, it added its concern over the failure of the Bill to also address as 'invasive' indigenous species whose populations get 'out of control', especially on a regional, bioregional, catchment or jurisdictional level.⁴³

7.47 Mr Richard Sharp, an environmental practitioner and author of published articles dealing with the issue of 'alien species', expressed support for the Bill subject to certain changes being made.⁴⁴ In a September 1999 article he wrote:

Today, alien species or those animals, plants and micro-organisms which are not native to Australia, are invading to such an extent that they are now posing a serious threat to the economy and the environment, especially biodiversity. While there have been some developments in terms of policy and legislation to deal with this problem in Australia, at the federal level

40 Department of Environment and Heritage, *Submission 61*, p. 14.

41 Weed Society of Queensland, *Submission 55*, p.1.

42 Tasmanian Weed Society, *Submission 18*, p. 6. See also Dr Trudi Ryan, *Submission 26*, p. 3; Ms Renae Leverenz, *Submission 27*, p. 3; Weed Management Society of South Australia, *Submission 35*, pp. 6-7; Bendigo and District Environment Council and Bendigo Field Naturalist Club, *Submission 46*, pp. 7-8.

43 Indigenous Land Corporation, *Submission 38*, pp. 15-16.

44 Mr Richard Sharp, *Submission 2*, p. 2.

there remains a need to continue such development in order to counter the continually growing and global threat of invading alien species.⁴⁵

Committee discussion

7.48 As stated in paragraph 7.1, the Committee's terms of reference require it to determine whether the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 could assist in improving the current statutory and administrative arrangements for the regulation, control and management of invasive species. While it is clear to the Committee that there is scope to improve the national effort to address the invasive species challenge, it is also clear that the Bill is not the answer.

7.49 Senator Bartlett saw the Bill as addressing perceived inadequacies in the current regulatory framework and as a catalyst to further debate about the issue of invasive species. It can be argued that the Bill has been a spectacular success in this latter aspect, moving the debate from the realms of the cognoscenti to a broader audience. Given the lack of public appreciation of the scale of the invasive species problem, and the public's important role in its resolution, the debate on the Bill should act as a platform for a coherent and determined community effort to address the matter. It could even be argued that the prospect of a debate on the Bill may have driven nervous State and Territory governments to seek to improve their performance, despite the likely threat of the passage of the Bill being minimal.

7.50 The Bill's single greatest strength is symbolic. It represents an attempt to codify in one piece of legislation a range of regulations currently scattered throughout the statute books which relate to the regulation, control and management of invasive species. This is a commendable, if somewhat idealistic, approach as there may be risks and confusion arising from any duplication.

7.51 Its principal drawback is that it duplicates existing regulations in some aspects. It is perhaps unsurprising that the evidence from environmental groups was for greater Commonwealth involvement on the basis that ecological processes do not recognise state borders: '[a] species banned in one State may not be banned in other States and many are inadvertently or deliberately transported to an environment where they are dangerous'.⁴⁶

7.52 The Queensland Farmers' Federation's submission contained a similar theme: while Commonwealth involvement in managing the threat posed by invasive species is critical, it queried whether a national statutory foundation was the only way to

45 Mr Richard Sharp, *Australian Journal of Environmental Management*, Vol 6, September 1999, p. 172.

46 WWF Australia, *Submission 30*, p. 53.

achieve the co-ordination of already established State and Territory weed and pest animal management regimes.⁴⁷

7.53 Equally unsurprising was the Bill's substantial rejection by governments at both Commonwealth and State levels, notwithstanding State support of regulations under section 301A of the EPBC Act. The current regulatory system – based as it is on the IGAE, with its emphasis on environmental protection vested in the States and Territories – is designed to improve consistency and reduce duplication between the different levels of government and to increase efficiency of decision-making with regard to environmental management protection. The Tasmanian Weed Society highlighted this issue in its submission:

The Bill would benefit from complementary legislation at the State level as many of its planning functions and on ground outcomes functions will require State participation. The Weeds of National Significance program provides some insight to the functioning of the Bill and demonstrates the stress placed on States to participate in that program within existing state obligations and programs. Considerable Commonwealth funding would be required to assist State and Territories to participate in planning and management programs under the Bill, particularly in assisting landholders who carry the responsibility for managing the invasive species...

It should be noted that for most threat abatement plans to be produced, the Commonwealth will be dependent on State and Territory co-operation by virtue of the distribution of most invasive species. The legislation is likely to be ineffective in the management of invasive species in Australia if it does not support and encourage other jurisdictions to participate. The Bill fails this requirement.⁴⁸

7.54 The Committee is supportive of the Commonwealth, in consultation with the States and Territories, seriously examining the merits of proclamation of regulations under section 301A. Support for such regulations as part of a focussed national regulatory framework were explicitly supported by both the Queensland and Western Australian governments.

7.55 The Queensland Government stated that:

Section 301 and other sections of the current EPBC Act, if implemented, should allow the Commonwealth to provide adequate national management of invasive species of the environment that are either not covered by state legislation or that need some form of overarching federal legislation, eg. national bans on sale.⁴⁹

7.56 The Western Australian Government similarly identified the useful role of EPBC Act regulations providing a prohibition on sale and recommended that:

47 Queensland Farmers' Federation, *Submission 42*, p. 6.

48 Tasmanian Weed Society, *Submission 18*, pp. 6-7.

49 Queensland Government, *Submission 43a*, p.1.

Commonwealth legislation to be amended to prevent the sales of identified threats, such as Northern Australia Quarantine Strategy (NAQS) potential species.⁵⁰

7.57 A range of scientific organisations, including the Weeds CRC, also supported the proclamation of national regulations.

7.58 This is both a logical and necessary step as the national government needs to be able to represent the nation on an international basis. Dr Cas Vanderwoude, technical adviser to the Invasive Species Specialist Group of the International Union for the Conservation of Nature (IUCN), went so far as to call for the Bill to be expanded to enable the Commonwealth to operate on a regional basis:

Current Australian legislation does not encompass this [regionally based threat assessments] strategy and as a result there is no funding mechanism through which planning and implementation of regional plans ... can be implemented.⁵¹

Australia is, of course, and as described in Chapter 2, a signatory to many important international agreements designed to protect its environment from invasive species, particularly the Convention on Biological Diversity and the International Convention for the Control and Management of Ships Ballast Water and Sediments.

7.59 As has been discussed at length in Chapter 5, section 301A of the EPBC Act already appears to provide a sound statutory basis for the Commonwealth to exercise a prominent role in the invasive species challenge, but which is simply foundering for want of will. All the legislation in the world is not an adequate substitute for a determination to act. While the Committee commends the framers of the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 to seek to highlight the issues, it is unable to recommend that the Bill be implemented. Rather, in the final chapter the Committee has set out a range of measures for reform, including regulations under section 301A, that combine into a coherent national framework to prevent and control invasive species.

7.60 Creation of such a system of regulation gives the opportunity for the Commonwealth to provide a lead to the States and Territories, whose efforts are currently fragmented and undermined by a lack of coordination. A national regulatory framework to oversee the existing diverse and disparate range of regulations and laws throughout the States and Territories can only encourage them to more appropriately implement coordinated action within and between jurisdictions.

⁵⁰ Western Australian Government, *Submission 67*, p. 3.

⁵¹ Dr Cas Vanderwoude, *Submission 19*, p. 1.

