

**SENATE RURAL & REGIONAL AFFAIRS & TRANSPORT  
LEGISLATION COMMITTEE**

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**Inquiry into the Biosecurity Bill 2012 and the Inspector-General of Biosecurity  
Bill 2012**

**Sydney, Thursday, 9 May 2013**

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Tabled 9/5/13  
Dr Sophie Riley (Sydney)

## Opening Statement by Sophie Riley (9 May 2013)

My submission focuses on the linkages between biosecurity and invasive alien species that threaten biodiversity. The fact that some alien species can pose threats to the environment is reflected in Article 8(h) of the Convention on Biological Diversity that obliges the parties to 'Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species'. Notorious examples of invasive alien species in Australia include rabbits, prickly pear, cane toads and carp.

Biosecurity has an important role to play in preventing the entry and establishment of species that threaten the environment. While this is acknowledged in Australia's Biodiversity Conservation Strategy (at page 27), in practice, the environmental impacts of invasive alien species and biosecurity are comprehended almost as two unrelated systems. The draft Biosecurity Bill does attempt to address some of these concerns; for example, by including environmental matters in the Bill's objects and by dealing with incursions in Chapter 6. However, as the NGO submission has pointed out, the Bill does not incorporate key environmental concepts, such as the precautionary approach.

Australia is a signatory to the Convention on Biological Diversity and, as such, should comply with obligations set out in the Convention, as well as adhere to other instruments adopted by the Conference of the Parties to the Convention. One such instrument is the *Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species*. This instrument adopts a three-tiered approach to the regulation of invasive alien species, commencing with preventative measures that hinge on strong border controls in quarantine, or biosecurity.

In this context, my submission highlighted two areas of the draft Biosecurity Bill that could be given more consideration. The first relates to the use of definitions and the second to the application of the precautionary approach. With regard to definitions, strictly speaking, these are found in the *Guiding Principles*, rather than the Biodiversity Convention itself. Issues raised with respect to the precautionary approach are more complex and centre on the place of the precautionary approach at the intersection of environmental regulation, biosecurity and the rules of the international trading regime, namely the WTO. Importantly, the *Guiding Principles* advocate the use of the precautionary approach in risk analysis, while the WTO does not acknowledge the approach, either in its instruments, or as a concept of customary international law. This makes integration of the precautionary approach very complex and difficult, however, it is submitted that this fact does not justify the matter being side-stepped.

## 1. DEFINITIONS

### 1.1 Biosecurity Bill 2012

#### Chapter 1—Preliminary (Preliminary and Definitions) PM50 Chapter 1 part 2

*Biodiversity Convention* means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, as amended and 22 in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1993 24 No. 32 (1993 ATS 32). In 2012, the text of a Convention in the 25 Australian Treaty Series was accessible through the Australian 26 Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

*invasive pest* means a pest that:

- (a) is an alien species (within the meaning of the Biodiversity Convention); but
- (b) is not capable of:
  - (i) infesting humans, animals or plants; or
  - (ii) acting as a vector for a disease; or
  - (iii) causing disease in any other way.

*pest* means a species, strain or biotype of a plant or animal, or a disease agent, that has the potential to cause, either directly or indirectly, harm to:

- (a) human, animal or plant health; or
- (b) the environment.

#### Chapter 6—Prevention and control measures

Modified meaning of *biosecurity risk*

(2) However, if a pest is suspected of being, or is known to be, an invasive pest, *biosecurity risk* means:

- (a) the likelihood of the invasive pest:
  - (i) entering Australian territory or a part of Australian territory; or
  - (ii) emerging, establishing itself or spreading in Australian territory or a part of Australian territory; and
- (b) the potential for the invasive pest to cause harm to ecosystems, habitats or native species.

Note: See sections ^PM76 and ^PM77 in relation to the application of this Act in relation to invasive pests.

### 1.2 Convention on Biological Diversity

#### Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

**1.3 Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species.** Adopted April 2002 as part of Decision VI/23 of the Conference of the Parties. Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/6/20 (23 September 2002), definitions in footnote (57).

(57) The following definitions are used:

- i. "alien species" refers to a species, subspecies or lower taxon, introduced outside its natural past or present distribution; includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce;
- ii. "invasive alien species" means an alien species whose introduction and/or spread threaten biological diversity (For the purposes of the present guiding principles, the term "invasive alien species" shall be deemed the same as "alien invasive species" in decision V/8 of the Conference of the Parties to the Convention on Biological Diversity.);

**1.4 International Standards For Phytosanitary Measures (ISPM 5)**

**Glossary Of Phytosanitary Terms (2012)**

**Pest:**

Any species, species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products. Note: In the IPPC, plant pest is sometimes used for the term pest.

**Quarantine Pest:**

A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled

**Comparison CBD and IPPC Terminology**

<b>CBD Terminology</b>	<b>Explanation in IPPC Context</b>	<b>Additional Comments</b>
"Alien Species" is a species, subspecies or lower taxon, introduced outside its natural past <sup>1</sup> or present distribution; includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce	An alien species (CBD) is an individual <sup>3</sup> or population, at any life stage, or a viable part of an organism that is non-indigenous to an area and that has entered by human agency into the area	"Alien" refers only to the location and distribution of an organism compared with its natural range. It does not imply that the organism is harmful
"Invasive alien species" <i>CBD definition</i> An alien species whose introduction and/or spread threaten biological diversity.	An invasive alien species (CBD) is an alien species (CBD) that by its establishment or spread has become injurious to plants, or that by risk analysis (CBD) is shown to be potentially injurious to plants	"Biological diversity". This is not an IPPC term. Does it apply cultivated areas? (note that definition of in-situ conservation in CBD does include cultivated species.) The CBD definition and its explanation concern the whole term <b>invasive alien species</b> and do not address the term "invasive" as such

## 2. PRECAUTIONARY APPROACH

### 2.1 CBD GUIDING PRINCIPLES

#### Guiding principle 1: Precautionary approach

Given the unpredictability of the pathways and impacts on biological diversity of invasive alien species, efforts to identify and prevent unintentional introductions as well as decisions concerning intentional introductions should be based on the precautionary approach, in particular with reference to risk analysis, in accordance with the guiding principles below. The precautionary approach is that set forth in principle 15 of the 1992 Rio Declaration on Environment and Development and in the preamble of the Convention on Biological Diversity.

The precautionary approach should also be applied when considering eradication, containment and control measures in relation to alien species that have become established. Lack of scientific certainty about the various implications of an invasion should not be used as a reason for postponing or failing to take appropriate eradication, containment and control measures.

### 2.2 Environment Protection and Biodiversity Conservation Act 1999 -

#### Section 391

##### Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

(1)The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

(2)The *precautionary principle* is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Includes the following items that deal with export and import of CITES species:

10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the <u>list</u> of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the <u>list</u> referred to section 303EB
10D	303EN	whether or not to grant a permit

## 2.3 NORWAY

### Nature Diversity Act (Act No. 100 of June 19, 2009 relating to the Management of Biological, Geological and Landscape Diversity)

**Section 9** (*precautionary principle*) When a decision is made in the absence of adequate information on the impacts it may have on the natural environment, the aim shall be to avoid possible significant damage to biological, geological or landscape diversity. If there is a risk of serious or irreversible damage to biological, geological or landscape diversity, lack of knowledge shall not be used as a reason for postponing or not introducing management measures.

#### Chapter IV Alien Organisms

##### Section 29 (import)

Living or viable organisms may only be imported to Norway subject to a permit granted by the competent authority under this Act.

If an organism is imported with a view to releasing it into the environment, the application for a permit shall clarify the possible effects of such release on biological diversity.

No permit may be granted if there is reason to believe that the import will have substantial adverse impacts on biological diversity.

The King may make regulations regarding import under the first paragraph, including requirements for permits and conditions for permits. The King may also make regulations to the effect that specific organisms may be imported without a permit under this section, or may prohibit the import of specific organisms if this is considered necessary in order to avoid substantial adverse impacts on biological diversity....

## 2.4 NEW ZEALAND

### Hazardous Substances and New Organisms Act 1996

#### Section 7 Precautionary Approach

All persons exercising functions, powers, and duties under this Act, including but not limited to, functions, powers, and duties under sections 28A, 29, 32, 38, 45, and 48, shall take into account the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects.

(Sections referred to deal with importation, assessment of material and species to be imported)

### 3. THE PRECAUTIONARY APPROACH AND SPS AGREEMENT

In accordance with the rules of the WTO, states need to demonstrate that their measures are underpinned by scientific certainty, either by using international standards, or by undertaking their own risk assessment.

Article 2.2 prohibits states from maintaining permanent measures without sufficient scientific evidence.

Article 5.7 specifies that

In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information...In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

If a state has not based its measures on international standards, or carried out *any*, or any *proper*, risk assessment, this constitutes a breach of Article 5.1 of the SPSA, leading to the measures being declared invalid.

Does the quality of evidence required for permanent measures under Article 2.2 differ from the standard of evidence required for provisional measures under article 5.7? Yes - quarantine measures cannot be maintained pursuant to Article 2.2 without a sufficient quality and quantity of scientific evidence that is proportional to the severity of the measure (that is the volume of evidence needs to be conclusive). However, under Article 5.7 provisional measures may only be implemented absent an appropriate volume of evidence, whether or not the evidence is conclusive. This has the tendency of pushing inconclusive material into the risk assessment process, where its lack of conclusiveness means it cannot underpin permanent measures.

#### Uncertainty and the Agreement on the Application of Sanitary and Phytosanitary Measures

