
Legal Options for Quarantine on offshore islands with High Conservation Values

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Overview

- Objective, Issues and Definitions
 - Relevance to Offshore Islands
 - Statutory provisions relevant to quarantine issues at Cth/State level
 - Options for law reform/management (statutory and non -statutory)
 - Preliminary issues (breaks, and facilities & papers)
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What is quarantine on offshore islands about? (cont'd...)

■ Aim

- Objective of quarantine management is to ensure that new pests (plant, animal or other organisms) do not become established on offshore islands
 - Subsidiary aims include effective management measures
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Who is affected by quarantine here?

- Stakeholders include:
 - The public interest (conservation and other relevant public interest groups)
 - Indigenous peoples and their representatives
 - Lessees and temporary occupiers (including pastoralists on some islands and tourists on others)
 - Commercial fishers
 - Key agencies
 - Stakeholder issues
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Definitions

- Quarantine terminology:
 - Introduced Plants and Environmental Weeds
 - Introduced Animals that become Pests, including Marine Pests
 - Unwanted new organisms such as avian flu
 - Diseases - Pest, and Human
 - Vector - anything capable of carrying or transmitting pests, diseases or infections.
 - Invasion or incursion – detection of pest in the wild
 - Interception – detection of pest in a secured area, such as a quarantine station
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Relevance to offshore islands

- WA's 14,000 km of coastline and offshore islands are
 - Important for biodiversity conservation right around WA, for example:
 - Recherche
 - Abrolhos
 - Barrow and Thevenard
 - Vulnerable to marine pests, weeds and diseases
 - Not able to be policed in an intensive manner
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Preliminary legal issues

- Commonwealth matters outside today's seminar brief (but important to understand from an administrative standpoint):
 - *Quarantine Act* (Cth); and
 - s 51(ix) of the *Australian Constitution*
 - Ballast water, imports of food, wood and live animals are dealt with under Cth laws exclusively
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Preliminary legal issues

- Common law – also outside brief
 - Can tort law or trade practices law assist you if you are economically damaged by an invasion?
 - Answer it depends on whether there was “reasonable foreseeability that events of the kind that occur later would occur”
 - In management terms, there was a known risk that was not trivial and not managed by some kind of management intervention.
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Administration of Quarantine laws

- AQIS/WAQIS
 - Land tenure largely determines responsibility (as we will see in detail later):
 - CALM on Crown lands vested in the Conservation Commission or MPRA, also CALM on Unallocated Crown lands under s 5 of the *Land Administration Act* by MOU with Dept of Lands
 - Pastoral lessees on pastoral leases (see EDO Fact Sheet 34, p 2 on conditions relating to protection of indigenous pasture)
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Administration ... (cont'd)

- Department of Environment may monitor compliance with conditions on implementation agreements***
 - Department administering Crown lands in relation to declared animals and plants (see the EDO Fact Sheet on same)
 - Local government in relation to pest plants declared under local laws e.g. Boddington
 - Agriculture Department in relation to agricultural lands and issues under various statutes
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State legislation State laws in relation to quarantine issues of an environmental kind

- State Acts to be reviewed are:
 - *Plant Diseases Act 1914;*
 - *Biological Control Act 1986;*
 - *Environmental Protection Act 1986;*
 - *Agriculture and Related Resources Protection Act 1976;*
 - *Conservation and Land Management Act 1984;* and
 - *Land Administration Act 1997.*
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State laws in relation to quarantine issues of an environmental kind

■ *Plant Diseases Act 1914*

- Diseases common to plants are addressed, marginally relevant to offshore islands, to the extent that people living there may be cultivating fruit and vegetables that develop diseases
 - Powers are of interest in the sense of their responsiveness (unlike EP Act procedures for example) and include prescription, search and seizure, quarantine of carriers
 - S 23A Minister may by written instruction authorise the carrying out of any procedure relevant to prevention eradication and prevention of a disease on private property without notice
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State laws in relation to quarantine issues of an environmental kind

■ *Biological Control Act 1986*

- Biological Control Authority (WA) may by publication of a Gazette Notice declare organisms to be target organisms (s 18) or agent organisms (s 27) after nominations, submissions and reports
 - Emergency powers exist to declare target and agent organisms on consultation with the Council
 - Appeals against exercises of the discretion of the authority are heard by a specially constituted Board and it hears the matter de novo
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State laws in relation to quarantine issues of an environmental kind

- *Environmental Protection Act 1986* –planned events
 - Part IV assessment: if it is a significant proposal, such as the Gorgon proposal for Barrow Island, then the EPA may recommend and the Minister will be able to consider imposing conditions relating to protection of environment (including biodiversity) including provisions requiring biosecurity protocols to be followed
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State laws in relation to quarantine issues of an environmental kind

- *Environmental Protection Act 1986* –unplanned events
 - No jurisdiction to use powers under the EP Act for quarantine purposes e.g. prevention of harm to the environment by intercepting or turning away from State Waters boats known to be infected, say or carriers species crossing diseases (Federal function but problem is with people on the ground for interception purposes**)
 - Directions powers the CEO under s 71 EP Act could stop a specified activity likely to cause material environmental harm
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State laws in relation to quarantine issues of an environmental kind

- *Environmental Protection Act 1986*
 - Offences of causing material or serious environmental harm ss 50A and 50 B of the EP Act
 - Applies after the event
 - Proving criminal intent in these kinds of cases as difficult as can be therefore lesser penalties likely to result. Likely top end of penalty range thus halves.
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State laws in relation to quarantine issues of an environmental kind

- *Agriculture and Related Resources Protection Act* and regulations
 - S.3 object of the Act is to protect primary industries (replaced the noxious weeds and vermin legislation) so of limited relevance to offshore islands
 - S. 35 Gazette Notice the Agricultural Protection Board declares animals to be certain categories of declared animal which has the consequence of requiring a permit under the relevant regulations and thus has the effect of inhibiting people from bringing them into the State (mostly birds). Same mechanism for declared plants.
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State laws in relation to quarantine issues of an environmental kind

- *Agriculture and Related Resources Protection Act* and regulations
 - S 41 says that on Crown lands the department having responsibility for the lands has responsibility for declared plants and animals on public lands within its control
 - S110-112 local government may pass local laws prescribing a plant as a pest plant in its district (examples Wagin, Dumbleyung and Boddington)
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State laws in relation to quarantine issues of an environmental kind

- *Conservation and Land Management Act 1984*
 - Management Plans under ss 55 and 56 would be the primary mechanism in this legislation for addressing these issues – but very few have been prepared, not all national parks have one and there is only one for a single nature reserve, although some plans cover more than one such reserve
 - Weeds Policy 1986 applies across all CALM managed lands but does not address all biosecurity issues
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State laws in relation to quarantine issues of an environmental kind

- *Land Administration Act 1997*
 - Much Crown land in the State is held under this Act including pastoral leases
 - For A class reserves no mechanism exists other than management plans (which are strictly optional in the sense that either the Minister or the management body may initiate one but most reserves do not have one) for biosecurity purposes
 - Conditions on pastoral leases to control weeds and pests and protect indigenous pasture
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Other relevant State legislation

- *Petroleum Act* s 15 A ministerial directions to protect flora and fauna
 - *State Agreement Acts*
 - e.g. *Barrow Island Act* 2003
 - Purpose is to create leases and licences and allow geosequestration to occur
 - No biosecurity control provisions although s 7 requires quarantine management as part of a proposal
 - BI Act Minister must defer to Environment Minister's powers under Part IV EP Act (Cl 8 of Schedule) so under Part IV EP Act an implementation agreement can be used to regulate biosecurity issues
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Review of State legal framework

- No one set of weeds, disease and pests laws in State law c.f. Quarantine Act
 - No biodiversity protection laws akin to the *Environment Protection and Biodiversity Conservation Act (Cth) 1999* that would provide a hierarchy of increased concern about weeds pests and diseases depending on the scientifically based biodiversity value of the natural resources concerned
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Review of State legal framework

- Not a good framework for dealing with non-agricultural concerns about invasions by other species – to the contrary agricultural lands (by definition degraded lands) have powers in emergencies that are more useful for rapid response to incursions than the EP laws
 - Ministerial conditions may not result in strict enough conditions because of the wide nature of the ministerial discretion
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Performance in biosecurity

- The vast majority of species are found nowhere else in the world.
 - The rate at which new species are invading Australia is increasing and the rate of species extinction is also increasing.
 - What value do we place on the uniqueness of ecosystems? What will our next review of the State of our Environment say about our performance?
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Options for law reform or management responses

- Introduce biodiversity conservation legislation that contains biosecurity protocols for islands that cannot be overridden by State Agreements, or Ministerial discretions under any other State legislation, or
 - Introduce a *Quarantine Act (WA)* that matches the Commonwealth Act, and that addresses all biosecurity issues, or
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Options for law reform or management responses

- Introduce a policy that must be followed by all those administering Crown land governing biosecurity controls (e.g. via adoption of model management plan under LAA / CALM Act, or by agreement between agencies)
 - Another non-policy option: better vector management, which involves perhaps the federal authorities providing quarantine stations on HCV islands that are vulnerable instead of providing support from nearby mainland quarantine stations
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Options for law reform or management responses

■ Others?

- ❑ Improve emergency directions powers under the EP Act to deal with unplanned events/threats to the environment from marine sources to ensure that jurisdiction does exist for use in response to weed, disease and pest incursions, or
 - ❑ Introduce an EPP specifically for offshore islands weed disease and pest management
 - ❑ Introduce EMS requirements for entry onto land with High Conservation Value (see Antarctica protocol*)
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Summary of biosecurity framework

- Consideration of the range of tools currently available shows that the State law is fragmented and does not articulate a single standard or set of rules across the State, or a very high standard, in any part of the State for management of these issues.
 - High Conservation Lands deserve the implementation of a biosecurity standard that is higher than other lands in order for the State to achieve its goals of conservation of these lands and ecological communities.
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EDO (WA) Inc.

- The EDO is committed to long-term systemic change for environmental protection of the natural resources of WA
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