



New South Wales

Noxious Weeds Amendment Bill 2004

Explanatory note

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

Overview of Bill

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

- (a) to broaden the objects of the Principal Act to take into account the impact of noxious weeds on the economy, community and environment of the State,
- (b) to replace the existing weed control orders made by the Minister for Primary Industries (the **Minister**) and control categories for noxious weeds with orders made by the Minister that permit a broader range of control measures to be used, together with a new classification system for noxious weeds,
- (c) to make amendments to the Act to cover the classification of seeds and plants previously dealt with under the *Seeds Act 1982*,
- (d) to require public consultation before weed control orders are made,
- (e) to provide for emergency weed control orders and emergency weed control notices,
- (f) to extend to owners of land who do not occupy land, as well as occupiers of land, obligations to comply with weed control notices issued by local control authorities when occupiers fail to comply with weed control orders,

- (g) to enable occupiers of land to be exempted from obligations under the Principal Act to control aquatic weeds and to confer those obligations on local councils and other bodies that are local control authorities,
- (h) to require prior notice to be given before a weed control notice is given to an owner or occupier by a local control authority,
- (i) to replace the Minister's power to give a local control authority a weed control notice to enforce its general obligations under the Principal Act with a power to direct a local control authority to carry out its functions and to enable the Minister to appoint a weed control administrator for a local control authority,
- (j) to reduce the time within which an appeal may be made to the Land and Environment Court against a weed control notice and to enable the Court to order that the notice continues to have effect while the appeal is proceeding,
- (k) to prohibit the sale of fodder from land on which there are notifiable weeds,
- (l) to enable the Minister to make grants of money, out of money appropriated by Parliament, to further the objects of the Act,
- (m) to require local control authorities to keep certain records and report to the Director-General of the Department of Primary Industries (the *Director-General*) on noxious weed control,
- (n) to amend the powers of inspectors and authorised officers,
- (o) to make it clear that local control authorities may enter into agreements or arrangements with other persons or bodies for the exercise of the authorities' functions under the Principal Act,
- (p) to enable regulations to be made with respect to fees or charges for services provided under the Principal Act,
- (q) to make other minor and consequential amendments and provisions of a savings or transitional nature.

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

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Noxious Weeds Act 1993* set out in Schedule 1.

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

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

Schedule 1 Amendments

Objects of Act

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

Weed control orders and noxious weed classification

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

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

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

Proposed section 8 sets out the weed control classes, which are grouped according to level of threat on a State, regional or area basis and their level of distribution. There is also a class of weeds characterised by being likely, either by their sale or by sale of their seeds or movement throughout the State, to spread in the State or outside the State (this class reflects plants previously regulated under the *Seeds Act 1982*). Noxious weeds classified as Class 1, State Prohibited Weeds, Class 2, Regionally Prohibited Weeds or Class 5, Restricted Plants, are **notifiable weeds** for the purposes of the Principal Act.

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

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

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

Noxious weed control on land

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

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

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

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

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

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

Proposed section 17A re-enacts the existing obligations of occupiers of land to control noxious weeds on watercourses, rivers or inland waters (tidal or non-tidal) that are part of or situated beside the land, as well as the obligations of occupiers on opposite sides of watercourses, rivers or inland waters (tidal or non-tidal) with respect to noxious weeds on or in the water. The proposed section also enables the Director-General, by order published in the Gazette, and the Minister (in a weed control order) to exempt an occupier, a noxious weed or a watercourse, river or inland water from those provisions. In the case of an exemption, the local control authority is to be responsible for the control of the noxious weeds.

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

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

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

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

Schedule 1 [6] substitutes section 20 of the Principal Act. The proposed section re-enacts the existing powers of local control authorities to control noxious weeds on land subject to a weed control notice, with changes to reflect the repeal of control categories and the changes to the content of weed control orders. It also provides that

the requirement for 24 hours' notice does not apply if an emergency weed control notice has been given.

Schedule 1 [7] substitutes sections 22–26.

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

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

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

Proposed section 25 re-enacts the existing right of a person (other than a public authority or a local control authority) to appeal to the Land and Environment Court against a weed control notice, but permits the notice to specify the period for making an appeal (being not less than 7 days) and, if no period is specified, retains the existing period of 28 days. Pending final determination of the appeal, the operation of the notice is suspended unless the Court orders that the notice continues to have effect.

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

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

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

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

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

Offences

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

Grants of money

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

Records to be kept by local control authorities

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

Powers of inspectors and authorised officers

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

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

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

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

Arrangements by local control authorities

Schedule 1 [25] re-enacts section 69 of the Principal Act. The proposed section extends the powers of local control authorities to enter into arrangements with other

persons or bodies as to the exercise of functions of the authorities by those persons or bodies.

Other minor amendments

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

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

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

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

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

Schedule 1 [28] omits a superseded section.

Schedule 1 [29] updates an outdated reference.

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

Schedule 1 [32] contains transitional provisions.

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

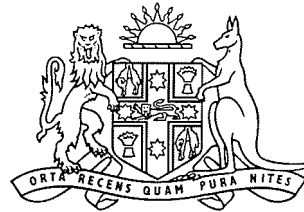
Schedule 1 [36] inserts new definitions of *emergency weed control notice*, *emergency weed control order*, *public channel land* and *weed control order* for the purposes of the Principal Act.

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

Noxious Weeds Amendment Bill 2004

Explanatory note

Explanatory note page 8



New South Wales

Noxious Weeds Amendment Bill 2004

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Noxious Weeds Act 1993 No 11	2
4 Repeal of Seeds Act 1982 No 14 and Seeds Regulation 1994	2
5 Amendment of Fair Trading Act 1987 No 68	2
Schedule 1 Amendments	3

Noxious Weeds Amendment Bill 2004

Contents

Page

Contents page 2



New South Wales

Noxious Weeds Amendment Bill 2004

No , 2004

A Bill for

An Act to amend the *Noxious Weeds Act 1993* to make further provision with respect to the declaration, classification and control of noxious weeds; to repeal the *Seeds Act 1982*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Noxious Weeds Amendment Act 2004</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Noxious Weeds Act 1993 No 11	6
The <i>Noxious Weeds Act 1993</i> is amended as set out in Schedule 1.	7
4 Repeal of Seeds Act 1982 No 14 and Seeds Regulation 1994	8
The <i>Seeds Act 1982</i> and the <i>Seeds Regulation 1994</i> are repealed.	9
5 Amendment of Fair Trading Act 1987 No 68	10
The <i>Fair Trading Act 1987</i> is amended by omitting “ <i>Seeds Act 1982</i> ” from Schedule 1.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1] Section 3		3
	Omit the section. Insert instead:	4
	3 Objects of this Act	5
	The objects of this Act are as follows:	6
	(a) to reduce the negative impact of weeds on the economy, community and environment of this State by establishing control mechanisms to:	7
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		9
	(i) prevent the establishment in this State of significant new weeds, and	10
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	(ii) restrict the spread in this State of existing significant weeds, and	12
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	(iii) reduce the area in this State of existing significant weeds,	14
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	(b) to provide for the monitoring of and reporting on the effectiveness of the management of weeds in this State.	16
		17
[2] Part 2		18
	Omit the Part. Insert instead:	19
	Part 2 Noxious weeds and control measures	20
	7 Weed control orders	21
	(1) The Minister may, by order published in the Gazette, make a weed control order for a specified plant.	22
		23
	(2) A weed control order is to do the following:	24
	(a) declare that the plant is a noxious weed,	25
	(b) apply a weed control class or classes to the plant,	26
	(c) specify the land (being part or the whole of the State) to which the order applies,	27
		28
	(d) specify the control measures that are to be, or may be, used to control the plant in general or particular circumstances,	29
		30
	(e) specify the control objectives for the plant,	31
	(f) specify the term of the order (being a period not exceeding 5 years).	32
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- (3) A plant that is the subject of a weed control order is a *noxious weed* for the purposes of this Act. 1
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 - (4) An order takes effect from the date of its publication in the Gazette or on a later date specified in the order. 3
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 - (5) The Minister may not make an order declaring any 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
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8 Weed control classes 9

- (1) The following weed control classes may be applied to a plant by a weed control order: 10
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 - (a) Class 1, State Prohibited Weeds, 12
 - (b) Class 2, Regionally Prohibited Weeds, 13
 - (c) Class 3, Regionally Controlled Weeds, 14
 - (d) Class 4, Locally Controlled Weeds, 15
 - (e) Class 5, Restricted Plants. 16
- (2) The characteristics of each class are as follows: 17
 - (a) Class 1 noxious weeds are plants that pose a potentially serious threat to primary production or the environment and are not present in the State or are present only to a limited extent. 18
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 - (b) Class 2 noxious weeds are plants that pose a potentially serious threat to primary production or the environment of a region to which the order applies and are not present in the region or are present only to a limited extent. 22
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 - (c) Class 3 noxious weeds are plants that pose a serious threat to primary production or the environment of an area to which the order applies, are not widely distributed in the area and are likely to spread in the area or to another area. 26
27
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29
 - (d) Class 4 noxious weeds are plants that pose a threat to primary production, the environment or human health, are widely distributed in an area to which the order applies and are likely to spread in the area or to another area. 30
31
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 - (e) Class 5 noxious weeds are plants that are likely, by their sale or the sale of their seeds or movement within the State or an area of the State, to spread in the State or outside the State. 34
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37
- (3) A noxious weed that is classified as a Class 1, 2 or 5 noxious weed is referred to in this Act as a *notifiable weed*. 38
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- 9 Public consultation procedures** 1
- (1) Before making a weed control order, the Minister is to cause the proposed order to be subject to public consultation. 2
3
- (2) The public consultation procedure is as follows: 4
- (a) notice of the intention to make the order is to be published in a newspaper circulating generally in the area in which the land subject to the proposed order is located, or, if appropriate, in a newspaper circulating throughout the whole State, 5
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- (b) the notice is to indicate when and where a copy of the proposed order is to be placed on public exhibition and that submissions may be made about it, 10
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12
- (c) the proposed order (and any other information the Minister considers appropriate) is to be publicly exhibited for a period of at least 21 days after the notice is given, 13
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15
- (d) the Minister is to consider any public submissions on the proposed order. 16
17
- (3) The regulations may make provision for or with respect to the notification and exhibition of proposed weed control orders. 18
19
- (4) Nothing in this section requires the Minister to undertake any further public consultation if a proposed order is changed as a result of the public consultation procedure. 20
21
22
- 10 Emergency weed control orders** 23
- (1) The Minister may, by order published in the Gazette, make an emergency weed control order for a specified plant if of the opinion that the threat posed by the plant requires the order to be made. 24
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27
- (2) An emergency weed control order is to have a term not exceeding 3 months. 28
29
- (3) Section 9 does not apply to an emergency weed control order. 30
- (4) This Act applies to an emergency weed control order in the same way as it applies to a weed control order, except as provided by this Act. 31
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[3] Sections 12–14	1
Omit the sections. Insert instead:	2
12 Private occupiers of land must control noxious weeds on land	3
An occupier (other than a public authority or a local control authority) of land to which a weed control order applies must control noxious weeds on the land as required under the order.	4 5 6
Maximum penalty: 40 penalty units.	7
Note. If an occupier fails to comply with obligations under a weed control order, those obligations may be enforced against the owner of the land as well as the occupier by a weed control notice issued under section 18.	8 9 10
13 Public authorities' obligations to control noxious weeds on own land	11 12
(1) A public authority that is an occupier of land to which a weed control order applies must control noxious weeds on the land as required under the order, to the extent necessary to prevent the weeds from spreading to adjoining land.	13 14 15 16
(2) A public authority must provide information as to the name and contact details of an occupier of land owned by the public authority to the relevant local control authority, if the land is subject to a weed control order.	17 18 19 20
14 Local control authorities' obligations to control noxious weeds on own land	21 22
(1) A local control authority that is an occupier of land subject to a weed control order must control noxious weeds on the land as required under the order.	23 24 25
(2) A local control authority must control noxious weeds on any road (other than a freeway, tollway or State work within the meaning of the <i>Roads Act 1993</i>) in the local area of the authority that is subject to a weed control order as required under the order.	26 27 28 29
(3) The obligation to control noxious weeds on a road is a joint obligation with any occupier required to control the weeds under section 17 or 17B.	30 31 32

[4] Sections 17–18A	1
Omit sections 17 and 18. Insert instead:	2
17 Obligations to control noxious weeds on roads	3
(1) An obligation imposed under this Act on an occupier of land to control noxious weeds on that land also extends to noxious weeds on:	4
(a) any part of a road that intersects the land, not being part of the road that is fenced on both sides, and	5
(b) the half of the width of any part of a road that forms part of the boundary of the land, not being a part of the road that is fenced on both sides, and	6
(c) any part of a road that 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
(2) An occupier may enter a road at all reasonable times for the purpose of complying with this section.	8
(3) In this section, <i>road</i> does not include a State highway, freeway, tollway or State work within the meaning of the <i>Roads Act 1993</i> .	9
(4) This section does not apply to a road referred to in section 17B.	10
17A Obligations to control aquatic weeds	11
(1) If the land of an occupier is situated on opposite sides of a watercourse, river or inland water (tidal or non-tidal), an obligation under this Act for the occupier to control noxious weeds on that land also extends to noxious weeds located on the land between those sides.	12
(2) If a watercourse, river or inland water (tidal or non-tidal) is situated between land occupied by different occupiers, an obligation under this Act for each occupier to control noxious weeds extends to weeds located on the land between the boundary of the land and any “give and take” fence erected to define the boundary of the land or, if there is no such fence, to the middle line of the watercourse, river or inland water.	13
(3) An occupier may enter a watercourse, river or inland water for the purpose of complying with this section.	14
(4) A local control authority may exempt the whole or part of a watercourse, river or inland water in its local area from the operation of subsection (1) or (2), or both, if, in its opinion, the	15

depth or width of the watercourse, river or inland water is such that, in the circumstances, it would be unreasonable to apply the provisions concerned.	1 2 3
(5) The Director-General may, by order published in the Gazette, exempt an occupier, a noxious weed or the whole or part of a watercourse, river or inland water, from the operation of subsection (1) or (2), or both.	4 5 6 7
(6) The Minister may, in a weed control order, exempt an occupier, a noxious weed or the whole or part of a watercourse, river or inland water, from the operation of subsection (1) or (2), or both.	8 9 10
(7) A local control authority is to be responsible for the control of noxious weeds located on a watercourse, river or inland water in its local area if, because of an exemption under this section, subsection (1) or (2), or both, do not apply to the control of those weeds.	11 12 13 14 15
Note. Under section 69, a local control authority may enter into agreements with another person or body to exercise functions of the authority under this Act.	16 17 18
(8) This section does not apply to land referred to in section 17B.	19
17B Obligations to control noxious weeds in irrigation areas	20
(1) An obligation 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:	21 22 23
(a) any part of a public road, a public reserve or public channel land that intersects the occupier’s land, or forms part of its boundary and is within 20 metres from the boundary of the land, and	24 25 26 27
(b) any part of a watercourse, river or inland water (tidal or non-tidal) situated on the land.	28 29
(2) If a public road, a public reserve or public 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, reserve or channel land.	30 31 32 33 34 35 36
(3) An occupier may enter a public road, a public reserve or public channel land at all reasonable times for the purpose of complying with this section.	37 38 39

(4)	In this section, <i>road</i> does not include a State highway, freeway, tollway or State work within the meaning of the <i>Roads Act 1993</i> .	1 2
18	Local control authority may require owners or occupiers of land (other than public authorities or other local control authorities) to control noxious weeds	3 4 5
(1)	A local control authority may, by notice (a <i>weed control notice</i>) given to an owner or occupier of land, require the owner or occupier to carry out any of the occupier's obligations to control noxious weeds on that land as required under a weed control order.	6 7 8 9 10
(2)	The notice may specify the time (not being less than 14 days) within which action is to be taken.	11 12
(3)	A notice (an <i>emergency weed control notice</i>) may require compliance within a shorter time (not being less than 24 hours) if the notice relates to obligations under an emergency weed control order.	13 14 15 16
(4)	The local control authority may give a weed control notice only if satisfied that an occupier has failed to carry out any of his or her obligations under this Act to control noxious weeds.	17 18 19
(5)	A local control authority may by notice revoke or amend a weed control notice given by the authority.	20 21
(6)	A local control authority may not give a weed control notice to a public authority or another local control authority.	22 23
(7)	An owner of land who is not the occupier of the land may, at all reasonable times, and after giving reasonable notice to the occupier, enter the land for the purpose of complying with a weed control notice.	24 25 26 27
18A	Prior notice of weed control notice	28
(1)	A local control authority must give prior notice of a proposed weed control notice (other than an emergency weed control notice) to the owner or occupier to whom it is to be given.	29 30 31
(2)	The notice procedure is as follows:	32
(a)	the local control authority must give notice to the owner or occupier of the terms of the proposed notice and the period within which action must be taken,	33 34 35
(b)	the notice must specify a period (being not less than 7 days) within which submissions about the proposed notice may be made to the local control authority,	36 37 38

(c)	the local control authority must consider any submissions made by or on behalf of an owner or occupier,	1 2
(d)	the local control authority must determine whether to proceed with the proposed notice and, if proceeding, whether to change its terms.	3 4 5
(3)	A local control authority must, if practicable, give prior oral or written notice of an emergency weed control notice to the owner or occupier to whom it is to be given.	6 7 8
[5]	Section 19 Owners and occupiers must comply with weed control notices by local control authority	9 10
	Insert “owner or” before “occupier” wherever occurring.	11
[6]	Section 20	12
	Omit the section. Insert instead:	13
20	Noxious weed control by local control authority after notice not complied with	14 15
(1)	A local control authority may control noxious weeds on land subject to a weed control order if the owner or occupier fails, or a predecessor in title to the owner or occupier has failed, to comply with a weed control notice given in accordance with sections 18 and 18A.	16 17 18 19 20
(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 (sections 41–55) for provisions about powers of entry.	21 22 23 24 25
(3)	A local control authority must give not less than 24 hours’ notice of any proposed control of noxious weeds under this section to the owner or occupier of the land concerned, except where an emergency weed control notice has been given.	26 27 28 29
(4)	If an emergency weed control notice has been given, a local control authority must, if practicable, give prior oral or written notice to the owner or occupier of the land concerned of any proposed control of noxious weeds under this section.	30 31 32 33

[7] Sections 22–26	1
Omit the sections. Insert instead:	2
22 Minister may require public authorities and local control authorities to control noxious weeds	3
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(1) The Minister may, by notice (a <i>weed control notice</i>) given to a public authority that is an occupier of land or a local control authority that is an owner or occupier of land, require the authority to carry out any of the obligations to control noxious weeds on that land as required under a weed control order that applies to the land.	5 6 7 8 9 10
(2) The notice may specify the time (not being less than 14 days) within which action is to be taken.	11 12
(3) A notice (an <i>emergency weed control notice</i>) may require compliance within a shorter time (not being less than 24 hours) if the notice relates to obligations under an emergency weed control order.	13 14 15 16
(4) The Minister may give a weed control notice only if satisfied that a public authority or local control authority, or an occupier of land owned by a local control authority, has failed to carry out any of the authority's or occupier's obligations under this Act to control noxious weeds.	17 18 19 20 21
(5) Before giving a weed control notice (other than an emergency weed control notice) to a public authority or local control authority, the Minister must consult with the authority as to the giving of the notice and its contents.	22 23 24 25
(6) The Minister may by notice revoke or amend a weed control notice given by the Minister.	26 27
(7) A public authority or a local control authority must comply with a weed control notice given to the authority by the Minister.	28 29
23 Noxious weed control by Minister after notice not complied with	30
(1) The Minister may control noxious weeds on land subject to a weed control order and occupied by a public authority or owned or occupied by a local control authority if the authority fails, or a predecessor in title to the authority has failed, to comply with a weed control notice given in accordance with section 22.	31 32 33 34 35

(2)	Authorised officers may control noxious weeds on behalf of the Minister under this section and may enter premises for that purpose.	1 2 3
	Note. See Division 1 of Part 5 (sections 41–55) for provisions about powers of entry.	4 5
(3)	Before controlling noxious weeds on land occupied by a public authority, the Minister must obtain the approval of the Premier.	6 7
(4)	The Minister must give not less than 24 hours' notice of any proposed control of noxious weeds under this section to the public authority or local control authority concerned, except where an emergency weed control notice has been given.	8 9 10 11
(5)	If an emergency weed control notice has been given, the Minister must, if practicable, give prior oral or written notice of any proposed control of noxious weeds under this section to the public authority or local control authority concerned.	12 13 14 15
24	Appointment of weed control administrator for local control authority	16 17
(1)	The Minister may, by notice given to a local control authority, direct the authority to comply with or carry out or give effect to provisions of this Act within the period specified in the notice.	18 19 20
(2)	Before giving a direction to a local control authority, the Minister must consult with the authority as to the giving of the direction and its contents.	21 22 23
(3)	The Minister may, with the approval of the Minister administering the <i>Local Government Act 1993</i> , by order published in the Gazette, appoint a person as a weed control administrator for a local control authority specified in the order for the term specified in the order.	24 25 26 27 28
(4)	The Minister may make an order if:	29
	(a) a local control authority fails to comply with a direction under this section, or	30 31
	(b) the Minister is of the opinion that the local control authority has failed to comply with or carry into effect or enforce provisions of this Act.	32 33 34
(5)	A weed control administrator may exercise the following functions:	35 36
	(a) any or all of the functions of the local control authority under this Act, as specified in the order,	37 38
	(b) any necessary ancillary functions of the authority.	39

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| (6) | The remuneration of a weed control administrator, and other costs and expenses of the administrator in exercising functions as an administrator, are payable from the consolidated fund of the local control authority concerned with the approval of the Minister administering the <i>Local Government Act 1993</i> . | 1
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| (7) | Without limiting any other powers of authorised officers under this Act, an authorised officer may exercise functions under Division 1 of Part 5 for the purposes of determining whether there are grounds for giving a direction under this section and ascertaining whether any such direction has been complied with. | 6
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| 25 | Appeals against weed control notices issued by local control authorities | 11
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| (1) | An owner or occupier of land may appeal to the Land and Environment Court against a weed control notice given to the owner or occupier by a local control authority. | 13
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| (2) | An appeal must be made within the period (not being less than 7 days) specified in the notice or, if no period is so specified, within 28 days after the notice is given. | 16
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| (3) | On hearing the appeal, the Court may: | 19 |
| | (a) amend or revoke the weed control notice, or | 20 |
| | (b) confirm the notice. | 21 |
| (4) | If an appeal is duly made to the Court against a notice, the operation of the notice is suspended pending the final determination of the appeal, unless the Court orders that the notice continues to have effect. | 22
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| 26 | Expenses | 26 |
| (1) | Liability for expenses | 27 |
| | Any reasonable expense incurred by or on behalf of the Minister or a local control authority in ascertaining whether a weed control notice has been complied with, and in taking action if it is not being complied with (including charges for any inspection of land), is payable by the person required to comply with the notice, on demand by the Minister or authority. | 28
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| (2) | Liability of local control authorities | 34 |
| | Any reasonable expense incurred by or on behalf of the Minister in ascertaining whether a direction given to a local control authority has been complied with (including charges for any inspection of land), is payable by the local control authority, on demand by the Minister. | 35
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(3)	Recovery of expenses	1
	The amount of any expenses due and payable may be recovered by the Minister or the local control authority as a debt in a court of competent jurisdiction.	2 3 4
(4)	Interest	5
	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 person liable to comply with the weed control notice or direction concerned as a debt in a court of competent jurisdiction.	6 7 8 9 10 11
[8]	Section 27 Notice of control of prohibited plants	12
	Omit “Agriculture” from section 27 (1). Insert instead “Primary Industries”.	13
[9]	Section 29 Sale of soil, turf or fodder from land with notifiable weeds prohibited	14 15
	Omit “or turf”. Insert instead “, turf or fodder”.	16
[10]	Section 31 Agricultural machines—spread of noxious weeds into NSW	17
	Omit “inspected and” from section 31 (3) (b) wherever occurring.	18
[11]	Section 33	19
	Omit the section. Insert instead:	20
	33 Minister’s noxious weed control functions	21
	The Minister has the following noxious weed control functions:	22
	(a) responsibility for the control of noxious weeds in the State,	23
	(b) the declaration and classification of noxious weeds,	24
	(c) the control of noxious weeds, if authorised to do so under this Act or if the Minister thinks it appropriate to do so in the circumstances,	25 26 27
	(d) the making of grants of money, out of money appropriated by Parliament, to assist public authorities, local control authorities and trustees of commons or reserves in carrying out their obligations under this Act or to further the objects of this Act,	28 29 30 31 32
	(e) any other functions that are conferred or imposed on the Minister by or under this Act.	33 34

[12] Section 34 Minister may permit growing of noxious weeds and other things	1 2
Omit “or turf” from section 34 (2). Insert instead “, turf or fodder”.	3
[13] Section 34A Minister may declare quarantine area	4
Omit “spread” wherever occurring in section 34A (1) and (4) (f).	5
Insert instead “dispersal”.	6
[14] Section 34A (1) and (3)	7
Omit “W1 or W2” wherever occurring. Insert instead “Class 1 or 2”.	8
[15] Section 36	9
Omit the section. Insert instead:	10
36 Noxious weed control functions of local control authorities	11
A local control authority has the following noxious weed control functions in relation to the area for which it is the local control authority (the <i>local area</i>):	12 13 14
(a) responsibility for the control of noxious weeds by occupiers of land (other than public authorities or local control authorities),	15 16 17
(b) control of noxious weeds on land owned or occupied by the local control authority and on certain roads and watercourses, rivers or inland waters as provided by this Act,	18 19 20 21
(c) to ensure, so far as practicable, that owners and occupiers of land (other than public authorities or other local control authorities) carry out obligations to control noxious weeds imposed under this Act,	22 23 24 25
(d) to develop, implement, co-ordinate and review noxious weed control policies and noxious weed control programs,	26 27
(e) inspection of land within the local area in connection with its noxious weed control functions,	28 29
(f) to report, at the request of the Minister, on the carrying out of the local control authority’s functions under this Act,	30 31
(g) to co-operate with local control authorities of adjoining areas to control noxious weeds, where appropriate,	32 33
(h) any other functions that are conferred or imposed on the local control authority by or under this Act.	34 35

[16] Section 36A Temporary restrictions during noxious weed control	1
Insert “owner or” before “occupier” in section 36A (2).	2
[17] Section 37	3
Omit the section. Insert instead:	4
37 Record keeping obligations of local control authorities	5
(1) A local control authority must monitor the presence of noxious weeds in its local area and keep records of the following matters:	6
(a) the presence and distribution of noxious weeds in the local area,	7
(b) the implementation of the authority’s weed control policy and weed control programs,	8
(c) any other matters prescribed by the regulations.	9
(2) A local control authority must, if required to do so by the Director-General, report to the Director-General on the presence and distribution of noxious weeds in the local area and on its weed control policy and weed control programs and their implementation.	10
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[18] Sections 39 and 40	18
Omit the sections. Insert instead:	19
39 Noxious weed control functions of inspectors	20
An inspector has the following noxious weed control functions in relation to the local area of the local control authority that appointed the inspector:	21
(a) to inspect land and any other premises for the presence of noxious weed material,	22
(b) to advise as to the presence of noxious weed material and as to the means of controlling those weeds,	23
(c) to report to the local control authority on noxious weeds and noxious weed control,	24
(d) any other functions that are conferred or imposed on inspectors by or under this Act or by the local control authority.	25
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40 Further powers in relation to notifiable weed material	33
An inspector who has reasonable cause to suspect that notifiable weed material of a weed that is a notifiable weed in any part of the State is or may be present in an agricultural machine may	34
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	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 material.	1 2 3
[19]	Section 44 Inspections and investigations	4
	Insert “or vegetable or other matter containing noxious weed material” after “material” in section 44 (h).	5 6
[20]	Section 45 Notice of entry	7
	Insert “or within a period” after “day” in section 45 (1).	8
[21]	Section 50 Certificates of authority	9
	Omit section 50 (2) (f). Insert instead:	10
	(f) bears the signature of the Director-General or the General Manager of a local control authority.	11 12
[22]	Section 60 Expenses to be charged on land	13
	Insert “owner or” before “occupier” in section 60 (1).	14
[23]	Section 65 Disputes between Minister and public authority	15
	Omit section 65 (1). Insert instead:	16
	(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, or a direction given to a local control authority, by the Minister under this Act, a party to the dispute may submit the dispute to the Premier for settlement.	17 18 19 20 21 22
[24]	Section 66 Delegation by Minister	23
	Omit “sections 22 and 24”. Insert instead “sections 22, 23 and 24”.	24
[25]	Section 69	25
	Omit the section. Insert instead:	26
	69 Arrangements by local control authorities	27
	A local control authority may enter into agreements or other arrangements with another person or body to exercise all or any, or to assist in the exercise of all or any, of the authority’s functions under this Act or the regulations.	28 29 30 31

[26] Section 71 How notice is to be given under this Act	1
Insert “owner or” before “occupier” in section 71 (2) (b).	2
[27] Section 73 Regulations	3
Omit section 73 (2). Insert instead:	4
(2) In particular, the regulations may make provision for or with respect to the following matters:	5
(a) 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,	6
(b) the fees or charges payable for services provided under this Act or the regulations.	7
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[28] Section 76 Review of Act	13
Omit the section.	14
[29] Schedule 1 Members of advisory committees	15
Omit “Part 2 of the <i>Public Sector Management Act 1988</i> ” from clause 5 (1).	16
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	17
	18
[30] Schedule 2 Savings, transitional and other provisions	19
Omit clause 2 (1). Insert instead:	20
(1) The regulations may make provision of a savings or transitional nature consequent on the enactment of this Act and the following Acts:	21
<i>Noxious Weeds Amendment Act 2004</i>	22
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[31] Schedule 2, clause 2 (2)	25
Omit “to this Act”. Insert instead “to the Act concerned”.	26
[32] Schedule 2, clause 8	27
Insert after clause 7:	28
8 Weed control orders and notices	29
(1) A weed control order in force immediately before the commencement of Part 2, as inserted by the <i>Noxious Weeds Amendment Act 2004</i> , ceases to have effect on that commencement.	30
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(2)	A weed control notice in force before that commencement continues to have effect on or after that commencement, and may be enforced, as if this Act had not been amended by the <i>Noxious Weeds Amendment Act 2004</i> .	1 2 3 4
(3)	The Minister is not required to comply with section 9, as inserted by that Act, in respect of any weed control order made not later than 6 months after that commencement.	5 6 7
[33]	Dictionary, definition of “channel land” Insert “or an irrigation corporation” after “Corporation”.	8 9
[34]	Dictionary, definition of “control category” Omit the definition.	10 11
[35]	Dictionary, definition of “Director-General” Omit “Agriculture”. Insert instead “Primary Industries”.	12 13
[36]	Dictionary Insert in alphabetical order: <i>emergency weed control notice</i> means a notice referred to in section 18 (3) or 22 (3). <i>emergency weed control order</i> means an order made under section 10. <i>public channel land</i> means channel land that is owned by the Crown or a public authority (other than land occupied by a person other than a public authority). <i>weed control order</i> means an order made under section 7 or an emergency weed control order.	14 15 16 17 18 19 20 21 22 23 24
[37]	Dictionary, definition of “irrigation area” Omit the definition. Insert instead: <i>irrigation area</i> means: (a) land within an area within the meaning of the <i>Hay Irrigation Act 1902</i> or the <i>Wentworth Irrigation Act 1890</i> , or (b) land within the area of operations of an irrigation corporation within the meaning of Part 1 of Chapter 4 of the <i>Water Management Act 2000</i> .	25 26 27 28 29 30 31 32 33

Noxious Weeds Amendment Bill 2004

Schedule 1 Amendments

[38] Dictionary, definition of “notifiable weed”	1
Omit “section 8 (2)”. Insert instead “section 8 (3)”.	2
[39] Dictionary, definition of “weed control notice”	3
Omit the definition. Insert instead:	4
<i>weed control notice</i> means a notice given under section 18 (1) or	5
22 (1) or an emergency weed control notice.	6