

Second reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [2.59 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The bill before the House today is about improving the management of noxious weeds in NSW and, in turn, better protecting land owners, their neighbours, the community and the environment from the damaging effects of noxious weeds.

The bill makes provision for improved regulatory powers to help minimise the risk of new weeds establishing in NSW, and for authorities to be able to more rapidly deal with the weeds if and when they arrive.

The *Noxious Weeds Amendment Bill 2012* will also strengthen the objectives of the Act and allow for special arrangements on Lord Howe Island.

The genesis of this bill was a statutory review of the *Noxious Weeds Act 1993* which was conducted in 2010.

The bill has been developed after extensive consultation with the community, industry, local government and State government organisations.

64 submissions were received.

Before I go any further I would like to clarify that a noxious weed is a plant that is subject to a weeds control order under the *Noxious Weeds Act 1993*.

The *Noxious Weeds Act 1993* provides the regulatory framework for controlling noxious weeds in NSW. The Act sets out various processes for declaring, classifying and controlling noxious weeds. It requires occupiers of land to notify and control noxious weeds on their land and establishes local control authorities who are responsible for the management of noxious weeds in their local area. In most cases, this is the council.

The Act provides for noxious weeds inspectors and authorised officers and sets out their powers.

The Act also makes provision for the establishment of the Noxious Weeds Advisory Committee. This Committee advises the Minister on all aspects of noxious weed management including declarations, allocation of grant funds, regulations under the Act and policy issues.

Weeds have a major impact on agricultural productivity and the environment in NSW. Weeds displace native species, contribute to land degradation and reduce farm and forest productivity.

Weeds are a very costly natural resource management problem for farmers.

The Australian Bureau of Statistics Natural Resource Management survey in 2006-2007 found that agricultural businesses in New South Wales spent \$933 million and 3 million days on weed, pest, land and soil activities.

It also found that weed management nationally comes at a cost of \$1.5 billion for Australian farmers.

The Report on the 2010 Statutory Review of the *Noxious Weeds Act 1993* recommended making a number of amendments to the Act to improve its effectiveness.

I now turn to these amendments in the bill.

The first proposed change is to strengthen the objectives of the Act so that they better reflect the current weed management policy and provide greater consistency with the NSW Invasive Species Plan.

Two amendments to the objects of the Act are proposed.

The first amendment is to extend objective 3 (a) (ii) to refer to preventing, eliminating and restricting the spread of both existing and new significant weeds.

The current section 3 (a) (ii) refers only to restricting the spread of existing significant weeds and makes no mention of prevention or elimination the spread of existing significant weeds.

The second amendment is to objective 3 (a) (iii) of the Act. Currently this section refers to reducing the area in this State of existing significant weeds.

While a reasonable objective "in principle" this measure is considered impractical, largely unachievable on a State scale, and not an appropriate indicator of how successful a weed control program has been.

In other words, while a successful program may reduce the density and impacts of certain weeds, the actual area affected by that weed may not be reduced.

This bill therefore replaces the current objective in section 3 (a) (iii) to instead include the stated objective of effectively managing widespread weeds in this State.

The next amendment in this bill is to clarify the area where a noxious weed is declared.

The clear intention of the Act is that a weed may be declared noxious in a specific area or areas. Section 7 (3) as currently worded though, is ambiguous and could be interpreted to mean that once a plant has been declared a noxious weed in any part of the State, that plant is a noxious weed across the whole State.

The bill proposes clarifying that a plant is considered to be a noxious weed only in the area to which the relevant weed control order applies.

The next amendment relates to a new Ministerial power to prohibit or regulate the bringing into NSW, or a specified part of NSW, noxious weed material or anything else that the Minister considers is likely to introduce noxious weed material into NSW or a specified part of NSW.

Unlike other NSW biosecurity legislation, the Noxious Weeds Act is currently extremely limited in its power to prevent the entry into NSW of high priority weeds, new weeds from other States and Territories, or weed material, produce or anything else that may be contaminated with these weeds or weed material.

The Act's focus is on weeds and weed material once they are in NSW. Currently, the only provisions in the Act that are concerned with weeds or weed material coming into NSW from other jurisdictions are the requirements to clean certain agricultural machines before they enter NSW from Queensland. These provisions are obviously limited in their application.

The bill proposes amending the *Noxious Weeds Act 1993* to allow the Minister, by order, to prohibit or regulate the bringing into NSW of noxious weed material or anything else that the Minister considers is likely to introduce noxious weed material into New South Wales. A person who fails to comply with such an order will be guilty of an offence with a maximum penalty of \$11,000.

This amendment is about protecting NSW producers and the environment from the unnecessary introduction of weeds to NSW.

Occupiers of land are legally required to control noxious weeds if that land is subject to a weed control order. However, the occupier may not necessarily be the land owner. The local control authority should have a mechanism whereby they can quickly establish who the occupier is. This will allow the local control authority to more efficiently fulfil its obligations under the Act.

It is proposed to enable a local control authority to, by written notice, require a private land owner whose land is subject to a weed control order, to provide the local control authority with the name and contact details of the occupier and a description of the land.

To make the amendment enforceable, the bill proposes making it an offence for failing to comply with any such requirement. The maximum penalty for this offence is \$2,200.

Under the Act, public authorities are already required to notify the local control authority of the name and contact details of an occupier of land that is owned by that public authority.

However, public authorities are not required to provide a description of the occupied land. To ensure consistency in the Act and improve the information provided to local control authorities, the bill also proposes that public authorities be required to provide a description of the land that is occupied by each occupier.

Another important amendment in this bill will help reduce the risk of noxious weeds spreading into NSW from Queensland and other jurisdictions.

Currently, under section 31 of the Act certain types of agricultural machines subject to an order under this section which are being used for their intended purpose must be produced for inspection at the border of Queensland and NSW. Before that machine can lawfully enter NSW, the border inspector must certify that the machine has been cleaned as legally required.

Currently this includes grain harvesters, comb trailers, grain harvesting bins, augers and associated transport and pilot vehicles.

There are, however, a large number of mining exploration machines, and other machines and

equipment, moving from Queensland into NSW with high potential to spread noxious weeds such as parthenium into NSW.

It is therefore proposed to amend the Act so that an order can apply to machinery and equipment more generally, not just to agricultural machines and to machinery and equipment coming into NSW from any other State or Territory rather than just from Queensland.

Other State and Territories have noxious weeds that may, in the future, be found to be spreading into NSW via mining machinery, for example. This amendment will allow action to be taken to require the cleaning and inspection provisions to apply in such circumstances.

It then follows that inspector's powers to require the treatment of agricultural machines to remove any notifiable weed material should be extended to "machinery and equipment" in general. It is also considered necessary that the offence of knowingly transporting, moving or using an agricultural machine containing notifiable weed material be applied to all machinery and equipment. The bill includes such amendments.

The bill also includes some amendments relating to weed management on Lord Howe Island.

The Lord Howe Island Group was world heritage listed in 1982 in recognition of its outstanding natural beauty and its exceptional biodiversity.

The vegetation of Lord Howe Island is unique in that nearly half of its plant species do not occur anywhere else in Australia.

It would be advantageous to declare certain plant species as Class 2 weeds on Lord Howe Island so as to protect the unique flora and status of the island. Class 2 weeds are those that pose a potentially serious threat to primary industries or the environment and are not present in or, are present only to a limited extent in a region.

However, once a plant is declared a Class 2 weed anywhere in NSW, certain sections of the Act are triggered in relation to that plant that apply across the whole State. For example, it is an offence to sell or purchase any Class 2 weed material knowing it to be a notifiable weed anywhere in the State. It is also an offence to sell soil, turf or fodder from land if the person knows that there is a weed on that land that is notifiable anywhere in the State; and it is an offence to knowingly transport, use or move machinery or equipment containing a weed that is notifiable anywhere in the State.

These offences apply anywhere in New South Wales, even if the plant is only declared to be a noxious weed on Lord Howe Island and is widespread on mainland New South Wales.

For the most part this is considered appropriate given the seriousness of Class 2 weeds. However, given the uniqueness of Lord Howe Island vegetation and its geographic isolation from mainland New South Wales, a mechanism is required to allow the Minister to declare a plant as a Class 2 weed on Lord Howe Island only while ensuring that a person, class of person, premises, machinery or equipment on mainland NSW can be exempt from certain provisions if considered appropriate.

The bill includes a power for the Minister to make such exemptions.

The statutory review concluded that there are insufficient powers in the Act to allow the investigation, management, identification and trace-back of suspected noxious weed

material—for example, where there are no leaves, spines or branches to allow immediate identification of a plant species.

Currently, the Act gives inspectors various powers to investigate, manage, identify and trace-back noxious weed material and material containing noxious weed material, but no powers in relation to material suspected of being or containing noxious weed material.

In practice, it can be difficult to identify certain plant material, such as seed in fodder and grain, and bare plant branches used by florists.

These materials often need to be propagated until they become reproductive to allow definitive identification.

This inefficiency will be overcome by amending the Act to extend the powers of inspectors to also enable them to examine, seize, detain, remove or destroy any thing that the inspector reasonably suspects to be or to contain noxious weed material.

I wish to make it clear here, that the only powers of inspectors that are to be extended are those related to dealing with noxious weeds. It does not include extending inspectors' powers of entry to a property or premises. These powers of entry remain unchanged.

A further amendment to the Act allows inspectors to take samples of anything that the inspector reasonably suspects to be or to contain noxious weed material and to take photographs or video recordings of any such thing.

These improvements will greatly assist inspectors in identifying and tracing noxious weeds.

The Act does not expressly provide that inspectors have the power to take photographs and video recordings when investigating noxious weed matters.

These modern technologies are an essential tool in measuring and documenting weed spread. Taking photos is a much more efficient way of capturing the spread of weeds than manual plotting on a graph.

They are also an objective and defensible way of documenting weed presence during property inspections. Therefore, it is appropriate that the Act is amended to make it clear that inspectors can take photographs and video recordings for the purposes of the Act.

The bill also includes an amendment to empower inspectors to require people to answer questions for the purpose of assisting the source or destination of suspected noxious weed material to be traced.

The Act currently states that inspectors can only require people to answer questions if they reasonably believe it will enable them to trace the source or destination of actual noxious weed material.

The Act currently does not require questions to be answered in relation to suspected noxious weed material. Also, the power is limited to situations where the inspector reasonably believes the answer may enable the source or destination to be traced.

The amendment in this bill extends this important power to situations where the inspector reasonably believes that the answer may assist with the tracing of the source or destination of

the material in question.

Finally, the bill includes an amendment that will streamline and simplify delegation functions under the Act.

Currently, local councils have been delegating certain functions in the *Noxious Weeds Act 1993* pursuant to the delegation powers contained in either the *Noxious Weeds Act 1993* or the *Local Government Act 1993*.

For consistency and clarity, the bill includes an amendment that ensures that functions under the *Noxious Weeds Act 1993* can only be delegated under that Act and cannot be delegated under the *Local Government Act 1993*. This will ensure that inspectors are not appointed under the *Local Government Act*.

This bill proposes amendments to the *Noxious Weeds Act 1993* to improve weed control and management across the State. They are sensible amendments which will deliver benefits to NSW landowners and the community.

By taking action to address weeds, we can also improve agricultural sustainability and food security, primary industry productivity, the survival of threatened and endangered plants and animals, and deliver broad environmental benefits.

I commend the bill to the House.