

NOXIOUS WEEDS ACT 1993 No. 11

NEW SOUTH WALES



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advisory committee
agricultural machine
approved
authorised officer
border inspector
channel land control category
council
Director-General
exercise of a function
function
inspector
irrigation area
local area
local control authority
notifiable weed
notifiable weed material
noxious weed
noxious weed material

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occupier of land
premises
public authority
public reserve
rural lands protection board
sell
weed control notice
Western Division

NOXIOUS WEEDS ACT 1993 No. 11

NEW SOUTH WALES



Act No. 11, 1993

An Act to provide for the identification, classification and control of noxious weeds; to make consequential amendments to other Acts; and for other purposes. [Assented to 4 May 1993]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Noxious Weeds Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of this Act

3. The objects of this Act are as follows:
 - to identify noxious weeds in respect of which particular control measures need to be taken
 - to specify those control measures
 - to specify the duties of public and private landholders as to the control of those noxious weeds
 - to provide a framework for the State-wide control of those noxious weeds by the Minister and local control authorities.

Definitions

4. The Dictionary at the end of this Act contains definitions of words and expressions used in this Act.

Act binds Crown

5. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Notes

6. Matter appearing under the heading “Note” does not form part of this Act.

PART 2—NOXIOUS WEEDS AND CONTROL MEASURES**What are the noxious weeds to which this Act applies?**

7. (1) This Act applies to a plant declared, by order of the Minister published in the Gazette, to be a noxious weed for the purposes of this Act.

(2) The order may declare a plant to be a noxious weed in respect of the whole of the State or a part of the State.

(3) An order takes effect from the date of its publication in the Gazette or on a later date specified in the order.

(4) The Minister may not make an order declaring any tree, shrub, fern, creeper, vine, palm or plant that is native to the State to be a noxious weed, except with the consent of the Minister administering the National Parks and Wildlife Act 1974.

(5) This Act does not apply to prickly pear within the meaning of the Prickly Pear Act 1987.

Control categories for noxious weeds

8. (1) The Minister is to specify in the order that one or more “control categories” apply to the noxious weed. A control category may be applied to a noxious weed in respect of the whole of the State or a part of the State.

(2) The control categories for noxious weeds are W1, W2, W3 and W4. A W1 weed is referred to in this Act as a “notifiable weed”.

(3) The Minister is, when specifying that category W4 applies to a noxious weed, to specify the action that must be taken in respect of the weed, in particular or general circumstances.

Effect of control categories

9. The action required to be taken under this Act to control a noxious weed for which a particular control category is specified is the action set out below in relation to that control category:

- For a W1 noxious weed, the presence of the weed on land must be notified to the local control authority and the weed must be fully and continuously suppressed and destroyed
- For a W2 noxious weed, the weed must be fully and continuously suppressed and destroyed
- For a W3 noxious weed, the weed must be prevented from spreading and its numbers and distribution reduced
- For a W4 noxious weed, the action specified in the declaration must be taken in respect of the weed

NOTE: The action specified in relation to a W4 weed may be more or less stringent, and more specific, than the action required to be taken under the other control categories.

Who is responsible for carrying out noxious weed control?

10. (1) Part 3 provides that occupiers of land (this includes owners of land) have responsibility for controlling noxious weeds on the land they occupy.

(2) Part 3 provides that this obligation applies to both private and public occupiers of land, including local control authorities, and can be enforced by the issue of weed control notices by the Minister and local control authorities.

Who is responsible for ensuring and administering noxious weed control?

11. (1) Part 4 provides that the Minister has responsibility for control of noxious weeds in the State and for control of noxious weeds by public authorities and local control authorities.

(2) Part 4 provides that local control authorities have responsibility for control of noxious weeds in the areas under their control but are not responsible for control of noxious weeds by public authorities or other local control authorities.

PART 3—NOXIOUS WEED CONTROL ON LAND**Division 1—Action to control noxious weeds****Private occupiers of land must control noxious weeds on the land**

12. An occupier of land (other than a public authority or a local control authority) must control noxious weeds on the land, as required under the control category or categories specified in relation to the weeds concerned.

Maximum penalty: 40 penalty units.

Public authorities must control noxious weeds likely to spread

13. A public authority that is an occupier of land must control noxious weeds on the land, as required under the control category or categories specified in relation to the weeds concerned, to the extent necessary to prevent the weeds from spreading to adjoining land.

Local control authorities must control noxious weeds on land occupied by them

14. (1) A local control authority must control noxious weeds on land occupied by the authority, as required under the control category or categories specified in relation to the weeds concerned.

(2) A local control authority must control noxious weeds on roads (other than freeways, toll works or State works under the State Roads Act 1986) in the local area of the authority, as required under the control category or categories specified in relation to the weeds concerned.

(3) The obligation to control noxious weeds on roads is a joint obligation with any occupier required to control such weeds under section 17.

Occupiers of land must notify local control authority of notifiable weeds

15. (1) An occupier of land (other than a public authority or a local control authority) on which there is a notifiable weed must notify the local control authority for the land of that fact within 24 hours of becoming aware that the notifiable weed is on the land.

Maximum penalty: 20 penalty units.

(2) A public authority that is an occupier of land on which there is a notifiable weed must notify the local control authority for the land of that fact within 3 days of becoming aware that the notifiable weed is on the land.

NOTE: For a local control authority's power to control notifiable weeds at its own expense, see section 37.

Evidence of knowledge of notifiable weeds

16. (1) For the purpose of proving in any prosecution under section 15 that an occupier of land was aware that a notifiable weed was located on the land, if it is proved that the occupier or an employee of the occupier or other person using the land ought reasonably to have known that a notifiable weed was located on the land, that is evidence that the occupier was aware that it was on the land.

Other land to which occupiers' obligations to control noxious weeds extend

17. (1) Irrigation areas generally. A requirement imposed under this Act on an occupier of land within an irrigation area to control noxious weeds on that land also extends to noxious weeds on:

- (a) any part of a road, a public reserve or channel land which intersects the occupier's land, or forms part of its boundary and is within 20 metres from the boundary of the land; and
- (b) any part of a watercourse, river or inland water, tidal or non-tidal, situated on the land.

(2) Roads in irrigation areas. If a road, a public reserve or channel land less than 40 metres wide is situated between land within an irrigation area occupied by different occupiers, the requirement for each occupier to control noxious weeds extends to noxious weeds located on that part of the road, reserve or channel land that is located between the boundary of the occupier's land and the middle line of the road, public reserve or channel land.

(3) Watercourses etc. on land. If the land of an occupier is situated on opposite sides of a watercourse, river or inland water, tidal or non-tidal, the requirement for the occupier to control noxious weeds on that land also extends to noxious weeds located on the land between those sides. This subsection does not apply to land within an irrigation area.

(4) Watercourses etc, between properties. If a watercourse, river or inland water, tidal or non-tidal, is situated between land occupied by different occupiers, the requirement for each occupier to control noxious weeds extends to weeds located on the land between the boundary of the occupier's land and any "give and take" fence erected to define the boundary of the occupier's land or, if there is no such fence, to the middle line of the watercourse, river or inland water. This subsection does not apply to land within an irrigation area.

(5) Exemption. A local control authority may exempt a watercourse, river or inland water in its area from the application of subsection (3) or (4), or both, if, in its opinion, the depth or width of the watercourse, river or inland water is such that, in the circumstances, it would be unreasonable to apply the subsections. The council may control noxious weeds on any such watercourse, river or inland water.

(6) Roads. A requirement imposed under this Act on an occupier of land (other than land referred to in subsection (2)) to control noxious weeds on that land also extends to noxious weeds on:

- (a) any part of a road which intersects the land, not being a part of the road that is fenced on both sides; and
- (b) the half of the width of any part of a road which forms part of the boundary of the land, not being a part of the road that is fenced on both sides; and
- (c) any part of a road which forms part of the boundary of the land, being a part of the road that is not fenced on the side forming part of the boundary but is fenced on the other side.

(7) Roads not included. In this section, a reference to a road does not include a reference to a freeway, toll work or State work under the State Roads Act 1986.

Local control authority may require occupiers of land (other than public authorities or other local control authorities) to control noxious weeds

18. (1) A local control authority may, by notice (a “**weed control notice**”) given to an occupier of land (other than a public authority or a local control authority), require the occupier to carry out any of the occupier’s obligations to control noxious weeds on the land, as required under the specified control category or categories, in the manner specified in the notice.

(2) The notice may specify the time within which action is to be taken.

(3) The local control authority may give a weed control notice only if satisfied that an occupier has failed to carry out any of the occupier’s obligations under this Act to control noxious weeds.

(4) A local control authority or the Minister may by notice revoke or amend a weed control notice given by the authority.

Occupiers must comply with weed control notices by local control authority-

19. An occupier of land (other than a public authority or a local control authority) given a weed control notice by a local control authority, or a successor in title to the occupier who has notice of the notice, must not fail to comply with the notice.

Maximum penalty: 100 penalty units.

Noxious weed control by local control authority after notice not complied with

20. (1) A local control authority may control noxious weeds on land, as required under the control category or categories specified in relation to the weeds concerned, if the occupier fails, or a predecessor in title to the occupier has failed, to comply with a weed control notice given by the authority in accordance with section 18.

(2) Persons authorised in writing by a local control authority may control noxious weeds on behalf of the local control authority under this section and may enter premises for that purpose.

NOTE: See Division 1 of Part 5 (ss. 41–55) for provisions about powers of entry.

(3) A local control authority must give 24 hours’ notice of any proposed control of noxious weeds under this section to the occupier of the land concerned.

Local control authority may recommend that weed control notice be given to a public authority

21. A local control authority may recommend to the Minister that a weed control notice be given by the Minister to a public authority or another local control authority.

Minister may require occupiers of land to control noxious weeds

22. (1) The Minister may, by notice (a “**weed control notice**”) to an occupier of land (including a public authority or a local control authority), require the occupier to carry out any of the occupier’s obligations to control noxious weeds on the land, as required under the control category or categories specified in relation to the weeds concerned, in the manner specified in the notice.

(2) The notice may specify the time within which action is to be taken.

(3) Before giving a weed control notice to a public authority or a local control authority, the Minister must consult with the authority as to the giving of the notice and its contents.

(4) The Minister may give a weed control notice only if satisfied that an occupier has failed to carry out any of the occupier’s obligations under this Act to control noxious weeds.

(5) The Minister may by notice revoke or amend a weed control notice.

(6) The Minister is to notify the local control authority for the local area of any weed control notice given by the Minister, other than a notice given to the authority.

(7) A weed control notice may require a local control authority to act jointly with another local control authority and may specify the proportion of the costs of complying with the notice for which each is to be responsible.

Occupiers must comply with weed control notices by Minister

23. (1) An occupier of land (other than a public authority or a local control authority) given a weed control notice by the Minister, or a successor in title to the occupier who has notice of the notice, must not fail to comply with the notice.

Maximum penalty: 100 penalty units.

(2) A public authority or a local control authority must comply with a weed control notice given to the authority by the Minister.

Noxious weed control by Minister after notice not complied with

24. (1) The Minister may control noxious weeds on land, as required under the specified control category or categories, or exercise any function of a local control authority under this Act, if the local control authority fails to comply with a weed control notice given by the Minister.

(2) The Minister may control noxious weeds on land, as required under the specified control category or categories, if an occupier fails, or a predecessor in title to the occupier has failed, to comply with a weed control notice given by the Minister.

(3) Authorised officers may control noxious weeds on behalf of the Minister under this section and may enter premises for that purpose.

NOTE: See Division 1 of Part 5 (ss. 41–55) for provisions about powers of entry.

(4) Before controlling noxious weeds on land occupied by a public authority, the Minister must obtain the approval of the Premier.

(5) The Minister must give at least 24 hours' notice of any proposed control of noxious weeds under this section to the occupier of the land concerned.

Appeals against weed control notices

25. (1) An occupier of land (other than a public authority or a local control authority) given a weed control notice by a local control authority or the Minister, or a successor in title to the occupier (other than a public authority or a local control authority), may appeal against the notice to the Land and Environment Court.

(2) An appeal must be made within 28 days or such time as may be prescribed by the regulations.

(3) On hearing the appeal, the Court may:

- (a) amend or revoke the weed control notice; or
- (b) confirm the notice.

(4) If an appeal is duly made to the Land and Environment Court against an order, the order has no force or effect for the purposes of this Act unless the Court confirms or amends the order or the appeal is withdrawn.

Expenses

26. (1) Liability for expenses. Any reasonable expense incurred by or on behalf of the Minister or a local control authority in ascertaining whether a weed control notice given to an occupier, or a predecessor in

title to the occupier, is being or has been complied with, and in taking action if it is not being or has not been complied with (including charges for any inspections of land), is payable by the occupier of the land concerned, on demand by the Minister or authority.

(2) Liability of local control authorities. Any reasonable expense incurred by or on behalf of the Minister in ascertaining whether a weed control notice issued to a local control authority is being or has been complied with, and in taking action if it is not being or has not been complied with (including charges for any inspections of land), is payable by the authority? on demand by the Minister.

(3) Recovery of expenses. The amount of any expense due and payable may be recovered by the Minister or the local control authority as a debt in a court of competent jurisdiction.

(4) Interest. Interest on the amount of any unpaid expense, charged at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts, may be recovered by the Minister or local control authority from the occupier of land or authority liable to comply with the weed control notice concerned as a debt in a court of competent jurisdiction.

Notice of control of prohibited plants

27. (1) A person (including the Minister and a local control authority) must give notice to the police officer in charge of the nearest police station and to an officer of the Department of Agriculture approved by the Director-General for the purposes of this section of any proposed action by the person to control any noxious weed that is a prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985.

(2) The notice must give at least 24 hours' notice and may be given orally or in writing.

(3) The Director-General may by notice direct a person (including a local control authority) to use specified means and to take specified measures to control any noxious weed that is a prohibited plant.

(4) A person (other than the Minister) must not take action to control a prohibited plant:

- (a) if the Director-General has directed the person that any such action not be commenced or is to be discontinued; or
- (b) if the action contravenes a direction by the Director-General to use specified means or to take specified measures to control the prohibited plant; or

- (c) unless the person has given notice in accordance with this section.
Maximum penalty: 50 penalty units.

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

Sale etc. of certain weed material prohibited

28. (1) A person (including a public authority) must not sell or purchase any:

- (a) notifiable weed material or other noxious weed material prescribed by the regulations; or
- (b) any animal or thing which has on it, or contains, notifiable weed material or other noxious weed material prescribed by the regulations,

knowing it to be, or to have on it or to contain, any such weed material.

(2) An occupier of land (including a public authority) must not knowingly remove or cause to be removed from the land any animal or thing which has on it, or contains, notifiable weed material or other noxious weed material prescribed by the regulations.

Maximum penalty: 50 penalty units.

Sale of turf etc. from land with notifiable weeds prohibited

29. An occupier of land (including a public authority) must not use or permit the land to be used for the purpose of disposing of, transporting or selling soil or turf, if the occupier knows, or ought reasonably to know, that there is a weed on the land that is a notifiable weed in any part of the State.

Maximum penalty: 50 penalty units.

Scattering of certain weed material prohibited

30. A person must not scatter or cause to be scattered on any land or water any notifiable weed material or other noxious weed material prescribed by the regulations, knowing it to be such weed material.

Maximum penalty: 50 penalty units.

Agricultural machines to be produced for inspection

31. (1) A person who brings an agricultural machine from Queensland into New South Wales must without delay produce the machine for inspection by a border inspector for notifiable weeds.

(2) A border inspector is to inspect an agricultural machine produced for inspection and is to issue an inspection notice if:

- (a) where the border inspector suspects that a weed that is a notifiable weed in any part of the State is or may be present on or in the machine, the person seeking the inspection treats the machine, in accordance with the border inspector's direction, so as to remove any such weed to the satisfaction of the border inspector; or
- (b) the border inspector is satisfied that the machine is free of any such weed; or
- (c) the border inspector is of the opinion that, in the special circumstances of the case, it is proper to issue the notice.

(3) A person must, on demand by a border inspector or an inspector, produce any inspection notice in the person's possession in relation to an agricultural machine.

Maximum penalty: 20 penalty units.

Use of agricultural machines

32. A person must not knowingly transport or move or use an agricultural machine that has on or in it a weed that is a notifiable weed in any part of the State.

Maximum penalty: 20 penalty units.

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

Division 1—Minister

Minister's noxious weed control functions

33. The Minister has the following functions as to the control of noxious weeds:

- responsibility for the control of noxious weeds in the State
- declaration of plants to be noxious weeds and application of control categories to noxious weeds
- control of noxious weeds, if the Minister is authorised to do so by or under this Act or if the Minister thinks it appropriate to do so in the circumstances

- 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
- such other functions as may be conferred or imposed on the Minister by or under this Act.

Minister may permit growing etc, of noxious weeds

34. (1) The Minister may permit a person or body to have, transport or grow a noxious weed or to carry out any other activity in relation to a noxious weed for the purposes of research or for other purposes specified by the Minister.

(2) The Minister may permit an occupier of land to use or permit the land to be used for the purpose of disposing of, transporting or selling soil or turf, even though there is or may be a notifiable weed on the land.

(3) A permission under this section is to be given in writing and may be given subject to conditions.

(4) Despite any other provision of this Act, a person or body or occupier may carry out any activity permitted by this section in accordance with the written permission of the Minister.

Division 2—Local control authorities**What are the local control authorities?**

35. (1) The local control authority for land within a local government area is the council of the local government area or, if noxious weed control functions for that area have been conferred on a county council under any other Act, the county council having those functions.

(2) The local control authority for land within the Western Division that is not within a local government area is the Western Lands Commissioner.

Noxious weed control functions of local control authorities

36. A local control authority has the following functions as to the control of noxious weeds in relation to the area for which it is the local control authority (the “local area”):

- responsibility for the control of noxious weeds by occupiers of land (other than public authorities or other local control authorities)
- control of noxious weeds on land occupied by the local control authority and on certain roads as provided by this Act

- to ensure, so far as practicable, that occupiers of land (other than public authorities or other local control authorities) carry out obligations to control noxious weeds imposed under this Act
- to develop, implement, co-ordinate and review noxious weed control policies and noxious weed control programs
- inspection of land within the local area in connection with its noxious weed control functions
- to report, at the request of the Minister, on the carrying out of the local control authority's functions under this Act
- to co-operate with local control authorities of adjoining areas to control noxious weeds, where appropriate
- such other functions as may be conferred or imposed on the local control authority by or under this Act.

Supply of materials and equipment and control services

37. (1) A local control authority may supply materials and equipment for use for the control of noxious weeds to occupiers of land and other persons and may charge for any such supply.

(2) A local control authority may supply noxious weed control services to occupiers of land (including public authorities and other local control authorities) and other persons and may charge for any such service.

(3) A local control authority may, at its discretion, supply weed control services to control notifiable weeds to occupiers of land at the expense of the local control authority or may charge for any such service,

Powers related to control of aquatic weeds

38. (1) A local control authority may temporarily obstruct navigation in any waters to a reasonable extent for the purpose of the control of noxious weeds under this Act.

(2) A local control authority may, on the application of an occupier of land, and after considering any objections, drain a swamp on the land for the purpose of the control of noxious weeds under this Act.

Noxious weed control functions of inspectors

39. An inspector has the following functions as to the control of noxious weeds in relation to the local area of the local control authority that appointed the inspector:

- to inspect land and any other premises for the presence of noxious weed material
- to advise as to the presence of noxious weed material and as to the means of controlling those weeds
- to report to the local control authority on noxious weeds and noxious weed control
- such other functions as may be conferred or imposed on inspectors by or under this Act or by the local control authority.

Further powers, in relation to notifiable weeds

40. An inspector who has reasonable cause to suspect that a weed that is a notifiable weed in any part of the State is or may be present in an agricultural machine may require the person apparently in charge of the machine to treat the machine immediately, in the manner specified by the inspector, to remove any such weed.

**PART 5—NOXIOUS WEED CONTROL OFFICERS AND
ADVISORY COMMITTEES****Division 1—Appointment and powers of inspectors****Inspectors**

41. (1) A local control authority may appoint inspectors for the purposes of this Act.

(2) An inspector has the functions conferred or imposed on inspectors by or under this Act.

(3) An inspector appointed by a local control authority may not exercise any functions under this Act outside the local area of the authority.

NOTE: The noxious weed control functions of inspectors are set out in sections 39 and 40.

Authorised officers

42. (1) The Director-General may authorise any person in writing to exercise some or all of the functions of an inspector under this Act in relation to the whole or any part of the State.

(2) For the purpose of exercising a power of entry of an authorised officer, references in this Part to a local control authority are taken to include references to the Minister, except in section 49.

Power of entry

43. (1) For the purposes of this Act, an inspector, authorised officer or other person authorised by a local authority to control noxious weeds on land may enter any premises.

(2) Entry may be made at all reasonable hours.

Inspections and investigations

44. For the purposes of this Act, an inspector or an authorised officer who has a power to enter premises may do any of the following:

- (a)** inspect the premises;
- (b)** search the premises;
- (c)** examine, seize, detain or remove any noxious weed material in or about those premises;
- (d)** require the production of and inspect any records in or about those premises;
- (e)** take copies of, or extracts or notes from, any such records;
- (f)** require any person in or about those premises to answer questions or otherwise furnish information;
- (g)** require the occupier of those premises to provide the inspector or authorised officer with such assistance and facilities as is or are reasonably necessary to enable the inspector or authorised officer to exercise his or her functions;
- (h)** remove or destroy or cause to be removed or destroyed any noxious weed material found in or about those premises;
- (i)** break open and search any box, container, package or receptacle (including any place that could be used as a receptacle) in or about those premises.

Notice of entry

45. (1) Before an inspector, authorised officer or other person authorised to enter premises does so, the local control authority must give the occupier of the premises oral or written notice of the intention to enter the premises on a day specified in the notice.

(2) This section does not require notice to be given:

- (a)** if entry to the premises is made with the consent of the occupier of the premises; or
- (b)** if entry is required urgently and the local control authority has authorised in writing (either generally or in the particular case) entry without notice.

Use of force

46. (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Part by an inspector, authorised officer or other person, but only if authorised by the local control authority in accordance with this section.

(2) No force is to be exercised in any case unless the local control authority has authorised in writing (either generally or in the particular case) the use of force in the circumstances of the case.

(3) A general authority given by the local control authority for the use of force is invalid. The authority is to specify the circumstances which are required to exist in a case before force may be used.

Notification of use of force or entry without notice

47. An inspector, authorised officer or other person authorised to enter premises who:

- (a) uses force for the purpose of gaining entry to the premises; or
- (b) enters the premises without notice having been given to the occupier of the premises of the intention to enter as required by section 45,

must promptly advise the local control authority which is to cause written notice to that effect to be served on such persons or authorities as appear to the local control authority to be appropriate in the circumstances.

Care to be taken

48. In the exercise of a function under this Act, an inspector, authorised officer or other person authorised to enter premises must do as little damage as possible.

Compensation

49. (1) In this section, a reference to a local control authority does not include a reference to the Minister.

(2) A local control authority or the Crown, as the case may be, must compensate all interested parties for any damage caused by an inspector or authorised officer authorised under this Part to enter premises in entering the premises (but not any damage caused by exercising any other function), unless the occupier of the premises obstructed, hindered or restricted the inspector or authorised officer in the exercise of the power of entry.

Certificates of authority

50. (1) A power conferred by this Act to enter premises or to do anything in or about any premises may not be exercised unless the person proposing to exercise the power is in possession of a certificate of authority and produces the certificate if required to do so by the occupier of the premises.

(2) A “**certificate of authority**” is a certificate (in a form approved by the Director-General) issued by a local control authority which:

- (a) states that it is issued under this Act; and
- (b) gives the name of the person to whom it is issued; and
- (c) describes the nature of the powers conferred and the source of the powers; and
- (d) states the date (if any) on which it expires; and
- (e) describes the kind of premises to which the power extends; and
- (f) bears the signature of the officer prescribed by the regulations for the purposes of this paragraph.

(3) This section does not apply to a power conferred by a search warrant.

In what circumstances can entry be made to a residence?

51. The powers of entry and inspection conferred by this Part are not exercisable in relation to that part of any premises being used for residential purposes except when the powers are exercised by an inspector or an authorised officer:

- (a) with the permission of the occupier of that part of the premises; or
- (b) under the authority conferred by a search warrant.

Search warrant

52. (1) An inspector or authorised officer may apply to an authorised justice for a search warrant if the inspector or authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being or is about to be contravened in or about any premises.

(2) An inspector or authorised officer may not apply for a search warrant to search premises unless the inspector or authorised officer has notified the Director-General of the intended application.

(3) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising an inspector or authorised officer named in

the warrant to enter the premises and to exercise there the powers under section 44.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(5) In this section, “**authorised justice**” has the same meaning as it has in the Search Warrants Act 1985.

Inspector or authorised officer may request assistance

53. (1) An inspector or authorised officer may request the assistance of any police officer if the inspector or authorised officer reasonably believes that the performance of functions conferred by or under this Act will be obstructed.

(2) An inspector or authorised officer may request the assistance of any person he or she believes to be capable of providing assistance in the performance of functions conferred by or under this Act.

Offence: obstructing inspector, authorised officer or other authorised person

54. (1) A person who:

- (a) prevents an inspector or authorised officer from exercising a function conferred by or under this Act; or
- (b) hinders or obstructs an inspector or authorised officer in the exercise of such a function; or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an inspector or authorised officer asked in accordance with this Act; or
- (d) furnishes an inspector or authorised officer with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person who:

- (a) prevents a person authorised by a local control authority to control noxious weeds on land from exercising a function conferred by or under this Act; or
- (b) hinders or obstructs the person authorised in the exercise of such a function, is guilty of an offence.

Maximum penalty: 20 penalty units.

Offence: impersonating inspector, authorised officer or other authorised person

55. A person who impersonates or falsely represents that the person is an inspector, an authorised officer or a person authorised by a local control authority to control noxious weeds on land is guilty of an offence.

Maximum penalty: 10 penalty units.

Division 2—Advisory committees**Establishment of advisory committees**

56. The Minister may from time to time establish advisory committees and dissolve any such advisory committee.

Functions of advisory committees

57. (1) An advisory committee is to assist the Minister and any other person nominated by the Minister in exercising their functions under this Act.

(2) An advisory committee has such other functions relating to the administration of this Act as the Minister determines.

Membership and procedure of advisory committees

58. (1) An advisory committee is to consist of such members as the Minister determines who are to represent a range of interests and expertise appropriate to the functions of the committee,

(2) Except as otherwise directed by the Minister, an advisory committee is to regulate its own proceedings for the calling of meetings and the conduct of its business.

(3) Schedule 1 has effect with respect to the members of an advisory committee.

PART 6—ENFORCEMENT PROVISIONS**Recovery of charges and fees**

59. Any charge or fee due and payable under this Act and which remains unpaid may be recovered as a debt in a court of competent jurisdiction.

Expenses to be charged on land

60. (1) Any expenses payable by an occupier of land to a local control authority in connection with a weed control notice and subsequent control of noxious weeds on the land are a charge on the land.

(2) The charge ranks on an equal footing with a charge on the land under any other Act but takes priority over any other charge or encumbrance.

(3) The charge does not affect:

- (a) the estate of the Crown in land owned by the Crown; or
- (b) the estate of a Crown lessee if the lease is granted after the expenses were incurred.

(4) The charge does not affect a purchaser for value in good faith who made due inquiry at the time of purchase but had no notice of the liability. A purchaser who has obtained a certificate under section 64 is taken to have made due inquiry.

Proceedings for offences

61. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Offences by corporations

62. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director or is concerned in the management of the Corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted.

(3) This section does not affect any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

(4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention at that time.

Penalty notices for certain offences

63. (1) An inspector or authorised officer may serve a penalty notice on a person if it appears to the inspector or authorised officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, and is not in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The regulations:

- (a)** may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b)** may prescribe the penalty payable for the offence if dealt with under this section; and
- (c)** may prescribe different penalties for different offences or classes of offences.

(6) The penalty prescribed for an offence is not to exceed 2 penalty units.

(7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.

PART 7—MISCELLANEOUS**Certificate as to weed control notices, expenses and charges on land**

64. (1) A person may apply to a local control authority for a certificate as to weed control notices affecting particular land and as to any outstanding expenses payable to the authority or any resulting charge on the land.

(2) The application is to be in the approved form and is to be accompanied by the fee approved by the local control authority, being a

fee not exceeding the maximum amount (if any) prescribed by the regulations.

(3) On an application being made in accordance with this section, the local control authority is to issue a certificate to the applicant stating the following matters:

- (a) whether there are in force any weed control notices issued by or on behalf of the authority or the Minister that affect the land;
- (b) the amounts of expenses due or payable to the authority under this Act in connection with any weed control notice given by the authority that affects the land and any subsequent action to control noxious weeds taken by the authority;
- (c) whether the land is subject to any charge arising out of the control of noxious weeds and the amount of any such charge.

(4) 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.

Disputes—between Minister and public authority

65. (1) If a dispute arises between the Minister and the Minister responsible for a public authority or a local control authority in connection with a weed control notice given to the authority by the Minister, a party to the dispute may submit the dispute to the Premier for settlement.

(2) On submission of a dispute to the Premier, the Premier may hold an inquiry into the dispute and may make such decision about the dispute as the Premier thinks fit, having regard to the public interest and the circumstances.

(3) A Minister or public authority or local control authority must comply with a decision of the Premier under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act.

Delegation by Minister

66. The Minister may delegate to a person any of the Minister's functions under this Act other than this power of delegation and the Minister's functions with respect to public authorities and local control authorities under sections 22 and 24.

Delegation by Director-General

67. (1) The Director-General may delegate to a person any of the Director-General's functions under this Act other than this power of delegation and the Director-General's functions with respect to public authorities and local control authorities under section 27.

(2) The Director-General may delegate to a person any functions delegated to the Director-General by the Minister under this Act.

Delegation by local control authorities

68. A local control authority may delegate to a person any of the local control authority's functions under this Act other than this power of delegation.

Arrangements by local control authorities

69. A local control authority may make arrangements with another person or body to assist in the exercise of any of the local control authority's functions under this Act.

Protection from liability

70. (1) No matter or thing done or omitted to be done by:

- (a) the Minister; or
- (b) the Director-General; or
- (c) a local control authority; or
- (d) an inspector; or
- (e) an authorised officer; or
- (f) a member of an advisory committee; or
- (g) a person acting under the direction of the Minister, a local control authority, an inspector, an authorised officer or an advisory committee,

if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subjects any such person, or the Crown, to any action, liability, claim or demand.

(2) No proceedings in any court may be brought against the Minister, a local control authority or a public authority, or a person acting under the direction of the Minister or an authority, for an order to remedy or restrain a breach or a threatened or apprehended breach of this Act by the Minister, authority or person as an occupier of land or in any other capacity under this Act.

(3) Subsection (2) applies to any action, whether brought under the inherent jurisdiction of a court or under any Act or other law.

How notice is to be given under this Act

71. (1) A notice under this Act is to be given in writing either personally or by post or in any other manner permitted by this section.

(2) A notice under this Act concerning particular land may also be given:

- (a) by fixing a notice addressed to the occupier, either by name or as the occupier, on a conspicuous part of the land or any building or other structure on the land; or
- (b) if the address of the occupier is unknown, publishing the notice in a newspaper circulating in the local area.

(3) A notice served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the last known address of the person known to the person or body giving the notice.

Description of land in notices under this Act

72. Land is sufficiently described in a notice given under this Act if the description of the land allows no reasonable doubt as to the land to which the notice relates.

Regulations

73. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the means, measures or methods, whether mechanical, chemical or otherwise, to be taken or used for or with respect to the control of noxious weeds or to be specified for that purpose in weed control notices.

(3) The regulations may create offences punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

74. Schedule 2 has effect.

Amendment of Acts

75. (1) Each Act specified in Schedule 3 is amended as set out in that Schedule.

(2) Ordinances Nos. 50 (Noxious Plants) and 50A (Aquatic Pests) under the Local Government Act 1919 are repealed.

Review of Act

76. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

SCHEDULE 1—MEMBERS OF ADVISORY COMMITTEES

(Sec. 58 (3))

Terms of office

1. Subject to this Schedule, a member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

2. Each member of an advisory committee is entitled to receive such remuneration (including travelling and subsistence allowances) for attending meetings and transacting the business of the committee as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

3. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office under this clause; or
 - (e) is absent from 4 consecutive meetings of the advisory committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the advisory committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the advisory committee from having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

SCHEDULE 1—MEMBERS OF ADVISORY COMMITTEES—
continued

(2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

4. If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

5. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purpose of any Act, an office or place of profit under the Crown,

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 74)

Former Part

1. In this Schedule, the “former Part” means Part 22 of the Local Government Act 1919.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

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

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of the publication.

Noxious Plants Advisory Committee

3. (1) A person who, immediately before the repeal of the former Part, held office as a member of the Noxious Plants Advisory Committee:

- (a) ceases to hold that office on that repeal; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of an advisory committee under this Act.

(2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

References to noxious plants

4. A reference in any other Act, in any instrument made under any such Act or in any instrument of any kind to a noxious plant or to an aquatic pest that is a noxious plant is taken to be a reference to a noxious weed under this Act.

Rates by rural lands protection boards

5. Nothing in this Act affects the validity of, or the liability of any person to pay, any rate made or levied by a rural lands protection board pursuant to section 470 of the Local Government Act 1919.

Existing arrangements etc. not affected

6. Any arrangement or agreement made by a council with an occupier or owner of land under the former Part, and in force immediately before the repeal of the former Part, is taken to have been made under this Act and this Act applies accordingly.

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Notices**

7. A notice given by a council or the Minister under the former Part, and in force immediately before the repeal of the former Part, is taken to have been given under this Act and this Act applies accordingly as if the action required to be taken under the notice could be required to be taken under this Act.

SCHEDULE 3—AMENDMENT OF ACTS

(Sec. 75 (1))

Agricultural Tenancies Act 1990 No. 64

Schedule 1 (**Improvements that a tenant may make as of right**):

Omit item 5, insert instead:

5. Destruction of prickly pear and control of noxious weeds on land.

Bush Fires Act 1949 No. 31

Section 57 (**Regulations**):

Omit section 57 (2) (d), insert instead:

(d) the use of phosphorus or other preparations for the control of noxious weeds on land or the extermination or suppression of animals;

Commons Management Act 1989 No. 13

Section 9 (**Power of a trust to make by-law**):

Omit section 9 (1) (i), insert instead:

(i) controlling noxious weeds that grow on the common;

Conveyancing Act 1919 No. 6

(1) Section 85 (**Powers in lessor**):

(a) From section 85 (1) (c), omit “involving the destruction of noxious weeds or”, insert instead “involving the control of noxious weeds on land or the destruction of noxious”.

SCHEDULE 3—AMENDMENT OF ACT S—*continued*

- (b) From section 85 (1) (c), omit “Provided that such destruction”, insert instead “Provided that such control, destruction”.
- (2) Schedule 4 (**Short forms of covenants in mortgages and leases**):
- (a) From item 7 in Column 2 of Part 2 of Schedule 4, omit “involving the destruction of noxious weeds or”, insert instead “involving the control of noxious weeds on land or the destruction of noxious”.
- (b) From item 7 in Column 2 of Part 2 of Schedule 4, omit “provided that such destruction”, insert instead “provided that such control, destruction”.

Justices Act 1902 No. 27Section 100I (**Definitions**):

In paragraph (a) of the definition of “penalty notice”, insert, in alphabetical order, the following matter:

Noxious Weeds Act 1993, section 63;

Land and Environment Court Act 1979 No. 204Section 18 (**Class 2—local government and miscellaneous appeals**):

After section 18 (c3), insert:

(c4) appeals under section 25 of the Noxious Weeds Act 1993;

Local Government Act 1919 No. 41(1) Section 4 (**Definitions**):

Omit the definition of “Aquatic pest”.

(2) Part 22 (**Noxious plants**):

Omit the Part.

(3) Part 28 (**Aquatic pests**):

Omit the Part.

SCHEDULE 3—AMENDMENT OF ACTS—*continued*(4) Section 564 (**Powers**):

(a) From section 564 (3) and (3D), omit “eradication of noxious plants” wherever occurring, insert instead “control of noxious weeds on land”.

(b) After section 564 (3), insert:

(3AA) A proclamation under this section delegating functions to a county council as to the control of noxious weeds on land is to be made only with the concurrence of the Minister administering the Noxious Weeds Act 1993.

(5) Part 29, Division 5 (sections 566–569) (Aquatic pests destruction—assessment of costs):

Omit the Division.

Rural Lands Protection Act 1989 No. 197

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of “**noxious plant**”; insert instead:

“noxious weed” means a plant declared to be a noxious weed under the Noxious Weeds Act 1993;

(2) Part 4, Division 1, heading:

Omit the heading, insert instead:

Division 1—Rates

(3) Section 54A:

After section 54, insert:

Board may levy noxious weed control rates

54A. (1) The board established for a district may, for the purpose of meeting expenses incurred by the board in relation to its noxious weed control functions under the Noxious Weeds Act 1993, levy a rate in any year on each occupier of land within the district who is liable to pay the board’s general rate.

(2) The Minister may by order published in the Gazette impose a maximum rate under this section.

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

(3) The board must within a period prescribed by the regulations serve a rate notice on each occupier who is liable to pay the levy.

(4) A board must, if requested to do so by a person who is the occupier of 2 or more holdings within its district that are not contiguous, treat the holdings as a single holding for the purpose of determining liability under this section.

(4) Section 55 (**Assessment of carrying capacity**):

From section 55 (3) (a), omit “plants”, insert instead “weeds”.

(5) Section 81 (**Specific responsibilities of a board in respect of travelling stock reserves**):

Omit section 81 (1) (d).

Search Warrants Act 1985 No. 37Section 10 (**Definitions**):

Insert in the definition of “search warrant” in section 10 in alphabetical order of Acts the following matter:

section 52 of the Noxious Weeds Act 1993;

Western Lands Act 1901 No. 70Schedule A (**Covenants, reservations and exceptions referred to in section 18**):

Omit paragraph (c), insert instead:

- (c) To carry out the control of noxious weeds on land as directed by the Director-General of the Department of Conservation and Land Management, the Minister for Agriculture and Rural Affairs or an authorised person under the Noxious Weeds Act 1993.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 4)

advisory committee means a committee referred to in section 56.

agricultural machine means a header, auger or field bin that has been used for the purpose for which it was manufactured.

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

approved means approved by the Minister.

authorised officer means a person authorised as an authorised officer under section 42.

border inspector means an inspector appointed under the Stock Diseases Act 1923 and authorised in writing to act as a border inspector for the purposes of this Act.

channel land means land in an irrigation area designed and used or proposed to be used by the Water Administration Ministerial Corporation for the purpose of water supply or drainage channels.

control category means a control category specified for a noxious weed in an order of the Minister declaring the weed to be a noxious weed.

council means the council of a local government area

Director-General means the Director-General of the Department of Agriculture.

exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

function includes a power, authority or duty.

inspector means a person appointed as an inspector under section 41.

irrigation area means an irrigation area constituted under the Murrumbidgee Irrigation Act 1910, the Irrigation Act 1912, the Balranald Irrigation Act 1902, the Hay Irrigation Act 1902 or the Wentworth Irrigation Act 1890.

local area has the meaning set out in section 36.

local control authority has the meaning set out in section 35.

notifiable weed has the meaning set out in section 8 (2).

notifiable weed material includes notifiable weeds and any seed or other part of a notifiable weed.

noxious weed is a weed declared by an order under section 7 to be a noxious weed.

noxious weed material means noxious weeds or any seed or other part of a noxious weed.

occupier of land means:

- (a) the person for the time being entitled to possession of the land and includes, if the person so entitled does not reside on the land, the resident manager or other person in charge of the land; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

- (b) in the case of Crown lands or lands of the Crown to which no person is entitled to possession, the person having the care, control and management of the lands; or
- (c) the trustees of the land, if it is reserved or dedicated for any public purpose; or
- (d) if the land consists of a road, street, stock route or reserve under the control of a rural lands protection board, the board; or
- (e) any other person designated by the regulations as an occupier of land for the purposes of this definition.

premises includes any land, structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part of it.

public authority means:

- (a) a public or local authority constituted by or under an Act (other than a local control authority); or
- (b) a government department or administrative office; or
- (c) a statutory body representing the Crown; or
- (d) the trustees of land reserved or dedicated for any public purpose; or
- (e) a member of staff or other person who exercises functions on behalf of a public authority.

public reserve means:

- (a) a public park; and
- (b) any land conveyed or transferred to a council under section 340A of the Local Government Act 1919; and
- (c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of that Act; and
- (d) any land vested in a council, and declared to be a public reserve, under section 76 of the Crown Lands Act 1989; and
- (e) any land dedicated or reserved from sale by the Crown for public health, recreation, enjoyment or other public purpose of the like nature,

but does not include land reserved or dedicated under the National Parks and Wildlife Act 1974 or a common.

rural lands protection board means a rural lands protection board established under the Rural Lands Protection Act 1989.

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

sell includes:

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale; or
- (b) sell for resale-

weed control notice means a notice given under section 18 or 22,

Western Division means the Western Division established under the Crown Lands Act 1989.

*[Minister's second reading speech made in—
Legislative Assembly on 2 March 1993
Legislative Council on 20 April 1993]*