

# Noxious Weeds Act 1993 No 11

[1993-11]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
*Electricity Network Assets (Authorised Transactions) Bill 2015*

### Authorisation

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# Noxious Weeds Act 1993 No 11



New South Wales

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# Noxious Weeds Act 1993 No 11



New South Wales

An Act to provide for the identification, classification and control of noxious weeds; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Objects of this Act

The objects of this Act are as follows:

- (a) to reduce the negative impact of weeds on the economy, community and environment of this State by establishing control mechanisms to:
  - (i) prevent the establishment in this State of significant new weeds, and
  - (ii) prevent, eliminate or restrict the spread in this State of particular significant weeds, and
  - (iii) effectively manage widespread significant weeds in this State,
- (b) to provide for the monitoring of and reporting on the effectiveness of the management of weeds in this State.

### 4 Definitions

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

### 5 Act binds Crown

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.

## 6 Notes

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

## Part 2 Noxious weeds and control measures

### 7 Weed control orders

- (1) The Minister may, by order published in the Gazette, make a weed control order for a specified plant.
- (2) A weed control order is to do the following:
  - (a) declare that the plant is a noxious weed,
  - (b) apply a weed control class or classes to the plant,
  - (c) specify the land (being part or the whole of the State) to which the order applies,
  - (d) specify the control measures that are to be, or may be, used to control the plant in general or particular circumstances,
  - (e) specify the control objectives for the plant,
  - (f) specify the term of the order (being a period not exceeding 5 years).
- (2A) The Minister may, in a weed control order, grant an exemption referred to in section 32A.
- (2B) An exemption has effect for the period specified in the order and is subject to such conditions, if any, as may be specified in the order.
- (2C) The Minister may amend or revoke an exemption or a condition of an exemption.
- (3) For the purposes of this Act, a plant that is the subject of a weed control order is a noxious weed in relation to the land to which the order applies.
- (4) An order takes effect from the date of its publication in the Gazette or on a later date specified in the order.
- (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*.

### 8 Weed control classes

- (1) The following weed control classes may be applied to a plant by a weed control order:
  - (a) Class 1, State Prohibited Weeds,
  - (b) Class 2, Regionally Prohibited Weeds,

- (c) Class 3, Regionally Controlled Weeds,
- (d) Class 4, Locally Controlled Weeds,
- (e) Class 5, Restricted Plants.

(2) The characteristics of each class are as follows:

- (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.
- (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.
- (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.
- (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.
- (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.

(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**.

## **9 Public consultation procedures**

- (1) Before making a weed control order, the Minister is to cause the proposed order to be subject to public consultation.
- (2) The public consultation procedure is as follows:
  - (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,
  - (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,
  - (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,
  - (d) the Minister is to consider any public submissions on the proposed order.



- (3) The regulations may make provision for or with respect to the notification and exhibition of proposed weed control orders.
- (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.

#### **10 Emergency weed control orders**

- (1) The Minister may 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.
- (2) An emergency weed control order is to have a term not exceeding 12 months.
- (2A) An emergency weed control order is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
  - (a) in a newspaper circulating, or by radio or television broadcast, in the area in which the land subject to the order is located, or, if appropriate, in a newspaper circulating throughout the whole State, or
  - (b) on the Department's internet website.
- (2B) If an order is published in accordance with subsection (2A) other than in the Gazette, the Minister is to publish the order as soon as practicable in the Gazette.
- (2C) The order commences on the day it is first published in accordance with this section, or on such later day as may be specified in the order.
- (3) Section 9 does not apply to an emergency weed control order.
- (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.

#### **11 Power to regulate or prohibit bringing into NSW noxious weed material or things likely to introduce such material**

- (1) The Minister may, by order published in accordance with subsection (2), regulate or prohibit the bringing into the State (or into any specified part of the State) of noxious weed material or any other thing that the Minister considers is likely to introduce any noxious weed material into the State (or into any specified part of the State).
- (2) An order made by the Minister under this section is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
  - (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the land subject to the order is located, or, if appropriate, in a newspaper circulating throughout the whole State, or

(b) on the internet website of a newspaper referred to in paragraph (a) or on the Department's internet website.

- (3) If an order is published in accordance with subsection (2) other than in the Gazette, the Minister is to publish the order as soon as practicable in the Gazette.
- (4) An order commences on the day it is first published in accordance with this section or on such later day as may be specified in the order.
- (5) A person who fails to comply with an order made under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

## **Part 3 Noxious weed control on land**

### **Division 1 Action to control noxious weeds**

#### **12 Private occupiers of land must control noxious weeds on land**

- (1) 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.

Maximum penalty: 40 penalty units.

**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.

- (2) A local control authority may, by written notice, require the owner of land (other than a public authority or a local control authority) to which a weed control order applies to provide the following information in relation to the land:
  - (a) the name and contact details of the occupier of the land or any part of the land,
  - (b) a description of the land occupied by the occupier.
- (3) The notice must specify the manner in which, and may specify a reasonable time by which, the information must be provided.
- (4) A person who, without reasonable excuse, fails to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **13 Public authorities' obligations to control noxious weeds on own land**

- (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.

- (2) A public authority must provide information as to the name and contact details of an occupier of land owned by the public authority, and a description of the land occupied, to the relevant local control authority, if the land is subject to a weed control order.

#### **14 Local control authorities' obligations to control noxious weeds on own land**

- (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.
- (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 [Roads Act 1993](#)) in the local area of the authority that is subject to a weed control order as required under the order.
- (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.

#### **15 Occupiers of land must notify local control authority of notifiable weeds**

An occupier of land (other than 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 after becoming aware that the notifiable weed is on the land.

Maximum penalty (for an occupier other than a public authority): 20 penalty units.

#### **16 Evidence of knowledge of notifiable weeds**

For the purpose of proving in any prosecution under section 15 (1) 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.

#### **16A Duty of other persons to notify local control authority of notifiable weeds**

A person who, in a professional capacity, becomes aware or suspects that a plant on land is a notifiable weed must notify the local control authority for the land of that fact within 24 hours of becoming aware or suspecting that the notifiable weed is on the land.

Maximum penalty: 20 penalty units.

#### **17 Obligations to control noxious weeds on roads**

- (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:

- (a) any part of a road that intersects the land, not being part of the road that is fenced on both sides, and
  - (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
  - (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.
- (2) An occupier may enter a road at all reasonable times for the purpose of complying with this section.
- (3) In this section, **road** does not include a State highway, freeway, tollway or State work within the meaning of the *Roads Act 1993*.
- (4) This section does not apply to a road referred to in section 17B.

#### **17A Obligations to control aquatic weeds**

- (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.
- (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.
- (3) An occupier may enter a watercourse, river or inland water for the purpose of complying with this section.
- (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 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.
- (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.
- (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.
- (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.

**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.

(8) This section does not apply to land referred to in section 17B.

**17B Obligations to control noxious weeds in irrigation areas**

- (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:
  - (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
  - (b) any part of a watercourse, river or inland water (tidal or non-tidal) situated on the land.
- (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.
- (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.
- (4) In this section, **road** does not include a State highway, freeway, tollway or State work within the meaning of the [Roads Act 1993](#).

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

- (1) A local control authority may, by notice (a **weed control notice**) 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.
- (2) The notice may specify the time (not being less than 14 days) within which action is to be taken.
- (3) A notice (an **emergency weed control notice**) 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.

- (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.
- (5) A local control authority may by notice revoke or amend a weed control notice given by the authority.
- (6) A local control authority may not give a weed control notice to a public authority or another local control authority.
- (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.

#### **18A Prior notice of weed control notice**

- (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.
- (2) The notice procedure is as follows:
  - (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,
  - (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,
  - (c) the local control authority must consider any submissions made by or on behalf of an owner or occupier,
  - (d) the local control authority must determine whether to proceed with the proposed notice and, if proceeding, whether to change its terms.
- (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.

#### **19 Owners and occupiers must comply with weed control notices by local control authority**

An owner or 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 owner or occupier who has notice of the notice, must not fail to comply with the notice.

Maximum penalty: 100 penalty units.

## **20 Noxious weed control by local control authority after notice not complied with**

- (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.
- (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.

- (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.
- (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.

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

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.

## **22 Minister may require public authorities and local control authorities to control noxious weeds**

- (1) The Minister may, by notice (a **weed control notice**) 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.
- (2) The notice may specify the time (not being less than 14 days) within which action is to be taken.
- (3) A notice (an **emergency weed control notice**) 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.
- (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.

- (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.
- (6) The Minister may by notice revoke or amend a weed control notice given by the Minister.
- (7) A public authority or a local control authority must comply with a weed control notice given to the authority by the Minister.

### **23 Noxious weed control by Minister after notice not complied with**

- (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.
- (2) 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 (sections 41-55) for provisions about powers of entry.

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

### **24 Appointment of weed control administrator for local control authority**

- (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.
- (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.
- (3) The Minister may, with the approval of the Minister administering the [Local Government Act 1993](#), 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.



- (4) The Minister may make an order if:
  - (a) a local control authority fails to comply with a direction under this section, or
  - (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.
- (5) A weed control administrator may exercise the following functions:
  - (a) any or all of the functions of the local control authority under this Act, as specified in the order,
  - (b) any necessary ancillary functions of the authority.
- (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 [Local Government Act 1993](#).
- (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.

## **25 Appeals against weed control notices issued by local control authorities**

- (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.
- (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.
- (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 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.

## **26 Expenses**

- (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 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.

- (2) **Liability of local control authorities** 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.
- (3) **Recovery of expenses** 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.
- (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 person liable to comply with the weed control notice or direction concerned as a debt in a court of competent jurisdiction.

## **27 Notice of control of prohibited plants**

- (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 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**

### **28 Sale etc of certain weed material prohibited**

- (1) A person (including a public authority) must not sell or purchase:

- (a) any 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.

(3) Notifiable weed material:

- (a) in subsection (1) extends to a plant, or any seed or other part of a plant, that is a notifiable weed in any part of the State, and
- (b) in subsection (2) is limited to a plant, or any seed or other part of a plant, that is a notifiable weed in that part of the State that includes the land that is relevant for the purposes of that subsection.

Maximum penalty: 50 penalty units.

### **29 Sale of soil, turf or fodder from land with notifiable weeds prohibited**

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, turf or fodder, if the occupier knows, or ought reasonably to know, that there is a plant on the land that is a notifiable weed in any part of the State.

Maximum penalty: 50 penalty units.

### **30 Scattering of certain weed material prohibited**

(1) 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.

(2) In this section, **notifiable weed material** is limited to a plant, or any seed or other part of a plant, that is a notifiable weed in that part of the State that includes the land that is relevant for the purposes of this section.

### **31 Machinery and equipment—spread of noxious weeds into NSW**

(1) The purpose of this section is to prevent the spread into New South Wales of notifiable weeds that are prevalent elsewhere in Australia.

**Note—**

The principal notifiable weed concerned is parthenium weed.

(2) This section applies to machinery or equipment:

- (a) that is of a kind declared, by order of the Minister published in the Gazette, to be machinery or equipment to which this section applies, and
- (b) that has already been used for the purpose for which it was manufactured, being machinery or equipment that is brought into New South Wales from another State or a Territory.

(3) The following provisions apply to any machinery or equipment to which this section applies:

- (a) The Minister is to make arrangements for inspectors to set up places at or near the borders of New South Wales at which machinery or equipment may be produced for inspection (being places set up on a regular basis or by special arrangement with a person bringing machinery or equipment into New South Wales). The machinery or equipment is to be brought into New South Wales at such a place and produced to an inspector without delay.
- (b) A declaration in duplicate must be lodged with an inspector at that place certifying that the machinery or equipment has been cleaned as required by the regulations (being a declaration signed by the person who cleaned the machinery or equipment).
- (c) An inspector at that place must inspect the machinery or equipment.
- (d) Following that inspection, the inspector is to sign a copy of the declaration and return it to the person in charge of the machinery or equipment, unless the inspector is not satisfied that the machinery or equipment has been cleaned as required by the regulations.
- (e) If the inspector is not satisfied that the machinery or equipment has been cleaned as required by the regulations, the machinery or equipment is not to be moved anywhere in New South Wales, without the approval of an inspector, until the inspector is so satisfied and has signed a copy of a declaration (referred to in paragraph (b)) lodged with the inspector. Until the inspector is so satisfied, the inspector may only approve of the movement of the machinery or equipment to an appropriate place to be cleaned or for its return to the State or Territory concerned.
- (f) A copy of the declaration signed by the inspector must accompany the machinery or equipment while it is in New South Wales (but only for the period of 12 months after the machinery or equipment was last brought into New South Wales).

(4) A person who moves, or permits the movement of, machinery or equipment within

New South Wales, knowing that subsection (3) has been contravened in relation to the machinery or equipment, is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) A person who, for the purposes of this section, lodges a declaration with an inspector that the person knows, or ought reasonably to know, is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units.

- (6) An inspector may:

- (a) stop and inspect machinery or equipment that the inspector reasonably suspects to have been moved in New South Wales in contravention of subsection (3), and
- (b) require any such machinery or equipment to be cleaned as required by the regulations under subsection (3) if the inspector reasonably suspects that it contains notifiable weed material.

- (7) The person in charge of machinery or equipment that is required under subsection (3) to be accompanied by a copy of a declaration must, on demand by an inspector, produce for inspection the copy of the declaration.

Maximum penalty: 20 penalty units.

- (8) In this section, **inspector** includes a border inspector or an authorised officer.

### **32 Use of machinery or equipment**

A person must not knowingly transport or move or use machinery or equipment that has on or in it a plant that is a notifiable weed in any part of the State.

Maximum penalty: 20 penalty units.

#### **32A Exemptions relating to weeds notifiable only on Lord Howe Island**

- (1) The Minister may, by order published in the Gazette, exempt:

- (a) a person or class of persons, or
- (b) premises, machinery or equipment,

from the operation in any part of the State other than Lord Howe Island of section 28 (1), 29, 32 or 40 in relation to a plant, or any seed or other part of a plant, that is a Class 2 noxious weed only on Lord Howe Island (and not elsewhere in the State).

- (2) An exemption is subject to such conditions, if any, as may be specified in the order.

- (3) An order commences on the day it is published in the Gazette or on such later day as may be specified in the order.

## **Part 4 General noxious weed control functions of Minister and local authorities**

### **Division 1 Minister**

#### **33 Minister's noxious weed control functions**

The Minister has the following noxious weed control functions:

- (a) responsibility for the control of noxious weeds in the State,
- (b) the declaration and classification of noxious weeds,
- (c) the control of noxious weeds, if authorised to do so under this Act or if the Minister thinks it appropriate to do so in the circumstances,
- (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,
- (e) any other functions that are conferred or imposed on the Minister by or under this Act.

#### **34 Minister may permit growing of noxious weeds and other things**

- (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, turf or fodder, 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.
- (5) In this section, **noxious weed** includes noxious weed material.

#### **34A Minister may declare quarantine area**

- (1) The Minister may, by order, declare land described in the order to be a quarantine area for the purpose of controlling, or preventing the dispersal of, any specified kind of Class 1 or 2 noxious weeds that are present on the land or that the Minister considers are reasonably likely to spread to the land.
- (2) Before making an order under this section, the Minister must consult with the

Ministers responsible for any public authorities having functions that are exercisable on or in respect of the land that is to be subject to the order.

- (3) Land can be declared to be a quarantine area for a kind of Class 1 or 2 noxious weed even though it is already a quarantine area for another kind of Class 1 or 2 noxious weed.
- (4) An order must state the purpose of the quarantine and may:
  - (a) prohibit or restrict the movement of people, animals and things (such as vehicles and machinery) into, out of and within the quarantine area, and
  - (b) specify conditions subject to which people may move and animals and things may be moved into, out of or within that area, and
  - (c) without limiting paragraph (a) or (b), require movements of people, animals or things into or out of that area to be made only at specified entry or exit points, and
  - (d) authorise the erection of fencing and gates across roads within that area for the purpose of regulating the movement of vehicles or animals, and
  - (e) close any road within that area in order to regulate or prevent the passage of vehicles or animals, and
  - (f) specify other steps to be taken for the purpose of promoting the control, or preventing the dispersal, of the weed concerned.
- (5) An order declaring land to be a quarantine area must be published in a newspaper circulating in the area in which the land is located. However, if the Minister considers that the order is urgently required, the order may be published on the Department's internet website.
- (5A) If an order is published in accordance with subsection (5) on the Department's internet website, the Minister is to publish the order as soon as practicable in a newspaper circulating in the area in which the land is located.
- (5B) The order commences on the day it is first published in accordance with this section, or on such later day as may be specified in the order.
- (6) An order remains in force for 12 months or such shorter period as is specified in the order. However, in the case of land that is already the subject of an order, the Minister may make a further order that is to have effect as soon as the existing order ceases to have effect.
- (7) Any person who, without reasonable excuse, contravenes a requirement imposed on the person by an order, or a direction given to the person under the authority of an order, is guilty of an offence.

Maximum penalty (subsection (7)): 100 penalty units.

**34B Powers to stop and search vehicles in respect of quarantine areas**

- (1) At any place on or near the boundary of a quarantine area, an inspector may display a traffic sign directing drivers of approaching vehicles to stop their vehicles. A sign must be of a kind prescribed by the regulations and be displayed so as to be clearly visible to the drivers of approaching vehicles.
- (2) The driver of a vehicle approaching a traffic sign displayed in accordance with subsection (1) must:
  - (a) ensure that the vehicle stops within a reasonable distance of the sign, and
  - (b) ensure that the vehicle remains stationary so as to enable the inspector to exercise the inspector's powers with respect to the vehicle.

Maximum penalty: 20 penalty units.

- (3) An inspector may, for the purpose of ascertaining whether a vehicle referred to in subsection (2) is contaminated with a relevant kind of noxious weed:
  - (a) inspect, enter and search the vehicle and any of its accessories, and
  - (b) open any door or opening of, or remove any covering from, the vehicle or require the driver of the vehicle to do any of those things, and
  - (c) take from the vehicle for analysis or further examination samples of any vegetable matter that the inspector reasonably suspects to be a noxious weed of that kind.

- (4) In this section:

**driver** of a vehicle includes the person in charge of the vehicle if that person is not the driver and also includes the rider of the vehicle in the case of a vehicle such as a motor cycle.

**inspector** includes an authorised officer.

**place** includes a road (whether public or private).

**relevant kind of noxious weed** means a noxious weed of the kind the presence of which gave rise to the declaration of the quarantine area concerned.

**vehicle** means any device that is designed to be driven or ridden by a person and is propelled by human or animal power or by an engine, and includes a boat.



## **Division 2 Local control authorities**

### **35 What are the local control authorities?**

- (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.
- (3) The local control authority for land within Lord Howe Island is the Lord Howe Island Board.

### **36 Noxious weed control functions of local control authorities**

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 **local area**):

- (a) responsibility for the control of noxious weeds by occupiers of land (other than public authorities or local control authorities),
- (b) control of noxious weeds on land owned or occupied by the local control authority and on certain roads and watercourses, rivers or inland waters as provided by this Act,
- (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,
- (d) to develop, implement, co-ordinate and review noxious weed control policies and noxious weed control programs,
- (e) inspection of land within the local area in connection with its noxious weed control functions,
- (f) to report, at the request of the Minister, on the carrying out of the local control authority's functions under this Act,
- (g) to co-operate with local control authorities of adjoining areas to control noxious weeds, where appropriate,
- (h) any other functions that are conferred or imposed on the local control authority by or under this Act.

### **36A Temporary restrictions during noxious weed control**

- (1) The purpose of this section is to enable a local control authority to impose temporary restrictions:

- (a) to enable control measures for noxious weeds to be undertaken in accordance with this Act, or
  - (b) to protect people and animals from risks to their health and safety arising from measures taken to control noxious weeds in accordance with this Act.
- (2) A local control authority may require the owner or occupier of land to remove any animals from any part of the land and to prevent animals from entering any part of the land for a specified period. This subsection applies only if the authority is acting under section 20 because a weed control notice has not been complied with.
- (3) A local control authority may temporarily close or obstruct public or private roads (other than any State highway, freeway, tollway or State work within the meaning of the [Roads Act 1993](#)) while measures to control noxious weeds are being taken on land adjacent to those roads.
- (4) A local control authority may temporarily close to navigation, or obstruct navigation in, any waters while measures to control noxious weeds are being taken in those waters.
- (5) A local control authority may erect notices to warn people not to enter on, or remain on, any land on which measures are being taken to control noxious weeds.
- (6) An inspector appointed by a local control authority may give such directions, or take such steps, as are necessary in order to enable the local authority to exercise its functions under this section.

### **37 Record keeping obligations of local control authorities**

- (1) A local control authority must monitor the presence of noxious weeds in its local area and keep records of the following matters:
- (a) the presence and distribution of noxious weeds in the local area,
  - (b) the implementation of the authority's weed control policy and weed control programs,
  - (c) any other matters prescribed by the regulations.
- (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.

### **38 Powers related to aquatic weeds**

- (1) (Repealed)
- (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.

### **39 Noxious weed control functions of inspectors**

An inspector has the following noxious weed control functions in relation to the local area of the local control authority that appointed the inspector:

- (a) to inspect land and any other premises for the presence of noxious weed material,
- (b) to advise as to the presence of noxious weed material and as to the means of controlling those weeds,
- (c) to report to the local control authority on noxious weeds and noxious weed control,
- (d) any other functions that are conferred or imposed on inspectors by or under this Act or by the local control authority.

### **40 Further powers in relation to notifiable weed material**

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

## **Part 5 Noxious weed control officers and advisory committees**

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

#### **41 Inspectors**

- (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.

#### **42 Authorised officers**

- (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.

#### **43 Power of entry**

- (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.

#### **44 Inspections and investigations**

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, take samples, photographs or video recordings of, seize, detain or remove any thing in or about those premises that the inspector or authorised officer reasonably suspects to be noxious weed material or to be vegetable matter, or any other thing, containing noxious weed material,
- (c1) test, treat or disinfest any noxious weed material or any vegetable or other matter that the inspector or authorised officer reasonably suspects contains noxious weed material,
- (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 thing in or about those premises that the inspector or authorised officer reasonably suspects to be noxious weed material or to be vegetable matter, or any other thing, containing noxious weed material,
- (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,

- (j) test, treat or disinfest any box, container, package or receptacle (including any place that could be used as a receptacle) in or about those premises that the inspector or authorised officer reasonably suspects contains any noxious weed material or vegetable or other matter containing noxious weed material.

#### **45 Notice of entry**

- (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 or within a period 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.

#### **46 Use of force**

- (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.

#### **47 Notification of use of force or entry without notice**

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.

#### **47A Inspectors and others may inquire as to source or destination of noxious weed**

### **material**

- (1) An inspector or authorised officer who reasonably believes that a person has information that may assist in tracing or determining the source or destination of any matter that the inspector or authorised officer reasonably suspects to be noxious weed material may require the person to answer questions for that purpose.
- (2) A person referred to in subsection (1) is not excused from answering a question put to the person under that subsection only on the ground that the answer might tend to incriminate the person. However, if the person claims, before answering the question that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings other than proceedings under section 54.
- (3) An inspector or authorised officer may, for the purposes of this Act, divulge information given to the inspector or officer under this section.

### **48 Care to be taken**

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.

### **49 Compensation**

- (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.

### **50 Certificates of authority**

- (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 Director-General or the General Manager of a local control authority.

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

### **51 In what circumstances can entry be made to a residence?**

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.

### **52 Search warrant**

- (1) An inspector or authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a search warrant if the inspector or authorised officer under this Act 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 under this Act may not apply for a search warrant to search premises unless the inspector or authorised officer under this Act has notified the Director-General of the intended application.
- (3) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 under this Act named in the warrant to enter the premises and to exercise there the powers under section 44.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) (Repealed)

### **53 Inspector or authorised officer may request assistance**

- (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.

**54 Offence: obstructing inspector, authorised officer or other authorised person**

- (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.

**55 Offence: impersonating inspector, authorised officer or other authorised person**

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**

**56 Establishment of advisory committees**

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



### **57 Functions of advisory committees**

- (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.

### **58 Membership and procedure of advisory committees**

- (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**

### **59 Recovery of charges and fees**

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.

### **60 Expenses to be charged on land**

- (1) Any expenses payable by an owner or 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.
- (5) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

## **61 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

## **62 Offences by corporations**

- (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.
- (1A) Subsection (1) does not apply in respect of a contravention of section 54 (1) or (2).
- (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.

## **63 Penalty notices for certain offences**

- (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**

### **64 Certificate as to weed control notices, expenses and charges on land**

- (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.

### **64A Protection of emergency actions**

- (1) The Minister may, by order published in the Gazette, declare:
  - (a) that a notifiable weed emergency affects a specified part or the whole of New South Wales or there is a likelihood that such an emergency is imminent in New South Wales, and

- (b) that it is necessary to make orders or take other actions under this Act (**emergency actions**) to control the notifiable weed concerned, and
  - (c) the specified period (the **emergency period**) during which emergency actions are required to be taken to enable effective control of the notifiable weed.
- (2) A court must not issue an interim injunction, make any other interim order or give any other interim relief having the effect of preventing, restricting or deferring any emergency action or anything authorised or required to be done pursuant to an emergency action during the emergency period.
  - (3) An order under this section takes effect on publication or on such later day as is specified in the order.
  - (4) This section does not prevent a court from making a permanent injunction or other final order in any proceedings at any time.

#### **65 Disputes between Minister and public authority**

- (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.
- (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.

#### **66 Delegation by Minister**

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, 23 and 24.

#### **67 Delegation by Director-General**

- (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.

## **68 Delegation by local control authorities**

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) but only under this power of delegation.

### **Note—**

Accordingly, a council may not delegate any of its functions as a local control authority under this Act under the council's power of delegation under the [Local Government Act 1993](#).

## **69 Arrangements by local control authorities**

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.

## **70 Protection from liability**

(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.

### **71 How notice is to be given under this Act**

- (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 owner or 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.

### **72 Description of land in notices under this Act**

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.

### **73 Regulations**

- (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 following matters:
  - (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,
  - (b) the fees or charges payable for services provided under this Act or the regulations.
- (3) The regulations may create offences punishable by a penalty not exceeding 5 penalty units.

### **74 Savings, transitional and other provisions**

Schedule 2 has effect.

### **75 (Repealed)**

### **76 Review of Act**

- (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 and at the end of each further period of 5 years (starting with the 5-year period commencing on 1 June 2005).
- (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 each period of 5 years.

## **Schedule 1 Members of advisory committees**

(Section 58 (3))

### **1 Terms of office**

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.

### **2 Remuneration**

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.

### **3 Vacancy in office of member**

- (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 that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

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

#### **4 Filling of vacancy in office of member**

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

#### **5 Effect of certain other Acts**

(1) Chapter 2 of the *Public Sector Employment and Management Act 2002* 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**

(Section 74)

### **1 Former Part**

In this Schedule, the **former Part** means Part 22 of the *Local Government Act 1919*.

### **2 Regulations**

(1) The regulations may make provision of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Noxious Weeds Amendment Act 2005*

*Noxious Weeds Amendment Act 2012*

*Primary Industries Legislation Amendment (Biosecurity) Act 2012*



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

### **3 Noxious Plants Advisory Committee**

- (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.

### **4 References to noxious plants**

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.

### **5 Rates by rural lands protection boards**

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](#).

### **6 Existing arrangements etc not affected**

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.

### **7 Notices**

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.

## 8 Weed control orders and notices

- (1) A weed control order in force immediately before the commencement of Part 2, as inserted by the *Noxious Weeds Amendment Act 2005*, ceases to have effect on that commencement.
- (2) Before making the first weed control order on the commencement of Part 2, as so inserted, the Minister must consider the suitability of all plants that were noxious weeds on the date of assent to this Act for inclusion in a weed control order.
- (3) 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 *Noxious Weeds Amendment Act 2005*.
- (4) 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.

## 9 Existing orders and declarations under section 31

- (1) In this clause:

**amending Act** means the *Noxious Weeds Amendment Act 2012*.

- (2) An order made in relation to agricultural machines under section 31 (2) and in force immediately before the substitution of that subsection by the amending Act is taken to be an order made in relation to machinery or equipment under section 31 (2) as so substituted.
- (3) Any declaration lodged or other thing done under and in accordance with section 31 (3) before its amendment by the amending Act is taken to have been lodged or done under and in accordance with that subsection as so amended.

## Schedule 3 (Repealed)

### Dictionary

(Section 4)

**advisory committee** means a committee referred to in section 56.

**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 or an irrigation corporation for the purpose of water supply or drainage channels.

**council** means the council of a local government area.

**Department** means the Department of Industry and Investment.

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

**emergency weed control notice** means a notice referred to in section 18 (3) or 22 (3).

**emergency weed control order** means an order made under section 10.

**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:

- (a) land within an area within the meaning of the [Hay Irrigation Act 1902](#) or the [Wentworth Irrigation Act 1890](#), or
- (b) land within the area of operations of an irrigation corporation within the meaning of Part 1 of Chapter 4 of the [Water Management Act 2000](#).

**land** includes watercourse, river or inland water, whether tidal or non-tidal.

**local area** has the meaning set out in section 36.

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

**local government area** has the same meaning as **area** has in the [Local Government Act 1993](#).

**notifiable weed** has the meaning set out in section 8 (3).

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

**noxious weed** is a plant 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
- (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 Local Land Services, Local Land Services, 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
- (c1) the Forestry Corporation, 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 channel land** 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).

**public reserve** has the same meaning as it has in the [Local Government Act 1993](#).

**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 (1) or 22 (1) or an emergency weed control notice.

**weed control order** means an order made under section 7 or an emergency weed control order.

**Western Division** means the Western Division established under the [Crown Lands Act 1989](#).