

Noxious Weeds Amendment Bill 2004

New South Wales

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Noxious Weeds Act 1993* (the **Principal Act**) as follows:

- (a) to broaden the objects of the Principal Act to take into account the impact of noxious weeds on the economy, community and environment of the State,
- (b) to replace the existing weed control orders made by the Minister for Primary Industries (the **Minister**) and control categories for noxious weeds with orders made by the Minister that permit a broader range of control measures to be used, together with a new classification system for noxious weeds,
- (c) to make amendments to the Act to cover the classification of seeds and plants previously dealt with under the *Seeds Act 1982*,
- (d) to require public consultation before weed control orders are made,
- (e) to provide for emergency weed control orders and emergency weed control notices,
- (f) to extend to owners of land who do not occupy land, as well as occupiers of land, obligations to comply with weed control notices issued by local control authorities when occupiers fail to comply with weed control orders,
- (g) to enable occupiers of land to be exempted from obligations under the Principal Act to control aquatic weeds and to confer those obligations on local councils and other bodies that are local control authorities,
- (h) to require prior notice to be given before a weed control notice is given to an owner or occupier by a local control authority,
- (i) to replace the Minister's power to give a local control authority a weed control notice to enforce its general obligations under the Principal Act with a power to direct a local control authority to carry out its functions and to enable the Minister to appoint a weed control administrator for a local control authority,
- (j) to reduce the time within which an appeal may be made to the Land and Environment Court against a weed control notice and to enable the Court to order that the notice continues to have effect while the appeal is proceeding,
- (k) to prohibit the sale of fodder from land on which there are notifiable weeds,
- (l) to enable the Minister to make grants of money, out of money appropriated by Parliament, to further the objects of the Act,
- (m) to require local control authorities to keep certain records and report to the Director-General of the Department of Primary Industries (the **Director-General**) on noxious weed control,
- (n) to amend the powers of inspectors and authorised officers,
- (o) to make it clear that local control authorities may enter into agreements or arrangements with other persons or bodies for the exercise of the authorities' functions under the Principal Act,
- (p) to enable regulations to be made with respect to fees or charges for services provided under the Principal Act,
- (q) to make other minor and consequential amendments and provisions of a savings or transitional nature.

The Bill also repeals the *Seeds Act 1982* and the *Seeds Regulation 1994*.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Noxious*

Weeds Act 1993 set out in Schedule 1.

Clause 4 repeals the *Seeds Act 1982* and the *Seeds Regulation 1994*.

Clause 5 removes a reference to the *Seeds Act 1982* from the *Fair Trading Act 1987*.

Schedule 1 Amendments

Objects of Act

Schedule 1 [1] substitutes section 3 of the Principal Act and broadens the objects of the Principal Act to take into account the impact of noxious weeds on the economy, community and environment of the State.

Weed control orders and noxious weed classification

Currently, plants are declared, by order of the Minister published in the Gazette, to be noxious weeds. The order applies a control category to the noxious weed and the Principal Act specifies the level of weed control that applies to each category. The amendments replace this system.

Schedule 1 [2] substitutes Part 2 of the Principal Act. The new Part contains the following provisions:

Proposed section 7 enables the Minister, by order published in the Gazette, to make a weed control order for a specified plant. The order is to declare the plant to be a noxious weed, apply a weed control class or classes to it and specify where the order applies, the control measures that may be used to control the plant, the control objectives for the plant and the term of the order (being not more than 5 years).

Proposed section 8 sets out the weed control classes, which are grouped according to level of threat on a State, regional or area basis and their level of distribution. There is also a class of weeds characterised by being likely, either by their sale or by sale of their seeds or movement throughout the State, to spread in the State or outside the State (this class reflects plants previously regulated under the *Seeds Act 1982*).

Noxious weeds classified as Class 1, State Prohibited Weeds, Class 2, Regionally Prohibited Weeds or Class 5, Restricted Plants, are **notifiable weeds** for the purposes of the Principal Act.

Proposed section 9 requires the Minister to cause a public consultation procedure to be undertaken before a weed control order is made. The procedure includes notice of a proposed order in a newspaper, public exhibition of the proposed order and the opportunity for the public to make submissions on the proposed order.

Proposed section 10 enables the Minister to make an emergency weed control order if of the opinion that the threat posed by a plant requires the order to be made.

Schedule 1 [34], [36] and [38] make consequential amendments.

Noxious weed control on land

Schedule 1 [3] substitutes sections 12–14 of the Principal Act.

Proposed section 12 re-enacts the current requirement for occupiers (other than public authorities or local control authorities) of land subject to weed control orders to control noxious weeds, with changes to reflect the repeal of control categories and the changes to the content of weed control orders.

Proposed section 13 re-enacts the existing obligations of public authorities to control noxious weeds, with changes to reflect the repeal of control categories and the changes to the content of weed control orders.

Proposed section 14 re-enacts the existing obligations of local control authorities to control noxious weeds, with changes to reflect the repeal of control categories and the changes to the content of weed control orders.

Schedule 1 [4] repeals sections 17 and 18 and inserts proposed sections 17–18A into the Principal Act.

Proposed section 17 re-enacts the existing obligations of occupiers of land to control noxious weeds on roads that intersect their land or form part of the boundary of the land.

Proposed section 17A re-enacts the existing obligations of occupiers of land to control noxious weeds on watercourses, rivers or inland waters (tidal or non-tidal)

that are part of or situated beside the land, as well as the obligations of occupiers on opposite sides of watercourses, rivers or inland waters (tidal or non-tidal) with respect to noxious weeds on or in the water. The proposed section also enables the Director-General, by order published in the Gazette, and the Minister (in a weed control order) to exempt an occupier, a noxious weed or a watercourse, river or inland water from those provisions. In the case of an exemption, the local control authority is to be responsible for the control of the noxious weeds.

Proposed section 17B re-enacts the existing obligations of occupiers of land in irrigation areas to control noxious weeds on roads, public reserves or channel land that intersects their land or forms part of the boundary of the land. However, the obligations are to apply only to public roads and do not apply to channel land that is not occupied by a public authority.

Proposed section 18 enables a local control authority to issue a weed control notice, requiring an owner or occupier of land to control noxious weeds on the land, as required under a weed control order applying to the land. The time for compliance is to be not less than 14 days but an emergency weed control notice (given after an emergency weed control order) may specify a time for compliance that is not less than 24 hours. A local control authority may not give a weed control notice to a public authority or another local control authority.

Proposed section 18A requires a local control authority to give not less than 7 days' notice of a proposed weed control notice, except in the case of an emergency weed control notice.

Schedule 1 [5] makes it an offence under section 19 of the Principal Act for an owner of land, or a successor in title to an owner, to fail to comply with a weed control notice.

Schedule 1 [6] substitutes section 20 of the Principal Act. The proposed section re-enacts the existing powers of local control authorities to control noxious weeds on land subject to a weed control notice, with changes to reflect the repeal of control categories and the changes to the content of weed control orders. It also provides that the requirement for 24 hours' notice does not apply if an emergency weed control notice has been given.

Schedule 1 [7] substitutes sections 22–26.

Proposed section 22 enables the Minister to issue a weed control notice, requiring a public authority that is an occupier of land or local control authority that is the owner or occupier of land to control noxious weeds on the land, as required under a weed control order. The time for compliance is to be not less than 14 days but an emergency weed control notice (given after an emergency weed control order) may specify a time for compliance that is not less than 24 hours. The section does not contain the existing power of the Minister to issue a weed control notice to occupiers who are not public authorities.

Proposed section 23 enables the Minister to control noxious weeds on land subject to a weed control notice issued by the Minister. It also provides that the requirement for 24 hours' notice does not apply if an emergency weed control notice has been given.

Proposed section 24 confers on the Minister power to direct a local control authority to comply with or carry out or give effect to provisions of the Principal Act within a specified period. The Minister is empowered to appoint, with the approval of the Minister administering the *Local Government Act 1993*, a weed control administrator for a local control authority if the Minister is of the opinion that the authority has failed to comply with any such direction or failed to comply with or carry out or give effect to or enforce provisions of the Principal Act. The administrator may exercise the functions of the authority under the Principal Act and any necessary ancillary functions.

Proposed section 25 re-enacts the existing right of a person (other than a public authority or a local control authority) to appeal to the Land and Environment Court

against a weed control notice, but permits the notice to specify the period for making an appeal (being not less than 7 days) and, if no period is specified, retains the existing period of 28 days. Pending final determination of the appeal, the operation of the notice is suspended unless the Court orders that the notice continues to have effect.

Proposed section 26 re-enacts the existing provisions relating to recovery of expenses by the Minister and local control authorities and makes necessary changes as a result of the extension of obligations under the Principal Act to owners.

Schedule 1 [16], [22] and [26] make amendments consequential on the extension of obligations under the Principal Act to owners.

Schedule 1 [23] extends the procedure under section 65 of the Principal Act for resolving disputes between the Minister, other Ministers responsible for public authorities and local control authorities to disputes arising out of directions given to local control authorities by the Minister.

Schedule 1 [24] makes an amendment consequential on the amendment made by Schedule 1 [7].

Schedule 1 [33] and [37] make amendments to definitions of terms as a consequence of the enactment of proposed section 17B.

Offences

Schedule 1 [9] amends section 29 of the Principal Act to make it an offence to use or permit land to be used for the purpose of disposing of, transporting or selling fodder, if the occupier knows, or ought reasonably to know, there is a notifiable weed on the land. **Schedule 1 [12]** makes a consequential amendment.

Grants of money

Schedule 1 [11] substitutes section 33 of the Principal Act. The proposed section re-enacts provisions containing the general weed control functions of the Minister under the Principal Act and also enables the Minister to make grants of money to further the objects of the Principal Act.

Records to be kept by local control authorities

Schedule 1 [17] repeals an unnecessary provision and inserts proposed section 37. The proposed section requires local control authorities to keep records of the presence and distribution of noxious weeds in their local area and of the implementation of their weed control policies and programs and other matters that may be prescribed by the regulations. It also enables the Director-General to require local control authorities to report on those matters.

Powers of inspectors and authorised officers

Schedule 1 [18] re-enacts section 39 of the Principal Act, which contains the general weed control functions of inspectors. It also re-enacts section 40 which contains a power for an inspector to require a person in charge of an agricultural machine to treat the machine immediately if the inspector reasonably suspects that a notifiable weed is or may be in the machine. This power is also now extended to notifiable weed material.

Schedule 1 [19] amends section 44 of the Principal Act to enable inspectors and authorised officers who have power to enter premises to remove or destroy vegetable matter and other matter containing noxious weed material.

Schedule 1 [20] replaces the requirement in section 45 of the Principal Act to specify in a notice of entry given by an inspector or authorised officer the day on which the premises are to be entered with a requirement to specify the day or the period within which entry will take place.

Schedule 1 [21] replaces the requirement in section 50 of the Principal Act to have a certificate of authority of an inspector or authorised officer signed by a prescribed officer with a requirement that it be signed by the Director-General or the General Manager of a local control authority.

Arrangements by local control authorities

Schedule 1 [25] re-enacts section 69 of the Principal Act. The proposed section extends the powers of local control authorities to enter into arrangements with other persons or bodies as to the exercise of functions of the authorities by those persons or bodies.

Other minor amendments

Schedule 1 [8] corrects an outdated reference to a Government Department.

Schedule 1 [10] amends section 31 of the Principal Act to remove an incorrect reference to inspection.

Schedule 1 [13] and [14] change the ground for declaring a quarantine area under section 34A of the Principal Act from the purpose of controlling or preventing the spread of specified W1 or W2 noxious weeds to controlling or preventing the dispersal of Class 1 or Class 2 weeds.

Schedule 1 [15] re-enacts section 36 of the Principal Act, which contains the general weed control functions of local control authorities.

Schedule 1 [27] amends section 73 of the Principal Act to permit regulations to be made with respect to the fees or charges payable for services provided under the Principal Act or regulations under that Act.

Schedule 1 [28] omits a superseded section.

Schedule 1 [29] updates an outdated reference.

Schedule 1 [30 and [31] amend Schedule 2 to the Principal Act to enable the making of regulations of a savings or transitional nature consequential on the enactment of the proposed Act.

Schedule 1 [32] contains transitional provisions.

Schedule 1 [35] updates the title of the Director-General.

Schedule 1 [36] inserts new definitions of *emergency weed control notice*, *emergency weed control order*, *public channel land* and *weed control order* for the purposes of the Principal Act.

Schedule 1 [39] inserts a new definition of *weed control notice* for the purposes of the Principal Act.