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Noxious weeds

by

Daniel Montoya

NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),
Manager, Politics & Government/Law (02) 9230 2356

Lenny Roth (BCom, LLB),
Senior Research Officer, Law..... (02) 9230 3085

Daniel Montoya (BEnvSc (Hons), PhD),
Research Officer, Environment/Planning (02) 9230 2003

Nathan Wales (BSc/BA, PhD)
Research Officer, Environment/Planning (02) 9230 2906

Talina Drabsch (BA, LLB (Hons)),
Research Officer, Social Issues/Law (02) 9230 2484

Lynsey Blayden (BA, LLB (Hons))
Research Officer, Law (02) 9230 3085

John Wilkinson (MA, PhD), Research Officer, Economics (02) 9230 2006

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SUMMARY

The *Noxious Weeds Act 1993* regulates noxious weeds in NSW. These weeds have significant economic, environmental and social impacts for the State. Noxious weed control activities are undertaken by the NSW Government, local governments, industry and the community.

In February this year, the NSW Government introduced the Noxious Weeds Amendment Bill 2012 to amend the *Noxious Weeds Act 1993*. The Bill contains amendments designed to strengthen the preventative and investigative measures contained in the Act. The Bill also sets out clarifications to several administrative functions.

Weed classifications

A weed is any plant that requires some form of action to reduce its effect on the economy, the environment, human health and amenity. Each Australian State and Territory has its own list of noxious weeds. In NSW, weeds are listed as noxious weeds under the *Noxious Weeds Act 1993* if they cause, or have the potential to cause, significant harm to the economy, environment and/or community. **[2.1]**

Weeds may be listed on one or more of four national weeds lists. The Weeds of National Significance list identifies 20 introduced plants considered to be the worst weeds in Australia because of their invasiveness, potential for spread, and economic and environmental impacts. **[2.2.1]** The other three lists are: the National Environmental Alert List of weeds; Sleeper Weeds; and Species targeted for eradication. The weeds listed in each of these four lists are identified in Appendix 1. **[2.2]**

Weeds in NSW

Currently, weeds make up more than 20% of the flora of all regions of NSW. A 2006 survey of weeds in NSW identified a total of 1,386 species. Of these, 190 are listed under the *Noxious Weeds Act 1993*. Weed Control Order 28, made under the Act, classifies these weeds under one or more of the five classes of noxious weeds and, in the case of Classes 2, 3 and 4, identifies all the local control authority areas to which the control order applies. 16 of the 20 Weeds of National Significance are found in NSW. The distribution of established, new and emerging weeds is generally highest in NSW's coastal regions. **[3.1]**

The economic impact of weeds in NSW and/or Australia has been estimated on a number of occasions. According to the Co-operative Research Centre (CRC) for Australian Weed Management, in 2004 the total financial cost of on-farm weed control in Australia was estimated at being between \$1,365 and \$1,519 million. Production losses from weeds were estimated at \$2,218 million. **[3.3.1]** In 2006/07, the ABS found that 90.9% of surveyed NSW agricultural businesses reported weed related activities. Together, these agricultural businesses spent \$475 million per year on weed control activities, equivalent to \$10,986 per agricultural business. **[3.3.2]** In 2007, weeds were estimated by the CRC for Australian Weed Management to have cost agricultural production across

Australia \$4 billion per year. In 2011, the Local Government & Shires Association stated that weeds cost NSW over \$1.2 billion in lost production and control costs every year. **[3.3]**

Weeds pose a significant threat to NSW biodiversity. Weeds feature in seven key threatening processes listed under the *Threatened Species Conservation Act 1995* (NSW) and two key threatening processes listed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). A 2006 study of the impacts of weed on biodiversity in NSW found that 419 threatened species, populations and ecological communities in NSW were threatened by weeds. 127 weed species, or 9% of all weeds identified in NSW, were found to constitute a threat to threatened species, populations and ecological communities. Of the 127 species, 50 were listed on the *Noxious Weeds Act 1993* in 2006. **[3.4]**

NSW legislation

The key statutory instruments regulating noxious weeds in NSW are the *Noxious Weeds Act 1993* and the *Noxious Weeds Regulation 2008*. The Act sets out responsibilities for the Minister for Primary Industries, Local Control Authorities (local councils) and land owners and occupiers. It also sets out the powers of authorised officers for undertaking weed control activities. Provision is made for the Minister to make weed control orders for specific plants. Weed Control Order 28 classifies 190 weeds under one or more of the five classes of noxious weeds. It also sets out the weeds listed under each class and, in the case of Classes 2, 3 and 4, identifies all the local control authority areas to which the control order applies. **[4.1 & 4.2]**

Other NSW statutory instruments with relevant provisions are identified, including: the *Crown Lands Act 1989*; the *Pesticides Act 1999*; and the *Threatened Species Conservation Act 1995*. **[4.3]**

NSW legislative reforms

In 2010, the NSW Government released a Statutory Review Issues Paper for the *Noxious Weeds Act 1993*. The report was tabled in NSW Parliament in September 2011. In February 2012, the NSW Government introduced the *Noxious Weeds Amendment Bill 2012*. The Bill comprises reforms generally supported by stakeholders during the review process. The amendments strengthen and clarify preventative, investigative and administrative measures contained in the Act. Many of the proposals contained in the Issues Paper that were supported by stakeholders, but not introduced in the Bill, have been slated for progression and further consultation. The NSW Government also stated in the report on the statutory review that it is currently undertaking a NSW Biosecurity Reform Project, within which noxious weed control issues form an important component. **[5.0]**

NSW policy & administrative framework

The lead NSW Government bodies for noxious weed control are the Department of Primary Industries (DPI) and the Office of Environment & Heritage. Additional roles and responsibilities are shared by bodies such as

...
local councils, the Noxious Weeds Advisory Committee and Catchment Management Authorities. [6.1]

Noxious weed management in NSW is classified according to four policy approaches: prevention; eradication; containment; and asset protection. Each approach matches the invasion process of a weed species from arrival through to widespread establishment. Key NSW policies include: the *NSW invasive species plan 2008-2015*; the *NSW new weed incursion plan 2009-2015*; *Biodiversity priorities for widespread weeds: Statewide framework*; and weed specific strategies, such as the *NSW Alligator Weed Strategy 2010-2015*. [6.2]

Noxious weed control programs are funded by a variety of sources, including the Commonwealth's Caring for our Country program and the NSW Government's NSW Weeds Action Program. DPI expenditure on noxious weed control rose from \$8,353,000 in 2009/10 to \$11 million in 2011/12. The NSW 2011/12 Budget also allocated \$68 million to the Office of Environment & Heritage to manage pest animals and weeds and to improve fire management in National Parks. [6.3]

Commonwealth regulatory & administrative regimes

Commonwealth noxious weed control responsibilities can be divided into two areas: biosecurity measures to prevent new weeds from entering Australia; and measures to address weeds currently in Australia. The *Environment Protection and Biodiversity Conservation Act 1999* and the *Quarantine Act 1908* together regulate the importation of live plants into Australia. The *Agricultural and Veterinary Chemicals Code Act 1994* and the *Biological Control Act 1984* regulate different noxious weed control measures. [7.1]

Administrative responsibility for noxious weed control is shared between the Department of Agriculture, Fisheries and Forestry and the Department of Sustainability, Environment, Water, Population and Communities. Two inter-Governmental committees also play a significant role in noxious weed control: the National Biosecurity Committee; and the Australian Weeds Committee (AWC). In 2007, the AWC released the Australian Weeds Strategy. This Strategy sets out the weed management roles and responsibilities of each level of government, along with other relevant parties. It also identifies three goals, with associated strategic actions, to realise the Strategy's vision. [7.2]

The Commonwealth Government administers several programs involved in noxious weeds control. The most significant is the Weeds of National Significance program, under which each of the 20 listed weeds has a National Coordinator, a weed control manual and a strategic plan. Six national eradication programs are also under way, targeted at six weeds identified for eradication because of their potential impacts on Australia's primary industries, trade, the economy and the environment. [7.3]

1.0 INTRODUCTION

Invasive plant and animal species have significant economic, environmental and social impacts in Australia. Otherwise known as 'weeds' and 'pests' respectively, in NSW, invasive plant and animal species are regulated under different Acts. The *Noxious Weeds Act 1993* regulates specific invasive plant species, and the *Game and Feral Animal Control Act 2002* regulates invasive animal species.

A weed is any plant that requires some form of action to reduce its effect on the economy, the environment, human health and amenity. Under the *Noxious Weeds Act 1993* (NSW), noxious weeds are weeds for which control measures provide a benefit to the community over and above the cost of implementing control programs. Further, noxious weeds: have the potential to cause harm to the community and individuals; can be controlled by reasonable means; and have the potential to spread within an area and to other areas. Weeds may also be listed on one or more of four national weeds lists.

Weeds cause damage to natural landscapes, agricultural lands, waterways, coastal areas and urban areas. In 2007, it was estimated that weeds cost agricultural production across Australia \$4 billion per year. In 2011, lost production and control costs in NSW were estimated at \$1.2 billion. Weeds also pose a significant threat to biodiversity. A 2006 study found that 419 threatened species, populations and ecological communities in NSW are threatened by weeds. The economic, environmental and social costs of weeds are likely to increase as weeds are generally spreading faster than they can be controlled.

This paper starts by identifying the different weed classification systems used by the NSW and Commonwealth Governments. An account of the distribution of weeds in NSW follows, along with information on the health, economic and environmental impacts of weeds. A summary of the current NSW regulatory regime for weeds is provided. Whilst a number of statutes apply to various aspects of weed management in NSW, the key instruments are the *Noxious Weeds Act 1993* and the *Noxious Weeds Regulation 2008*. In February 2012, the NSW Minister for Primary Industries introduced the *Noxious Weeds Amendment Bill 2012*. This follows on from a regulatory review process which is summarised in the paper, as are the main provisions of the 2012 Bill. The paper ends with an overview of the relevant Commonwealth legislation, administrative framework, policies and programs.

2.0 WEED CLASSIFICATIONS

A weed is any plant that requires some form of action to reduce its effect on the economy, the environment, human health and amenity. Weeds are classed in broad groups depending on their characteristics and impacts. Each State and Territory has its own list of noxious weeds.¹ In addition, there are four national weeds lists.

2.1 Noxious weeds

Noxious weeds are defined under the NSW [Noxious Weeds Act 1993](#) (see section 4 of this paper). Weeds are declared as noxious under this legislation because:

- They have the potential to cause harm to the community and individuals;
- Their control will provide a benefit to the community over and above the cost of implementing control programs;
- They can be controlled by reasonable means; and
- Most importantly, they have the potential to spread within an area and to other areas.²

2.2 National weeds lists

Weeds may be listed on one or more of four national weeds lists:

- Weeds of National Significance (WONS);
- National Environmental Alert List Weeds;
- Sleeper Weeds; and
- Species targeted for eradication.

2.2.1 Weeds of National Significance

20 introduced plants are defined as [Weeds of National Significance](#) (WONS) under the [Australian Weeds Strategy](#) (see Appendix 1). These weeds are regarded as the worst weeds in Australia because of their invasiveness, potential for spread, and economic and environmental impacts.³

¹ In December 2011, the Australian Weeds Committee published a [list](#) of the noxious weeds in all Australian States and Territories.

² NSW Department of Primary Industries, [Weed definitions & FAQs](#), no date [online - accessed 24/02/2012]

³ Australian Government, [Weeds of National Significance](#), 14 December 2011 [online - accessed 27/02/2012]

2.2.2 National Environmental Alert List of Weeds

The [National Environmental Alert List of Weeds](#) (see Appendix 1) complements the WONS list. The 28 weeds on the list were selected according to three criteria:

- 1) They pose a high or serious potential threat to the environment;
- 2) They have limited distribution within Australia at present; and
- 3) They are amenable to successful eradication or containment programmes.⁴

2.2.3 Sleeper weeds

[Sleeper weeds](#) are plants from overseas that have currently established only small wild populations but have the potential to spread widely and affect agricultural or natural environments. Huge environmental damage and control costs can be prevented if these weeds are eradicated before they become widespread. 17 species are listed as sleeper weeds under four different categories (see Appendix 1).

2.2.4 Species targeted for eradication

Six weed species are [targeted for national eradication](#) under the National Resource Management Ministerial Council's National Cost-Sharing Eradication Programme (see Appendix 1).⁵ Each species-specific eradication programme involves mapping and monitoring the distribution of the target species.⁶

⁴ Australian Government, [National Environmental Alert List](#), 14 September 2007 [online - accessed 24/02/2012]

⁵ Note that the National Resource Management Ministerial Council and Primary Industries Ministerial Council were replaced by a new COAG Standing Council on Primary Industries and a new COAG Standing Council on Environment and Water after 30 June 2011 - Australian Government, [PIMC - NRMMC](#), 28 October 2011 [online - accessed 27/02/2012]

⁶ Australian Government, [Species targeted for eradication](#), 14 September 2007 [online - accessed 27/02/2012]

3.0 WEEDS IN NSW

Weeds have major economic, environmental and social impacts in Australia, causing damage to natural landscapes, agricultural lands, waterways, coastal areas and urban areas. Throughout Australia, weeds are spreading faster than they can be controlled. Exotic plant species currently account for roughly 15% of all Australian flora.⁷ In NSW, weeds make up more than 20% of the flora of all regions of NSW.⁸ Approximately 10 new exotic species are introduced in Australia every year.

A number of factors influence the spread of weeds. These include:

- land management practices;
- natural hazards such as droughts, fires and floods; and
- climate change.

Land management practices that clear native vegetation or degrade its condition favour the spread of weeds. Such practices provide opportunities for weeds to colonise new areas and reduce the ability of native vegetation to compete with weeds.

The interaction between weeds and natural hazards is complex. Flooding may spread weeds along watercourses previously free of weeds. Floods may also clear vegetation, providing the opportunity for new weed invasions. Fire may also provide opportunities for new weed invasions through a reduction in competition with other vegetation. However, fire may also act as a suppressant for some types of weeds.

The aggressiveness of weeds in competing with native types of vegetation may give them a competitive advantage when it comes to taking advantage of changes in climate. Climate change may also turn some currently benign species (both native and non-native) into invasive species and may lead to [sleeper weeds](#) becoming more active.⁹

⁷ Australian Government, [Impact of weeds](#), 1 December 2010 [online - accessed 27/02/2012]

⁸ Department of Environment, Climate Change and Water, [New South Wales State of the Environment 2009](#), 2009

⁹ Australian Government, [Impact of weeds](#), 1 December 2010 [online - accessed 27/02/2012]

3.1 Types of weeds in NSW and their distribution

A 2006 survey of weeds across NSW found a total of 1,386 species.¹⁰ Of these species, 190 are listed under the *Noxious Weeds Act 1993*. Weeds from each of the national weeds lists are found in NSW. 16 of the 20 weeds listed on the Weeds of National Significance (WONS) list are found in NSW. A proportion of the weeds listed on the other three lists - National Environment Alert List of Weeds, sleeper weeds, and species targeted for eradication - are also listed as noxious weeds in NSW under the *Noxious Weeds Act 1993* (see Table 1).

Table 1: Weeds in NSW¹¹

| Weed classification | Number |
|---|---|
| Total number of weeds in NSW | 1,386 |
| Noxious weeds | 190 |
| Weeds of National Significance | 20 of 20 are listed as noxious weeds in NSW As of 2006, 16 were found in NSW |
| National Environmental Alert List Weeds | 9 of 28 are listed as noxious weeds in NSW |
| Sleeper weeds | 4 of 17 are listed as noxious weeds in NSW |
| Species targeted for eradication | 4 of 6 are listed as noxious weeds in NSW |

[Weed Control Order 28](#), made under the *Noxious Weeds Act 1993*, classifies 190 weeds under one or more of the five classes of noxious weeds (see Table 2).¹² The five weed control classes are set out in section 8 of the [Noxious Weeds Act 1993](#). Weed Control Order 28 sets out the weeds listed under each class and, in the case of Classes 2, 3 and 4, identifies all the local control authority areas to which the control order applies.

¹⁰ Department of Environment, Climate Change and Water, [New South Wales State of the Environment 2009](#), 2009

¹¹ Sources: Department of Primary Industries, [Noxious and environmental weed control handbook: a guide to weed control in non-crop, aquatic and bushland situations](#), NSW DPI Management Guide, 2011; Department of Environment, Climate Change and Water, [New South Wales State of the Environment 2009](#), 2009

¹² Table sources: Department of Primary Industries, [Noxious and environmental weed control handbook: a guide to weed control in non-crop, aquatic and bushland situations](#), NSW DPI Management Guide, 2011; Industry & Investment NSW, [Report on the Statutory Review of the Noxious Weeds Act 1993](#), April 2011, p29. Note that some weeds may be classified within more than one class. For example, Bitou Bush is classified as Class 2, 3 and 4. Note also that sub-species may be classified as one species within a particular class. For example, all willow species except for three are classified together as Class 5.

Table 2: Noxious weeds in NSW

| Control class | Characteristics | Control Objective | Control Measure | Number listed |
|---|---|--|--|---------------|
| Class 1: State Prohibited Weeds | Plants that pose a potentially serious threat to primary production or the environment and are not present in the State or are present only to a limited extent. | To prevent the introduction and establishment of those plants in NSW. | The plant must be eradicated from the land and the land must be kept free of the plant. The weeds are also "notifiable" and a range of restrictions on their sale and movement exist. | 30 |
| Class 2: Regionally Prohibited Weeds | Plants that pose a potentially serious threat to primary production or the environment of a region to which the order applies and are not present in the region or are present only to a limited extent. | To prevent the introduction and establishment of those plants in parts of NSW. | The plant must be eradicated from the land and the land must be kept free of the plant. The weeds are also "notifiable" and a range of restrictions on their sale and movement exist. | 14 |
| Class 3: Regionally Controlled Weeds | Plants that pose a serious threat to primary production or the environment of an area to which the order applies, are not widely distributed in the area and are likely to spread in the area or to another area. | To reduce the area and the negative impact of those plants in parts of NSW. | The plant must be fully and continuously suppressed and destroyed | 45 |
| Class 4: Locally Controlled Weeds | Plants that pose a threat to primary production, the environment or human health, are widely distributed in an area to which the order applies and are likely to spread in the area or to another area. | To minimise the negative impact of those plants on the economy, community or environment of NSW. | The growth and spread of the plant must be controlled according to the measures specified in a management plan published by the local control authority and the plant may not be sold, propagated or knowingly distributed | 106 |
| Class 5: Restricted Plants | Plants that are likely, by their sale or the sale of their seeds or movement within the State or an area of the State, to spread in the State or outside the State. | To prevent the introduction of those plants into NSW, the spread of those plants within NSW or from NSW to another jurisdiction. | There are no requirements to control existing plants of Class 5 weeds. However, the weeds are "notifiable" and a range of restrictions on their sale and movement exists. | 29 |

Table 3 provides an indication of the distribution of weeds across NSW. The Sydney region has the highest number of weed species. Weeds also make up the largest proportion of total flora in the Sydney region in comparison with other regions. The Lower Murray-Darling region has the lowest number of weed species.

Table 3: Number of weeds in each Catchment Management Authority region in NSW¹³

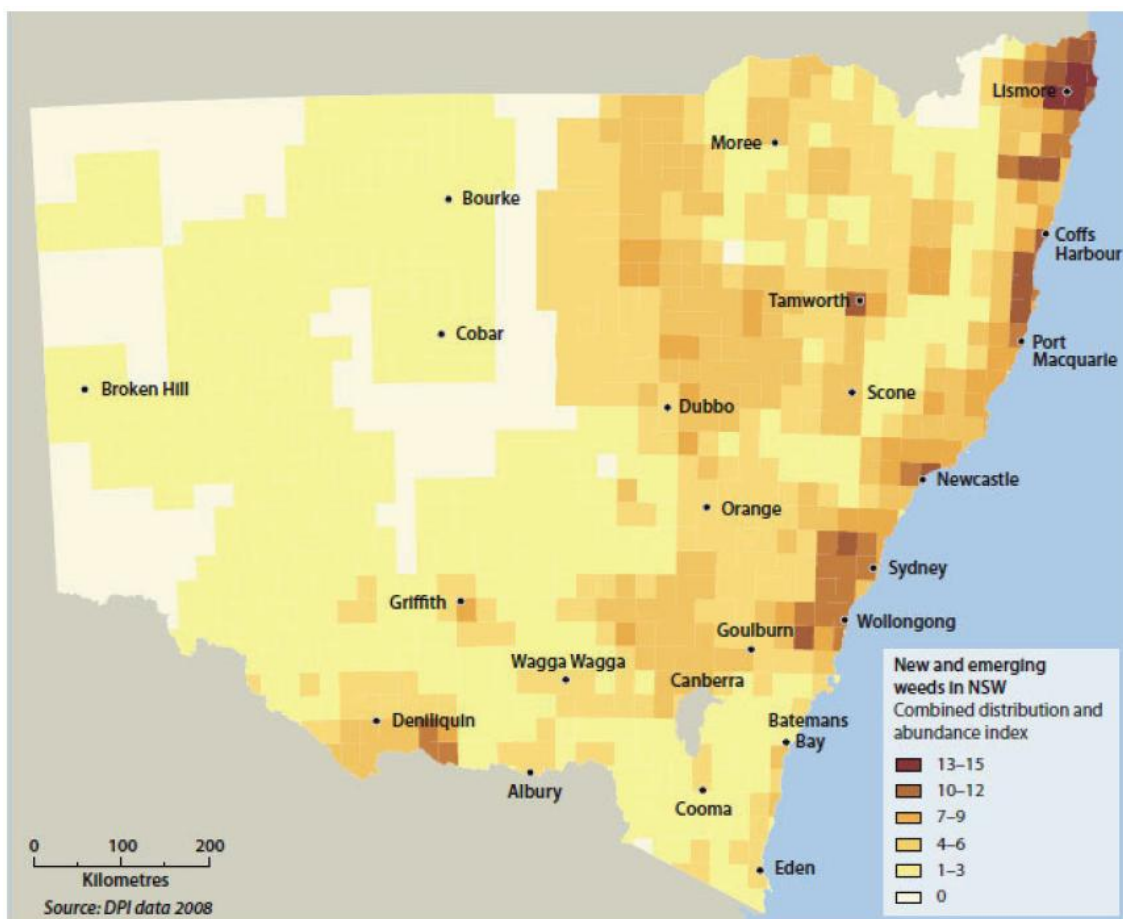
| CMA Region | Number of weed species (% of total) | Total flora | Contribution of weeds to total flora (%) |
|-----------------------|--|-------------|--|
| Sydney Metropolitan | 758 (55) | 2,356 | 32 |
| Hawkesbury-Nepean | 733 (53) | 3,012 | 24 |
| Northern Rivers | 627 (45) | 3,282 | 19 |
| Hunter-Central Rivers | 580 (42) | 2,893 | 20 |
| Southern Rivers | 577 (42) | 2,907 | 20 |
| Murrumbidgee | 531 (38) | 2,159 | 25 |
| Central West | 502 (36) | 2,197 | 23 |
| Namoi | 475 (34) | 1,917 | 25 |
| Lachlan | 447 (32) | 1,781 | 25 |
| Murray | 439 (32) | 1,641 | 27 |
| Border Rivers-Gwydir | 427 (31) | 2,029 | 21 |
| Western | 242 (17) | 1,463 | 17 |
| Lower Murray-Darling | 187 (13) | 896 | 21 |
| Total | 1,386 (100) | 6,634 | 21 |

Figure 1 confirms the data in Table 3, demonstrating that the distribution of new and emerging weeds is generally highest in NSW coastal regions.

¹³

A Coutts-Smith & P Downey, [Impact of weeds on threatened biodiversity in New South Wales](#), CRC for Australian Weed Management, 2006, Technical Series #11, p46

Figure 1: Distribution of new and emerging weeds in NSW¹⁴



Notes: the distribution and abundance index scores were determined by combining the frequency and abundance of each species recorded in each grid cell.

3.2 Health impacts

Weeds can cause human health problems. Common weeds such as Parthenium weed, Ragweed, Rye Grass, and Privet cause asthma and other respiratory conditions, especially in children. Other weeds can cause skin irritation and some are poisonous.¹⁵ Plants harmful to stock include St John's wort, Paterson's curse, silverleaf nightshade and athel pine.¹⁶

¹⁴ Source: Department of Environment, Climate Change and Water, [New South Wales State of the Environment 2009](#), 2009, p267

¹⁵ Australian Government, [Impact of weeds](#), 1 December 2010 [online - accessed 27/02/2012]

¹⁶ Industry & Investment NSW, [Noxious Weeds Act 1993: Statutory Review Issues Paper](#), December 2010

3.3 Economic impacts

Very little research has been conducted on the economic cost of weeds. While a significant proportion of economic costs are borne by landholders, governments also invest millions of dollars in weed management (see section 6.3 of this paper).

In 2007, the Co-operative Research Centre (CRC) for Australian Weed Management estimated that weeds cost agricultural production across Australia \$4 billion per year. Of this amount, \$1.5 billion is spent on weed control activities while the remaining \$2.5 billion represents lost agricultural production. This figure does not include the cost on biodiversity, landscape, tourism, water and other assets or industries.¹⁷

In 2011, the Local Government & Shires Association of NSW stated that weeds cost NSW over \$1.2 billion in lost production and control costs every year. In addition, total Australian government expenditure on monitoring, management, research and control of weeds was estimated at well over \$100 million each year.¹⁸

The remainder of this section summarises two studies that, whilst a little dated, provide some indication of the economic cost of weeds.

3.3.1 The economic impact of weeds in Australia (2004)

In 2004, the CRC for Australian Weed Management released a study on the economic impact of weeds in Australia. The study notes that the economic impacts of weeds may include not only costs but some benefits as well. For example, prickly acacia (a weed listed on the WONS list) causes economic costs for agriculture such as:

- control costs;
- less grass production;
- more drain maintenance; and
- more fence damage.

However, prickly acacia may also result in monetary benefits such as:

- increased lambing;
- better fleece weights;
- drought insurance; and
- improved stock condition.¹⁹

¹⁷ Ibid.

¹⁸ Local Government & Shires Association of NSW, [Submission on the NSW Budget for 2011/12](#), August 2011

¹⁹ J Sinden, R Jones, S Hester, D Odom, C Kalisch, R James and O Cacho, [The](#)

The study examined the costs of on-farm weed control for a number of agricultural industries using 2003 data. The figures presented in Table 4 comprise all chemical and non-chemical weed control costs per agricultural industry. In total, on-farm weed control was estimated to have cost Australian agriculture between \$1,365 and \$1,519 million in 2003.

Table 4: Total financial cost of on-farm weed control in Australia²⁰

| Industry | Low (\$m) | High (\$m) |
|------------------------|--------------|--------------|
| Grain | 674 | 720 |
| Dairy cattle | 21 | 22 |
| Beef cattle | 38 | 41 |
| Grain-sheep/Grain-beef | 361 | 402 |
| Sheep - Beef | 36 | 38 |
| Sheep | 40 | 43 |
| Cotton | 94 | 110 |
| Sugar | 43 | 46 |
| Rice | 41 | 44 |
| Fruit | 9 | 29 |
| Vegetables | 8 | 24 |
| Total | 1,365 | 1,519 |

Table 5 presents an estimation of the opportunity costs of weed production. The results are presented by industry and were calculated in a conservative manner given the lack of detailed data on production losses caused by weeds. Production losses due to weeds were estimated as a percentage loss, as listed in Table 5 under yield losses. The estimates for each industry were calculated as the difference between the gross margin reported and the gross margin that would have been likely in the absence of weeds.

[economic impact of weeds in Australia](#), CRC for Australian Weed Management, Technical Series #8, February 2004

Table 5: Production losses from weeds by industry²¹

| Industry | Yield losses (%) | Loss (\$/ha) | Total industry (\$m) |
|------------------------|------------------|--------------|----------------------|
| Grain | 6.5 | 14 | 171 |
| Dairy cattle | 5 | 41 | 118 |
| Beef cattle | 5 | 6 | 1,068 |
| Grain-sheep/Grain-beef | 5 | 9 | 176 |
| Sheep-beef | 5 | 6 | 256 |
| Sheep | 5 | 6 | - |
| Cotton | 15 | 133 | - |
| Sugar | 5.2 | 45 | 18 |
| Rice | 2.5 | 37 | - |
| Fruit | 1 | 5 | 1 |
| Vegetables | 1 | 8 | 1 |
| Total | | | 2,218 |

Weeds were estimated to have caused production losses in excess of \$2,218 million per year for Australian agriculture. According to the study:

This is a conservative estimate because a number of additional costs in each of the industries were identified, but not included due to difficulties in measurement. For example, a number of noxious weeds lead to animal deaths, many weed seeds contribute to 'vegetable' matter losses in fibre sales and additional marketing efforts may be required in cases where weed seed/trash is prevalent. Similarly, \$2,218m should be also considered conservative because it is based on major industries only. This estimate should therefore be considered the lower bound of the annual costs of lost production.²²

3.3.2 Natural Resource Management on Australian Farms (2006/07)

In 2006/07, the Australian Bureau of Statistics conducted its [second survey](#) of natural resource management on Australian farms. In that year, 90.9% of the 47,629 NSW agricultural businesses surveyed reported weed related activities, and 68.2% reported having weed related problems (see Table 6). Significant problems included: decreased value of production; decreased value of agricultural holding; and increased fire risk. Application of herbicides and the manual removal of weeds were the most commonly reported weed related activities.

²¹ Ibid., p16

²² Ibid., p16-17

Table 6: Weed problems and activities in 2006/07²³

| | NSW (incl. ACT) | Australia |
|--|-----------------|-----------|
| Agricultural businesses | | |
| # of agricultural businesses surveyed | 47,629 | 150,403 |
| Agricultural businesses reporting weed related problems | 32,468 | 99,222 |
| Agricultural businesses reporting weed related activities | 43,278 | 133,578 |
| Proportion reporting weed related problems (%) | | |
| Decreased value of production | 78.5 | 76.1 |
| Decreased value of holding | 38.9 | 34.3 |
| Increased fire risk | 32.5 | 32.0 |
| Decreased native plant or animal populations and distributions | 29.2 | 24.7 |
| Blocked water courses | 18.8 | 20.5 |
| Poisoned stock | 22.8 | 19.4 |
| Other weed related problems | 44.3 | 42.2 |
| Proportion reporting weed related activities (%) | | |
| Application of herbicides | 86.7 | 88.5 |
| Pulling manual removal or chipping | 60.3 | 55.5 |
| Slashing, cutting or mowing | 55.0 | 55.0 |
| Crop or grazing management | 41.2 | 39.5 |
| Cultivation | 33.9 | 35.0 |
| Burning | 14.6 | 17.0 |
| Use of biological control | 6.3 | 4.9 |
| Other weed related activities | 1.9 | 2.2 |

In 2006/07, NSW agricultural businesses spent at least \$475 million on weed control activities (see Table 7). This is equivalent to almost \$11,000 per business per year. In the same year, almost 1.4 million person days were expended in weed control by agricultural businesses in NSW.

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ABS, [Natural Resource Management on Farms](#), Table 2.1, 2006-07, 4620.0

Table 7: Weed control expenditure and effort in 2006/07²⁴

| | NSW (incl. ACT) | Australia |
|---|-----------------|-----------|
| Agricultural businesses | | |
| # of agricultural businesses surveyed | 47,629 | 150,403 |
| Agricultural businesses reporting weed related activities | 43,278 | 133,578 |
| Area ('000 ha) | | |
| Area of holding | 58,661 | 425,449 |
| Expenditure | | |
| Total expenditure (\$m) | 475 | 1,574 |
| Average expenditure (\$/agricultural business) | 10,986 | 11,785 |
| Average expenditure (\$/'000 ha) | 10,528 | 5,490 |
| Effort | | |
| Total effort managing (person days) | 1,396,019 | 4,134,490 |
| Average effort (person days/agricultural business) | 32 | 31 |
| Average effort (person days/'000 ha) | 31 | 14 |

3.4 Environmental impacts

Weeds pose a significant threat to threatened species, populations and ecological communities in NSW. Weeds feature in some of the Key Threatening Processes for vulnerable, endangered and critical endangered species, populations and ecological communities listed in Schedule 3 of the NSW [Threatened Species Conservation Act 1995](#). Weeds also feature in two of the Key Threatening Processes listed in the Commonwealth [Environment Protection and Biodiversity Conservation Act 1999](#) (see Table 8).

Table 8: Key Threatening Processes under the *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999*

| Key threatening processes |
|---|
| <i>NSW Threatened Species Conservation Act 1995</i> |
| Invasion and establishment of exotic vines and scramblers |
| Invasion and establishment of Scotch Broom (<i>Cytisus scoparius</i>) |
| Invasion, establishment and spread of Lantana (<i>Lantana camara</i> L. <i>sens. lat</i>) |
| Invasion of native plant communities by African Olive <i>Olea europaea</i> L. subsp. <i>cuspidata</i> (Wall ex G. Don Cirferri) |
| Invasion of native plant communities by Bitou bush and Boneseed (<i>Chrysanthemoides monilifera</i>) |

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ABS, [Natural Resource Management on Farms](#), Table 2.2, 2006-07, 4620.0

Table 8 (continued): Key Threatening Processes under the *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999*

| Key threatening processes |
|--|
| <i>NSW Threatened Species Conservation Act 1995</i> |
| Invasion of native plant communities by exotic perennial grasses |
| Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants |
| <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i> |
| Invasion of northern Australia by Gamba Grass and other introduced grasses |
| Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants |

A 2006 study by the CRC for Australian Weed Management examined the impact of weeds on threatened biodiversity in NSW. The study found that, of 945 threatened species, populations and ecological communities in NSW, 419 are threatened by weeds (see Table 9). This figure represents 44% of the total number of threatened species, populations and ecological communities. Proportionally, weeds pose more threat to both threatened plant populations and endangered ecological communities than to other species or communities.

Table 9: The threat posed by weeds to threatened species in NSW²⁵

| Type of biodiversity listed under the TSC and FM Acts ⁽¹⁾ | Number of native species in NSW | Number listed as threatened (% of total) | Threatened species that are threatened by weeds (% of total) |
|--|---------------------------------|--|--|
| Plant species | 5,248 | 569 (11) | 279 (49) |
| Animal species | 936 | 271 (29) | 62 (23) |
| Plant populations | na | 17 | 12 (71) |
| Animal populations | na | 16 | 2 (13) |
| Ecological communities | na | 72 | 64 (89) |
| Total | 6,187 | 945 (15) | 419 (44) |

Notes: (1) The *Threatened Species Conservation Act 1995* (TSC Act) and *Fisheries Management Act 1994* (FM Act)

²⁵

A Coutts-Smith & P Downey, [Impact of weeds on threatened biodiversity in New South Wales](#), CRC for Australian Weed Management, 2006, Technical Series #11, p29

The study assessed the threat of weeds to biodiversity in NSW on a regional basis (see Table 10). It found that, of 1,386 species of weeds, 127 species, or 9% of all weeds, constitute a threat to threatened plant and animal species in NSW. The largest numbers of threatened animal and plant species threatened by weeds were found in coastal regions, such as the Northern Rivers, Hawkesbury-Nepean, Southern Rivers and Sydney Metropolitan regions.

Table 10: The number of threatened species identified as threatened by weeds within each Catchment Management Authority region in NSW²⁶

| CMA Region | Number of weed species (% of total) | Number of weeds threatening biodiversity (% of total) | Number of threatened plant and animal species | Threatened plant and animal species threatened by weeds (% of total) |
|-----------------------|-------------------------------------|---|---|--|
| Sydney Metropolitan | 758 (55) | 101 (13) | 125 | 57 (46) |
| Hawkesbury-Nepean | 733 (53) | 98 (13) | 225 | 99 (44) |
| Northern Rivers | 627 (45) | 100 (16) | 342 | 166 (49) |
| Hunter-Central Rivers | 580 (42) | 96 (17) | 192 | 68 (35) |
| Southern Rivers | 577 (42) | 98 (17) | 200 | 58 (29) |
| Murrumbidgee | 531 (38) | 67 (13) | 122 | 39 (32) |
| Central West | 502 (36) | 59 (12) | 107 | 28 (26) |
| Namoi | 475 (34) | 72 (15) | 87 | 22 (25) |
| Lachlan | 447 (32) | 54 (12) | 99 | 27 (27) |
| Murray | 439 (32) | 55 (13) | 91 | 24 (26) |
| Border Rivers-Gwydir | 427 (31) | 63 (15) | 127 | 29 (23) |
| Western | 242 (17) | 29 (12) | 120 | 26 (22) |
| Lower Murray-Darling | 187 (13) | 25 (13) | 81 | 14 (17) |
| Total | 1,386 (100) | 127 (9) | 790 | 317 (40) |

The study found that in 2006, of the 106 species of weeds prohibited for sale in NSW under the *Noxious Weeds Act 1993*, 34 were identified as threatening biodiversity in NSW. In total, 50 of the 127 weed species identified as being a threat to biodiversity were listed on the *Noxious Weeds Act 1993* in 2006.

²⁶

Ibid., p46 & 49

4.0 NSW LEGISLATION

The [Noxious Weeds Act 1993](#) regulates noxious weed management on all private and public land in NSW. It defines the roles of government, councils, private landholders and public authorities in the management of noxious weeds. It also sets up categorisation and control actions for the various noxious weeds, according to their potential to cause harm. This Act makes provision for a [Noxious Weeds Regulation 2008](#) and for the making of a [weed control order](#) that sets out the weeds listed under each control class and, in the case of Classes 2, 3 and 4, identifies all the local control authority areas to which the control order applies.

Several other NSW statutes contain provisions relevant to the control of noxious weeds in NSW, including the [National Parks and Wildlife Act 1974](#), [Pesticides Act 1999](#), [Threatened Species Conservation Act 1995](#) and [Work Health and Safety Act 2011](#).

4.1 Noxious Weeds Act 1993

4.1.1 Background

During the 1980s, noxious weeds had become epidemic in some parts of NSW. In 1993, the cost of weed control to the NSW community was estimated to be as high as \$800 million annually. At that time, administrative responsibility for noxious weed management was divided between the Minister for Local Government and the Minister for Agriculture and Rural Affairs. Following agreement between the two Ministers to transfer responsibility to the Minister for Agriculture and Rural Affairs, a working party prepared a draft bill for discussion with key parties such as local government and the NSW Farmers Association.

The Noxious Weeds Bill provided a "new framework for the control of noxious weeds" in order to "contain and arrest the infestation of weeds that occurred" in the 1980s.²⁷ The Bill drew heavily on the noxious plant provisions of the *Local Government Act 1919*, sections of which it replaced, as well as introducing several key reforms:

- The administration of noxious weeds control was placed under one Minister - the Minister for Agriculture and Rural Affairs;
- Four categories of weeds were introduced to replace the single category that existed under the previous legislation;
- The Minister was given the power to declare a plant a noxious weed and to declare the category into which the plant would fall;

²⁷NSW PD, [Noxious Weeds Bill](#), 2 March 1993

- The Act bound the Crown, placing weed control obligations upon government and statutory authorities;
- Increased penalties for failure to comply with the Act were introduced; and
- Provision was made for councils to recover costs for the re-inspection of land and for work done on land on the landholder's behalf.²⁸

Further significant reforms to noxious weeds management were introduced with the passage of the [Noxious Weeds Amendment Act 2005](#). Broadly, the key amendments introduced a more flexible, consultative approach to weeds management and included:

- Changing the objectives of the Act from reactive and punitive objectives to proactive objectives that guide weed management priorities and direction. These objectives encompass four core principles: prevent; contain; reduce; and monitor;
- Changing how noxious weeds are declared. The five new categories are based on impacts and need rather than obligations;
- Introducing public consultation procedures within the declaration process to ensure it is consultative and open and flexible; and
- Providing for new Weed Control Orders that will allow objectives, obligations and control methods to be tailored to the particular situation. The obligations and control requirements were previously contained within the Act.²⁹

4.1.2 Objects

The *Noxious Weeds Act 1993* has the following objects:

- (a) to reduce the negative impact of weeds on the economy, community and environment of this State by establishing control mechanisms to:
- (i) prevent the establishment in this State of significant new weeds, and
 - (ii) restrict the spread in this State of existing significant weeds, and
 - (iii) reduce the area in this State of existing significant weeds,

²⁸ Ibid.

²⁹ Industry & Investment NSW, [Noxious Weeds Act 1993: Statutory Review Issues Paper](#), December 2010, p9

(b) to provide for the monitoring of and reporting on the effectiveness of the management of weeds in this State (s3).

4.1.3 Weed control orders and weed control classes

Part 2 of the Act gives the Minister for Primary Industries the power to make weed control orders for specific plants. Section 9 provides for public consultation processes prior to the making of weed control orders. The weed control order must do the following:

- (a) declare that the plant is a noxious weed;
- (b) apply a weed control class or classes to the plant;
- (c) specify the land (being part or the whole of the State) to which the order applies;
- (d) specify the control measures that are to be, or may be, used to control the plant in general or particular circumstances;
- (e) specify the control objectives for the plant; and
- (f) specify the term of the order (being a period not exceeding 5 years) (s7(2)).

The current NSW weed control order, as of 30 September 2011, is [Weed Control Order 28](#). This Order classifies 190 weeds under one or more of the five classes of noxious weeds, as set out in section 8 of the Act (see Table 2). Weed Control Order 28 sets out the weeds listed under each class and, in the case of Classes 2, 3 and 4, identifies all the local control authority areas to which the control order applies.

A noxious weed classified as Class 1, 2 or 5 is also defined as a notifiable weed under the Act. Part 3 Division 2 sets out several offences related to notifiable weeds, including:

- The sale of notifiable weeds;
- The sale of soil, turf or fodder from land with notifiable weeds; and
- The spread of notifiable weeds from agricultural machines used in Queensland.

According to the 2010 Noxious Weeds Act Statutory Review Issues Paper:

Proposals for new Weed Control Orders are developed by Local Control Authorities (LCAs) for locally significant weeds and by the Department of Industry and Investment for state significant weeds. These are considered by the Noxious Weeds Advisory Committee, which makes a recommendation to the Minister about whether or not to make the order. The Minister considers the recommendation and, if he chooses to make the order, then publishes a draft order for public consultation before making a final order.³⁰

³⁰

ibid., p8

4.1.4 Ministerial responsibilities

The Minister is given the following noxious weed functions under the Act:

- (a) responsibility for the control of noxious weeds in the State;
- (b) the declaration and classification of noxious weeds;
- (c) the control of noxious weeds, if authorised to do so under this Act or if the Minister thinks it appropriate to do so in the circumstances; and
- (d) the making of grants of money, out of money appropriated by Parliament, to assist public authorities, local control authorities and trustees of commons or reserves in carrying out their obligations under this Act or to further the objects of this Act (s33).

In addition, the Minister has a number of specific powers under the Act. The Minister may permit certain activities in relation to noxious weeds for research or other purposes (s34). The Minister may also make an order declaring a quarantine area to prevent the spread of Class 1 or Class 2 noxious weeds (s35).

4.1.5 Local Control Authority responsibilities

Section 35 defines Local Control Authorities (LCAs) as the council within a local government area, or a county council in some circumstances. The Western Lands Commissioner is the LCA for the Western Division, where there is no local government body. The Lord Howe Island Board operates as the LCA for Lord Howe Island.

Each LCA has the following functions:

- (a) responsibility for the control of noxious weeds by occupiers of land (other than public authorities or local control authorities);
- (b) control of noxious weeds on land owned or occupied by the local control authority and on certain roads and watercourses, rivers or inland waters;
- (c) to ensure, so far as practicable, that owners and occupiers of land (other than public authorities or other local control authorities) carry out obligations to control noxious weeds imposed under the Act;
- (d) to develop, implement, co-ordinate and review noxious weed control policies and noxious weed control programs;
- (e) inspection of land within the local area in connection with its noxious weed control functions;
- (f) to report, at the request of the Minister, on the carrying out of the local control authority's functions under the Act; and

(g) to co-operate with local control authorities of adjoining areas to control noxious weeds, where appropriate (s36).

A LCA may issue a weed control notice to a land owner or occupier (other than public authorities or other local control authorities) requiring it to carry out its noxious weed obligations as set out in Weed Control Order 28 (s18). The LCA must give prior notice of no less than 7 days of a proposed weed control notice to the owner or occupier to whom it is to be given (s18A). Non-compliance with a weed control notice is an offence, and may incur a penalty of up to 100 penalty units or \$11,000 (s19). The LCA can control noxious weeds on the property where an owner or occupier of land has failed to comply with a weed control notice. The costs of this action are recoverable from the land occupier (s60).

4.1.6 Land owner and occupier responsibilities

The obligations of private owners or occupiers of land under the Act include:

- Controlling noxious weeds on their land as set out in the Weed Control Order, including any adjoining waterways, which may contain aquatic weeds, or unfenced roads (ss 12, 17, 17A & 17B); and
- Notifying the LCA of any notifiable weed on their land (s15).

Public authorities are required to prevent the spread of weeds to adjoining land (s13).

4.1.7 Noxious weed control officers

Part 5 sets out the powers of inspectors appointed by a LCA and authorised officers appointed by the Director General for the purposes of undertaking weed control activities. An inspector or authorised officer can only enter a residence with the permission of the occupier or under authority of a search warrant. Offences set out in Part 5 include obstructing an inspector or authorised officer or impersonating an inspector or authorised officer.

4.1.8 Advisory committees

Part 5 Division 2 provides for the establishment and sets out the functions of advisory committees. Currently, only one advisory committee has been established under the Act - the Noxious Weeds Advisory Committee.

4.2 Noxious Weeds Regulation 2008

The [Noxious Weeds Regulation 2008](#) makes provisions with respect to the following:

- (a) the manner in which certain agricultural machines that are brought into NSW from Queensland must be cleaned;

- (b) the kind of traffic sign directing drivers of approaching vehicles to stop that inspectors may display on or near the boundary of a quarantine area;
- (c) the offences under the [Noxious Weeds Act 1993](#) in respect of which a penalty notice (on the spot fine) may be issued and the amounts of penalty for those offences when dealt with in that way; and
- (d) savings and formal matters.

4.3 Other NSW legislation

Several additional NSW statutes contain provisions relevant to the control of weeds in NSW. Relevant provisions in each statute are set out in Table 11.

Table 11: Relevant noxious weed control provisions in other NSW legislation

| Statutory instrument | Relevant provisions |
|--|---|
| Agricultural and Veterinary Chemicals (New South Wales) Act 1994 | This Act provides for the Agvet Code as set out in the Agricultural and Veterinary Chemicals Act 1994 (Cth) to apply as a law of NSW. The Agvet Code regulates the use, supply and distribution of all pesticides in Australia (see further section 7.1 of this paper). |
| Crown Lands Act 1989 | This Act provides for the management of Crown land according to the principles of Crown land management set out in section 11. These principles include: environmental protection principles; the conservation of natural resources on Crown land; and the use and management of Crown land in such a way that both its land and resources are sustained in perpetuity. |
| National Parks and Wildlife Act 1974 | This Act establishes the NSW National Parks and Wildlife Service (NPWS) of the Office of Environment and Heritage. The Act regulates the control and management of all national parks, historic sites, nature reserves, Aboriginal areas, state conservation areas, karst conservation reserves, marine parks and regional parks within NSW. Noxious weed control in any of these areas is therefore also regulated by the relevant provisions of this Act. These include the objects, which aim to: <ol style="list-style-type: none"> 1) conserve nature; and 2) conserve objects, places or features of cultural value within the landscape. |
| Pesticides Act 1999 and the Pesticides Regulation 2009 | The use of pesticides in noxious weed control is regulated by the Pesticides Act 1999 and the Pesticides Regulation 2009 . Relevant objects of the Act include: <ol style="list-style-type: none"> 1) To promote the protection of human health, the environment, property and trade in relation to the use of pesticides, having regard to the principles of ecologically sustainable development; and 2) To minimise risks to human health, the environment, property and trade. |
| Rural Fires Act 1997 | A permit may be required under Part 4 of this Act should noxious weed control activities involve lighting a fire. |

Table 11 (continued): Relevant noxious weed control provisions in other NSW legislation

| Statutory instrument | Relevant provisions |
|--|--|
| <u>Threatened Species Conservation Act 1995</u> | <p>This Act aims to protect all threatened wildlife that is native to NSW. A <u>licence</u> issued under Part 6 from the Office of Environment and Heritage may be required in cases where noxious weed control activities may impact upon threatened species.</p> <p>Weed management actions for biodiversity conservation are encompassed under specific actions in:</p> <ol style="list-style-type: none"> 1) Recovery Plans (under Part 4); 2) Threat Abatement Plans (under Part 5); and 3) Threatened Species Priorities Action Statements (under Part 5A). |
| <u>Water Management Act 2000</u> | <p>Any noxious weed control activities carried out in, on or under waterfront land may require a controlled activity approval from the NSW Office of Water as provided for by section 91 of this Act.</p> |
| <u>Western Lands Act 1901</u> | <p>Relevant objects of this Act include:</p> <ol style="list-style-type: none"> 1) Ensuring that land in the Western Division is used in accordance with the principles of ecologically sustainable development; 2) Promoting the social, economic and environmental interests of the Western Division, having regard to both the indigenous and non-indigenous cultural heritage of the Western Division; and 3) Making other provision for the effective integration of land administration and natural resource management in the Western Division. |
| <u>Work Health and Safety Act 2011</u> and the <u>Work Health and Safety Regulation 2011</u> | <p>These two instruments regulate work health and safety issues associated with the use of pesticides used in controlling noxious weeds. Together, these instruments are intended to protect workers from both the short and long term effects of exposure to hazardous substances.</p> |

5.0 NSW LEGISLATIVE REFORMS

Under section 76 of the [Noxious Weeds Act 1993](#), the Minister is required to review the Act every 5 years to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. In 2010, the NSW Government issued a [Statutory Review Issues Paper](#). This Paper identified 12 main and 10 additional issues with the *Noxious Weeds Act 1993*, as raised by industry, Government and the community. In total, 64 submissions were received. Following the tabling on 7 September 2011 of the [Report on the Statutory Review of the Noxious Weeds Act 1993](#) in the NSW Parliament, on 23 February 2012 the NSW Government introduced the [Noxious Weeds Amendment Bill 2012](#). The Bill addresses all the proposed statutory amendments set out in the Report.

5.1 Noxious Weeds Act 1993: Statutory Review Issues Paper

In December 2010, Industry & Investment NSW, the precursor to the current [NSW Department of Primary Industries](#), released a [Statutory Review Issues Paper](#) on the *Noxious Weeds Act 1993*. The Paper set out the background to the review of the Act and identified 12 main and 10 additional issues in relation to the operation of the Act.

5.1.1 Terms of reference

The Terms of Reference for the Statutory Review are set out in the Issues Paper as follows:

The Review will take into consideration the following matters:

- whether the policy objectives of the Act remain valid; and
- whether the terms of the Act remain appropriate for securing those objectives, that is, whether the Act continues to meet the needs of contemporary weed management.

The Review will also consider issues raised since the last review of the Act and other matters that may impact on the effective implementation of the Act.

The Review will also consider whether the Act meets the better regulation principles ...

The Department will consult with and take submissions from relevant Government, industry and community organisations and the general public.³¹

³¹ Industry & Investment NSW, [Noxious Weeds Act 1993: Statutory Review Issues Paper](#), December 2010, p3

5.1.2 Issues identified with the Noxious Weeds Act 1993

The Issues Paper sets out 12 main issues with the *Noxious Weeds Act 1993*, as raised by industry, Government and the community. 10 additional issues were included in an Appendix to the Paper. Table 12 summarises the 12 main issues and lists the 10 additional issues. Appendix 2 of this paper contains more detail regarding the 10 additional issues identified in the Issues Paper.

Table 12: Main issues identified in the Noxious Weeds Act 1993 Statutory Review Issues Paper

| Issue No. | Issue | Proposal |
|-----------|--|---|
| 1 | <p>Objects of the Act: Object 3(a)(iii) is no longer considered realistic. The object is as follows: reduce the area in this State of existing significant weeds.</p> | That the objects specified in section 3(a)(iii) of the Act be amended to change the word “area” to “impact”. |
| 2 | <p>Transition to a permitted list approach: Adopting a permitted list for the introduction of new species or the movement of existing species has been raised for consideration. Applying the precautionary principle in view of the known substantial economic and social costs of noxious weeds, new species would be scientifically assessed for invasiveness before being permitted to be introduced to, or traded within, NSW.</p> | It is proposed to establish a separate review process to examine the feasibility of applying a permitted list approach in NSW. |
| 3 | <p>Responsibility for Class 4 declarations: There may be benefits from delegating part of this function to Local Control Authorities</p> | Allow LCAs to make declarations of Class 4 weeds but maintain the requirement for public consultation of draft declarations and also require LCAs to report any proposed and actual declarations to the Minister or Director General. |
| 4 | <p>Notification of noxious weed matters on sale of land: There are presently no mandatory requirements on vendors to notify prospective purchasers of land of the presence of noxious weeds, any Weed Control Orders or Weed Control Notices applying to the land, charges against the land or of noxious weed obligations relating to the land.</p> | <p>Two options were proposed:</p> <p>(1) Amendment of Schedule 4 to the Environmental Planning and Assessment Regulation 2000, which sets out those matters to be included in a s149 planning certificate, which must be provided to a prospective purchaser with a contract for sale under s4 of the Conveyancing (Sale of Land) Regulation 2010.</p> <p>(2) Amendment of Schedule 3 of the Conveyancing (Sale of Land) Regulation 2010, which sets out a number of matters required to be provided with a contract of sale.</p> |

Table 12 (continued): Main issues identified in the Noxious Weeds Act 1993 Statutory Review Issues Paper

| Issue No. | Issue | Proposal |
|-----------|---|--|
| 5 | <p>Management of the weed risk posed by commercial species:</p> <p>Appropriate legislative mechanisms to prevent and manage the negative impacts of commercial species (such as the invasion of plants from plantings and plantations into surrounding areas) are not currently available.</p> | <p>It is proposed to include in the Act specific provisions for the management of "conflict species" - species that pose a range of positive and negative impacts. A suggested framework is to enable the Minister to declare a species to be a "managed species" and then further provide that a managed species could be grown, propagated, scattered, sold, transported or otherwise dealt with in NSW upon meeting certain conditions.</p> |
| 6 | <p>Prevention of spread of high priority weeds from Queensland:</p> <p>Part 1: Expand the NSW / QLD border controls to prevent spread of high priority noxious weeds into NSW from Queensland.</p> <p>Part 2: Section 40 – expansion of the meaning of "machinery"</p> | <p>Part 1: Broaden the scope of the Act to provide for the quarantine measures set out in sections 31 and 32 to apply to a broader range of machinery, and to machinery brought into NSW from any State or Territory.</p> <p>Part 2: Broaden the scope of the Act so that the inspectors' powers in section 40 can be applied to a broader range of machinery and equipment.</p> |
| 7 | <p>Prohibition of importation of noxious weeds in NSW:</p> <p>Strengthening the NSW quarantine powers would assist in managing weed invasion.</p> | <p>Amend the Act to include provision for the Minister to prohibit importation into NSW of noxious weeds and significant new weeds.</p> |
| 8 | <p>Unworkable notifiable weed requirements:</p> <p>Class 5 weeds, which are notifiable, are widespread and the blanket classification of these weeds as notifiable weeds is considered an unnecessary impost on industry and the community.</p> | <p>Amend section 15 to remove the requirement for occupiers to notify the presence of Class 5 weeds on their land.</p> |
| 9 | <p>Lord Howe Island special circumstances:</p> <p>It is desirable, in some cases, for species to be declared as noxious weeds for Lord Howe Island under the State legislation. However, this can have unintentional consequences for the use of those species in NSW more broadly.</p> | <p>Provide a mechanism in the Act for the Minister to exempt or limit the operation of certain provisions of the Act in certain circumstances.</p> |
| 10 | <p>Public and private land owners or occupiers:</p> <p>The Act gives different responsibilities to public authorities than apply to private landholders regarding the control of noxious weeds.</p> | <p>That the Act be amended to give public authorities the same noxious weed control responsibilities as private land owners or occupiers for Class 1 and 2 species.</p> |

Table 12 (continued): Main issues identified in the Noxious Weeds Act 1993 Statutory Review Issues Paper

| Issue No. | Issue | Proposal |
|-----------------------------|---|--|
| 11 | Land owner notification when not the occupier: It is sometimes difficult and time consuming to determine who is the “occupier”. | That the Act be amended to include provision for the LCA to request that a landowner provide details of a land occupier. Compliance with such a request would be mandatory. |
| 12 | Identification and trace-back of noxious weed material: There are insufficient powers in the Act to allow the identification and trace-back of what is suspected to be noxious weed material. | To amend the Act to provide that an inspector or authorised officer may require a person to answer questions where they believe a person has information that may enable the source or destination of noxious weed material or material that the inspector or authorised officer reasonably suspects to be noxious weed material to be traced. |
| 10 Additional Issues | | |
| 13 | Control of noxious weeds on waterways and riparian land | |
| 14 | Confusion as to where a noxious weed is declared | |
| 15 | Conflict between the <i>Noxious Weeds Act 1993</i> and other NSW and Commonwealth Government legislation | |
| 16 | Appointment/authorisation of inspectors and delegation of Local Control Authority functions | |
| 17 | Definition of residence | |
| 18 | Refine the definition of occupier | |
| 19 | Proof of knowledge of notifiable weeds | |
| 20 | Offence for abuse of an Inspector or Authorised Officer | |
| 21 | Review of penalties under the Act | |
| 22 | Definition of classes of road | |

5.2 Stakeholder responses to the Issues Paper

64 submissions were received in response to the Issues Paper. A list of the persons and organisations who made submissions can be found in the [Report](#) on the Statutory Review. While the majority are not publicly available, several organisations have made their submissions available online:

- Clarence Environment Centre [\[link\]](#);
- Environmental Defender's Office NSW (EDO) [\[link\]](#);
- A coalition of eight environment groups including the Invasive Species Council and the Nature Conservation Council NSW [\[link\]](#);
- Local Government & Shires Association of NSW (LGSA) [\[link\]](#);
- Namoi Catchment Management Authority (CMA) [\[link\]](#);
- Southern Councils Group [\[link\]](#); and
- Upper Macquarie County Council [\[link\]](#).

The submissions from the EDO, LGSA and Namoi CMA are summarised in Appendix 3 of this paper. While the proposals for every issue were supported by the three organisations, in some certain support was conditional in nature, as outlined in Table 13.

Table 13: Selected stakeholder responses to the Statutory Review Issues Paper

| Issue No. | Stakeholder comments |
|-----------|--|
| 1 | <p>Objects of the Act: The EDO submitted that the principle of Ecologically Sustainable Development should appear in the objects of the Act.</p> |
| 3 | <p>Responsibility for Class 4 declarations: The Namoi CMA supported the proposal on the condition that a comprehensive and consistent assessment process be established.</p> |
| 4 | <p>Notification of noxious weed matters on sale of land: The EDO and LGSA supported option (1) as the preferred option i.e. amendment of Schedule 4 to the Environmental Planning and Assessment Regulation 2000</p> |
| 5 | <p>Management of the weed risk posed by commercial species: Supported in principle by all stakeholders, conditional on the establishment of adequate consultation and assessment processes.</p> |
| 6 | <p>Prevention of spread of high priority weeds from Queensland: The EDO recommended the introduction of clauses into the legislation to ensure consistency in noxious weed control across State and Territory borders. The LGSA supported the proposal subject to clarification of implementation issues.</p> |
| 9 | <p>Lord Howe Island special circumstances: The EDO supported the proposal subject to the clarification of the criteria that would apply to the process. The LGSA supported the proposal as long as the power given to the Minister is restricted to Lord Howe Island.</p> |
| 10 | <p>Public and private land owners or occupiers: The LGSA supported the proposal conditional on it applying to all weed classes.</p> |
| 13 | <p>Control Of Noxious Weeds On Waterways And Riparian Land: The EDO and LGSA supported the proposal subject to clarification.</p> |
| 15 | <p>Conflict between the <i>Noxious Weeds Act 1993</i> and other NSW and Commonwealth Government legislation: The EDO and LGSA supported the proposal in principle.</p> |

5.3 Report on the Statutory Review of the *Noxious Weeds Act 1993*

On 7 September 2011, the Minister for Primary Industries, Katrina Hodgkinson, tabled the [Report on the Statutory Review of the *Noxious Weeds Act 1993*](#) in the NSW Parliament. The report made the following findings with regard to the original terms of reference for the statutory review:

Validity of the policy objectives of the Act: The report recommended that "the wording of section 3 of the Act be amended to better reflect current policy objectives and provide greater consistency with the NSW Invasive Species Plan."³²

Appropriateness of the terms of the Act for securing the objectives: After listing the powers and control mechanisms established in the Act to achieve its objects, the report states that "whilst such provisions remain appropriate for securing the objectives of the Act it is recognised that greater efficiencies can be achieved and these will be progressed in due course."³³

5.3.1 Recommendations

Recommendations made for each of the issues identified in the Issues Paper fell under one of three broad headings: for statutory amendment; for progression and further consultation; and for no further action at this time (see Table 14). It is important to note that recommendations made in response to each of the issues identified in the Issues Paper were made within the context of an ongoing NSW Biosecurity Reform Project. With regards to this Project, the Report states that:

NSW has many obligations under inter-governmental agreements in relation to biosecurity risk management. To ensure NSW can meet these obligations, there is a broad review of biosecurity matters underway. The NSW Biosecurity Reform Project is considering the development of a NSW Biosecurity Strategy underpinned by contemporary legislation. Existing legislation is being closely reviewed to ascertain where efficiencies can be achieved, how some inconsistencies can be addressed and how to fill legislative gaps. The *Noxious Weeds Act 1993* falls within that program and it is appropriate that many of the issues raised throughout the Issues Paper and submissions be considered in this broader context.³⁴

³² Industry & Investment NSW, [Report on the Statutory Review of the Noxious Weeds Act 1993](#), April 2011, p8

³³ Ibid., p9

³⁴ Ibid., p3

Table 14: Statutory Review recommendations³⁵

| Recommendation | Issues |
|--|---|
| For statutory amendment | 1, 6, 7, 9, 11, 12, 14 & 16 |
| For progression and further consultation | 2, 3, 4, 5, 10, 13, 15, 17, 19, 20 & 21 |
| For no further action at this time | 8, 18, 22 & 23 |

An additional issue was included in the report, namely the removal of s18A, which provides a requirement for re-inspection where no objection to a Weed Control Notice is received. This Issue was raised as a pressing administrative issue in the submissions of a number of Local Control Authorities, supported by other major stakeholders. The report concluded that "overall, the provision enhances both procedural fairness and compliance outcomes and encourages active inspection regimes by Local Control Authorities. No amendment of the Act is therefore recommended."³⁶

Many other matters impacting the effective implementation of the Act were raised in submissions received by the statutory review. Matters raised include:

Declaration and classification system: Several issues were raised in regard to the declaration and classification system for noxious weeds. While noting that restricting the classes of noxious weeds to 5 categories works reasonably well in practice, the report concluded that "a review of the design of the declaration, classification and control mechanisms used in the Act, in particular a reconsideration of the need for Weed Control Categories, could improve its workability and give better effect to the flexibility intended in section 7 of the Act. This could occur as part of the broader Biosecurity Reform Project."³⁷

Monitoring, reporting and enforcement: A large number of submissions commented on the apparent lack of accountability for weed management activity and outcomes. While there was a perception that accountability and enforcement required strengthening, several submissions cautioned against over-zealous enforcement action and argued instead for increased public education.

Collaboration: Many submissions advocated improved co-operation between Government agencies, industry and community organisations.

Role of regional bodies: Several submissions advocated a strengthened role for regional bodies such as Catchment Management Authorities and regional weed committees.

³⁵ Ibid., p4ff

³⁶ Ibid., p21

³⁷ Ibid., p22

Weed awareness education: The NSW Aboriginal Land Council noted the need for culturally appropriate communication with Aboriginal landowners.

Resourcing and funding: Several submissions recommended a review of the funding of weed control in NSW and advocated increased resourcing of weed management activities.

Environmental weeds: Many environmental groups and Catchment Management Authorities argued for more effective management of environmental weeds. The Office of Environment and Heritage noted that, while at least 340 weed species have significant impacts on biodiversity, only 68 are listed under the *Noxious Weeds Act 1993*.

5.4 The Noxious Weeds Amendment Bill 2012

On 23 February 2012, the [Noxious Weeds Amendment Bill 2012](#) (the Bill) was introduced in the NSW Legislative Assembly. According to the Minister for Primary Industries:

The Noxious Weeds Amendment Bill 2012 is about improving the management of noxious weeds in New South Wales and, in turn, better protecting landowners, 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 New South Wales, and for authorities to be able to deal more rapidly with the weeds if and when they arrive.³⁸

The object of the Noxious Weeds Amendment Bill 2012 is to amend the *Noxious Weeds Act 1993* (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;

³⁸

NSW PD, [Noxious Weeds Amendment Bill 2012](#), 23 February 2012, p47

(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 *Noxious Weeds Act 1993*, not the *Local Government Act 1919*; and

(j) to make other minor or consequential amendments (including standardizing terminology and providing for matters of a savings or transitional nature).

By so doing, the Bill will address each of the issues identified for statutory amendment in the Report on the Statutory Review (see Table 15). Significant amendments are outlined below.

5.4.1 Objects of the Act (Issue 1)

The Bill sets out amendments of objects 3(a)(ii) and 3(a)(iii) of the Act so that they "better reflect the current weed management policy and provide greater consistency with the NSW Invasive Species Plan."³⁹ Object 3(a)(ii) is extended 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 preventing or eliminating the spread of existing significant weeds.

Object 3(a)(iii) of the Act currently refers to reducing the area in this State of existing significant weeds. The Bill amends the object to read: "effectively manage widespread significant weeds in this State."

5.4.2 Prevention of the spread of high priority weeds from other jurisdictions (Issue 6)

Currently, the Act primarily focuses on weeds and weed material once they are in NSW. Section 31, the only provision in the Act restricting the spread of weeds from other jurisdictions, is limited in its scope to limiting the spread of weeds from Queensland into NSW via certain types of agricultural machines. As noted in the Agreement in Principle speech:

There are ... mining exploration machines and other machines and equipment moving from Queensland into New South Wales with a high

³⁹

Ibid., p47

potential to spread noxious weeds such as parthenium into New South Wales.⁴⁰

Consequently, the Bill proposes 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 New South Wales from any other State or Territory rather than just from Queensland.⁴¹

5.4.3 Prohibition of the importation of noxious weeds into NSW (Issue 7)

Together with the proposed amendment of section 31, the Bill proposes an additional amendment in order to regulate the importation of noxious weeds into NSW. The Bill proposes the insertion of section 11 to:

... allow the Minister, by order, to prohibit or regulate the bringing into New South Wales 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 \$11,000.⁴²

5.4.4 Identification and trace-back of noxious weed material (Issue 12)

The Statutory Review of the Act concluded that there are insufficient powers in the Act to allow the investigation, management, identification and trace-back of suspected noxious weed material. Three amendments are proposed to address this issue:

Replacement of section 44(c): The Bill proposes to replace section 44(c) with an amendment permitting 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. This amendment is intended to improve the efficiency of monitoring activities and provide an "objective and defensible way of documenting the presence of weeds during property inspections."⁴³

Replacement of section 44(h): Under the Act, inspectors have 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

⁴⁰ Ibid., p47

⁴¹ Ibid., p47

⁴² Ibid., p47

⁴³ Ibid., p47

material. The Bill proposes to replace section 44(h) to extend the powers of inspectors to also enable them to examine, seize, detain, remove or destroy anything that the inspector reasonably suspects to be, or to contain, noxious weed material.

Replacement of section 47A: The Bill proposes to replace section 47A with 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. This amendment will address several limitations in the current powers given to inspectors with regard to tracing the source or destination of suspected noxious weed material.

6.0 NSW POLICY & ADMINISTRATIVE FRAMEWORK

The NSW policy and administrative framework for the management of noxious weeds is primarily established under the *Noxious Weeds Act 1993*. The lead NSW Government bodies for noxious weed control are the Department of Primary Industries (which is an operational division of the NSW Department of Trade & Investment, Regional Infrastructure & Services) and the Office of Environment & Heritage. Additional roles and responsibilities are shared between several other bodies, one of the most important of which is local government, as it is the designated Local Control Authority under the *Noxious Weeds Act 1993*.

NSW noxious weed control policy is based around four approaches: prevention; eradication; containment; and asset protection. Weed management policies, strategies and legislation may be categorised as addressing one or more of these approaches. Relevant policies, strategies and funding programs are developed, implemented and/or administered at State, regional and local levels.

6.1 Administrative framework

Noxious weed control responsibilities are shared between a number of bodies and persons in NSW (see Table 15). At the State level, the [Department of Primary Industries](#) (DPI), [Office of Environment and Heritage](#) (OEH) and the Noxious Weeds Advisory Committee (NWAC) all have significant regulatory, administrative and/or advisory roles. Regional and local enforcement, planning and/or implementation roles are shared between Catchment Management Authorities, Local Control Authorities (LCAs) and Regional Weed Advisory Committees. 14 [Regional Weed Advisory Committees](#) have been established across NSW to facilitate a regional approach to noxious weed management. Membership of these Committees includes representatives from LCAs, public authorities, industry bodies, state government agencies and the community.

Table 15: Noxious weed administrative framework in NSW⁴⁴

| Body | Responsibilities |
|----------------------------------|--|
| Department of Primary Industries | <ul style="list-style-type: none"> • Implement the NSW Invasive Species Plan • Administer the <i>Noxious Weeds Act 1993</i> • Noxious weed policy, planning and risk assessment • Conduct research • Coordinate State programs • Facilitate information flow between NWAC and LCAs • Support local government and regional delivery with distribution of biological control agents, relevant training and extension and promotional resources |

⁴⁴

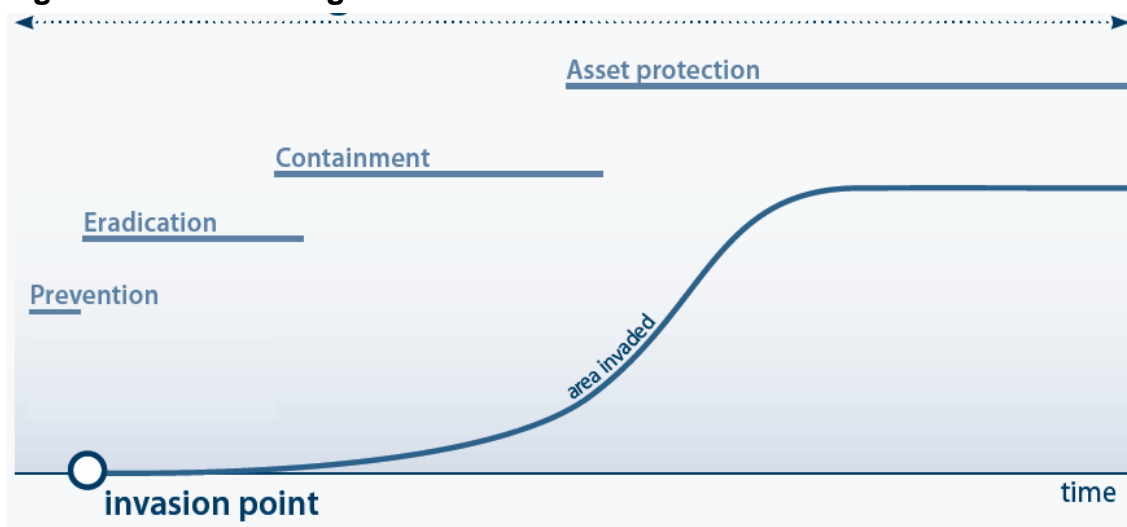
Sources: Industry & Investment NSW, [Noxious weed handbook for councils and councillors](#), 2010, p5; Office of the Hawkesbury-Nepean, [Roles and responsibilities - Aquatic weed management in the Hawkesbury-Nepean River system](#), 2010

Table 15 (continued): Noxious weed administrative framework in NSW

| Body | Responsibilities |
|---|---|
| Office of Environment and Heritage | <ul style="list-style-type: none"> • Develop and implement biodiversity conservation plans |
| Noxious Weeds Advisory Committee (NWAC) | <ul style="list-style-type: none"> • Advise the Minister on all aspects of noxious weed management |
| Public Authorities | <ul style="list-style-type: none"> • Control noxious weeds on land under their control |
| Natural Resources Commission | <ul style="list-style-type: none"> • Set statewide standards and targets to guide natural resource management in NSW |
| Catchment Management Authorities (CMAs) | <ul style="list-style-type: none"> • Development and implementation of weed management plans • Implementation of on-ground weed control projects |
| Local Control Authorities (LCAs) | <ul style="list-style-type: none"> • Enforce the control of noxious weeds on private land • Weed control measures on council land • Develop and implement weed management plans for the local area |
| Regional Weed Advisory Committees | <ul style="list-style-type: none"> • Promote a strategic approach to regional weed management • Develop regional weed management strategies/plans • Provide a forum for discussion of regional issues • Develop joint projects • Apply for grants • Increase community awareness of weed issues |
| Landholders and occupiers | <ul style="list-style-type: none"> • Prevent the spread of noxious weeds • Notify councils of infestations where appropriate • Be aware of weeds declared noxious in their area |

6.2 Policy framework

All weed management in NSW can be classified under four approaches: prevention; eradication; containment; and asset protection. These four approaches can be thought of as matching the invasion process of a weed species from arrival through to widespread establishment (see Figure 2). Different weed management strategies and legislation can be applied to each of the four approaches depending on the specific situation.

Figure 2: Weed management in NSW⁴⁵

The four weed management approaches are defined as follows:

Prevention: weed management aimed at preventing new weed species from arriving.

Eradication: weed management aimed at removing newly arrived and naturalized weeds (including all plant material), where eradication is an achievable goal.

Containment: weed management aimed at reducing the spread and/or severity of established weed infestations using defined geographic boundaries. Eradication is no longer feasible.

Asset protection: weed management aimed at protecting assets from the impacts of established weed species. Assets may be environmental, primary production or community (human health or cultural). Control in areas with no defined assets is a low priority.⁴⁶

The Department of Primary Industries and the Office of Environment and Heritage use three methods to determine weed management priorities in NSW:

- The *Weed Risk Assessment (WRA)* system for quarantine or preborder management addressing the Prevention category (see Figure 2); or

⁴⁵ Modified from: Department of Primary Industries, [New South Wales Parthenium Strategy 2010-2015](#), June 2011, p6

⁴⁶ NSW Department of Primary Industries and the Office of Environment and Heritage, [Understanding weed management in New South Wales](#), no date, p2

- The *Weed Risk Management* (WRM) system for post-border assessment and prioritisation of weed species once they have arrived and established, addressing Eradication and Containment (see Figure 2); or
- The Biodiversity Priorities for Widespread Weeds (BPWW) system for prioritisation of sites for environmental Asset protection (see Figure 2). This process is modelled on the Bitou Bush Threat Abatement Plan and ensures impact reduction is the primary focus for control of widespread weeds. A system for prioritising non-environmental assets impacted by widespread weeds is yet to be established.⁴⁷

Table 16 sets out examples of the relevant strategies, policies and legislation that apply to each of the four weed management approaches.

Table 16: Weed management strategies, policies and legislation by management approach⁴⁸

| Prevention | Eradication | Containment | Asset protection |
|-----------------------------------|-----------------------------------|---|--|
| <i>Quarantine Act 1908</i> (Cth) | NSW New Weed Incursion Plan | Weeds of National Significance containment lines (e.g. Lantana in Southern NSW) | <i>Threatened Species Conservation Act 1995</i> |
| NSW New Weed Incursion Plan | National Eradication Programs | | <i>National Parks and Wildlife Act 1974</i> |
| National Eradication programs | National Environmental Alert List | | <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) |
| National Environmental Alert List | Sleeper Weed List | | NSW Threat Abatement Plans/Priority Action Statement |
| Sleeper Weed List | | | Biodiversity Priorities for Widespread Weeds in NSW |

⁴⁷ Ibid., p1

⁴⁸ Ibid., p2

Table 16 (continued): Weed management strategies, policies and legislation by management approach

| Prevention | Eradication | Containment | Asset protection |
|---|-------------|-------------|------------------|
| Strategies or legislation relevant to all four approaches | | | |
| <i>Noxious Weeds Act 1993</i> | | | |
| NSW Invasive Species Plan | | | |
| NSW Biosecurity Strategy | | | |
| NSW Catchment Weed Management Strategies | | | |
| NSW State and Regional Weed Management Plans | | | |
| Australian Weeds Strategy | | | |
| Weeds of National Significance Strategies | | | |

Currently, DPI and OEH are developing a state-wide Monitoring, Evaluation and Reporting (MER) strategy for invasive species, based around the four approaches, using three indicators: (i) new incursions; (ii) emerging species; and (iii) asset protection through reducing impacts at priority sites. These Departments recommend that all weed management stakeholders in NSW should include MER actions within their programs.⁴⁹

6.2.1 Key policies

A number of statewide, regional and local plans and strategies are in place for dealing with noxious weeds in general, and several noxious weeds in particular. Key plans and strategies include:

NSW invasive species plan 2008-2015: This [plan](#) sets out a strategy for dealing with both invasive plant and animal species. The plan aims to prevent new incursions, contain existing populations and adaptively manage widespread species. Roles and responsibilities for key bodies and persons are identified in relation to the four goals adopted: (1) prevention of the establishment of new invasive species (2) eradication or containment of new invasive species (3) effective management of widespread invasive species and (4) building the capacity of key stakeholders to manage invasive species.

NSW new weed incursion plan 2009-2015: This [plan](#) was developed to address the first two goals of the NSW invasive species plan, namely to exclude, and to eradicate or contain new weed species in the State. The plan is intended to help coordinate the surveillance and identification of weeds and weed pathways, the risk assessment of species and the implementation of effective barriers to prevent their establishment. The Plan also outlines how responses to weed incursions will be coordinated, implemented, monitored and reported.

⁴⁹

Ibid.

NSW biosecurity strategy (2007): This [strategy](#) defines biosecurity as "the protection of the economy, environment and public health from negative impacts associated with pests, diseases and weeds".⁵⁰ The first three aims of this strategy are the same as the first three goals adopted in the NSW invasive species plan, namely the (1) prevention (2) eradication or containment and (3) effective management of biosecurity threats in NSW. The last two aims of the strategy concern ensuring cooperation between NSW DPI and other agencies, industry and the community, and maintaining DPI's capacity to manage biosecurity within NSW.

Biodiversity priorities for widespread weeds: Statewide framework (2011): This [framework](#) is the result of a collaborative project to develop biodiversity priorities for widespread weeds by OEH, DPI and the State's 13 Catchment Management Authorities. This project is aimed at addressing the following [Natural Resources Commission](#) statewide target: By 2015 there is a reduction in the impact of invasive species. The framework is intended to, amongst other aims, "identify and prioritise sites for control based on the likelihood of achieving a positive biodiversity response."⁵¹

Weed specific strategies: DPI has published several weed specific strategies, including: the [NSW Alligator Weed Strategy 2010-2015](#); the [NSW Parthenium Strategy 2010-2015](#); the [NSW Draft Fireweed Strategy 2010-2015](#); and the [NSW Draft Orange Hawkweed Strategy 2011-2016](#). Each strategy sets out relevant control strategies for managing the weed. They also identify a set of actions and performance indicators for which each relevant body is responsible.

6.3 Funding

A number of funding sources are available for noxious weed control programs and activities (see Table 17). These include Commonwealth and NSW Government sources.

⁵⁰ NSW Department of Primary Industries, [NSW biosecurity strategy](#), 2007, p2

⁵¹ NSW Department of Primary Industries, Office of Environment & Heritage, NSW Catchment Management Authorities, NSW National Parks & Wildlife Service & the Australian Government, [Biodiversity priorities for widespread weeds: Statewide framework](#), 2011, p6

Table 17: Noxious weed control program and activity funding sources

| Body | Funding program |
|---|---|
| Department of Agriculture, Fisheries & Forestry (Cth) | <ul style="list-style-type: none"> • Caring For Our Country grants • National Weeds & Productivity Research Program |
| DPI | <ul style="list-style-type: none"> • NSW Weeds Action Program |
| OEH | <ul style="list-style-type: none"> • Environmental Trust grants |
| Catchment Management Authorities | <ul style="list-style-type: none"> • Grants for weed control activities |
| Local Control Authorities | <ul style="list-style-type: none"> • Funding of on-ground works |

DPI expenditure on noxious weeds has increased between 2009/10 and 2011/12. In 2009/10, DPI spent \$8,353,000 on noxious weed control.⁵² This increased to \$9,183,000 in 2010/11⁵³ and, according to the 2011/12 NSW Budget, is expected to total \$11 million in 2011/12. In the 2011/12 NSW Budget, funding was allocated to specific noxious weed control programs, run by DPI and OEH, as well as programs and bodies which have noxious weed control responsibilities (see Table 18).

Table 18: Noxious weed control expenditure in the 2011/12 NSW Budget⁵⁴

| Body | Funding |
|----------------------------------|---|
| Catchment Management Authorities | <ul style="list-style-type: none"> • In 2011/12, the CMAs' key initiatives will include spending \$85.6 million on on-ground works. Funds will come from: <ul style="list-style-type: none"> ○ the NSW Government's Catchment Action NSW program (\$26.9 million); ○ the Commonwealth Government's Caring for our Country initiative (\$35.3 million); and ○ other sources, such as industry and the Commonwealth Government's Water for the Future program (around \$23.4 million). |
| Department of Primary Industries | <ul style="list-style-type: none"> • \$11 million to control noxious weeds, which includes an extra \$1.5 million in 2011/12 to attack noxious weeds, improve agricultural productivity and protect the environment • \$32 million to invest in natural resource management under Catchment Action NSW, of which \$26.9 million will be used by Catchment Management Authorities, \$3.2 million is for grants to agencies and \$1.6 million is for administrative costs to improve local environments |

⁵² This figure was sourced from the DTIRIS Annual Report 2010/11. The figure is slightly different to a 2011 Industry & Investment NSW publication, which stated that DPI awarded \$8,555,000 in noxious weed grants in 2009/10. This publication also provided a substantial breakdown of where the funds were spent: Industry & Investment NSW, [Noxious Weed Grants 2009-10: A summary of noxious weed grants paid by the NSW Government](#), 2011

⁵³ NSW Department of Trade & Investment, Regional Infrastructure & Services, [Annual Report 2010-11](#), 2011, p298

⁵⁴ Source: NSW Government, [Budget Paper 3: 2011-12 Budget Estimates](#), Chapters 7 & 8, 2011

Table 18 (continued): Noxious weed control expenditure in the 2011/12 NSW Budget

| Body | Funding |
|----------------------------------|--|
| Environmental Trust | <ul style="list-style-type: none"> \$19.8 million in new statutory grants for community groups, councils, schools, Aboriginal organisations, registered training organisations, lead environmental community groups, state agencies and research bodies, including \$2 million for a new bush regeneration program and \$5 million to buy land for national parks and reserves. |
| Office of Environment & Heritage | <ul style="list-style-type: none"> \$68 million to manage pest animals and weeds and to improve fire management in national parks \$12 million in payments to maintain Sydney's urban parks and gardens, including the Centennial Parklands and Moore Park Trust, Parramatta Park Trust and Western Sydney Parklands Trust |
| Western Sydney Parklands Trust | <ul style="list-style-type: none"> \$0.7 million to continue to improve the Parklands environment, including weed removal, restoring biodiversity and improving habitats |

The LGSA, representing NSW local governments and shires who together play a significant noxious weed control role in NSW, made a submission to NSW Treasury prior to the 2011/12 Budget. In their submission, the LGSA drew attention to a perceived neglect by the NSW Government of weed management relative to local councils. The submission states:

In NSW, councils play a significant role in the management of weeds. While the NSW Government helps by providing approximately \$8.6 million in grant funding for noxious weed management activities (via the NSW Weeds Action Program), councils invest significantly more funds on a wide range of other weed actions. It has been estimated that councils spend more than triple this amount (up to \$30 million) in undertaking weed management functions.

Many individual councils allocate considerable expenditure to weed management in such areas as bushland reserves, urban parks and local roads. This additional expenditure is rarely reported to a central authority, and the collection of such data is near impossible. Councils can not be expected to "win the fight against weeds" with such limited funding from other levels of government.⁵⁵

The LGSA proposed three solutions:

- Recognise the substantial economic impact of weeds to the entire community and significantly increase the level of funding allocated to weed management;

⁵⁵ Local Government and Shires Association of NSW, [Submission on the NSW Budget for 2011/12](#), August 2011, p12

- Specifically increase the level of funding allocated, through the NSW Weeds Action Program, to councils in their role as Local Weed Control Authorities to \$20 million per year; and
- Recognise the significant investment by councils in weed management and commit to the long term ongoing role for Local Government in this field through inclusion in the Intergovernmental Agreement.⁵⁶

7.0 COMMONWEALTH REGULATORY & ADMINISTRATIVE REGIMES

7.1 Legislation

Four Commonwealth Acts apply to the regulation of noxious weeds in Australia: the [Agricultural and Veterinary Chemicals Code Act 1994](#); the [Biological Control Act 1984](#); the [Environment Protection and Biodiversity Conservation Act 1999](#); and the [Quarantine Act 1908](#).

7.1.1 Agricultural and Veterinary Chemicals Code Act 1994

The [Agricultural and Veterinary Chemicals Code Act 1994](#) (Cth) regulates the use, supply and distribution of all pesticides in Australia. Under the Act, all pesticides must be registered with the [Australian Pesticides and Veterinary Medicines Authority](#). Section 5 of the [Agricultural and Veterinary Chemicals \(New South Wales\) Act 1994](#) (NSW) allows for the Commonwealth Act to apply as law in NSW.

7.1.2 Biological Control Act 1984

Part II of the [Biological Control Act 1984](#) makes provision for a weed to be declared a target organism for biological control. Section 3 of the Act defines the biological control of target organisms:

For the purposes of this Act, organisms of a particular kind shall be taken to be controllable by biological means if, and only if, those organisms can be controlled by the release of live organisms of another kind (s3).

Part III of the Act provides for the release of agent organisms to control nominated target organisms.

7.1.3 Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth Government is responsible for regulating the import and export of plant material. The [Environment Protection and Biodiversity Conservation Act 1999](#) (the EPBC Act), together with the [Quarantine Act 1908](#) and its subordinate legislation, regulates the importation of live animals and plants into Australia. Prior to any new plant or biological control agent being imported into Australia, the plant or agent must be assessed for its potential impacts under the Acts.⁵⁷

The EPBC Act also provides for:

- identification and listing of threatened species and threatened ecological communities;

⁵⁷ Australian Government, [Preventing the entry of new potential weeds into Australia](#), 1 December 2010 [online - accessed 01/03/2012]

- development of recovery plans for such species and ecological communities;
- recognition of key threatening processes; and
- reducing these processes through threat abatement plans.

The loss and degradation of native plant and animal habitat by the invasion of escaped garden plants, including aquatic plants, is listed as a key threatening process under the EPBC Act. The EPBC Act currently applies where weeds threaten any species or ecological community listed under the Act, or where control of weeds may have adverse effects on matters of national environmental significance.

7.1.4 Quarantine Act 1908

The [Quarantine Act 1908](#) and its subordinate legislation, together with the *Environment Protection and Biodiversity Conservation Act 1999*, regulates the importation of live animals and plants into Australia. Prior to any new plant or biological control agent being imported into Australia, the plant or agent must be assessed for its potential impacts under the legislative scheme.⁵⁸

7.2 Administrative framework

Commonwealth responsibility for weeds management in Australia is shared between the [Department of Agriculture, Fisheries and Forestry](#) and the [Department of Sustainability, Environment, Water, Population and Communities](#). Administrative responsibility for the relevant Commonwealth legislation is held by these two departments, and together they administer the [Weeds in Australia](#) website. The departments help identify, coordinate and resolve weed issues at the national level through membership on the [Australian Weeds Committee](#) and through implementation of the [Australian Weeds Strategy](#).

The [Australian Weeds Committee](#) was first established in an earlier form in July 1966. Currently, it operates as an inter-governmental mechanism for the identification and resolution of weed issues at a national level. Of its ten members, two are from the Commonwealth Government with the remainder each representing one of Australia's eight States and Territories. Along with the [National Weeds Management Facilitator](#), observers from three bodies attend Committee meetings: CSIRO; [Plant Health Australia](#); and the New Zealand Government.

The [National Biosecurity Committee](#) (NBC) was established in 2008 to provide strategic leadership in managing national approaches to emerging and ongoing biosecurity policy issues across jurisdictions and sectors. All biosecurity issues, including environmental, animal and plant biosecurity issues, are considered by the NBC, with a view to resolution or for the development of advice to the

⁵⁸

Ibid.

COAG Standing Council on Environment and Water and the COAG Standing Council on Primary Industries, as appropriate.⁵⁹

7.3 Policies and programs

7.3.1 The Australian Weeds Strategy

The [Australian Weeds Strategy](#) replaced the National Weeds Strategy in 2007.⁶⁰ The Vision of the Strategy is as follows:

Australia's economic, environmental and social assets are secure from the impacts of weeds.⁶¹

The Strategy sets out the weed management roles and responsibilities of each level of government, along with other relevant parties. Three goals, with associated strategic actions, have been identified to realise the Strategy's vision:

Goal 1: Prevent new weed problems

Goal 2: Reduce the impact of existing priority weed problems

Goal 3: Enhance Australia's capacity and commitment to solve weed problems.⁶²

7.3.2 Biosecurity policies

A [weed risk assessment](#) (WRA) process was developed after a 1996 review of Australia's quarantine systems identified the need to screen plants for weed potential before importation.⁶³ THE WRA process "is a science-based quarantine risk analysis tool for determining the weed potential of proposed new plant imports."⁶⁴ It is a three-tiered system that involves the importer, Biosecurity Australia and the Australian Quarantine Inspection Service (see

⁵⁹ Department of Agriculture, Fisheries and Forestry, [National Biosecurity Committee](#), 30 September 2011 [online - accessed 05/03/2012]

⁶⁰ The Australian Weeds Committee [website](#) provides two reports on the implementation of the National Weeds Strategy.

⁶¹ Natural Resource Management Ministerial Council, [The Australian Weeds Strategy: A national strategy for weed management in Australia](#), Developed by the Australian Weeds Committee, 2007, p2

⁶² Ibid., p3

⁶³ Department of Agriculture, Fisheries and Forestry, [Development of the weed risk assessment system](#), 27 October 2008 [online - accessed 05/03/2012]

⁶⁴ Department of Agriculture, Fisheries and Forestry, [The weed risk assessment process](#), 22 October 2008 [online - accessed 05/03/2012]

Table 19). If import conditions cannot be determined following the Tier 2 weed risk assessment, importers may be given the opportunity to provide more information for re-assessment of the species or to continue to the Tier 3 post-entry evaluation.

Table 19: Weed Risk Assessment process⁶⁵

| Tier | Process |
|--------|---|
| Tier 1 | Determine status in Australia: <ul style="list-style-type: none"> • present in Australia and not under official control; or • listed on AQIS's import conditions database (ICON); and/or • listed on AQIS's permitted seeds list |
| Tier 2 | Conduct a weed risk assessment |
| Tier 3 | Post-entry evaluation |

The [National Weed Incursion Plan](#) (NWIP) applies in the event of the detection of a high-risk weed species. The Plan outlines procedures generic for all responses to weed incursions. The Plan's objectives are as follows:

- Prevent the introduction and establishment of new weed incursions into Australia on public and private land;
- Support Australian Quarantine and Inspection Service (AQIS) and State/Territory governments to prevent the introduction of new weeds;
- Support a surveillance program to enhance the reporting of new weed incursions in Australia;
- Determine the appropriate type of response to each category of new weed incursion;
- Assess the potential impact on agricultural, environmental and social values of each incursion of high-risk weeds;
- Monitor, report and evaluate the type and number of new responses to high-risk weed incursions and the effectiveness of on-ground management and eradication programs; and
- Review the NWIP biennially to improve and enhance preparedness and response outcomes.

7.3.3 Weed control programs

In 2000, the National Weeds Strategy Executive Committee published [The Determination of Weeds of National Significance](#): a document laying out the process by which 20 Weeds of National Significance (WONS) were identified (see Appendix 1 for a list of the WONS weeds). Under the [WONS program](#), each WONS weed has a National Coordinator, a weed control manual and a strategic plan.

⁶⁵ Source: Department of Agriculture, Fisheries and Forestry, [The weed risk assessment process](#), 22 October 2008 [online - accessed 05/03/2012]

National eradication programs are being implemented for six weeds in Australia (see Appendix 1 for a list of the weeds). Eradication of these weeds has been determined to be both justifiable, because of their potential impacts on Australia's primary industries, trade, the economy and the environment, and feasible. National eradication programs for weeds in Australia are cooperative schemes between the Commonwealth Government and the State and Territory Governments. The programs are nationally coordinated by the Office of the Chief Plant Protection Officer. The State or Territory Government where the pest occurs is responsible for the management and operation of the program, with technical assistance from the Commonwealth Government Department of Agriculture, Fisheries and Forestry.⁶⁶

In 2008, the Commonwealth Government combined three national natural resource management programs into one: [Caring for our Country](#). This program supports regionalised natural resource management activities across Australia. Projects carried out under this program target natural resource management issues including weed management issues.

⁶⁶ Department of Agriculture, Fisheries and Forestry, [National Eradication Programs - exotic weeds](#), 22 August 2011 [online - accessed 05/03/2012]

8.0 CONCLUSION

Noxious weeds pose significant regulatory, policy and funding challenges because of their sizeable economic, environmental and social costs. These challenges are likely to increase in the future as weeds generally spread faster than they can be controlled. Responding to specific weeds requires policy measures tailored to the status of the weed in NSW. Where weeds are not yet present in NSW, preventative measures apply. These include policies such as the NSW New Weed Incursion Plan as well as biosecurity policies at State and Commonwealth levels. When a weed species is first detected, where feasible significant investment in eradication is justified. Many noxious weeds are already established in NSW. In such cases, containment and asset protection are the policy approaches currently adopted.

The *Noxious Weeds Act 1993* is the key statutory instrument for regulating noxious weeds in NSW. In February of this year, the NSW Government introduced the Noxious Weeds Amendment Bill 2012. The Bill, which developed out of a regulatory review process that included stakeholder consultation, contains several proposed amendments intended to strengthen the preventative and investigative measures contained in the Act. It also seeks to clarify several administrative functions laid out in the 1993 Act.

The proposed amendments, as contained in an Issues Paper released for stakeholder consultation, were generally supported by stakeholders. However, the Bill only contains some of the proposals contained in the initial Issues Paper and supported by stakeholder comments. At this stage, it appears that the Bill may be an initial step in a series of reforms of noxious weed management, and of biosecurity issues more generally. In the report into the statutory review of the *Noxious Weeds Act 1993*, the NSW Government noted that the amendments proposed in the Bill were made within the context of an ongoing NSW Biosecurity Reform Project. It also classified 11 of the initial 22 issues identified as being "for progression and further consultation." Which, if any, further reforms may be adopted in the future remains to be seen.

One priority for governments, industry and the community alike is to provide appropriate financial resources to adequately address the impacts of noxious weeds in NSW. A particular priority for government is for the establishment of a strong regulatory framework to support land management practices that mitigate the spread of noxious weeds.

APPENDIX 1: NATIONAL WEEDS LISTS

Weeds of National Significance

| Common name | Scientific name | Distribution in NSW | Number of NSW threatened species at threat |
|-------------------------|--|-------------------------|--|
| Alligator weed | <i>Alternanthera philoxeroides</i> | Widespread | 1 |
| Athel pine | <i>Tamarix aphylla</i> | Restricted distribution | 0 |
| Bitou bush/ Boneseed | <i>Chrysanthemoides monilifera</i> subsp. <i>rotundata</i> & <i>monilifera</i> | Widespread | 46 |
| Blackberry | <i>Rubus fruticosus aggregate</i> | Widespread | 21 |
| Bridal creeper | <i>Asparagus asparagoides</i> | Widespread | 4 |
| Cabomba | <i>Cabomba caroliniana</i> | Widespread | 0 |
| Chilean needle grass | <i>Nassella neesiana</i> | Widespread | 0 |
| Gorse | <i>Ulex europaeus</i> | Widespread | 0 |
| Hymenachne | <i>Hymenachne amplexicaulis</i> | Restricted distribution | 1 |
| Lantana | <i>Lantana camara</i> | Widespread | 96 |
| Mesquite | <i>Prosopis spp.</i> | Restricted distribution | 1 |
| Mimosa | <i>Mimosa pigra</i> | Not present | na |
| Parkinsonia | <i>Parkinsonia aculeata</i> | Restricted distribution | 0 |
| Parthenium weed | <i>Parthenium hysterophorus</i> | Widespread | 0 |
| Pond apple | <i>Annona glabra</i> | Not present | na |
| Prickly acacia | <i>Vachellia nilotica</i> | Not present | na |
| Rubber vine | <i>Cryptostegia grandiflora</i> | Not present | na |
| Salvinia | <i>Salvinia molesta</i> | Widespread | 2 |
| Serrated tussock | <i>Nassella trichotoma</i> | Widespread | 2 |
| Willow | <i>Salix spp. except</i> <i>S.babylonica, S.x</i> <i>calodendron & S.x reichardtii</i> | Widespread | 3 |

National Environmental Alert List Weeds

| Common name | Scientific name | Listed as a noxious weed in NSW |
|-------------------------|---|---------------------------------|
| Barleria | <i>Barleria prionitis</i> | No |
| Blue hound's tongue | <i>Cynoglossum creticum</i> | Yes |
| Cane needle grass | <i>Nassella hyalina</i> | No |
| Chinese rain tree | <i>Koelreuteria elegans</i> subsp. <i>formosana</i> | No |
| Chinese violet | <i>Asystasia gangetica</i> subsp. <i>micrantha</i> | Yes |
| Cutch tree | <i>Acacia catechu</i> | No |
| Cyperus | <i>Cyperus teneristolon</i> | No |
| False yellowhead | <i>Dittrichia viscosa</i> | No |
| Garden geranium | <i>Pelargonium alchemilloides</i> | No |
| Heather | <i>Calluna vulgaris</i> | No |
| Holly leaved senecio | <i>Senecio glastifolius</i> | No |
| Horsetail species | <i>Equisetum</i> spp. | Yes |
| Karoo thorn | <i>Acacia karroo</i> | Yes |
| Kochia | <i>Bassia scoparia</i> (weedy form) | Yes |
| Lagarosiphon | <i>Lagarosiphon major</i> | Yes |
| Laurel clock vine | <i>Thunbergia laurifolia</i> | No |
| Leaf cactus | <i>Pereskia aculeata</i> | No |
| Lobed needle grass | <i>Nassella charruana</i> | No |
| Orange hawkweed | <i>Hieracium aurantiacum</i> | Yes |
| Praxelis | <i>Praxelis clematidea</i> | No |
| Rosewood | <i>Tipuana tipu</i> | No |
| Senegal tea plant | <i>Gymnocoronis spilanthoides</i> | Yes |
| Siam weed | <i>Chromolaena odorata</i> | Yes |
| Subterranean cape sedge | <i>Trianoptiles solitaria</i> | No |
| Uruguayan rice grass | <i>Piptochaetium montevidense</i> | No |
| White Spanish broom | <i>Cytisus multiflorus</i> | No |
| White weeping broom | <i>Retama raetam</i> | No |
| Yellow soldier | <i>Lachenalia reflexa</i> | No |

Sleeper Weeds

| Common name | Scientific name | Listed as a noxious weed in NSW |
|--|--|---------------------------------|
| Category 1: Species that are considered to have been eradicated but are recommended for ongoing field monitoring | | |
| Common crupina | <i>Crupina vulgaris</i> | No |
| Parodi spike rush | <i>Eleocharis parodii</i> | No (was found in NSW) |
| Uruguayan rice grass | <i>Piptochaetium montevidense</i> | No |
| Category 2: Species for which recent field surveys are complete and which are recommended for immediate eradication. | | |
| Chinese Violet | <i>Asystasia gangetica</i> ssp. <i>micrantha</i> | Yes |
| Chilquilla | <i>Baccharis pingraea</i> | No |
| Lobed needle grass | <i>Nassella charruana</i> | No |
| Mallee cockspur | <i>Centaurea eriophora</i> | No |
| Meadow parsley, Water dropwort | <i>Oenanthe pimpinelloides</i> | No |
| Taurian thistle | <i>Onopordum tauricum</i> | Yes |
| Category 3: Species considered suitable for eradication but for which field surveys on distribution are recommended to confirm feasibility of eradication. | | |
| Badhara bush | <i>Gmelina elliptica</i> | No |
| Creeping yellow cress | <i>Rorippa sylvestris</i> | No |
| Pannicle jointvetch | <i>Aeschynomene paniculata</i> | No |
| Category 4: Eradication is desirable but probably not feasible, for which field surveys on distribution are recommended to confirm this assessment. | | |
| Chilean dodder | <i>Cuscuta suaveolens</i> | No |
| Giant tropical salvia | <i>Brillantaisia lamium</i> | No |
| Orange hawkweed | <i>Hieracium aurantiacum</i> | Yes |
| Snakecotton | <i>Froelichia floridana</i> | No |
| Square-stalked St John's Wort | <i>Hypericum tetrapterum</i> | No |

Note: The four categories refer to the status of the weed at the national level, not in NSW.

Species Targeted for Eradication

| Common name | Scientific name | Listed as a noxious weed in NSW |
|-------------------|--|---------------------------------|
| Branch Broom Rape | <i>Orobanche ramosa</i> | No |
| Koster's Curse | <i>Clidemia hirta</i> | Yes |
| Limnocharis | <i>Limnocharis flava</i> | No |
| Mikania Vine | <i>Mikania micrantha</i> | Yes |
| Miconia | <i>Miconia calvescens</i> , <i>M. racemosa</i> , <i>M. nervosa</i> | Yes |
| Siam Weed | <i>Chromolaena odorata</i> | Yes |

APPENDIX 2: ADDITIONAL ISSUES RAISED IN THE STATUTORY REVIEW ISSUES PAPER

Additional Issues raised in the Statutory Review Issues Paper

| Issue No. | Issue | Proposal | Legislation reference (if applicable) |
|-----------|---|--|--|
| 13 | <p>Control of noxious weeds on waterways and riparian land</p> <p>The Act currently places responsibility for control of noxious weeds in or on waterways with the adjoining land occupier. Overall it is often impossible to require an adjoining occupier to effectively manage such weeds, particularly as floating weeds may move rapidly from site to site according to wind, tide, and stream flow.</p> <p>In addition to this, effective management of aquatic weeds is often very expensive and requires specialised equipment; for example weed harvesters, watercraft and containment booms.</p> <p>In NSW management of the bed and banks of waterways is, generally, the responsibility of the Land and Property Management Authority while the water itself is vested in both the NSW Office of Water and the State Water Corporation. This, in itself, creates a discontinuous situation whereby no single entity can be approached in regards to weed management.</p> | <p>That the Act be amended to allow the Minister or Director General to appoint a person or organisation, or a group of persons or organisations, as having the responsibility for aquatic noxious weed management in particular circumstances or for specified waters.</p> <p>Such arrangements may be between those responsible for the waterway bed and banks and those responsible for the water or could be a single entity such as a local or state government agency or contractor.</p> | <p>s17A</p> <p><i>Noxious Weeds Act 1993</i></p> |
| 14 | <p>Confusion as to where a noxious weed is declared</p> <p>There is some ambiguity under Section 7 of the Act as to the part of NSW in which a plant has been declared noxious.</p> <p>Although the intent of Section 7 of the Act is to outline that a weed may be declared noxious in specific areas only, it may be interpreted that the weed is declared noxious across the State and declaration creates certain obligations by implication.</p> | <p>Amend the Act to provide that a plant is considered to be a noxious weed only in the area of land to which the relevant control order applies.</p> | <p>s7</p> <p><i>Noxious Weeds Act 1993</i></p> |
| 15 | <p>Conflict between the <i>Noxious Weeds Act 1993</i> and other NSW and Commonwealth Government legislation.</p> <p>There is potential for duplication and conflict between the <i>Noxious Weeds Act 1993</i> and other NSW and Commonwealth Government legislation, including:</p> <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Heritage Act 1977</i> | <p>Undertake a separate review of legislation impacting on noxious weeds management in NSW and identify duplication, conflicts and alternative regulatory approaches.</p> | <p>Various Acts and Regulations</p> |

| | | | |
|----|---|---|--|
| | <ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Nature Conservation Trust Act 2001</i> • <i>Native Vegetation Act 2003 and in particular the Native Vegetation Regulation 2005</i> • <i>Plantations and Reafforestation Act 1999 and in particular the Plantations and Reafforestation (Code) Regulation 2001</i> • <i>Threatened Species Conservation Act 1995</i> • <i>Roads Act 1993</i> • <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i> | | |
| 16 | <p>Appointment/authorisation of inspectors and delegation of Local Control Authority functions</p> <p>Local Councils can delegate functions under the <i>Noxious Weeds Act 1993</i> or the <i>Local Government Act 1993</i>.</p> <p>The preferred approach is for functions under the <i>Noxious Weeds Act 1993</i> to be delegated under that Act and not the <i>Local Government Act 1993</i>.</p> | Amend the Act to specify that appointment of inspectors, including delegation of this function, must be executed under the <i>Noxious Weeds Act 1993</i> . | ss41 and 68 <i>Noxious Weeds Act 1993</i> |
| 17 | <p>Definition of residence</p> <p>Section 51 prohibits entry by an inspector to that part of any premises used for residential purposes except with the permission of the occupier of that part of the premises or under the authority of a search warrant.</p> <p>“Residence” is intended to mean the dwelling but not the land around the dwelling. However, residence could be taken to include the whole of an allotment; that is the dwelling and property surrounding the dwelling. This could limit access for inspectors to premises to undertake their functions under the Act.</p> | Clarify within the Act that “residence” is limited to mean a dwelling, whether fixed to the land or not. | s51 <i>Noxious Weeds Act 1993</i> |
| 18 | <p>Refine the definition of occupier.</p> <p>The current definition of an occupier of land is inadequate to address urban and peri-urban lands in the situations where there are a number of occupiers.</p> | Amend the Act or Regulations to provide that where the land is occupied by multiple tenants and used in common, the body corporate or landowner is considered to be the occupier for the purposes of the Act. | Definitions: “occupier of the land” <i>Noxious Weeds Act 1993</i> |
| 19 | <p>Proof of knowledge of notifiable weeds</p> <p>The Act provides for offences for knowingly dealing with noxious weeds or noxious weed material.</p> <p>Knowledge is extremely difficult to prove and can realistically only be done by direct admission, or by the person being informed and warned prior to the offence occurring.</p> | Amend the Act to include a provision similar to section 26(3) of the <i>Plant Diseases Act 1924</i> which provides that such knowledge shall be presumed unless and until the | ss 15, 16, 28, 29, 30, 31 and 32 <i>Noxious Weeds Act 1993</i> |

| | | | |
|----|---|--|--|
| | Also, under section 15 of the Act, an occupier must notify the relevant LCA after becoming aware of a notifiable weed on the land. However, there is currently no requirement for the LCA to notify the Minister. | contrary is proved. Amend the Act to provide that an LCA must notify the Minister within 48 hours of becoming aware of a notifiable weed on any land. | |
| 20 | Offence for abuse of an Inspector or authorised officer The Act currently does not include an offence of abusing and/or threatening an Inspector or Authorised Officer in the performance of his or her duty. | Amend the Act to include offences for abusing and/or threatening an Inspector or Authorised Officer. See for example, s201 <i>Stock Diseases Act 1923</i> and s25C <i>Plant Diseases Act 1924</i> . | s54 <i>Noxious Weeds Act 1993</i> |
| 21 | Review of penalties under the Act There is no variation of penalty in accordance with the severity of the offence. Penalties for a Class 1 State Prohibited Weed are the same as for a Class 4 Locally Controlled Weed. | Undertake a separate review of offences and penalty amounts, with consideration of the scope to vary penalties according to the severity of the offence. | Various provisions <i>Noxious Weeds Act 1993</i> |
| 22 | Definition of classes of road The Roads and Traffic Authority (RTA) has responsibility for managing "State Highways" under the <i>Noxious Weeds Act 1993</i> . However, the term "State Highway" is not used in the <i>Roads Act 1993</i> . | Amend the Act to replace the term "State Highway" with "Highway". | ss 17(3), 17B(4) and 36A(3) <i>Noxious Weeds Act 1993</i> |

APPENDIX 3: SELECTED STAKEHOLDER RESPONSES TO THE STATUTORY REVIEW ISSUES PAPER

Selected stakeholder responses to the Statutory Review Issues Paper

| Issue No. | EDO | LGSA | Namoi CMA |
|-----------|---|--|--|
| 1 | The EDO did not agree with the statement that the current objects of the Act are "mostly deemed to be appropriate". The EDO submitted that the principle of Ecologically Sustainable Development should appear in the objects of the Act. The EDO also submitted that object 3(a)(iii) be revised from 'area' to 'adverse impacts'. | Supported | Supported Suggested the adoption of a collaborative principle to improve the effectiveness of the Act |
| 2 | Supported | Supported | Supported |
| 3 | Supported | Supported, on the condition that LCAs are also allowed to determine the required actions under that declaration | Supported, conditional on a comprehensive and consistent assessment process |
| 4 | Supported. The EDO supported option (1). | Supported. The LGSA stated that option (1) was the preferred option. | Supported |
| 5 | Supported in principle. Recommended establishment of a transparent and scientifically robust process for assessment. | Supported in principle, however, there were numerous concerns over the policy and implementation aspects of the proposal | Supported, provided that comprehensive consultation takes place |
| 6 | Supported. Also recommended the introduction of clauses into the legislation that require mutual recognition of declared weeds in other jurisdictions. | Both proposals were supported, conditional on a number of policy and implementation issues being addressed | Supported |
| 7 | Supported | Supported | Supported |
| 8 | Supported | Supported | Supported |
| 9 | Supported, conditional upon making clear the mandatory scientific criteria that should apply to this process. | Supported, so long as the power given to the Minister is restricted to Lord Howe Island | Supported |
| 10 | Supported | Supported, conditional on the proposal covering all weed classes, not just Class 1 and 2 weeds | Supported |

| | | | |
|----|---|--|-----------|
| 11 | Supported | Supported | Supported |
| 12 | Supported | Supported | Supported |
| 13 | Supported, conditional on clarification of the proposal | Supported, subject to certain conditions | Supported |
| 14 | Supported | Supported | Supported |
| 15 | Supported in principle | Supported in principle | Supported |
| 16 | Supported | Further legal advice needs to be received to ensure there is no conflict between delegation under the two Acts | Supported |
| 17 | Supported | Supported | Supported |
| 18 | Supported | Supported | Supported |
| 19 | Supported | Supported | Supported |
| 20 | Supported | Supported | Supported |
| 21 | Supported | Supported | Supported |
| 22 | Supported | Supported. Suggested that more negotiation be undertaken to resolve the confusion and ineffectiveness of the current arrangements surrounding roadside weed control. | Supported |
