



New South Wales

# Noxious Weeds Amendment Bill 2012

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Noxious Weeds Act 1993* (as a consequence of a recent statutory review of the Act) as follows:

- (a) to revise certain of the objects of the Act,
- (b) to clarify the land in relation to which a plant is a noxious weed,
- (c) to enable the Minister to regulate or prohibit the bringing of noxious weed material into NSW,
- (d) to enable local control authorities to require owners of land subject to a weed control order to provide details of the occupiers of the land,
- (e) to extend control measures in relation to agricultural machines to machinery and equipment,
- (f) to extend provision for border inspections of agricultural machinery from Queensland to machinery or equipment entering NSW from anywhere in Australia,

- (g) to enable the Minister to grant exemptions from certain provisions of the Act in relation to Class 2 noxious weeds that are notifiable only on Lord Howe Island,
- (h) to extend certain powers of inspectors to deal with noxious weed material so as to enable them to deal with (including to take samples, photographs or video recordings of) any thing they reasonably suspect to be or to contain noxious weed material,
- (i) to make it clear that the functions of local control authorities under the Act may only be delegated under the Act,
- (j) to make other minor or consequential amendments (including standardising terminology and providing for matters of a savings or transitional nature).

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Noxious Weeds Act 1993 No 11**

**Schedule 1 [1]** revises certain of the objects of the Act to better reflect the Government's current policy objectives.

**Schedule 1 [2] and [18]** enable the Minister, by published order (including by a weed control order), to exempt a person or class of persons, or premises, machinery or equipment, from the operation of certain provisions of the Act in any part of NSW other than Lord Howe Island, in relation to a plant that is a Class 2 noxious weed only on Lord Howe Island (or any part of such a plant). The provisions concerned create offences (in relation to selling or purchasing a plant or any part of it that is notifiable weed material anywhere in NSW, or selling soil, turf or fodder from land with, or transporting, moving or using machinery or equipment containing, a plant that is a notifiable weed anywhere in NSW) and enable inspectors to require the removal from machinery or equipment of a plant, or any part of a plant, that is a notifiable weed anywhere in NSW.

Schedule 1 [2] also makes it clear that a noxious weed is a noxious weed in relation to the land that is subject to the weed control order that declares it to be a noxious weed.

**Schedule 1 [3]** enables the Minister, by published order, to regulate or prohibit the bringing into NSW of noxious weed material or any other thing the Minister considers is likely to introduce noxious weed material into NSW. A person who fails to comply with an order is guilty of an offence for which the maximum penalty is 100 penalty units (\$11,000).

**Schedule 1 [4]** enables a local control authority, by written notice, to require the owner of land (other than a public authority or a local control authority) that is subject to a weed control order to provide details of the occupier and the land occupied. A person who, without reasonable excuse, fails to comply with a requirement of a notice is guilty of an offence for which the maximum penalty is 20 penalty units (\$2,200).

**Schedule 1 [5]** requires a public authority that is required to provide to the local control authority the name and contact details of occupiers of land it owns to also provide a description of the land occupied (consistent with the information required by Schedule 1 [4] to be provided by an owner of land other than a public authority or a local control authority).

**Schedule 1 [6], [7], [19], [20] and [28]** make amendments to standardise terminology in the Act and **Schedule 1 [14]** reconciles a reference with certain other references in a provision.

**Schedule 1 [8]–[16]** extend a current requirement for persons moving agricultural machines from Queensland into NSW to produce the machines for inspection by a border inspector (and associated offences) to persons moving machinery or equipment into NSW from any other State or a Territory. **Schedule 1 [13] and [16]** also extend a power of inspectors to require the removal of notifiable weed material from agricultural machines so that it applies in relation to all machinery or equipment. **Schedule 1 [27]** inserts a consequential savings provision.

**Schedule 1 [17]** extends an offence of knowingly transporting, moving or using an agricultural machine containing a notifiable weed to all machinery or equipment containing a notifiable weed.

**Schedule 1 [21] and [22]** extend the power of inspectors or authorised officers to examine, seize, detain, remove or destroy noxious weed material in or about premises, so as to enable them to do the same in relation to any thing in or about the premises that they reasonably suspect of being or containing noxious weed material. Schedule 1 [21] also enables inspectors or authorised officers to take samples, photographs or video recordings of any such thing found in or about the premises.

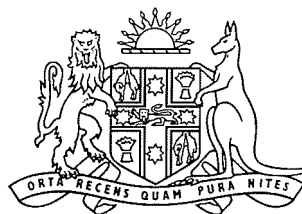
**Schedule 1 [23]** extends the power of inspectors or authorised officers to obtain information that may enable the tracing of the source or destination of noxious weed material so that it enables them to obtain information that may assist in tracing the source or destination of any matter they suspect to be noxious weed material.

**Schedule 1 [24] and [25]** make it clear that the functions of local control authorities under the Act may only be delegated under the Act (and not, for example, under a council's power of delegation under the *Local Government Act 1993*).

**Schedule 1 [26]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.



First print



New South Wales

# Noxious Weeds Amendment Bill 2012

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New South Wales

# Noxious Weeds Amendment Bill 2012

No , 2012

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## A Bill for

An Act to amend the *Noxious Weeds Act 1993* to make further provision with respect to the control of noxious weeds; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Noxious Weeds Amendment Act 2012</i> .	3
<b>2    Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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## **Schedule 1      Amendment of Noxious Weeds Act 1993 No 11**

**[1]    Section 3 Objects of this Act**

Omit section 3 (a) (ii) and (iii). Insert instead:

- (ii) prevent, eliminate or restrict the spread in this State of particular significant weeds, and
- (iii) effectively manage widespread significant weeds in this State,

**[2]    Section 7 Weed control orders**

Omit section 7 (3). Insert instead:

- (2A) The Minister may, in a weed control order, grant an exemption referred to in section 32A.
- (2B) An exemption has effect for the period specified in the order and is subject to such conditions, if any, as may be specified in the order.
- (2C) The Minister may amend or revoke an exemption or a condition of an exemption.
- (3) For the purposes of this Act, a plant that is the subject of a weed control order is a noxious weed in relation to the land to which the order applies.

**[3]    Section 11**

Insert after section 10:

**11    Power to regulate or prohibit bringing into NSW noxious weed material or things likely to introduce such material**

- (1) The Minister may, by order published in accordance with subsection (2), regulate or prohibit the bringing into the State (or into any specified part of the State) of noxious weed material or any other thing that the Minister considers is likely to introduce any noxious weed material into the State (or into any specified part of the State).
- (2) An order made by the Minister under this section is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
  - (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the land subject to the order

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Schedule 1      Amendment of Noxious Weeds Act 1993 No 11

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	is located, or, if appropriate, in a newspaper circulating throughout the whole State, or	1 2
	(b) on the internet website of a newspaper referred to in paragraph (a) or on the Department's internet website.	3 4
(3)	If an order is published in accordance with subsection (2) other than in the Gazette, the Minister is to publish the order as soon as practicable in the Gazette.	5 6 7
(4)	An order commences on the day it is first published in accordance with this section or on such later day as may be specified in the order.	8 9 10
(5)	A person who fails to comply with an order made under this section is guilty of an offence. Maximum penalty: 100 penalty units.	11 12 13
<b>[4]</b>	<b>Section 12 Private occupiers of land must control noxious weeds on land</b>	14
	Insert at the end of the section (after the note):	15
(2)	A local control authority may, by written notice, require the owner of land (other than a public authority or a local control authority) to which a weed control order applies to provide the following information in relation to the land:	16 17 18 19
(a)	the name and contact details of the occupier of the land or any part of the land,	20 21
(b)	a description of the land occupied by the occupier.	22
(3)	The notice must specify the manner in which, and may specify a reasonable time by which, the information must be provided.	23 24
(4)	A person who, without reasonable excuse, fails to comply with a requirement of a notice under this section is guilty of an offence. Maximum penalty: 20 penalty units.	25 26 27
<b>[5]</b>	<b>Section 13 Public authorities' obligations to control noxious weeds on own land</b>	28 29
	Insert “, and a description of the land occupied,” after “the public authority” in section 13 (2).	30 31
<b>[6]</b>	<b>Sections 28 (3) and 30 (2)</b>	32
	Omit “the weed material of a weed” wherever occurring.	33
	Insert instead “a plant, or any seed or other part of a plant,”.	34

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<b>[7] Sections 29 and 32</b>	1
Omit “a weed” wherever occurring. Insert instead “a plant”.	2
<b>[8] Section 31 Machinery and equipment—spread of noxious weeds into NSW</b>	3
Omit “in Queensland” from section 31 (1).	4
Insert instead “elsewhere in Australia”.	5
<b>[9] Section 31 (2)</b>	6
Omit the subsection. Insert instead:	7
(2) This section applies to machinery or equipment:	8
(a) that is of a kind declared, by order of the Minister published in the Gazette, to be machinery or equipment to which this section applies, and	9
(b) that has already been used for the purpose for which it was manufactured,	10
being machinery or equipment that is brought into New South Wales from another State or a Territory.	11
<b>[10] Section 31 (3) and (6) (b)</b>	12
Omit “agricultural machine” wherever occurring.	13
Insert instead “machinery or equipment”.	14
<b>[11] Section 31 (3) (a)</b>	15
Omit “border of New South Wales and Queensland”.	16
Insert instead “borders of New South Wales”.	17
<b>[12] Section 31 (3) (a)</b>	18
Omit “machines” and “a machine” wherever occurring.	19
Insert instead “machinery or equipment”.	20
<b>[13] Sections 31 (3) and (4) and 40</b>	21
Omit “The machine” and “the machine” wherever occurring.	22
Insert instead “The machinery or equipment” and “the machinery or equipment”, respectively.	23
<b>[14] Section 31 (3) (a)</b>	24
Omit “at that place”. Insert instead “at such a place”.	25

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<b>[15] Section 31 (3) (e)</b>	1
Omit “Queensland”. Insert instead “the State or Territory concerned”.	2
<b>[16] Sections 31 (4), (6) (a) and (7) and 40</b>	3
Omit “an agricultural machine” wherever occurring.	4
Insert instead “machinery or equipment”.	5
<b>[17] Section 32 Use of machinery or equipment</b>	6
Omit “an agricultural machine”. Insert instead “machinery or equipment”.	7
<b>[18] Section 32A</b>	8
Insert after section 32:	9
<b>32A Exemptions relating to weeds notifiable only on Lord Howe Island</b>	10
(1) The Minister may, by order published in the Gazette, exempt:	11
(a) a person or class of persons, or	12
(b) premises, machinery or equipment,	13
from the operation in any part of the State other than Lord Howe	14
Island of section 28 (1), 29, 32 or 40 in relation to a plant, or any	15
seed or other part of a plant, that is a Class 2 noxious weed only	16
on Lord Howe Island (and not elsewhere in the State).	17
(2) An exemption is subject to such conditions, if any, as may be	18
specified in the order.	19
(3) An order commences on the day it is published in the Gazette or	20
on such later day as may be specified in the order.	21
<b>[19] Section 40 Further powers in relation to notifiable weed material</b>	22
Omit “notifiable weed material of a weed”.	23
Insert instead “a plant, or any seed or other part of a plant,”.	24
<b>[20] Section 40</b>	25
Omit “such weed material”.	26
Insert instead “such plant, or seed or other part of a plant”.	27
<b>[21] Section 44 Inspections and investigations</b>	28
Omit section 44 (c). Insert instead:	29
(c) examine, take samples, photographs or video recordings	30
of, seize, detain or remove any thing in or about those	31
premises that the inspector or authorised officer	32

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	reasonably suspects to be noxious weed material or to be vegetable matter, or any other thing, containing noxious weed material,	1 2 3
<b>[22]</b>	<b>Section 44 (h)</b>	4
	Omit the paragraph. Insert instead:	5
	(h) remove or destroy or cause to be removed or destroyed any thing in or about those premises that the inspector or authorised officer reasonably suspects to be noxious weed material or to be vegetable matter, or any other thing, containing noxious weed material,	6 7 8 9 10
<b>[23]</b>	<b>Section 47A Inspectors and others may inquire as to source or destination of noxious weed material</b>	11 12
	Omit section 47A (1). Insert instead:	13
	(1) An inspector or authorised officer who reasonably believes that a person has information that may assist in tracing or determining the source or destination of any matter that the inspector or authorised officer reasonably suspects to be noxious weed material may require the person to answer questions for that purpose.	14 15 16 17 18 19
<b>[24]</b>	<b>Section 68 Delegation by local control authorities</b>	20
	Omit “other than this power of delegation”.	21
	Insert instead “(other than this power of delegation) but only under this power of delegation”.	22 23
<b>[25]</b>	<b>Section 68, note</b>	24
	Insert at the end of the section:	25
	<b>Note.</b> Accordingly, a council may not delegate any of its functions as a local control authority under this Act under the council’s power of delegation under the <i>Local Government Act 1993</i> .	26 27 28
<b>[26]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	29
	Insert at the end of clause 2 (1):	30
	<i>Noxious Weeds Amendment Act 2012</i>	31

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<b>[27]    Schedule 2, clause 9</b>	1
Insert after clause 8:	2
<b>9    Existing orders and declarations under section 31</b>	3
(1)    In this clause:	4
<i>amending Act</i> means the <i>Noxious Weeds Amendment Act 2012</i> .	5
(2)    An order made in relation to agricultural machines under section 31 (2) and in force immediately before the substitution of that subsection by the amending Act is taken to be an order made in relation to machinery or equipment under section 31 (2) as so substituted.	6 7 8 9 10
(3)    Any declaration lodged or other thing done under and in accordance with section 31 (3) before its amendment by the amending Act is taken to have been lodged or done under and in accordance with that subsection as so amended.	11 12 13 14
<b>[28]    Dictionary</b>	15
Omit “a weed” from the definition of <i>noxious weed</i> . Insert instead “a plant”.	16