NSW Legislative Council Hansard

Noxious Weeds Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 2 March 2005.

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.00 p.m.]: I move:

That this bill be now read a second time.

Weeds have a major impact on agricultural productivity and the environment in New South Wales. The Co-operative Research Centre for Australian Weed Management reports that weeds cost Australia in excess of $4 billion annually. New South Wales bears a proportionate share of this cost. To address the problems noxious weeds present, a concerted effort is needed from all stakeholders. Although the majority of landholders are vigilant and conscientious about weed management responsibilities, a proportion is not. The bill will allow landholders to better meet their land management obligations, and protect their neighbours, the community and the environment from the damaging effects of noxious weeds. The bill creates a much-needed flexibility to accommodate weed management practices as they change over time. It makes provision also for improved regulatory powers to restrict the opportunity for new weeds to establish in New South Wales, and for authorities to deal rapidly with weeds if they arrive.

The bill is the result of extensive consultation with the community, industry, local government and State Government organisations. The genesis of the bill was a comprehensive review of the Noxious Weeds Act 1993 in 1998. The review group was made up of representatives from the Local Government Association, the Shires Association, the New South Wales Farmers Association, the Nature Conservation Council, rural lands protection boards, Total Catchment Management, the National Trust, and the Department of Land and Water Conservation. An initial review of the Noxious Weeds Act 1993 involved a thorough and open consultation process that resulted in the receipt of more than 100 submissions. The review group took due account of these responses in making its final recommendations. A number of concerns were raised, particularly relating to the responsibilities of public authorities, the precedence of noxious weed legislation over other Acts, the use of weed management strategies to replace orders, joint-occupier responsibility, monitoring and reporting requirements, and other minor issues.

The staff of the Department of Primary Industries has been diligent in consulting with their opposite numbers in other organisations to ensure that their concerns and needs have been considered. The review met three broad requirements. The first was a statutory requirement that the Noxious Weeds Act 1993 be reviewed as soon as possible after five years from the date of its assent, which was 4 March 1993. The second was to continue the New South Wales Government's ongoing program of red tape reduction and regulatory reform. The third was to fulfil the New South Wales Government's commitment to review legislation that may impact on competition under the Competition Principles Agreement. In preparing the bill the importance of ensuring that the amendments were consistent with the objectives of national weed management was also recognised. Where possible the bill is consistent with the nine core principles of State and Territory weed legislation as set out by the Australian Weeds Committee.

Furthermore the House should note that weeds regulation in other States often is incorporated into broader land management legislation. Where practicable the bill has been developed to be consistent with the objects, functions and powers of that legislation. I will now turn to the findings of the review group. The final report identified several problems with the Act. Some of these problems included competition policy issues, in particular problems with supply of materials and equipment by local control authorities. The inherent ability in the current Act for a local control authority to artificially subsidise the cost of these services is contrary to the competition policy. This issue has been fully addressed in the Local Government Amendment (National Competition Policy Review) Act 2003. In response to the concerns of the review group the bill removes these provisions from the Act. A number of other amendments are required also to give effect to the recommendations of that review group.

The existing methods for declaring noxious weeds and defining weed control requirements are quite inflexible. Put simply, they do not address contemporary land and weed management practices. In most cases methods for controlling noxious weeds are limited to continuously suppressing and destroying weeds. However, contemporary land and weed management practices mean that noxious weeds can be controlled effectively by alternative methods. These techniques either address the cause of the weed problem or provide effective control using a range of techniques. For example, maintaining a dense pasture through improvement and grazing management can provide competition for weeds, reduce the level of infestation and reduce the opportunity for weeds to invade further. Other methods can include revegetation, farm forestry, and the establishment and maintenance of biological control agents. All these new methods avoid the need for continuous herbicide application, which can be expensive and can lead to the replacement of the existing weed with just another weed.

The other major advantage of these new land and weed management practices is that desirable competitive species are allowed to develop. To support this new approach, and to better reflect the significant danger that noxious weeds represent to pasture productivity and the environment, the bill replaces the existing categories of noxious weeds. New categories known as "control classes" have been created. The Government is committed to involving the community in this new approach. That is why the bill ensures that weed control orders, other than emergency weed control orders, will be subject to public consultation. The Act makes no provision for this type of public consultation. Weed control orders will continue to be declared by ministerial order, as is currently the case. Other changes to the order-making provisions provide for

increased flexibility in the management practices that can be used to control weeds. In some cases, particularly with common and widespread weeds, true long-term weed control will be achieved only through changed land management practices. As I noted earlier, special provision has been made in the bill for the making of emergency weed control orders. In addition, powers for local control authorities to deal with emergency noxious weeds also have been provided for.

Emergency weed control orders will be effective for up to three months. In some situations, the threat of the spread of a weed incursion may warrant immediate action. As such, the Minister responsible will have the power to waive the public consultation requirements for the making of these orders, if necessary. The bill provides that special emergency powers may be used in relation to emergency weed control orders. This means that a local control authority will be able to take emergency action to control noxious weed infestations where the circumstances justify such action. I am pleased to put on the record that after I have been speaking for 10 minutes, a member of The Nationals, the Hon. Melinda Pavey, has finally arrived in the Chamber.

Reverend the Hon. Dr Gordon Moyes: What about Madam Deputy-President?

The Hon. IAN MACDONALD: The Hon. Jennifer Gardiner is required to be present in her capacity as Deputy-President. I was referring to the absence of members of The Nationals on the Opposition backbench. I am not sure that the Hon. Jennifer Gardiner is still in The Nationals.

Mr Ian Cohen: Perhaps you should refer to weeds at this point.

The Hon. IAN MACDONALD: I am sure Mr Ian Cohen is enthralled. Where practicable, local control authorities will be required to give notice to the owner or occupier before entering a property to carry out work. In accordance with the existing provisions in the Act, this notice will have to be in writing. However, in a situation where an incursion of a particularly virulent weed not previously present in this State is detected on land and contact cannot be made with either the owner or occupier of that land, the fact that notice has not been given will not prevent a local control authority from entering the land to carry out work. The bill provides that the cost of such work will be recoverable by a local control authority from the owner or occupier of the land.

The bill also makes provision for the joint management of weeds by local control authorities. This will mean more effective weed control through joint arrangements between local control authorities and other persons or organisations. For example, under the current Act local control authorities have the power to inspect land for noxious weeds. Similarly, under the Rural Lands Protection Act 1998 rural lands protection boards have the power to inspect land for animal pests. The bill allows local control authorities and rural lands protection boards to enter into joint arrangements in respect of the inspection of land under the Noxious Weeds Act 1993. This will significantly increase efficiency between the agencies in terms of time and money.

Mr Ian Cohen: They already have that power.

The Hon. IAN MACDONALD: I will repeat what I said, and then Mr Ian Cohen will probably withdraw his comment. The bill allows local control authorities and rural lands protection boards to enter into joint arrangements in respect of the inspection of land under the Noxious Weeds Act 1993. The bill increases equity in weed management by giving landholders as well as occupiers responsibility for noxious weed management.

Mr Ian Cohen: They have always had that power.

The Hon. IAN MACDONALD: Rural lands protection boards control animal pests.

Mr Ian Cohen: And noxious weeds.

The Hon. IAN MACDONALD: Previously, it was just the occupier who was responsible for weed management on land. However, because weed invasion is recognised as a major contributor to land degradation, it is an issue that needs to be addressed at all levels. Some landholders shy away from their land management responsibilities by passing them on to other people, such as the tenants of their land. The bill ensures that landowners cannot totally ignore their land management responsibility to keep their land free from noxious weeds. Another matter that the bill deals with is the provision of information about weeds and weed control activities by local control authorities to government. Proper weed management is often frustrated by the lack of information on the presence and extent of noxious weed infestations and the actions being taken to control them. Without this information, it is extremely difficult to effectively plan weed management, allocate resources or to measure the success of weed control operations.

The bill provides that local control authorities must collect and record this information and prepare reports about weed-related matters for the New South Wales Government when requested to do so. This requirement is not onerous as local control authorities already collect this information to report for other purposes, such as preparing state of the environment reports. The New South Wales Government provides more than $7 million in noxious weed grants annually to local control authorities to assist them with their functions under the Act. It is, therefore, reasonable to expect recipients to maintain these records. The Minister for Primary Industries provides these grants for noxious weed control. However, the current Act is unnecessarily restrictive in allowing these grants to be made to assist organisations in carrying out their obligations under the Act. The bill broadens this function to allow grants to be made to further the objects of the Act.

Local control authorities are the front line for weed management in New South Wales. If they fail to fulfil their obligations, the effects on productivity and the environment can extend well beyond the boundaries of their local control authority. Lack of action by one local control authority cannot be allowed to threaten the broader weed management programs being

implemented in neighbouring areas. The bill makes provision for the Minister responsible to direct a local control authority to exercise its functions under the Act, and to exercise those functions where the local control authority does not comply with the direction. In order to exercise this power to its full extent, the bill provides that the Minister must first consult with the Minister for Local Government or some other responsible Minister. This will ensure that this provision is used only in very limited circumstances and generally only after no other option is available.

This provision is consistent with those given to the Minister for Primary Industries in part 14 of the Rural Lands Protection Act 1998 and to the Minister for Infrastructure and Planning in the Environmental Planning and Assessment Act 1979. In 2004-05, only 4.7 per cent of noxious weed grants were allocated to administration, down from 6 per cent in 2003-04. Administration costs of local councils, other than county councils, are specifically excluded from receiving noxious weed grants. The majority of the funds go to the special function of local control authorities as outlined in section 36 of the current Act. These remain unchanged under the bill's amending provisions. The bill also deals with the movement of weeds in seeds, fodder and turf on machinery and other equipment. This is a major source of the spread of noxious weeds.

The bill provides an effective means of controlling this route of spread, in particular for those weeds that are not yet in New South Wales or that have limited distribution but that have a high potential impact. This is achieved in two ways. First, the weed control order declaring noxious weeds may, in the methods for control and the obligations, specify such measures as need to be taken to prevent further spread. Second, the provisions of the Act have been strengthened to limit the spread of materials containing noxious weeds and the deliberate selling of noxious weeds or materials containing these weeds. For example, alligator weed, although common in some parts of the State, occurs in only a very few small patches in the Wah Wah Irrigation District near Griffith. There is a very real possibility that this weed could be carried on agricultural and earthmoving machinery from its current sites into the rest of the inland irrigation districts in New South Wales. This would have a devastating effect on the rice industry and on the environment of our inland rivers.

Further examples are the transfer of golden dodder in pasture seed and mesquite in the rumens of livestock to clean areas. I am sure the Hon. Melinda Pavey knows a lot about "dodders", especially the golden variety! I could certainly educate her about some of the "dodders" in The Nationals. Some of these weeds are currently regulated under the Seeds Act 1982. Some of the restrictions on the weed seed content of seed offered for sale for sowing, which are in the Seeds Act 1982, are still needed and have been endorsed by industry. It is proposed that these provisions will now be provided for under the amended Noxious Weeds Act 1993. The bill places strong obligations on public authorities by requiring them to manage noxious weeds to the level necessary to prevent them from spreading to adjoining lands. It is entirely appropriate that this obligation should be strong but different from that of private land managers. In New South Wales, there is an extensive system of conservation areas such as national parks, State forests, conservation areas and other Crown lands.

The majority of these areas are managed to protect and conserve a wide variety of native plants and animals and for cultural heritage purposes. The State of New South Wales has a statutory responsibility to manage and protect these reserves for these purposes. The majority of noxious weeds are currently declared under the Noxious Weeds Act 1993 because of their potential effect on agricultural production. In many cases, these weeds have little overall impact on the purpose for which the public lands are managed. Both the Noxious Weeds Act and the National Parks and Wildlife Act require weed control programs to be undertaken to mitigate the impacts of weeds. However, the National Parks and Wildlife Act also imposes constraints on the management practices that can be employed in these areas so that the impacts on native plants and animals are minimised. In addition, the nature of the land itself—commonly very large areas, heavily vegetated and often rugged—makes effective control of most declared noxious weeds impossible in practical terms.

Put simply, requiring public authorities to control all noxious weeds to the same extent as private landholders is not necessary to prevent spread to adjoining lands and unrealistically raises public expectations. The bill does not seek to alter the obligations or arrangements that currently apply on public land that runs through or that adjoins areas of private land. Private landholders will continue to be responsible for weed control on any unfenced public land holdings on their property in the same way that they are required to control weeds on any other area of occupied land. Similarly, the relevant public land managers will continue to be responsible for meeting their weed control obligations on fenced areas and local authorities will be for roads. The remaining matters dealt with by the Seeds Acts 1982 are now covered by a comprehensive code of conduct that has been developed in conjunction with the Seed Industry Association of Australia. As such, the Seeds Act 1982 can now be repealed.

The provisions in the Act that allowed local control authorities to provide materials, equipment and services to landholders for noxious weed control were identified as being contrary to national competition policy. The bill removes these provisions. This issue has been further addressed in the national competition policy review of the Local Government Act 1993. The Local Government Act allows local government to charge fees for services provided, including some that may relate to their noxious weed control functions. So, in order to ensure that the objectives of the Noxious Weeds Act are not frustrated by the charging of excessive fees, it is proposed that some of these charges be regulated. Another change to the Act relates to aquatic weeds. These weeds are amongst the most devastating and difficult to manage noxious weeds in the State. Aquatic weeds or floating weeds are moved by wind, tides and stream flow and cannot always be determined as any particular person's responsibility.

The Act places the obligation for control of these weeds on the landholder who owns property adjoining the waterway. So, while allowing a local control authority to exempt landholders from these responsibilities in certain circumstances, the Act does not enable the weed control responsibilities to be transferred to another party. The bill provides that the weed control responsibilities in these specific cases are transferred to the local control authority. The bill includes other important changes that are designed to improve the operation of the Act. I will now take the House through each of them. Some changes have been made to include "owner" as well as "occupier" to cover the changes brought about by the bill. Other changes to remove the powers of the Minister for Primary Industries relating to enforcement of weed control on private lands have also been made. These powers are no longer needed as they duplicate local control authorities' powers—real

devolution.

Other minor changes that have been made relate to the people who may sign certificates of authority as well as to how a weed control order may be served. Changes to the procedures for serving weed control notices have been made in the interest of efficiency and procedural fairness and to align this Act with similar provisions in the Rural Lands Protection Act 1998. The bill provides for local control authorities to retain the power to serve weed control notices and to enforce those notices. However, the local authorities will now be required to inform the owner or occupier of their intention to serve the notice. Intended recipients will then have the opportunity to respond and make submissions to the local control authority about the matter. It is proposed that the bill will commence on a day or days to be appointed by proclamation. This delay is necessary for a number of reasons.

The first is to ensure that before the Seeds Act is repealed proper provision is made in the Noxious Weeds Act and the Plant Diseases Act to prohibit the sale and spread of species of weed seeds. The second is to ensure that the existing declared noxious weeds lists are re-evaluated so that the new weed control orders are a true reflection of current needs. In summary, I believe the bill introduces a number of significant reforms that will greatly improve noxious weed management in New South Wales. It provides a balance between the need to require noxious weed control to protect our productive and environmental resources and the needs of the community for a management system that allows consideration of contemporary techniques. I commend the bill to the House.