

WEEDS, WHAT WEEDS?

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With the recent flooding across the State, there'll likely be an explosion of new noxious weeds on farmers' land from distant upstream sources, after they germinate in the summer ahead.

The Noxious Weeds Act, 1993 specifies farmers' duties, seeks to identify the noxious weeds and their control measures into categories W1 to W4 (W1 is the worst and also a notifiable weed), and sets up the framework for control by the Minister (for Agriculture) and the "local control authorities", being the Councils.

It makes the "occupier" of the land primarily responsible for noxious weed and you "must" control them according to its category W1 to W4. If you don't you are liable to conviction and fine of up to \$4,400. Also you must notify the Council within 3 days if you know there is a W1 notifiable weed, and if you don't you are liable to conviction and fine of up to \$2,200.

In addition to the above, if there is a "failure to control", the farmer risks a S18 "Weed Control Notice" and much more.

The way the Act works can have quite harsh consequences for the farmer:

- The farmer/occupier maybe touchy about using pesticides on the land. With run off to water supply and toxic residue in the farm produce, or the herd, this could hinder farm product premiums. Don't look to this Act for protection of the environment, or sustainability. You must comply with the S18 Notice, even if it contains compulsory pesticide spraying, if the Inspector or local officer demands it. Failure to comply carries a maximum penalty of \$11,000 and a conviction. There is a right to appeal the Notice, but only to the Land & Environment Court, but the cost of this litigation may far outweigh the cost of the chemicals. Or you can ask the Council or Minister to change it, with no guarantee.
- There is no minimum time in the Act to comply with the Notice.
- If you fail to comply with the Notice, authorised Council officers can, on 24 hours notice, enter your land, and control the noxious weeds themselves.
- They have a legal power of entry, at all reasonable hours, and they can inspect premises, search, seize, inspect records, break open containers and compel any person there to answer questions, they don't have to give notice, and if authorised can use reasonable force.
- If you obstruct entry, there is no compensation for damage.
- They can get a search warrant to enter your home, and if granted by the local Magistrate, and you obstruct them, the maximum penalty is \$11,000, or 2 years imprisonment, or both.
- They can request assistance from the Police if they believe you will obstruct them.
- If you obstruct them from entry, or don't fully cooperate, or obstruct them from weed control, you can convicted and fined up to \$2200.

- They can issue a variety of minor penalty notices as well.
- Occupiers who are responsible include non-resident farmer/owners, as well as managers or persons in charge of the land. The Pitt St farmer is deemed to know if the person using the land “ought reasonably to have known” and can be convicted. If it’s a company, each director maybe convicted.
- The inspectors, officers, council, Minister are all protected from liability, if they acted in good faith. You can’t bring any proceedings in any Court against them.

So if new noxious weeds have floated down on to your land in the recent floods, it may pay to check on which weeds are in what control category, identify them, notify any W1 weeds and control them.

However, the categories and noxious weed types are not declared in the Act, or the regulations. They are in the Minister’s Order 14. With an Act that carries such harsh consequences for the farmer, even with lack of actual knowledge of contravention, they should be more readily made available to farmers. Not everybody reads the Government Gazette. Not everybody knows that Minister in the Act means Minister of Agriculture, because it is not clear. So call the Department of Agriculture, and failing that, consult a Solicitor or Barrister. Get to know your weeds.

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