

Appendix VII

WWF-Australia

Environment Protection Biodiversity Conservation Act 1999

Proposed Drafting Instructions for regulation of invasive species

Chapter 5 – Conservation of Biological Diversity

Insert new Part 13, Division 6

Division 6 – Non-Indigenous Species

XXX Listing of non-indigenous species

The Minister must, by instrument published in the Gazette, establish a list of non-indigenous species divided into the following categories:

- (1) prohibited from import;*
- (2) capable of being eradicated;*
- (3) capable of being substantially contained; and*
- (4) beyond eradication.*

XXX Categories of non-indigenous species

A species is eligible to be included as a non-indigenous species prohibited from import if, at that time:

it is an alien species which has not, or is not known to have been, introduced into Australia; or

- (b) it is an alien species which is currently subject to eradication efforts, and,*
- (c) it has been determined that it has threatened overseas, or may threaten in Australia, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem, or agricultural commodity.*

A species is eligible to be included as a non-indigenous species capable of being eradicated if, at that time:

- (a) it is present in Australia, and*
- (b) it has been determined that it has threatened overseas, or may threaten in Australia, the survival, abundance or evolutionary development of a native species, ecological community ecosystem, or agricultural commodity, and*
- (c) it is considered capable of being successfully eradicated from Australia.*

(3) A species is eligible to be included as a non-indigenous species capable of being substantially contained if, at that time:

it is present in Australia, and

(b) it has been determined that it has threatened overseas, or may threaten in Australia, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem, or agricultural commodity, and

(c) it is considered capable of being successfully contained to a limited geographical area in Australia in which it is present and in which it is considered not capable of being successfully eradicated.

A species is eligible to be included as a non-indigenous species beyond eradication if, at that time:

it is already present in Australia, and

it has been determined that it threatens, or may threaten, the survival, abundance or evolutionary development of a native species, ecological community, ecosystem, or agricultural commodity, and

it is beyond effective eradication, but requires management to limit its spread and protect indigenous species and ecosystems.

(5) No species otherwise eligible for listing in any category of non-indigenous species shall be listed if:

*it has been established in Australia for at least x years, and
it provides a substantial economic benefit to Australia.*

XXXX Effect of listing

A species listed as prohibited from import shall not be imported into or held within Australia.

A species listed as capable of being eradicated shall not be imported into or held within Australia.

A species listed as capable of being substantially contained shall not be imported into Australia and may be held only in areas designated by action plans or action statements made pursuant to sections 252J and 252K.

A species listed as beyond eradication shall not be imported into Australia, but may be held within Australia.

No listed non-indigenous species shall be made available for sale, barter, trade or other exchange.

(6) An offence against sections (1), (2), (3), (4), and (5) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(7) Strict liability applies to sections (1), (2), (3), (4) and (5).

(8) An authorised officer may, for the purposes of this Division, take possession of a species which is suspected of being held, sold, bartered, traded or otherwise exchanged, in breach of this Act. In the event it is determined that the Act has been breach, the authorised officer may destroy the listed non-indigenous species seized.

XXXD Minister may amend lists

(1) Subject to this Subdivision, the Minister may, by instrument published in the Gazette, amend a list referred to in section 252A by:

- (a) including items in the list; or*
- (b) deleting items from the list; or*
- (c) transferring items from one category in the list to another category in the list; or*
- (d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.*

(2) An instrument (other than an instrument mentioned in paragraph (1)(d)) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(3) Despite section 48 of the Acts Interpretation Act 1901 as it applies in relation to an instrument because of section 46A of that Act, amendments of the kind mentioned in paragraphs (1)(b) and (c) take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.

(4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the Acts Interpretation Act 1901, the Minister must cause a statement to be laid before each House with the instrument explaining:

- (a) in the case of an item that has been included in a list by the instrument—why the item was so included; or*
- (b) in the case of an item that has been deleted from a list by the instrument—why the item was so deleted; or*
- (c) in the case of an item that has been transferred by the instrument from one category in the list referred to in section 252A to another category in that list—why the item has been so transferred.*

(5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations.

XXXE Maintaining the lists in up-to-date condition

(1) The Minister must take all reasonably practical steps to amend as necessary the list referred to in section 252A so that it contains in each category all non-indigenous species that are eligible to be, or can be, included in that category.

XXXF Public notification

(1) The Minister must, at intervals of not more than 12 months, cause to be published in the Gazette and in a national daily newspaper a notice inviting applications from persons or bodies wishing to be registered for receipt of advice on non-indigenous species listed under section 252A.

(2) The Minister must register any person or body that applies in writing for registration.

(3) Registrants shall be entitled to elect to be notified of any new nomination or listing of a non-indigenous species by post or electronic mail.

XXXG Amending list of non-indigenous species

(1) The Minister must not:

(a) include (whether as a result of a transfer or otherwise) a non-indigenous species in a particular category; or

(b) delete (whether as a result of a transfer or otherwise) a non-indigenous species from a particular category;

unless satisfied that the non-indigenous species is eligible, or is no longer eligible, as the case requires, to be included in that category.

(2) In deciding whether to include a non-indigenous species in, or delete a non-indigenous species from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of a native species, ecological community or ecosystem concerned.

XXXH Minister must consider advice from Scientific Committee

(1) In deciding whether to amend the list referred to in section 252A the Minister must, in accordance with the regulations, obtain and consider advice from the Scientific Committee on the proposed amendment.

(2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.

(3) In preparing advice for a proposed amendment of a list referred to in paragraph (1), the Scientific Committee must not consider any matter that does not relate to the survival of a native species, ecological community or ecosystem concerned, except as otherwise permitted by section 252B(5).

(4) If a native species or ecological community has been nominated under section 252I to be listed, the Scientific Committee must give its advice to the Minister within 12 months, or such longer period as is necessary to acquire additional information needed to provide advice, after the Scientific Committee receives the nomination from the Minister under that section. In no event shall the Scientific Committee take longer than 18 months to give its advice.

(5) The Minister must:

(a) decide whether to amend the list; and

(b) if the Minister decides to amend the list—cause the necessary instrument to be published in the Gazette;

within 90 days after receiving the Scientific Committee's advice on the amendment.

(6) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:

(a) is for the official purposes of the Scientific Committee; or

(b) if an instrument is published in the Gazette relating to an amendment of a list to which the advice relates—occurred after the publication.

XXXI Nomination of non-indigenous species

(1) A person may, in accordance with the regulations (if any), nominate to the Minister a non-indigenous species to be included in a particular category of the list referred to in section 252A.

(2) The Minister must forward all nominations to the Scientific Committee.

(3) If the Minister decides that a nominated non-indigenous species is not eligible to be included in the nominated category, the Minister must, in accordance with the regulations:

(a) advise the person who made the nomination of the Minister's decision; and

(b) give to that person a statement of reasons why the native species or ecological community is not eligible to be included in the nominated category.

(4) The Minister may, at any time, request a person who has made a nomination to provide additional information about the subject of the nomination within a period no

less than three months. At the time of the request, the Minister must provide the person with reasons why the information provided in the initial nomination is not considered sufficient.

XXXJ Non-indigenous species action plans

(1) The Minister must, by instrument in writing, make one action plan for non-indigenous species listed as capable of being eradicated and one action plan for non-indigenous species listed as capable of being substantially contained.

(2) The action plans shall identify practical measures to control, manage, eradicate and contain listed non-indigenous species and prioritise such measures, and must meet the requirements of section 252N.

(3) In the case of the action plan for non-indigenous species listed as capable of being substantially contained, the action plan shall contain a map of designated geographic areas in which it is permissible to hold such listed non-indigenous species. The map may only reflect areas in which it is considered impossible to eradicate non-indigenous species listed as capable of being substantially contained.

(4) Each action plan shall be reviewed every two years.

(5) Subject to section 252M, the Minister may, by instrument in writing, adopt a plan that has been made by a State or a self-governing Territory, or by an agency of a State or self-governing Territory (whether or not the plan is in force in the State or self-governing Territory) as part of an action plan. The Minister may adopt a plan with such modifications as are specified in the instrument.

(6) A plan, as modified and adopted under subsection (5), has effect as if the plan had been made by the Minister under subsection (1).

(7) The Minister must seek the co-operation of the States and self-governing Territories in which a listed non-indigenous species occurs, with a view to making jointly with those States and Territories, or agencies of those States and Territories, a joint action plan, unless the listed non-indigenous species occurs only in a Commonwealth area.

(8) Before making an action plan the Minister must:

(a) consider the advice of the Scientific Committee given under section 252P; and consult about the plan in accordance with sections 252Q and 252R.

(9) An action plan comes into force on the day on which it is made or adopted, or on such later day as the Minister specifies in writing.

XXXK Non-indigenous interim action statements

(1) The Minister may, by instrument in writing, make an interim action statement for the purpose of identifying practical measures to control, manage, eradicate and contain non-indigenous species listed as capable of being eradicated and non-indigenous species listed as capable of being substantially contained.

(2) An interim action statement comes into force on the day on which it is made and continues in force until such time as the non-indigenous species listed as capable of being eradicated and/or non-indigenous species listed as capable of being substantially contained to which it relates are included in an action plan.

XXXL Compliance with action plans and action statements

A non-indigenous species action plan and action statement shall bind the Crown in right of the Commonwealth, States and Territories and shall be enforceable by any person. A Commonwealth, State or Territory agency must not take any action that contravenes an action plan or an action statement.

XXXM Adoption of State and Territory plans

(1) The Minister must not adopt a plan as an action plan under subsection 252J(5) unless:

- (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and*
- (b) the plan meets the requirements of section 252N.*

Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

XXXN Content of action plans

An action plan must provide for the research and management actions necessary to control, manage, eradicate and contain non-indigenous species listed as capable of being eradicated and non-indigenous species listed as capable of being substantially contained.

XXXO Deadlines for preparing plans

Where effective containment or eradication of listed non-indigenous species is feasible, a listed non-indigenous species capable of being eradicated or capable of being substantially contained that occurs only in Commonwealth areas must be included in an action plan within 2 years after the species in question became included in the list.

XXXP Scientific Committee to advise on plans

(1) The Minister must obtain and consider the advice of the Scientific Committee on:

- (a) the content of action plans; and*
- (b) the times within which, and the order in which, such plans should be made.*

XXXQ Consultation on plans

(1) Before making an action plan, the Minister must:

- (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at prescribed places in each State and self-governing territory; and*
- (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and*
- (c) cause the notice to be published:*
 - (i) in the Gazette; and*
 - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory, in which the relevant listed non-indigenous species; and*
 - (iii) in any other way required by the regulations.*

The notice must:

- (a) specify the places where copies of the proposed plan may be purchased; and*
- (b) invite persons to make written comments about the proposed plan; and*
- (c) specify:*
 - (i) an address for lodgment of comments; and*
 - (ii) a day by which comments must be made.*

The day specified must not be a day occurring within 3 months after the notice is published in the Gazette.

XXXR Consideration of comments

The Minister:

- (a) must, in accordance with the regulations, consider all comments on a proposed action plan made in response to an invitation under section 252Q; and*
- (b) may revise the plan to take account of those comments.*

XXXS Publication, review and variation of plans

(1) As soon as practicable after the Minister makes or adopts an action plan under section 252A, the Minister must:

- (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and*
- (b) give notice of the making or adopting of each such plan; and*
- (c) publish the notice:*
 - (i) in the Gazette; and*

- (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and*
- (iii) in any other way required by the regulations.*

(2) The notice must:

- (a) state that the Minister has made or adopted the plan; and*
- (b) specify the day on which the plan comes into force; and*
- (c) specify the places where copies of the plan may be purchased.*

XXXT Variation of plans by the Minister

(1) The Minister may, at any time, review an action plan that has been made or adopted under section 225A and consider whether a variation of it is necessary.

(2) Each plan must be reviewed by the Minister at intervals of not longer than 2 years.

(3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.

(4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 252N.

(5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

(6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.

(7) Sections 252Q, 252R and 252S apply to the variation of a plan in the same way that those sections apply to the making of an action plan.

XXXU Variation by a State or Territory of joint plans and plans adopted by the Minister

(1) If a State or self-governing Territory varies a plan that:

- (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or*
- (b) has been adopted by the Minister as an action plan;*

the variation is of no effect for the purposes of this Act unless it is approved by the Minister.

(2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.

- (3) *The Minister must not approve a variation unless satisfied that:*
- (a) *a level of consultation no less than what is required by this Division (Division 5) was undertaken in varying the plan; and 12*
 - (b) *the plan, as so varied, continues to meet the requirements of section 252N.*
- (4) *If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.*
- (5) *Section 252S applies to the variation of a plan in the same way that it applies to the making of a recovery plan or threat abatement plan.*

XXXV Commonwealth assistance

- (1) *The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make or implement an action plan.*
- (2) *The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to assist in making or implementing an action plan.*
- (3) *The giving of assistance may be made subject to such conditions as the Minister thinks fit. The Minister is to have regard to the advice of the Scientific Committee under section 252W before determining those conditions.*

XXXW Scientific Committee to advise on assistance

The Scientific Committee is to advise the Minister on the conditions (if any) to which the giving of assistance under section 252V should be subject.

XXXX Reports on preparation and implementation of plans

- (1) *The Secretary must include in each annual report a report on the making and adoption under section 252A of each action plan during the year to which the report relates.*
- (2) *The Secretary must include in each annual report a report on the status and implementation of every existing action plan.*