

## Resolving conflict in weed control

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Orange

### Introduction

Australia has a long history of coordinated weed control and continues to protect the land from a range of agricultural, environmental and aquatic weeds.

In New South Wales responsibilities are assigned under the *Noxious Weeds Act 1993* to landholders (landowners or occupiers), local government, State government and finally to the Minister for Primary Industries.

The Act empowers the Minister to declare problem weeds as 'noxious weeds' in a specified area, which is usually a local government area, and to assign a Control Class to them.

The Act defines the obligations as follows.

### Occupiers and owners of land

The Act clearly places the responsibility for noxious weed control on the occupier of the land, who may or may not be the owner of the land. This includes occupiers of public lands. However, owners of land who are not the occupiers also have an obligation to control noxious weeds in some cases.

Occupiers of land must take whatever actions are required to control noxious weeds on the land they occupy. The actions required will depend on the Control Class of the particular noxious weed and the policy that the local control authority uses to implement its local weed management plan. Obligations and control procedures may vary between areas of NSW.

Occupiers, when they become aware of a notifiable weed (Control Classes 1 and 2), have an obligation to notify the local-control authority within 24 hours. Notice can be given in person or by telephone, facsimile, email or letter.

Some notifiable weeds are not widespread and may be notifiable only in particular areas of NSW. The links to the website on the last page of this document will give details of the weeds and the areas in which they are declared.

In designated irrigation areas the requirement for occupiers to control noxious weeds on their land extends to public roads, public reserves and channel land on the boundary or to within 20 m of the boundary of the land.

The responsibility of adjoining occupiers also extends to the middle of watercourses, rivers and inland waters, and to any unfenced roads within or adjoining their land.

### Local Control Authority

The local control authority (herein called 'the authority'), which has a mandate under the *Noxious Weeds Act*, can be the local council, a weed county council or another authority such as the Lord Howe Island Board or the Western Lands Commissioner in the unincorporated area.

The authority coordinates the control of weeds within its district and liaises with adjoining authorities and occupiers. The authority has an obligation to control noxious weeds on roads and reserves to prevent the spread to privately owned or any other land.

Each authority will have a weed-management policy for its roads. This will outline the strategy of the authority to meet the requirements of the Act. The policy provides the guidelines for the staff and,



if necessary, may be used in court to demonstrate that a consistent approach was applied equally to all land occupiers.

From time to time, situations may develop in dealing with a noxious weed where it is unreasonable to expect the authority or land occupiers to fully comply with the requirements specified under the Act. In this case the authority should apply to the Minister for a change in Control Class for that weed.

If a private occupier does not comply with reasonable requirements, the authority may compel the occupier and the owner to take actions by issuing a notice specifying the control measures to be taken. The authority may also initiate a prosecution and/or issue an on-the-spot fine.

Under the provisions of the Noxious Weeds Act, the authority is obliged to give the occupier or owner prior notice in writing of their intention to issue a weed control notice. This gives the recipient the opportunity to appeal to the authority about the matter.

If the matter is not resolved at this point, the authority may issue the occupier or owner with a weed control notice (a Section 18 Notice) requiring specified works to be carried out.

Failure to comply may allow the authority to enter the property and control the noxious weed/s as specified in the notice.

The authority will generally have a plan of action outlining its policy on its exercise of this responsibility. The plan may also outline what the authority believes is a reasonable expectation from land occupiers.

## Resolving conflicts

The presence of noxious weeds often causes conflict. Most conflicts are best resolved at a local level – where the conflict is between neighbours, they should initially try to resolve the issue themselves. It is unreasonable to expect the authority to intervene in every boundary weed control dispute.

There are often times when negotiation between neighbours does not resolve the conflict. If the issue is limited to weeds, it should be referred to the authority's plan for that weed. The plan should include the authority's policy on enforcing the control.

The policy will indicate whether or not it is reasonable to expect the authority to become involved.

Where occupiers or other stakeholders believe that the authority's plan is wrong or is not being implemented they should raise the issue with the authority, either through the authority's officers or through the elected councillors.

On the rare occasion that an issue is not resolved locally it may be necessary to refer the matter to the NSW Department of Primary Industries Regional Weed Control Coordinator.

Landholders should appreciate, however, that the authority is working to a plan which may not include major works in the complainant's area at this time and that resources are limited.

## Examples of disputes with weed control authorities

*Q. I have been given prior notice of the authority's intent to issue a weed control notice to control a weed on my land. I think it is unreasonable. What can I do?*

A. You are entitled to make a submission to the authority about the proposed weed control notice. The prior notice document (a Section 18A Notice) will advise you of the time period in which you must make any submission.

In most cases, legal action can be avoided and a resolution found by discussing the matters with the authority.

*Q. I have been issued with a weed control notice to control weeds on my land. I have already made a submission to the authority but they have given me the notice anyway. I still think this is unreasonable. What is my next step ?*

A. If you believe that a notice issued to you under the Noxious Weeds Act is unreasonable you have appeal rights through the Land and Environment Court. The appeal must be lodged within the period specified on the notice or within 28 days if no period is specified.

*Q. I do not think that the authority is taking weed control on its roads seriously. I have spoken to the weed officer two weeks ago but the weeds outside my property are still growing. How can I get the work done?*

A. The authority has the responsibility to control noxious weeds on roads, however, it is generally unreasonable to expect the authority to drop its scheduled work plan to address specific locations in a piecemeal approach. Ask for a copy of the authority work plan. If the plan needs modifying, draw that to the attention of the authority directly or through your elected representative.

*Q. The authority has a weed-management plan for St John's Wort but it just requires the authority to control the weed in part of the area.*

A. Some authority areas are very large and it is impractical to control all noxious weeds over the entire area all the time. In the case of Class 4 weeds, the authority's plan can have different control requirements for parts of their area. Discuss your concerns with the authority officers who can then consider amending the management plan.

*Q. The Act says that the Minister may issue a weed control notice to the authority. How can I get the Minister to issue a notice?*

A. The intent of the Noxious Weeds Act is to achieve weed control. Every effort should be made to settle disputes by discussion and/or negotiation. Before referring a matter to the Minister, make sure that you have discussed it with the authority. The Minister is reluctant to issue a notice on an authority, especially for weeds which are not declared for the whole state.

Most weeds are declared at the request of the authority. If the authority is not enforcing control, or controlling a weed on its land, it may be because the requirement is only to prevent spread from the land. The control requirements for weeds vary according to the Control Class. In the case of Control Class 4 weeds, this must be according to the authority's management plan for the species. In the case of Control Class 5 weeds, there is no obligation to control existing plants, these plants are only banned from sale and distribution.

It may also be that the policy adopted by the authority is to target particular areas. Generally, where an authority is implementing its policy consistently, the Minister will not act.

*Q. Does anyone have the power to stop entry onto any land including my private property?*

A. The Minister has power to quarantine areas for the purpose of controlling or preventing the spread of any specified Control Class 1 or 2 noxious weeds that are present on the land. By an Order the Minister can prevent movement of people, animals and things into, out of and within the quarantine area.

Local control authority's authorised weeds inspectors have a responsibility and legal right to inspect private property provided they notify the occupier of their intention to inspect or have the permission of the occupier. Obstructing an inspector from exercising their functions is an offence under the Noxious Weeds Act.

The authority may also impose temporary restriction of entry to enable control measures for noxious weeds to be undertaken. It may also require the occupier to remove any animals from any part of the land and prevent re-entry for a specified period. Temporary closure may also include any water body or stream.

This action would be carried out under Section 20 because of non-compliance with the weed-control notice issued.

*Q. Is there anyone else I can contact if I disagree with a notice?*

A. The State Ombudsman may be consulted to help resolve a matter between two parties in a dispute. The Ombudsman should only be contacted after every possible attempt has been made to reconcile the issue locally.

To contact the Ombudsman:

Phone (02) 9286 1000  
(toll-free) 1800 451 524  
Fax (02) 9283 2911

Or write to  
The Ombudsman  
Level 24,  
580 George Street  
Sydney NSW 2000

More information and details of all declared noxious weeds may be found on the NSW Department of Primary Industries website:

<http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/noxweed>

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Department of Primary Industries

ISSN 1832-6668  
Updates of this Primefact are available at  
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Job number 7279