

RURAL LANDS PROTECTION (AMENDMENT) ACT 1994
No. 55

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Rural Lands Protection Act 1989 No. 197

SCHEDULE 1—AMENDMENTS

RURAL LANDS PROTECTION (AMENDMENT) ACT 1994
No. 55

NEW SOUTH WALES



Act No. 55, 1994

An Act to amend the Rural Lands Protection Act 1989 in relation to the control of certain pests; and for other purposes. [Assented to 28 September 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Rural Lands Protection (Amendment) Act 1994.

Commencement

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

Amendment of Rural Lands Protection Act 1989 No. 197

3. The Rural Lands Protection Act 1989 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

After “noxious animals”, insert “, pest animals”.

(2) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**pest animal**” is defined in section 138B;

(3) Part 9A:

After Part 9, insert:

PART 9A—PEST ANIMALS

Object of Part

138A. The object of this Part is to facilitate the control of animals or birds on designated public or private land that are adversely impacting on agricultural enterprises or the local environment, or both.

Definitions

138B. In this Part:

“**control**” of an animal or bird includes the suppression or eradication of the animal or bird;

“**control order**” means an order made under section 138D;

SCHEDULE 1—AMENDMENTS—*continued*

“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
- (b) in the case of public land to which no person is entitled to possession, the person having the care, control and management of the land; or
- (c) the trustee or trustees of the land, if it is reserved or dedicated for any public use or purpose; or
- (d) any other person designated by the regulations as an occupier of land for the purposes of this definition;

“pest animal”, in relation to land, means an animal or bird of a species that is the subject of a control order made under section 138D in relation to that land;

“public authority” includes:

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

“public land” includes lands of the Crown.

Applications for control orders by boards

138C. (1) A board may make an application to the Minister for a control order in respect of any land within its district.

(2) A board must not make an application for a control order in relation to land consisting in whole, or in part, of land occupied by a public authority unless it has discussed the proposed control order with the public authority.

SCHEDULE 1—AMENDMENTS—*continued*

(3) An application must:

- (a) be in writing addressed to the Minister; and
- (b) specify the land in respect of which the control order is sought; and
- (c) specify the species of animals or birds (other than protected fauna within the meaning of the National Parks and Wildlife Act 1974) in respect of which the control order is sought; and
- (d) specify the control method or methods the board considers should be implemented in respect of those animals or birds; and
- (e) indicate the nature of the board's consultations with the community in relation to the proposed control order; and
- (f) if any of the land is occupied by a public authority—indicate the nature of the board's discussions with the public authority in relation to the proposed control order.

(4) The Minister is to cause a notice of the application to be published in a newspaper circulating in the district within which the land in respect of which the control order is sought is located and in at least one daily newspaper circulating throughout New South Wales.

(5) The application must be placed on public exhibition for a period of not less than 21 days in, at least, the office of the board and the office of the Department of Agriculture that is closest to the land in respect of which the control order is sought.

(6) The Minister is to take into consideration any submissions received from members of the community during the period of public exhibition.

Control orders

138D. (1) The Minister may make a control order on the application of a board.

(2) The Minister need not make a control order in the same terms sought by the board in the application.

(3) A control order must:

- (a) specify the purpose for which it is made; and

SCHEDULE 1—AMENDMENTS—*continued*

- (b) specify the land to which it applies; and
- (c) specify the species of animals or birds (other than protected fauna within the meaning of the National Parks and Wildlife Act 1974) to which it applies; and
- (d) in relation to private land—specify the control method or methods to be implemented in respect of those animals or birds; and
- (e) in relation to public land—specify only such control method or methods to be implemented in respect of those animals or birds as is or are necessary to minimise the risk of the animals or birds causing damage on land; and
- (f) specify the period (not exceeding 5 years) during which it is to operate.

(4) The Minister may make a control order only if the Minister is satisfied that adequate community consultation has taken place in relation to the proposed control order.

(5) The Minister may make a control order that applies to an animal or bird that is a noxious animal only if all the land to which the order applies is public land.

(6) A control order must be published in the Gazette and takes effect from the date of its publication in the Gazette or such later date as may be specified in the order.

(7) The Minister may repeal or amend any control order without a further application by a board.

(8) The Minister is to cause a notice setting out the terms of the control order to be published in a newspaper circulating in the district within which the land to which the control order applies is located. However, a failure by the Minister to comply with this subsection does not affect the validity of the order.

Control of pest animals on private land

138E. (1) An occupier of private land to which a control order applies must (to the extent that is reasonably practicable) implement the control method or methods specified in the order in respect of the pest animals to which the order applies.

Maximum penalty: 50 penalty units.

SCHEDULE 1—AMENDMENTS—*continued*

(2) It is a defence to a prosecution for an offence under this section if the occupier demonstrates that implementation of a control method or methods specified in the control order concerned would not achieve the purpose for which the control order was made.

Control of pest animals on public land

138F. An occupier of public land to which a control order applies must (to the extent that is reasonably practicable) implement any control measures specified in the order to reduce the number of pest animals on the land, but only to the extent necessary to minimise the risk of the animals causing damage on land.

Powers of entry and inspection

138G. (1) In this section:

“**controlled land**” means the land to which a control order applies;

“**prescribed officer**” means a noxious animal inspector or ranger employed by the relevant board or any other person specifically authorised to exercise the functions conferred on prescribed officers by this section;

“**relevant board**” means the board established for the district within which the controlled land is located.

(2) For the purpose of ascertaining whether the provisions of a control order have been complied with, a prescribed officer of a relevant board may:

- (a) enter and remain on controlled land at any time, either with or without a vehicle or equipment; and
- (b) take all such steps as are necessary for the purpose of ascertaining whether the provisions of this Part or any control order have been complied with.

(3) If an inspection conducted under this section has revealed that a control order has not been complied with, the relevant board may serve a notice on the occupier of the controlled land requiring the occupier to pay to the board an inspection charge for the inspection of the land.

SCHEDULE 1—AMENDMENTS—*continued*

(4) An inspection charge required to be paid under subsection (3) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

(5) For the purpose of determining whether the provisions of a control order have been complied with, a relevant board (or an employee or agent of the board) may:

- (a) enter controlled land; and
- (b) take such measures and carry out such work there as required by the control order for the control of pest animals on the land and the control of those animals' habitats and refuges.

(6) Neither subsection (2) nor subsection (5) authorises a prescribed officer or any other employee or agent of a board to enter the residential premises of a person.

(7) The powers conferred on a prescribed officer or a relevant board by subsections (2) and (5) respectively are exercisable only if the board:

- (a) in the case of powers conferred by subsection (2)—first serves the occupier with at least 7 days written notice of its intention to take any action referred to in that subsection; and
- (b) in the case of powers conferred by subsection (5)—first serves the occupier with at least 7 days written notice of its intention to take any action referred to in that subsection unless the provisions of the relevant control order are complied with; and
- (c) attaches a copy of the relevant control order to the notice.

(8) If a person authorised by a board for the purposes of this section complains on oath to a Magistrate that the board believes on reasonable grounds that pest animals are being kept in captivity on residential premises, the Magistrate may issue a warrant authorising the complainant (or some other person authorised by the board) to enter those premises for the purpose of controlling any such animals.

Recovery of charges and expenses by a board

138H. (1) If the occupier of land required to pay a charge imposed under section 138G (3) fails to pay the charge

SCHEDULE 1—AMENDMENTS—*continued*

within such period as is specified in the notice containing the requirement, the board concerned may, by proceedings brought in a court of competent jurisdiction, recover that charge as a debt from the occupier.

(2) If a board has exercised the functions conferred on it by section 138G (5) in relation to any particular land, it may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the occupier of the land any expenses that the board has incurred in exercising those functions.

(3) If the occupier of land:

- (a) on whom a board has served a notice under section 138G (3); or
- (b) in relation to whose land a board has taken measures or carried out work under section 138G (5),

fails to pay to the board within the period prescribed by the regulations the amount of the charge specified in the notice or, as the case may be, an amount equal to the board's expenses in taking those measures or carrying out that work, the charge or amount is increased until payment by a sum calculated at the rate per year prescribed by the regulations, and the amount as so increased is accordingly recoverable under this section.

(4) The amount of any judgment that a board has recovered under this section and of any costs awarded to the board in respect of its claim are a charge on the land concerned.

(5) Such a charge is a charge OR land which may be registered in the General Register of Deeds kept at the office of the Registrar-General.

(6) Schedule 4 applies to any part of the amount of a judgment recovered under this section (including costs) that remains unpaid after the expiration of 5 years from the date of the judgment of the court concerned.

(7) Subsections (4) and (5) do not apply to public land and subsection (6) does not apply to a judgment recovered from the occupier of public land.

SCHEDULE 1—AMENDMENTS—*continued***Disputes between a Minister and another Minister**

138I. If a dispute arises between the Minister and another Minister or between the Minister and the Minister responsible for a public authority in connection with:

- (a) a control order applying in whole or in part to public land for which the other Minister or the authority is responsible; or
- (b) the implementation of any control measure with respect to any pest animals on that land,

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 decisions about the dispute as the Premier thinks fit, having regard to the public interest and the circumstances.

(3) A Minister or public 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.

(4) Schedule 4 (Sale of land for non-payment of money owing to a board):

In clause 1 (b), after “section 128”, insert “, 138H”.

*[Minister's second reading speech made in—
Legislative Assembly on 3 May 1994
Legislative Council on 22 September 1994]*