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Weed Management Act 1999

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Weed Management Act 1999

An Act to provide for the control and eradication of declared weeds and to promote a strategic and sustainable approach to weed management

[Royal Assent 22 December 1999]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Weed Management Act 1999 .

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

approved means approved by the Secretary;

declared weed means a plant declared to be such under section 9 or 10 ;

identity card means a card issued under section 35 ;

infested area means an area declared to be an infested area under section 25 ;

inspector means a person appointed under section 34 ;

material includes soil, gravel, shingle and any other matter taken from land;

owner, in relation to a place, includes –

(a) a body corporate constituted under any Act in relation to the place –

(i) that is vested in it; and

(ii) in respect of which it has any power or function but which is vested in the Crown;
and

(b) a council in relation to any highway that it maintains;

package includes anything –

(a) in or by which a declared weed may be contained, wrapped or packed; and

(b) on which a declared weed may be located;

place includes any land, road, highway or premises;

plant includes –

(a) any vegetative product of a plant; and

(b) any part of a plant able to reproduce or be used to reproduce the plant;

protected area means an area declared to be a protected area under section 30 ;

public notice means a notice –

(a) published in the *Gazette*; and

(b) published in a daily newspaper;

requirement notice means a notice under section 13 ;

Secretary means the Secretary of the Department;

statement of intent means a statement referred to in section 8 ;

weed management plan means a draft weed management plan as approved by the Minister under Part 3

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4. Reference to land

[Section 4 Amended by No. 102 of 2001, Sched. 2, Applied:28 Jun 2002] For the purpose of this Act, land may be referred to by its entry in a valuation roll under the Valuation of Land Act 2001 .

5. Exercising powers and performing functions

In exercising any power or performing any function under this Act, a person is to –

(a) take into account the desirability of –

(i) minimising the harmful effect of weeds on the sustainability of Tasmania's productive capacity, natural ecosystems and biodiversity; and

(ii) promoting a strategic and sustainable approach to weed management; and

(iii) encouraging community involvement in weed management; and

(iv) promoting the sharing of responsibility for weed management; and

(b) further the objectives of the resource management and planning system of Tasmania as specified in the State Policies and Projects Act 1993 .

6. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 - Declared weeds

7. Declaration of weeds

[Section 7 Amended by No. 3 of 2007, s. 4, Applied:01 Jan 2008] A plant may be declared to be a declared weed in accordance with this Part.

8. Statement of intent

- (1) The Minister is to direct the Secretary to prepare a statement of intent to make an order declaring a plant to be a declared weed.
- (2) The statement of intent is to specify –
 - (a) the plant to which the order is to relate; and
 - (b) the reasons for making the order; and
 - (c) any proposed restrictions or measures in respect of the plant; and
 - (d) any other matter the Minister determines.
- (3) The Secretary, by public notice, is to notify –
 - (a) the contents of the statement of intent; and
 - (b) that a person may make written submissions in relation to the statement of intent; and
 - (c) the period during which the submissions may be made; and
 - (d) the address to which the submissions may be sent.
- (4) The Secretary, within 30 days after the end of the period referred to in subsection (3)(c), is to make a recommendation to the Minister taking into account any written submissions received.

9. Order for declared weed

- (1) On receipt of the Secretary's recommendation, the Minister, by order, may declare a plant to be a declared weed if satisfied that –
 - (a) *[Section 9 Subsection (1) amended by No. 3 of 2007, s. 5, Applied:01 Jan 2008]* the plant may have an adverse impact on –
 - (i) the productive capacity of Tasmania, another State or a Territory; or
 - (ii) any natural or physical resources of Tasmania, another State or a Territory; or
 - (iii) the genetic diversity of an indigenous plant of Tasmania, another State or a Territory; or
 - (iv) the genetic integrity of an indigenous plant of Tasmania, another State or a Territory; or
 - (v) the maintenance of indigenous ecological processes of Tasmania, another State or a Territory; and
 - (b) nature conservation and matters relating to social and economic matters have been taken into account.
- (2) An order may be made in respect of –
 - (a) the whole or any specified part of the State; or
 - (b) any specified circumstances.
- (3) An order in respect of a plant remains in force until whichever of the following occurs first:
 - (a) a weed management plan relating to the plant ceases to be in force;

(b) [Section 9 Subsection (3) amended by No. 3 of 2007, s. 5, Applied:01 Jan 2008] the end of a period of 12 months after the order is made and no draft weed management plan exists in relation to the plant.

10. Emergency declaration

- (1) The Minister, by public notice, may declare a plant to be a declared weed if of the opinion that an emergency situation exists making it expedient to do so.
- (2) A declaration in respect of a plant remains in force until whichever of the following occurs first:
 - (a) the end of a period of 12 months after the declaration is made;
 - (b) an order is made under section 9 in relation to that plant;
 - (c) the declaration is revoked under section 12 .

11. Amendment of order or declaration

- (1) The Minister may amend an order made under section 9 or a declaration made under section 10 .
- (2) The provisions of sections 8 and 9 do not apply to any amendment to an order that is of a minor nature.

12. Revocation of order or declaration

- (1) The Minister may revoke an order made under section 9 or a declaration made under section 10 .
- (2) The provisions of sections 8 and 9 apply to an intention to revoke an order as if it were an intention to make the order.

13. Requirement to take measures

- (1) An inspector, by notice served on the owner of any place, may require the owner to take reasonable specified measures in respect of any declared weed within a specified period to –
 - (a) control or eradicate the weed; and
 - (b) prevent or reduce its spread; and
 - (c) reduce the risk of contamination.
- (2) An inspector may –
 - (a) revoke a requirement notice; or
 - (b) amend a requirement notice.
- (3) A person must comply with a requirement notice.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (4) Any measures required to be taken under this section in relation to a declared weed are to be consistent with any weed management plan in force relating to that weed.
- (5) A requirement notice is to state the right of appeal under section 54 .

14. Compliance

- (1) If a person fails to comply with any measures specified in a requirement notice, the inspector who served the notice may cause those measures to be taken.
- (2) Any costs incurred in carrying out measures under subsection (1) are –
 - (a) payable by the person specified in the requirement notice; and
 - (b) recoverable as a debt in a court of competent jurisdiction.
- (3) A person carrying out any measures pursuant to this section may only enter and remain in any place with the written approval of the Secretary.

PART 3 - Management plans

15. Draft weed management plan

- (1) The Minister is to direct the Secretary to prepare a draft weed management plan in respect of any declared weed within 12 months after an order is made under section 9 relating to that weed.
- (2) A draft weed management plan is to provide for any one or more of the following matters:
 - (a) the distribution and extent of the declared weed;
 - (b) the area covered by the weed management plan;
 - (c) the storage in a specified area of any thing contaminated with a declared weed;
 - (d) measures to –
 - (i) reduce the number of plants or eradicate a species of plant in an area; or
 - (ii) restrict a species of plant to a particular area;
 - (e) procedures for the notification of the occurrence of specified weeds;
 - (f) measures to prevent entry into Tasmania of the declared weed;
 - (g) any other measures the Minister considers appropriate to control any declared weed.

16. Notification of draft weed management plan

- (1) As soon as possible after a draft weed management plan has been prepared, the Secretary, by public notice, is to notify –
 - (a) that a draft weed management plan has been prepared; and
 - (b) the declared weed to which the draft weed management plan relates; and
 - (c) that a person may make written submissions in relation to the draft weed management plan; and
 - (d) the period during which submissions may be made; and
 - (e) the address to which submissions may be sent; and
 - (f) the place at which a copy of the draft weed management plan may be obtained; and
 - (g) the cost, if any, of obtaining a copy of the draft weed management plan; and
 - (h) the place at which the draft weed management plan is exhibited; and
 - (i) the period during which the draft weed management plan is to be exhibited.
- (2) The Secretary is to notify the council of the municipal area to which a draft weed management plan relates that the draft weed management plan has been prepared.

17. Consideration of submissions

After considering any submissions received in relation to a draft weed management plan, the Secretary –

- (a) may amend the draft weed management plan to take account of any submission; and
- (b) is to prepare a report in relation to any submission received.

18. Approval of draft weed management plan

- (1) The Secretary is to submit to the Minister –
 - (a) the draft weed management plan with any amendments made under section 17 ; and
 - (b) the report prepared under that section.

- (2) The Minister is to approve a draft weed management plan if satisfied that the Secretary has taken appropriate action in relation to any submission made in respect of the plan.
- (3) If the Minister is not satisfied under subsection (2) , the Minister is to –
- (a) consult with any relevant body or organisation accordingly; and
 - (b) refer the draft weed management plan to the Secretary; and
 - (c) specify any matter which requires action before the Minister may be satisfied under subsection (2) .
- (4) The Minister is to make available at the request of a person and on payment of a fee determined by the Minister a copy of a report prepared under section 17 .

19. Notification of approval of draft weed management plan

If the Minister approves a draft weed management plan, the Secretary, by public notice, must notify –

- (a) that the draft weed management plan has been approved; and
- (b) that the plan as approved is a weed management plan; and
- (c) the date on which the weed management plan takes effect; and
- (d) the period during which the weed management plan is in force; and
- (e) the place at which a copy of the weed management plan may be obtained; and
- (f) the cost of obtaining a copy of the weed management plan; and
- (g) any other information the Secretary considers relevant to the weed management plan.

20. Changes to weed management plan

[Section 20 Substituted by No. 3 of 2007, s. 6, Applied:01 Jan 2008]

- (1) The Minister, by order published in the *Gazette*, may change a weed management plan by omitting, amending, substituting or adding any provision if satisfied that an emergency has arisen, or is likely to arise, making it necessary or advisable to so change the weed management plan.
- (2) The Secretary may amend a weed management plan by –
- (a) correcting a minor error in the plan; or
 - (b) making a change of form, not involving a change of substance, in the plan.

21. Notification of changes to weed management plan

[Section 21 Amended by No. 3 of 2007, s. 7, Applied:01 Jan 2008] Before the Minister makes an order under section 20(1) –

- (a) the Minister is to consult with any relevant body or organisation; and
- (b) the Secretary, by public notice, is to specify the proposed changes.

22. Period of order, &c.

- (1) *[Section 22 Subsection (1) amended by No. 3 of 2007, s. 8, Applied:01 Jan 2008]* An order made under section 20(1) is in force for the period, not exceeding 90 days, specified in the order.
- (2) *[Section 22 Subsection (2) amended by No. 3 of 2007, s. 8, Applied:01 Jan 2008]* The Minister, by notice published in the *Gazette*, may extend an order made under section 20(1) once only for a further period not exceeding 90 days if satisfied that there is likely to be a significant risk if the order is not extended.
- (3) *[Section 22 Subsection (3) inserted by No. 3 of 2007, s. 8, Applied:01 Jan 2008]* An amendment to a weed management plan under section 20(2) is in force for the period during which the weed management plan is in force.

23. Suspension of substituted provision

[Section 23 Amended by No. 3 of 2007, s. 9, Applied:01 Jan 2008] The application of a provision of a weed management plan that is substituted by an order under section 20(1) –

- (a) is suspended for the period during which the order is in force; and
- (b) has effect the day after that period ends.

24. Review of weed management plan

- (1) The Minister may direct the Secretary to conduct a review of a weed management plan at least once every 5 years if satisfied that it is necessary or desirable to do so.
- (2) In conducting a review, the Secretary is to consult with –
 - (a) any relevant body or organisation; and
 - (b) any other person the Secretary considers appropriate.
- (3) As a result of a review, the Secretary may recommend to the Minister any amendments the Secretary considers should be made to the weed management plan.
- (4) The Minister may –
 - (a) approve any amendment to the weed management plan the Secretary recommends if satisfied that the amendment –
 - (i) improves the effectiveness of the weed management plan; and
 - (ii) does not have a significant adverse impact on any person or class of persons; or
 - (b) refuse to approve any amendment if not so satisfied.
- (5) The Minister is to make available at the request of a person and on payment of a fee determined by the Minister a copy of the amended plan.
- (6) *[Section 24 Subsection (6) inserted by No. 3 of 2007, s. 10, Applied:01 Jan 2008]* An amendment to a weed management plan under this section is in force for the period during which the weed management plan is in force.

PART 4 - Infested and protected areas

Division 1 - Infested areas

25. Declaration of infested area

- (1) The Minister, by public notice, may declare a place to be an infested area if reasonably satisfied that it is consistent with a weed management plan to do so.
- (2) A declaration of an infested area –
 - (a) takes effect on the day on which it is first published; and
 - (b) continues in force until whichever of the following occurs first:
 - (i) a day specified in the public notice for its expiry;
 - (ii) the day on which a public notice revoking the declaration is first published.
- (3) The Minister may amend or revoke a declaration of an infested area by public notice.

26. Restrictions and prohibitions relating to infested area

- (1) The Minister, in accordance with a relevant weed management plan and by public notice or in a declaration of an infested area under section 25 , may –
 - (a) specify any restriction or prohibition relating to the movement into and out of that area of any plant, declared weed, goods, livestock, material or vehicle; and
 - (b) authorise the inspection of any thing in that area for the presence of any plant, declared weed, goods, material or vehicle; and
 - (c) specify any restriction or prohibition relating to any specified activity in that area.
- (2) A person must not carry out any activity specified in subsection (1) except –
 - (a) in accordance with any specified restriction or prohibition; or
 - (b) as authorised by a permit issued under section 29 .

Penalty: Fine not exceeding 100 penalty units.

27. Movement into and out of infested area

- (1) A person who is not an inspector must not –
 - (a) move or allow to be moved any plant, declared weed, goods, livestock, material or vehicle into or out of an infested area; or
 - (b) be in possession of any plant, declared weed, goods, livestock, material or vehicle moved into or out of an infested area.

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 6 months, or both.

- (2) Subsection (1) does not apply to any movement or possession carried out –
 - (a) in accordance with any restriction or prohibition specified under section 26 ; or
 - (b) as authorised by a permit issued under section 29 .

28. Application for permit relating to infested area

- (1) A person may apply to the Secretary for a permit authorising –
 - (a) the movement into and out of an infested area of any plant, declared weed, goods, livestock, material or vehicle; or

(b) the possession of any plant, declared weed, goods, material or vehicle within that area; or

(c) the carrying out of any activity restricted or prohibited under section 26(1)(c) .

(2) An application is to be –

(a) in an approved form; and

(b) accompanied by the prescribed fee.

29. Granting permit relating to infested area

(1) The Secretary may –

(a) grant an application for a permit relating to an infested area subject to any conditions the Secretary determines in accordance with a relevant weed management plan; or

(b) refuse to grant it.

(2) If the Secretary grants the application, the Secretary is to issue a permit to the applicant.

(3) The Secretary may amend or revoke a permit by written notice to the holder of the permit.

Division 2 - Protected areas

30. Declaration of protected area

(1) The Minister, in accordance with a relevant weed management plan and by public notice, may declare a place to be a protected area if reasonably satisfied that it is necessary to do so to prevent the introduction into that area of any declared weed.

(2) A declaration of a protected area –

(a) takes effect on the day on which it is first published; and

(b) continues in force until whichever of the following occurs first:

(i) a day specified in the public notice for its expiry;

(ii) the day on which a public notice revoking the declaration is first published.

(3) The Minister may amend or revoke a declaration of a protected area by public notice.

31. Restrictions and prohibitions relating to protected area

(1) The Minister, by public notice or in a declaration of a protected area under section 30 , may –

(a) specify any restriction or prohibition relating to the movement into that area of any person, plant, declared weed, goods, livestock, material or vehicle; and

(b) authorise the inspection of any thing in that area for the presence of any plant, declared weed, goods, material or vehicle; and

(c) specify any restriction or prohibition relating to any specified activity in that area.

(2) A person must not move or allow to be moved any plant, declared weed, goods, material or vehicle into a protected area except –

(a) in accordance with any specified restriction or prohibition; or

(b) as authorised by a permit issued under section 33 .

Penalty: Fine not exceeding 100 penalty units.

(3) A person must not carry out any activity specified in subsection (1)(c) except –

(a) in accordance with any specified restriction or prohibition; or

(b) as authorised by a permit issued under section 33 .

Penalty: Fine not exceeding 100 penalty units.

32. Application for permit relating to protected area

- (1) A person may apply to the Secretary for a permit authorising –
 - (a) the movement into a protected area of any plant, declared weed, goods, livestock, material or vehicle; or
 - (b) the carrying out of any activity restricted or prohibited under section 31(1)(c) .
- (2) An application is to –
 - (a) give reasons for the application; and
 - (b) be in an approved form; and
 - (c) be accompanied by the prescribed fee.

33. Granting permit relating to protected area

- (1) The Secretary may –
 - (a) grant an application for a permit relating to a protected area in accordance with a weed management plan; or
 - (b) refuse to grant it.
- (2) If the Secretary grants the application, the Secretary is to issue a permit to the applicant.
- (3) A permit –
 - (a) is subject to any conditions the Secretary determines; and
 - (b) may specify entry and exit points for the protected area.
- (4) The Secretary may amend or revoke a permit by written notice to the holder of the permit.

PART 5 - Inspectors

Division 1 - Appointment

34. Appointment of inspectors

- (1) The Secretary may appoint as an inspector –
 - (a) a suitably qualified person employed in the Department; and
 - (b) *[Section 34 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* with the approval of another Head of a State Service Agency, a suitably qualified person employed in that Agency; and
 - (c) any other suitably qualified person.
- (2) *[Section 34 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A person appointed under subsection (1) may hold that office in conjunction with any other office held under the State Service Act 2000 .
- (3) A council, with the approval of the Secretary, may appoint any person as an inspector for the purpose of this Act.

35. Identity cards

- (1) The Secretary is to issue to an inspector a card identifying that person as an inspector.
- (2) On ceasing to be an inspector, a person must return his or her identity card to the Secretary or the council as appropriate.

Penalty: Fine not exceeding 10 penalty units.

36. Production of identity card

- (1) An inspector, in exercising a power under this Act, must produce his or her identity card for inspection if required to do so by any person.
- (2) If an inspector fails to produce his or her identity card when required by a person to do so, the person is not guilty of resisting or obstructing the inspector or failing to comply with a requirement of the inspector.
- (3) This section does not apply to the exercise of a power under a warrant issued under section 39 .

Division 2 - Powers of inspectors

37. Exercise of powers

- (1) Subject to subsection (2) , an inspector may only exercise the powers of an inspector –
 - (a) in any area of the State as directed by the Secretary; and
 - (b) in relation to a declared weed as directed by the Secretary.
- (2) An inspector appointed under section 34(3) may only exercise the powers of an inspector within the municipal area of the council that appointed the inspector.
- (3) An inspector is to exercise any power under this Act in a manner that is consistent with any relevant weed management plan.

38. Entry and search

- (1) For the purpose of this Act, an inspector, at any reasonable time, may –
 - (a) enter and remain in any place or vehicle where there is, or is reasonably believed to be, any declared weed; and
 - (b) search any place lawfully entered for the presence of any declared weed; and

- (c) stop and search any vehicle for the presence of any declared weed; and
 - (d) open or break open and search any package in any vehicle or place lawfully entered.
- (2) An inspector may only enter residential premises –
 - (a) with the consent of the owner or occupier; or
 - (b) under the authority of a warrant issued under section 39 .

39. Warrants

- (1) On the application of an inspector, a magistrate may issue a warrant if satisfied that there are reasonable grounds for believing that it is necessary for the inspector to enter residential premises for the purpose of performing any function or exercising any power under this Act.
- (2) A warrant is to specify the residential premises in respect of which it is made.
- (3) A warrant has effect for a period of 30 days after the day on which it is granted.
- (4) An inspector named in the warrant and any person assisting that inspector may –
 - (a) enter and remain in the residential premises; and
 - (b) perform any function and exercise any power under this Act.

40. Stopping vehicles

- (1) An inspector may signal or direct a person apparently in charge of any vehicle –
 - (a) to stop the vehicle; or
 - (b) not to move the vehicle for a reasonable period.
- (2) An inspector may only exercise a power under this section if the inspector reasonably believes that –
 - (a) an offence under this Act has been, is being or is about to be committed in the vehicle; or
 - (b) there is in, on or under the vehicle any evidence of the commission of an offence under this Act.
- (3) A person must comply with a signal or direction under subsection (1) unless the person –
 - (a) reasonably believes that to comply would endanger the person, another person or the vehicle; and
 - (b) complies with the signal or direction as soon as it is safe to do so.

Penalty: Fine not exceeding 50 penalty units.

41. Securing places

- (1) An inspector, by notice in writing, may require the owner of any place to secure the place.
- (2) A person must comply with the notice.

Penalty: Fine not exceeding 50 penalty units.

42. Opening and unlocking

- (1) For the purpose of this Act, an inspector may require a person to open or unlock any vehicle, gate or package if the inspector reasonably believes that evidence of the commission of an offence under this Act may be found.
- (2) An inspector may break open any vehicle, gate or package –
 - (a) in searching or inspecting a place; or
 - (b) if the inspector reasonably believes that evidence of the commission of an offence under this Act may be found.

43. Dismantling, repairing and erecting

- (1) For the purpose of this Act, an inspector, at any reasonable time, may –
 - (a) dismantle or remove anything if the inspector considers it necessary to do so for the purpose of finding a declared weed; and
 - (b) repair or erect anything; and
 - (c) tag or mark anything in any manner appropriate for the purpose of identification.
- (2) An inspector is to be reimbursed for any reasonable costs incurred by the inspector in exercising any power under subsection (1) .

44. Removal and destruction

- (1) An inspector may –
 - (a) require a person to remove, destroy or otherwise dispose of a declared weed; or
 - (b) prohibit the removal, destruction or disposal of a declared weed for a specified period.
- (2) A person must comply with a requirement or prohibition under subsection (1) .

Penalty: Fine not exceeding 50 penalty units.

45. Seizure

- (1) For the purpose of this Act, an inspector may seize and retain anything that appears to indicate that an offence under this Act has been, is being or is about to be committed.
- (2) An inspector is to provide the owner of anything seized with a written notice of that seizure as soon as practicable.
- (3) The Secretary may retain anything seized by an inspector –
 - (a) for a period not exceeding 6 months commencing on the day it is seized; or
 - (b) if proceedings for an offence in relation to it are instituted within that period, until the proceedings are terminated.
- (4) The Secretary may release anything that has been seized to the owner unconditionally or on any conditions the Secretary considers appropriate.
- (5) Without the written permission of the Secretary, a person must not interfere with or remove anything that has been seized.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

46. Documents

For the purpose of this Act, an inspector may –

- (a) examine, make or print copies of, or take extracts from, any document or record; and
- (b) take any photograph, film or video recording; and
- (c) make any sketch or drawing; and
- (d) make any recording by any means.

47. Giving name and address

- (1) An inspector may require a person to give his or her full name and address.
- (2) A person must not –
 - (a) refuse to give his or her name and address when required to do so; or
 - (b) give a false name or false address.

Penalty: Fine not exceeding 50 penalty units.

Division 3 - General provisions

48. Assistance

- (1) In performing any function or exercising any power, an inspector may be accompanied and assisted by any person the inspector considers appropriate.
- (2) An inspector may direct any person to remove any physical or other obstruction that may hinder or prevent the inspector from performing any function or exercising any power under this Act.
- (3) A person must not fail to comply with a direction under subsection (2) .

Penalty: Fine not exceeding 50 penalty units.

49. Using reasonable force

In performing any function or exercising any power under this Act, an inspector may use any reasonable force necessary in the circumstances.

50. Obstruction of inspector

- (1) A person, without reasonable excuse, must not –
 - (a) obstruct, resist, impede or assault –
 - (i) an inspector who is performing or exercising a function or power under this Act; or
 - (ii) a person who is assisting that inspector; or
 - (b) threaten, abuse or insult an inspector; or
 - (c) fail to answer a question if required to do so by an inspector; or
 - (d) fail to provide any document, record or information if required to do so by an inspector; or
 - (e) prevent or attempt to prevent a person from giving information to, or being questioned by, an inspector; or
 - (f) impersonate an inspector.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) On convicting a person of an offence under subsection (1)(c) or (d) , in addition to imposing a penalty a court may order that person to –
 - (a) answer the question; or
 - (b) provide the document, record or information.
- (3) Any answer, document, record or information provided by a person under this section is not admissible against that person in any proceedings, other than proceedings for an offence under section 58 .

PART 6 - Miscellaneous

Division 1 - Approved facilities

51. Storage in approved facility

(1) A person must store anything contaminated with a declared weed at an approved facility if required to do so under a relevant weed management plan.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not remove anything contaminated with a declared weed that is stored in an approved facility.

Penalty: Fine not exceeding 50 penalty units.

52. Approved facility

(1) The Secretary, by public notice, may declare a facility to be an approved facility for the purpose of this Act.

(2) The Secretary is to provide the operator of an approved facility with a copy of the notice declaring the facility to be an approved facility.

53. Register of approved facilities

The Secretary is to –

- (a) keep a register of approved facilities; and
- (b) make the register available for inspection by the public; and
- (c) make available a copy of any entry in the register on payment of the prescribed fee.

Division 2 - Appeals

54. Appeals against requirement notice

(1) A person may appeal to a magistrate against a requirement notice.

(2) An appeal is to be –

- (a) made within 7 days after –
 - (i) service of the requirement notice; or
 - (ii) the first publication of the requirement notice; and
- (b) in an approved form; and
- (c) accompanied by the prescribed fee.

(3) In hearing an appeal, a magistrate may make any of the following orders:

- (a) that the requirement notice be complied with;
- (b) that the requirement notice be amended as specified in the order;
- (c) that the requirement notice be revoked.

Division 3 - Offences

55. Offences by bodies corporate

(1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.

- (2) It is a defence in proceedings under subsection (1) for a person to prove that –
- (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
 - (c) the person, if in such a position, used all due diligence to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.
- (4) This section does not affect a liability imposed on a body corporate for an offence committed by it against a provision of this Act.
- (5) For the purpose of this section, the following persons are persons who are concerned in, or take part in, the management of a body corporate:
- (a) a director of the body corporate;
 - (b) a secretary of the body corporate;
 - (c) a receiver and manager of property of the body corporate;
 - (d) an administrator of a deed of arrangement executed by the body corporate;
 - (e) a liquidator of the body corporate appointed in a voluntary winding-up of the body corporate;
 - (f) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

56. Sale, purchase, propagation, use, &c., of declared weed prohibited

[Section 56 Substituted by No. 3 of 2007, s. 11, Applied:01 Jan 2008]

- (1) A person must not –
- (a) sell a declared weed or any material or thing containing or carrying a declared weed; or
 - (b) purchase or offer to purchase a declared weed or any material or thing containing or carrying a declared weed; or
 - (c) grow, propagate or scatter a declared weed; or
 - (d) store a declared weed or any material or thing containing or carrying a declared weed; or
 - (e) hire or offer for hire any material or thing containing or carrying a declared weed; or
 - (f) use a declared weed or any material or thing containing or carrying a declared weed; or
 - (g) deal with a declared weed or any material or thing containing or carrying a declared weed in any manner that is likely to result in the spread of the declared weed.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply in respect of feed grain for animals that is –
- (a) carrying a declared weed; and
 - (b) imported into Tasmania in accordance with any measures prescribed for the purpose of section 57(2).
- (3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she took all reasonable actions to prevent the commission of the offence.

57. Importation of declared weed

(1) *[Section 57 Subsection (1) amended by No. 3 of 2007, s. 12, Applied:01 Jan 2008]* A person must not import or allow to be imported into Tasmania any declared weed.

Penalty: Fine not exceeding 50 penalty units.

(2) *[Section 57 Subsection (2) substituted by No. 3 of 2007, s. 12, Applied:01 Jan 2008]* A person must not import or allow to be imported into Tasmania, otherwise than in accordance with any prescribed measures, any feed grain for animals that may be carrying a declared weed.

Penalty: Fine not exceeding 50 penalty units.

(3) *[Section 57 Subsection (3) substituted by No. 3 of 2007, s. 12, Applied:01 Jan 2008]* A person must not import or allow to be imported into Tasmania, otherwise than in accordance with any prescribed measures, any livestock that may be carrying a declared weed.

Penalty: Fine not exceeding 50 penalty units.

58. False and misleading statements

A person, in providing any information, record or document under this Act, must not –

- (a) provide it knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the information, record or document is false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) a natural person, a fine not exceeding 50 penalty units.

Division 4 - Liability and exemption

59. Personal liability

A person exercising or purporting to exercise any power or performing or purporting to perform any function under this Act is not liable for an honest act done or omission made while doing so.

60. Exemptions

- (1) The Secretary, by notice in writing and in consistence with a relevant weed management plan, may exempt a person from any or all of the provisions of this Act subject to any specified conditions.
- (2) A person must comply with any condition of an exemption.

Penalty: Fine not exceeding 50 penalty units.

Division 5 - Infringement notices

61. Infringement notices

- (1) An inspector may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.
- (2) An infringement notice is not to relate to 4 or more offences.
- (3) *[Section 61 Subsection (3) inserted by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]* An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

62.

[Section 62 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

63.

[Section 63 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

64.

[Section 64 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

65.

[Section 65 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

66. Payments to council or Consolidated Fund

Any payments made in respect of an infringement notice –

- (a) are payable to a council, if the notice was served by an inspector appointed under section 34(3) ; or
- (b) are payable into the Consolidated Fund if the notice was served by an inspector appointed under section 34(1) .

67.

[Section 67 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

68.

[Section 68 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

69.

[Section 69 Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]

Division 6 - Regulatory and administrative matters

70. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (2) The Governor may make regulations that –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (3) Regulations made under this Act may –
 - (a) authorise any matter to be determined, applied or regulated by a person or body specified in the regulations; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations; and
 - (c) confer a power and impose a duty on a specified person or class of person.
- (4) The regulations may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.
- (5) Regulations may prescribe fees payable in respect of –
 - (a) any inspection carried out by an inspector; or
 - (b) any application and any inspections relating to the application; or
 - (c) any other matter or service provided for under this Act.

(6) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.

(7) Regulations under subsection (6) may take effect from the commencement of this Act or on a later day.

71. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

(a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and

(b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

72. Savings and transitional provisions

Schedule 1 has effect with respect to savings and transitional matters.

73.

The amendment effected by this section has been incorporated into the authorised version of the Noxious Weeds Act 1964 .

SCHEDULE 1 - Savings and transitional provisions

Section 72

1. Interpretation

In this Schedule –

commencement day means the day on which this Act commences;

repealed Act means the Noxious Weeds Act 1964 .

2. Inspectors

(1) A person who was a State inspector under the repealed Act immediately before the commencement day is, on that day –

(a) an inspector appointed under section 34(1) ; and

(b) subject to the same conditions of appointment as under the repealed Act.

(2) A person who was a municipal inspector under the repealed Act immediately before the commencement day is, on that day –

(a) an inspector appointed under section 34(3) ; and

(b) subject to the same conditions of appointment as under the repealed Act.

3. Legal proceedings

Any legal proceedings instituted under the repealed Act and not determined before the commencement day may, on or after that day, be determined under the repealed Act.

4. Appeals

Any appeals instituted under the repealed Act and not determined before the commencement day may, on or after that day, be determined under the repealed Act.

5. Enforcement notice

Any enforcement notice in force under the repealed Act immediately before the commencement day continues in force if it relates to a plant that is a declared weed.