

## NOXIOUS WEEDS BILL 1993

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to provide for the identification and control of noxious weeds in the State and the establishment of the administrative framework for that control. The Bill when enacted will replace Parts 22 and 28 of the Local Government Act 1919.

The Bill:

- identifies noxious weeds in respect of which particular control measures need to be taken
- specifies those control measures
- specifies the duties of public and private landholders as to the control of those noxious weeds
- provides a framework for the State-wide control of those noxious weeds by the Minister and local control authorities
- creates offences relating to noxious weeds.

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### PART 1—PRELIMINARY

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

**Clause 3** sets out the objects of the proposed Act.

**Clause 4** provides that certain words and expressions used in the proposed Act are defined in the Dictionary at the end of the proposed Act. These include “notifiable weed”, “noxious weed”, “occupier of land” and “public authority”.

**Clause 5** provides that the proposed Act binds the Crown.

**Clause 6** makes it clear that matter appearing under the heading “Note” does not form part of the proposed Act.

**PART 2—NOXIOUS WEEDS AND CONTROL MEASURES**

**Clause 7** applies the proposed Act to plants declared by order of the Minister to be noxious weeds. The proposed Act does not apply to prickly pear. Native plants may only be declared to be noxious weeds if the Minister administering the National Parks and Wildlife Act 1974 consents.

**Clause 8** requires the Minister's order to specify that one or more named control categories apply to a noxious weed.

**Clause 9** sets out the kind of control action required by the proposed Act to be taken under the particular control categories.

**Clause 10** describes the broad responsibilities of occupiers.

**Clause 11** describes who has the responsibility for ensuring and administering noxious weed control.

**PART 3—NOXIOUS WEED CONTROL ON LAND****Division 1—Action to control noxious weeds**

**Clause 12** requires private occupiers of land to control noxious weeds on the land, as required by the relevant control category or categories, and imposes a maximum penalty of 40 penalty units (currently \$4,000) for failing to do so.

**Clause 13** requires public authorities to control noxious weeds on their land, as required by the relevant control category or categories, to the extent necessary to prevent the weeds from spreading to adjoining land.

**Clause 14** requires local control authorities to control noxious weeds on their land and on roads (other than freeways, toll works or State works under the State Roads Act 1986), as required by the relevant control category or categories.

**Clause 15** requires occupiers of land to notify the appropriate local control authority of notifiable weeds on the land and imposes a maximum penalty of 20 penalty units (currently \$2,000) on private occupiers for failing to do so.

**Clause 16** is an evidentiary provision that provides that, for the purposes of proving a prosecution under clause 15 (1), the fact that it is likely that an occupier or other person using the land ought reasonably to have known that a notifiable weed was on the land is evidence that the occupier was so aware.

**Clause 17** extends the obligations of occupiers of land in irrigation areas in relation to noxious weeds to roads (other than freeways, toll works or State works under the State Roads Act 1986), reserves, channel lands or waterways enclosed by, or adjoining, the land. It also sets out the obligations of occupiers of other land in relation to noxious weeds on such roads where the land adjoins unfenced roads and in relation to noxious weeds on waterways that adjoin or are on land

**Clause 18** enables local control authorities to give weed control notices requiring occupiers (other than public authorities or other local control authorities) to carry out obligations to control noxious weeds. A notice may be given only if the local control authority is satisfied that an occupier has failed to carry out obligations to control noxious weeds.

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**Clause 19** makes it an offence to fail to comply with a weed control notice given by a local control authority and imposes a maximum penalty of 100 penalty units (currently \$10,000).

**Clause 20** empowers a local control authority to control noxious weeds as required by the proposed Act if a weed control notice is not complied with.

**Clause 21** provides that a local control authority may recommend to the Minister that a weed control notice be given to a public authority or another local control authority.

**Clause 22** enables the Minister to give weed control notices requiring any occupiers to carry out obligations to control noxious weeds. A notice may be given only if the Minister is satisfied that an occupier has failed to carry out obligations to control noxious weeds. Before issuing a weed control notice to a public authority or a local control authority the Minister must consult with the authority.

**Clause 23** makes it an offence for a private occupier to fail to comply with a weed control notice issued by the Minister and imposes a maximum penalty of 100 penalty units. A duty is also imposed on a public authority or a local control authority to comply with a notice.

**Clause 24** empowers the Minister to control noxious weeds as required by the Act if a weed control notice is not complied with.

**Clause 25** enables an occupier (other than a public authority or a local control authority) to appeal to the Land and Environment Court against a weed control notice given by a local control authority or the Minister. On such an appeal the Court may confirm or revoke or amend the notice.

**Clause 26** makes occupiers (including local control authorities) liable for reasonable expenses associated with weed control notices and subsequent control of noxious weeds by local control authorities or the Minister. Any unpaid expenses may be recovered as a debt in a court of competent jurisdiction.

**Clause 27** sets out requirements for notification of proposed control of any noxious weed that is a prohibited plant under the Drug Misuse and Trafficking Act 1985. The clause also provides that the Director-General of the Department of Agriculture may direct that specified means be used to control the prohibited plant.

**Division 2—Offences related to notifiable weeds and other prescribed noxious weeds**

**Clause 28** makes it an offence knowingly to sell or purchase notifiable weed material or other noxious weed material prescribed by the regulations or any animal or thing which has on it, or contains, any such weed material. It will also be an offence knowingly to remove or cause to be removed from land any animal or thing which has on it, or contains, any such weed material. A maximum penalty of 50 penalty units (currently \$5,000) is imposed.

**Clause 29** prohibits the use of land for disposing of, transporting or selling soil or turf if an occupier knows or ought reasonably to know that there is a notifiable weed on the land and imposes a maximum penalty of 50 penalty units for any such use.

**Clause 30** prohibits the scattering of notifiable weed material and imposes a maximum penalty of 50 penalty units for a contravention of the clause.

**Clause 31** requires persons moving agricultural machines from Queensland into this State to produce the machines for inspection by a border inspector. On inspection, an inspection notice may be issued if the inspector is satisfied that the machine is free from a notifiable weed or has been treated so as to remove any such weed. A maximum penalty of 20 penalty units is imposed for failing to comply with the clause.

**Clause 32** makes it an offence knowingly to transport or move or use an agricultural machine that has on it or in it a notifiable weed. A maximum penalty of 20 penalty units is imposed for failing to comply with the clause.

#### **PART 4—GENERAL NOXIOUS WEED CONTROL FUNCTIONS OF MINISTER AND LOCAL AUTHORITIES**

##### **Division 1—Minister**

**Clause 33** confers on the Minister responsibility for the control of noxious weeds in the State and other related functions.

**Clause 34** enables the Minister to permit certain activities in relation to noxious weeds or the disposing of, transporting or selling of soil or turf which would otherwise be prohibited by the proposed Act.

##### **Division 2—Local control authorities**

**Clause 35** defines local control authorities. They are to be local councils, county councils on which noxious weed control functions are conferred and, for unincorporated areas in the Western Division, the Western Lands Commissioner.

**Clause 36** confers on local control authorities responsibility for the control of noxious weeds in their local areas and other related functions.

**Clause 37** enables a local control authority to supply materials and equipment to control noxious weeds as well as noxious weed control services.

**Clause 38** confers on local control authorities powers to temporarily obstruct navigation and to drain swamps for the purpose of controlling noxious weeds.

**Clause 39** confers on inspectors noxious weed control functions and other related functions.

**Clause 40** enables inspectors to require that notifiable weeds be removed from agricultural machines.

#### **PART 5—NOXIOUS WEED CONTROL OFFICERS AND ADVISORY COMMITTEES**

##### **Division 1—Appointment and powers of inspectors**

**Clause 41** provides for the appointment of inspectors by local control authorities.

**Clause 42** enables the Director-General of the Department of Agriculture to authorise persons to act as authorised officers and, in so acting, to exercise some or all of the functions of inspectors.

**Clause 43** confers on inspectors, authorised officers and persons authorised to control noxious weeds powers to enter premises.

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**Clause 44** confers additional powers on inspectors and authorised officers, including powers of inspection, search and seizure.

**Clause 45** requires notice to be given before a power of entry under the proposed Act is exercised.

**Clause 46** sets out the circumstances under which reasonable force may be used to enter premises.

**Clause 47** requires a person who uses reasonable force to now the local control authority which in turn must notify the appropriate authorities.

**Clause 48** requires care to be taken by a person exercising a power of entry.

**Clause 49** requires a local control authority to compensate all interested parties for any damage caused in entering premises under the proposed Part.

**Clause 50** provides that a person authorised to enter premises must possess a certificate of authority in a form approved by the Director-General of the Department of Agriculture.

**Clause 51** prohibits entry onto residential premises except with consent or under the authority of a search warrant.

**Clause 52** sets out procedures for application for a search warrant.

**Clause 53** enables inspectors or authorised officers to request assistance from a police officer or any other person, where necessary.

**Clause 54** makes it an offence to prevent an inspector or authorised officer or other authorised person from exercising a function, to hinder or obstruct an inspector or authorised officer or other authorised person, to refuse or fail to comply with a requirement of or to answer a question of an inspector or authorised officer or other authorised person or to furnish an inspector or authorised officer with false or misleading information. It is also an offence to prevent a person authorised to control noxious weeds from exercising a function or to hinder or obstruct any such person. A maximum penalty of 20 penalty units is imposed.

**Clause 55** makes it an offence for a person to impersonate, or represent that the person is, an inspector or authorised officer or another person authorised under the proposed Act. A maximum penalty of 10 penalty units (currently \$1,000) is imposed.

#### **Division 2—Advisory committees**

**Clause 56** empowers the Minister to establish advisory committees.

**Clause 57** confers the function of assisting the Minister and any other person nominated by the Minister in exercising their functions on advisory committees. Any such committee will also have such other functions in connection with the administration of the Act as the Minister determines.

**Clause 58** provides for the membership and procedure of advisory committees and gives effect to Schedule 1.

**PART 6—ENFORCEMENT PROVISIONS**

**Clause 59** makes any charge or fee due and payable and which remains unpaid under the proposed Act recoverable as a debt in a court of competent jurisdiction.

**Clause 60** makes expenses payable to a local control authority in connection with a weed control notice a charge on the land.

**Clause 61** provides that offences under the proposed Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Clause 62** makes a director of a corporation or a person concerned in the management of a corporation that contravenes the proposed Act liable for the contravention if the director or person knowingly authorised or permitted the contravention.

**Clause 63** sets out a procedure for the issue of penalty notices for offences under the proposed Act.

**PART 7—MISCELLANEOUS**

**Clause 64** provides for certificates as to weed control notices and outstanding expenses affecting land to be issued by the local control authority for the land, on application. The production of the certificate is taken for all purposes to be conclusive proof in favour of a purchaser for value in good faith of the matters certified.

**Clause 65** establishes a procedure for the resolution of disputes arising under the proposed Act between the Minister and the Minister responsible for a public authority or a local control authority. A dispute may be submitted to the Premier for settlement and the Ministers and the authority must comply with the decision of the Premier.

**Clause 66** enables the Minister to delegate the Minister's functions under the proposed Act, other than the power of delegation and the Minister's powers with respect to public authorities and local control authorities under proposed sections 22 and 24.

**Clause 67** enables the Director-General of the Department of Agriculture to delegate the Director-General's functions under the proposed Act, other than the power of delegation and the Director-General's functions with respect to public authorities and local control authorities under proposed section 27, as well as functions delegated to the Director-General by the Minister.

**Clause 68** enables a local control authority to delegate its functions under the proposed Act other than the power of delegation.

**Clause 69** enables a local control authority to make arrangements with another person or body to aid in the exercise of any of its functions under the proposed Act.

**Clause 70** protects the Crown and persons acting in an official capacity under the proposed Act from liability for things done or omitted to be done in good faith for the purpose of executing the proposed Act. The clause also prohibits proceedings being brought against the Minister, a local control authority or other officials for an order to remedy or restrain a breach of the proposed Act.

**Clause 71** sets out the manner in which notice is to be given under the proposed Act.

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**Clause 72** provides for the manner in which land may be described in a notice given under the Act.

**Clause 73** contains the power to make regulations under the proposed Act and confers power to make regulations as to the means, measures or methods to be used to control noxious weeds and to be specified in weed control notices.

**Clause 74** is a formal provision giving effect to Schedule 2 which contains savings, transitional and other provisions.

**Clause 75** is a formal provision giving effect to Schedule 3 which contains consequential amendments to other Acts. The clause also repeals Ordinances Nos. 50 and 50A under the Local Government Act 1919 which relate to noxious plants and aquatic pests.

**Clause 76** requires the Minister to review the proposed Act after 5 years from the date of assent to the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives.

#### **SCHEDULE 1—MEMBERS OF ADVISORY COMMITTEES**

This Schedule:

- sets out the terms of office of members (clause 1)
- enables the Minister to determine remuneration for members (clause 2)
- specifies the circumstances in which a member ceases to hold office (clause 3)
- provides for the filling of vacancies (clause 4)
- enables a person to be a member even though the person holds another office (clause 5).

#### **SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

This Schedule:

- contains a power to make regulations of a savings or transitional nature (clause 2)
- provides that members of the former Noxious Plants Advisory Committee cease to hold office (clause 3)
- converts existing references to noxious plants in other Acts or in instruments to references to noxious weeds (clause 4)
- makes it clear that the proposed Act does not affect liability for existing noxious plant rates (clause 5)
- continues existing arrangements between councils and occupiers or owners (clause 6)
- provides that notices given under the Local Government Act 1919 in relation to noxious plants are taken to have been given under the proposed Act (clause 7).

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**SCHEDULE 3—AMENDMENT OF ACTS**

This Schedule repeals Parts 22 and 28 of the Local Government Act 1919. The Schedule also makes amendments to other Acts consequential on the enactment of the proposed Act.

**DICTIONARY OF WORDS AND EXPRESSIONS**

The Dictionary defines certain words and expressions used in the proposed Act.

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