

PRINCIPLES OF WEEDS LEGISLATION DISCUSSION PAPER¹

INTRODUCTION

Both the National Weeds Strategy Executive Committee (NWSEC) and the Australian Weeds Committee (AWC) have identified the need to examine State and Territory weeds legislation for consistency and to develop achievable principles that would help reduce the spread of weeds in Australia².

In 1997, the Commonwealth Government published the NWS. Goal 1 of the NWS is “to prevent the development of new weed problems”. This is to be achieved under objective 1.3: “to reduce weed spread to new areas within Australia”, by having in place effective State and Territory legislation and coordinated action plans (Anon. 1997). While the NWS does not seek identical or uniform legislation in each State and Territory, weeds legislation needs to be sufficiently consistent to limit the spread of weeds within and across borders³.

In 2000, the AWC was restructured and developed a three-year strategic plan. Goal 5 of the strategic plan is that “nationally consistent legislation, guidelines and/or principles are in place”. The relevant objective being:

- Nationally consistent legislation, policy and guideline needs are identified and addressed which allow State/regional variations and differences.

In developing principles of weeds legislation, this discussion paper explains the rationale for government intervention through weeds legislation, examines the aims and objectives of relevant Commonwealth legislation and the weeds legislation of the States and Territories. A comparison of existing State and Territory weeds legislation along with principles previously suggested by various authors are outlined to help develop a core set of principles for adoption at the State and Territory level.

Complementary legislation covering seeds and plant health⁴ that also aim to limit the spread of weeds within Australia are not examined. However, for completeness, any review of weeds legislation at the State level should encompass these as well as natural resource management/environmental and local government legislation to ensure consistency of approach and that the necessary links exist to target the major vectors of weed spread.

BACKGROUND

There are over 2700 plant species that have been documented as naturalised plants in Australia (Lazarides *et al.* 1997). Naturalisations of non-native plant species have averaged around eleven per annum since European settlement (Csurhes and Edwards 1998) with a trend towards an increasing rate of weed establishment (Groves 1997, Panetta 1993).

¹ The term weeds legislation is limited to State and Territory legislation governing the declaration and control of certain weeds at the State and Territory level. It does not include legislation enabling local government to declare weeds or legislation covering seeds and plant health.

² The NWSEC was disbanded on 30 June 2002. The AWC now has responsibility for progressing NWS issues.

³ It should be noted that preventing the development of new weed problems is only part of the objectives of most weeds legislation. Reducing weed spread to new areas in Australia will only be partially achieved by effective legislation.

⁴ A Standing Committee taskforce has been examining the feasibility of nationally uniform agricultural plant and animal health legislation for a number of years. While there is general consensus that nationally uniform agricultural plant and animal health legislation has merit, agreement has not been reached on an acceptable approach across all jurisdictions.

Around ten per cent of naturalised plant species become weeds that cause significant economic and environmental damage (Williamson and Fitter 1996). The environmental consequences of many introduced agricultural plants have been largely ignored in the past while public and commercial demand for exotic species for horticultural and cultural purposes has also contributed to Australia's weed problems (Thorp and Lynch 2000). Groves (1997) found that in the period between 1971 and 1995, most weeds had been introduced deliberately for horticultural purposes.

The more recently developed countries such as Australia, New Zealand and the USA, tend to have a higher level of invasive weeds, with land being less intensively managed and major weeds being exotic plants. In Europe, it is likely that the majority of major weeds have reached their potential range (Amor and Twentyman 1974). Legislation is one means of helping to reduce the number and the rate of spread of weeds.

Weeds legislation has a long history in Australia, with South Australia first enacting legislation in 1851, followed by Victoria in 1856 (Parsons and Cuthbertson 1992). Each State and Territory has its own legislation that allows certain plants to be proclaimed as "noxious weeds", "declared weeds", "declared plants", "pest plants" or "proclaimed plants"⁵. Through existing State and Territory legislation, there is currently over 330 species of declared weeds throughout Australia (NWS Website 2001).

The ability of legislation to be an effective tool in weed management has often been undermined through a lack of scientific rigour in deciding on which species to declare, inappropriate coordination between control areas at the State level and insufficient resourcing for enforcement of the legislation (Trumble 1978). Weed declarations have probably been influenced more by politics, institutional arrangements and community attitudes to weeds than scientific considerations (Smith 1987, Thorp and Lynch 1999).

These deficiencies have been further compounded by a focus on widespread agricultural weeds, a culture of government intervention and resulting expectation of control due to weed declarations, the political nature of the process and competing interests for 'new' and 'better' plants adding to the number of weeds establishing and spreading.

Based on an examination of nine weed eradication programs within Australia, Groves and Panetta (2002) suggest two general principles that will determine the success of a weed eradication program:

- "Weed eradication programs will be biologically and economically feasible if the known distribution of the weed is less than 100 hectares, if it occurs at three or fewer locations, if its location sites are easily accessible and if the weed is readily detectable"; and
- "If the weed has a period of seed viability in the soil greater than five years and/or continues to be traded by nurseries, then the longer will be the period required for eradication."

Nearly all the declared weeds in Australia fall outside of these principles. So what is the basis of weeds legislation?

One of the first weeds proclaimed in South Australia and Victoria was *Cirsium vulgare*, spear thistle (Parsons and Cuthbertson 1992, Smith 1987), and it is still a declared weed in parts of both of those States. It could be argued that given the widespread distribution of this weed

⁵ Hereafter, the term declared weed is used to cover the various legislative terms for plants proclaimed under State and Territory weeds legislation. It does not include plants proclaimed by local government.

within Australia, legislation has had minimal effect on the abundance and distribution of the weed⁶.

This of course ignores the fact that while not always explicitly stated in the objectives, one of the main principles underlying weeds legislation is to reduce the rate of spread of weeds. While eradication is possible, especially for new incursions with limited spread, the eradication of a widespread declared weed has not been accomplished in Australia and is generally unrealistic (Carter 2000, Medd 1987, Moore 1975).

Nevertheless, given the historical significance of weeds legislation in Australia, it would be politically dangerous to suggest that such laws be revoked (Amor and Twentyman 1974). Weeds are one of the most commonly reported land degradation problems on broadacre and dairy farms (Mues *et al.* 1998) and the effort and money expended on weed control is increasing (Thorp and Lynch 1999, 2000). A national survey of grain growers found that farmers regarded weeds as the number one problem of winter cropping activities, a significant proportion believing that compared to five years earlier, the problem is getting worse (Alemseged *et al.* 1999).

Around the early 1970's, many authors questioned the inherent weaknesses in weeds legislation, especially the lack of scientific basis and the generally *ad hoc* list of declared weeds (Quinlivan 1972, Roberts 1987). While legislation is just one tool, albeit an important one, the policy behind the legislation and weed declarations ignored key ecological and economic principles (Smith 1987). Auld (1987) was of the opinion that weed spread mechanisms should determine whether there is any need for public policies for particular weeds.

Trumble (1978) listed five essentials of effective weeds legislation:

- Policies about the designation of pest species and prescribed methods of their control which recognise the ecological, economic and social facts of life;
- Machinery which has sufficient flexibility to allow the same species to be treated differentially in different geographical or economic situations;
- An administrative structure which gives a strong sense of local participation and responsibility combined with sufficient central strength to secure adequate standards at the local level and to deal with widespread problems and matters of interstate concern;
- A financial structure which provides sufficient able and qualified persons to operate at the local level, to ensure sound planning and implementation of control programs; and
- Clear and enforceable statements of the ultimate responsibility of the landholder - private or public - for weed control, with options available to local and central authorities to partially or wholly accept financial responsibility in some circumstances, eg where eradication is the aim.

Much of the authors' attention addressed issues such as to which category, if any, to assign the various declared weeds (Amor and Twentyman 1974, Moore 1971, Moore 1975, Quinlivan 1972). These were more criteria for declaring weeds than principles of weeds legislation.

Western Australia introduced legislation during that period (1976) that categorised weeds according to whether they should be prevented, eradicated, controlled or contained. The weeds legislation that followed generally incorporated a similar categorisation system.

Smith (1987) listed eight criteria for weeds being declared on "sound economic and biological considerations". His eight criteria were:

⁶ In some instances it is difficult to remove weeds from a State or Territory's declared weeds list due to community sensitivity that removing a declaration notice is an admission of failure and that past efforts to control the weeds have been wasted.

- Evidence to show that the plant causes, or has the potential to cause, serious economic loss to agricultural production or harm to the environment through invasion or dominance of natural vegetation;
- Evidence that the weed is likely to spread from its present distribution to other areas;
- Evidence that the weed is poisonous or harmful to humans or animals;
- Information on the actual and potential distribution and abundance of the plant;
- Evidence that effective and practical control measures are available;
- Indications that action taken under legislation would be expected to be effective and result in at least partial reduction in areas infested;
- Availability of a plan of the proposed program of control or eradication for the area; and
- An assurance that there is a firm intention to initiate, maintain and if necessary, enforce the measures required under the program.

Around this period was also the start of community concerns for protection of the environment. Initially centred on such issues as herbicide usage, off-site damage and residue problems (Trumble 1978), over time, there has been an increasing awareness of the environmental damage caused by weeds (Groves 1999a).

More recently, the environmental consequence of deliberately introduced agricultural (Lonsdale 1994) and horticultural plants (Blood 1999, Dellow and Groves 1999, Groves 1997) has received increasing attention. Community action and involvement in weed issues has followed.

The NWS was released in 1997 (Anon. 1997). The Strategy outlines a risk management approach to weed problems and follows the Landcare philosophy of collective action (Thorp and Lynch 1999).

The NWS raised the profile of both primary industry and environmental weeds and the need to apply a strategic approach to the management of weed problems. The States and Territories have increasingly adopted this approach with an emphasis on regional and local weed management plans along with an acknowledgement of greater community responsibilities and involvement (Bishop and Harradine 1999, Ward and James 1999, Welsh *et al.* 1999, Wilson *et al.* 1999 and Woods and Carter 1999).

This period coincided with a review of Australian quarantine and significant changes to Australia's legal obligations on the quarantine issues of trade and the protection of the environment (Nairn *et al.* 1996).

Plant quarantine measures had traditionally targeted plant imports on the basis of preventing insect and disease entry into Australia. It was not until the late 1980's that the first quarantine system was implemented to assess weed potential (Hazard system). This system relied principally on a plant's known weed history elsewhere in the world (Steinke and Walton 1999). A more comprehensive, scientifically based, risk management approach for assessing the weed potential of all plant imports into Australia, the Weed Risk Assessment system, was implemented in 1997 (Walton *et al.* 1998).

WHY THE NEED FOR WEEDS LEGISLATION?

Governments are involved in weed management through legislation due to market failure. As individuals can tend to act in their own self-interest, not everyone will act for the common good to limit the consequences of their actions on the rest of society. In the case of weeds, this involves the increased risk of a weed spreading across a landholder's and/or manager's boundaries resulting in external costs (externality) and/or the private level of weed control being less than the socially desired level (ignorance or uncertainty) (Amor and Twentyman 1974, Auld

1987, Carter 2000, Parnell 1999, Roberts 1987). The faster the rate of spread, all other things being equal, the greater the rationale for government intervention (Auld 1987).

The resulting market failure can be due to current operational practices and/or poor weed management practices including quality control, poor or lack of short-term economic returns, behavioural and cultural practices and ignorance or uncertainty regarding weeds and weed management.

Even when markets fail, government intervention would not be justified on pure economic grounds if the costs outweigh the benefits. The question that then arises is in which situations can government intervention result in a net social gain, through which mechanisms and at what level (Roberts 1987)? However, the difficulty with applying a pure economic analysis is in accurately accounting for many of the external costs and benefits that may provide the reasons for government intervention. Governments are nevertheless, influenced by other considerations including political gain, parochialism, self-interest and lobby groups, historical considerations and targeting of perceived disadvantaged groups (Parnell 1999).

It is interesting to note that weeds legislation was first introduced at a State level from 1851 due to the "great injury and loss" being caused by thistles (Parsons and Cuthbertson 1992). There was probably also an expectation that landholders had a duty of care to manage land in a way that was not detrimental to their neighbours and the rest of society. However, in a 1908 High Court of Australia case, the Court ruled that an occupier of land has no duty at common law to prevent a declared weed growing naturally on their property from spreading to neighbouring properties unless the resulting damage due to the spread of the weed was from the intervention of a human act. The High Court was of the opinion that normal farming operations did not constitute such human intervention. Liability for such actions is therefore necessary through statute (Auld 1987, Smith 1987).

Shine et al (2000) have written "A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species" which gives an international perspective on invasive plants regulation.

COMMONWEALTH LEGISLATION TO PREVENT WEED INCURSIONS

The Australian quarantine legislation consists of the *Quarantine Act 1908*, Regulations (Animal, Plant and General) under the Act and Proclamations (Animal, Plant and General) (Nairn *et al.* 1996). The Quarantine Act is Australia's first line of defence against weeds by prohibiting the entry of potential weeds and weed seeds and empowers AQIS to regulate the importation of all plant material into Australia based on a screening process for weed potential; the Weed Risk Assessment (WRA) system (Walton *et al.* 1998). Within the limitations imposed by international obligations under the Sanitary and Phytosanitary agreement between WTO Members, the WRA system follows the precautionary principle of avoiding the risk in the absence of the scientific information necessary to assess that risk (Pheloung 1999).

A second line of quarantine defence that complements existing quarantine legislation is provided by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA). There is a requirement for a strategic environmental assessment of proposals to import live animals and plants, with the intent of preventing additional invasive species from entering Australia (Stone 2001)⁷.

⁷ The previous scheme for regulating wildlife trade, the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, was repealed with provisions now incorporated into an amended *Environment Protection and Biodiversity Conservation Act 1999*. These amendments were enacted on 11 January 2002.

COMMONWEALTH LEGISLATION FOR ESTABLISHED WEEDS

With the exception of legislation to prevent weed incursions, responsibility and legislative powers regarding declared weeds resides with the States and Territories⁸, noting that the Commonwealth has no legislative powers regarding incursions that cannot be shown to arise from or be in contravention of regulations under the Quarantine Act⁹.

There are two relevant pieces of Commonwealth legislation that can target established weeds. The first is the *Biological Control Act 1984*.

The majority of weeds nominated as targets for biological control are assessed via a process of consultation approved by the Standing Committee on Agriculture and Resource Management (SCARM)¹⁰ and administered by the AWC¹¹. The approval of biological control agents generally requiring their importation does necessitate quarantine approval¹². Where the nominated weed and/or control agents are likely to cause some opposition, approval may be sought under the Biological Control Act.

The most recent Commonwealth legislation, which may target established weeds including incursions, is the EPBCA. Provisions under the Act allow for regulations to establish a list of non-native species that are or may threaten biodiversity and to regulate or prohibit trade concerning species on that list. It is unclear as to how the EPBCA is to be implemented regarding weeds and biodiversity.

The full impact of EPBCA notwithstanding, for the majority of declared weeds within Australia, legislative power resides with the States and Territories. The effectiveness of any Commonwealth policy will always be constrained by the power vested with the States and Territories.

The objectives of the relevant Commonwealth legislation are listed at Attachment A.

STATE AND TERRITORY WEEDS LEGISLATION

The NWS (Anon. 1997) lists some of the difficulties associated with a heavy reliance on State and Territory weeds legislation to reduce weed problems. These include:

- Lack of clear and appropriate weeds legislation objectives;
- The slow process of using legal means to force reluctant landholders to control weeds, allowing weeds to spread in the meantime;
- Non-reporting of new outbreaks or infestations of declared weeds due to the potential short-term financial penalty to landholders of control measures;
- Lack of harmonisation of weeds legislation and regulations within and between States;
- Insufficient resources to implement weeds legislation effectively;
- Heavy focus on agricultural weeds;

⁸ The Office of Chief Plant Protection Officer provides a Commonwealth funded service of facilitation and technical input into systems to detect and manage weed incursions. Along with the States and Territories, the Commonwealth provides input into any cost sharing arrangements for weed incursion management agreed through the Standing Committee process.

⁹ The exception is where an incursion is on the Environment Protection and Biodiversity Conservation Act list of non-native species.

¹⁰ SCARM was recently disbanded. This responsibility will either reside with the Primary Industries Standing Committee or the Natural Resource Management Standing Committee.

¹¹ A review of the SCARM approved process for nomination of target weeds for biological control is being undertaken by the AWC.

¹² The assessment of biological control agents for importation is managed by Biosecurity Australia, which is a part of the Commonwealth Department of Agriculture, Fisheries and Forestry – Australia.

- Little community consultation in the drafting and implementation of weeds legislation; and
- An over expectation and reliance on weeds legislation to solve weed problems.

Other difficulties include:

- Legislation only dealing with the symptom requiring control of the declared weed while ignoring major vectors in the spread of the weed;
- Policies failing to address the cause of the weed problems;
- Lack of community awareness/knowledge regarding actions and what are weeds or potential weeds;
- Self interest and conflict of interest regarding which weeds to declare;
- Lack of strategic planning/priority setting in declaring weeds¹³;
- Lack of integration between legislation within a State/Territory and between States/Territories; and
- Inadequate reporting mechanisms and follow up procedures.

Table 1 lists the weeds legislation and agency responsible for administration and/or implementation of the legislation in each State and Territory.

Noxious Weeds Legislation		Responsible Agency
NSW	<i>Noxious Weeds Act 1993</i>	NSW Agriculture
VIC	<i>Catchment and Land Protection Act 1994</i>	Department of Sustainability and Environment
QLD	<i>Land Protection (Pest and Stock Route Management) Act 2001¹⁴,</i>	Department of Natural Resources and Mines
WA	<i>Agriculture and Related Resources Protection Act 1976</i>	Department of Agriculture
SA	<i>Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986</i>	Animal and Plant Control Commission/Department of Water, Land and Environment
TAS	<i>Weed Management Act 1999</i>	Department of Primary Industries, Water and Environment
NT	<i>Weeds Management Act 2001</i>	Department of Business, Industry and Resource Development
ACT	<i>Land (Planning and Environment) Act 1991</i>	Department of Urban Services

Table 1 Weeds Legislation and Responsible Agency in Each State and Territory

Aims and Objectives

The common theme in the majority of the State and Territory weeds legislation objectives is to control declared weeds. New South Wales, Tasmanian and Northern Territory legislation is specifically focussed on declared weeds. All of the other State and Territory weeds legislation

¹³ A workshop held in Canberra in March 2002 agreed on a national framework for weed prioritisation processes. The national framework is still being drafted before seeking endorsement through the AWC.

¹⁴ It is expected that the new Queensland legislation that was passed in April 2002 will be enacted by mid-2003. As a result, reference is made to the impending new legislation.

include provisions for the control of pest animals and in some cases, other more general land and water management purposes.

The more recent weeds legislation introduced by Tasmania Northern Territory and Queensland has incorporated the philosophy of the NWS into their objectives of attempting to apply a strategic and sustainable approach to the management of weeds encompassing both primary industries and the environment. The Northern Territory legislation objectives also include a reference to the Territory's Weeds Management Strategy.

The Queensland legislation lists pest management principles of integration, public awareness, commitment, consultation and partnership, planning, prevention, best practice and improvement.

The Victorian legislation has a natural resource management basis, addressing all forms of land degradation that impact on productive and environmental values through establishing a framework for the integrated management and protection of catchments.

The older legislation tends to be less specific in its stated aims and objectives and is more likely to have a greater focus on agricultural weeds. The exception being the South Australian weeds legislation with the stated objective of protection of both agriculture and the environment. Attachment B lists the aims and objectives of the relevant State and Territory weeds legislation.

Organisational Structures

In addition to providing the necessary legislative framework for the control of declared weeds, in some cases, weeds legislation establishes the organisational structures responsible for administering the legislation. Examples include:

- Local Control Authorities in New South Wales; and
- The Animal and Plant Control Commission and local Animal and Plant Control Boards in South Australia.

The benefit of this approach is that it does provide the infrastructure necessary to achieve the stated objectives of the legislation. Where the declared weed objectives form part of more comprehensive legislation, such as the Victorian legislation, this promotes an integrated natural resource management approach that is essential for effective management. However, caution is necessary as it can increase the complexity of the legislation¹⁵.

The Victorian legislation establishes the Victorian Catchment Management Council and Catchment Management Authorities (CMAs). The CMAs have responsibility for overseeing the development and guiding the implementation of regional catchment strategies, including regional weed action plans.

Western Australia has a separate act for the organisational structure responsible for administering the weeds legislation (the Agriculture Protection Board).

Queensland has devolved pest management to the local government level and this is driven by a local government area pest management plan developed to record targeted pests, action plans and priorities. The plan is subject to a State interest check, but is financed by the local government.

¹⁵ As with the Victorian legislation which promotes an integrated approach to land and water management issues, some States have proposed that natural resources are best protected through rationalising legislation, administration and planning in natural resource management.

A compromise between the different approaches adopted by the States and Territories so as to keep the weeds legislation as enabling as possible would be to place the detail of the organisational arrangements into regulations under the weeds legislation.

Comparison of State and Territory Noxious Weeds Legislation

Attachment C provides a comparison of some key features of State and Territory weeds legislation. Weeds legislation serves many functions with most States and Territories having taken differing approaches that are often based on historical considerations.

Attachment D provides further background including extracts from State and Territory weeds legislation.

DISCUSSION

As outlined in the background, earlier principles of weeds legislation focused on categorisation of weeds. In many cases, these were criteria for declaring weeds and/or the effective operation of weeds legislation. More recent principles are listed in the NWS (Anon. 1997):

- Weeds legislation will embrace weeds that are a serious threat to primary production, natural ecosystems, human and animal welfare or other values;
- Weeds legislation must be developed and implemented with the participation and support of the community;
- Action taken under weeds legislation must be harmonised where there is a potential for a weed problem in one State or Territory to affect another State's or Territory's borders/lands;
- Individual States and Territories have the right to protect their lands against the introduction of serious weeds from other States and Territories (Mutual Recognition legislation recognises the need for interstate quarantine for weeds and other organisms);
- Appropriate support should be available to a State or Territory that takes action against a weed primarily for the benefit of another State or Territory¹⁶;
- Where there is a risk of spreading serious weeds within a State or Territory or across borders, the provisions of noxious weeds legislation should have precedence over legislation controlling the sale and movement of seeds, stockfeeds, livestock and plant material;
- Weeds legislation is in no way to be used as an artificial barrier to imports or interstate trade;
- Weeds legislation should be administered by the most appropriate agency in the given State or Territory. This should involve liaison with, and the cooperation of, other agencies, industry and local government as appropriate. Such liaison and cooperation are particularly important where the key agency is solely agriculturally or environmentally based;
- Administration of weeds legislation will be flexible and take account of changes in land management and in the status of particular weeds over time; and
- Weeds legislation will facilitate the initiation of emergency action against new weed outbreaks of regional, State or national significance.

While attempting to incorporate the principles listed in the NWS, the following is a discussion outlining the major causes of the spread of weeds.

Duty of Care

The NWS recognises that the main responsibility for weed management rests with individual landholders (Anon. 1997). The focus for the control of weeds has generally been targeted at individual landholders and managers involved in primary production.

¹⁶ This would presumably be in the context of an agreed national approach. Any financial support would need to be collectively agreed by the States and Territories through the relevant Standing Committee.

Yet weed spread through human intervention does not occur only as a result of the activities of landholders on their land (Panetta and Scanlan 1995). A duty of care for the land through reducing the rate of weed spread therefore involves the wider community.

The introduction of a general duty of care within legislation should be complemented by other initiatives that may be within or outside of the legislation. These can include codes of practice, best management practices and guidelines. These can help to define the boundaries of what is reasonable and practical in terms of weed management. In addition, they can also provide a significant educational benefit to all resource users on reducing the environmental impacts of proposed actions.

Primary Industry, Environmental and Social Impacts of Weeds

The impact of weeds on primary industries has been well documented and is often supported by data on the economic costs (Anon. 1997, Thorp and Lynch 2000). The economic impact of weeds on natural ecosystems and human welfare, including any economic component, is more difficult to estimate.

The NWS has raised the profile of weed problems throughout Australia and explicitly articulated the roles and responsibilities of key stakeholders (Parnell 1999). The NWS was instrumental in formalising the increasing concern of the community to ensure that recognition was given to the impacts that weeds are having on the environment and the need to ensure that both primary industry and environmental weed impacts are adequately addressed in government policy and legislation.

As the incidence of weeds increases, further negative impacts on biodiversity will occur (Groves and Willis 1999). While not always directly obvious, the impacts on the environment are of potentially greater long-term significance (Anon. 1997). However, this does not negate the economic considerations of who should pay for any control measures and who are the beneficiaries of such action regarding environmental weeds¹⁷.

The Victorian and South Australian weeds legislation and the more recent weeds legislation enacted by Tasmania and the Northern Territory give prominence to the impacts caused by both primary industry and environmental weeds¹⁸. The social impact of weeds is less of a stated principle in weeds legislation, although it is often a consideration in the risk assessment and prioritisation process of declaring weeds either as a requirement of the weeds legislation or government policy¹⁹.

Cost Effectiveness

There has been a general trend requiring detailed economic input into most government policy decision-making. This has had implications for the prioritisation of weed actions at the State and Territory level.

The Victorian Parliamentary Review of Weeds (Environment and Natural Resources Committee 1998) agreed that government investment in weeds needs to be based on cost effectiveness criteria. Numerous authors over an extended period of time have agreed with this principle and argued that the most cost effective approach is prevention, early intervention and the targeting

¹⁷ It should be noted that agricultural landholders are less affected by environmental weeds than primary industry weeds. Therefore, there is less incentive to actively control environmental weeds on agricultural lands.

¹⁸ The emphasis here is on actions to minimise the spread, sale and deliberate propagation of serious weeds taking into consideration the resulting impacts across the landscape, whether that be primary industry or environmental.

¹⁹ See Attachment C for further details.

of incursions and sleeper weeds²⁰ (Anon. 1997, Csurhes and Edwards 1998, Groves 1999b, Moore 1971, Moore 1975, Panetta 1999, Panetta and Scanlan 1995, Quinlivan 1972, Smith 1987, Weiss 1999).

At the national level, efforts to increase weed prevention are being achieved through the WRA system. For weeds and potential weeds that are already past the quarantine border, prevention and early intervention will be the most cost-effective approach.

This may not always mean eradication. Where a plant species has long-lived and buried seeds, rapid dispersal mechanisms and is spread by natural vectors, eradication is likely to fail (Carter 2000). Csurhes and Edwards (1998) list four reasons why eradication campaigns can fail:

- The lack of highly localised and defined boundaries;
- The lack of an effective control method;
- Reinfestation from surrounding areas; and
- The lack of continuity of funding for monitoring retreatment of areas for many years.

However, even where eradication is not possible, early intervention will significantly reduce the rate of spread of weeds and associated costs of any control program (Groves 1999b).

Vectors of Weed Spread

The prevention or reduction in the rate of weed spread is fundamental to any control strategy. Auld (1987) believed that an understanding of the ecology of weed spread is necessary in order to determine whether there is any need for government intervention. While an understanding of the reproductive attributes of any weed is necessary for successful eradication (Cshures and Edwards 1998), it is where humans are the major vector in weed spread that the potential exists for a greater level of control of the spread of the weed and therefore greater feasibility with regard to any regulation (Carter 2000, Panetta 1987, Panetta and Scanlan 1995).

Groves (1999b) identified two factors that were important in determining sleeper weed status. The first factor was the time from naturalisation and the other important factor was relocation to a more favourable site. The rate of spread of weeds is likely to be very high where humans are a major vector (Auld 1987).

While there are many vectors that can spread weeds, in a study of 233 non-native noxious weeds, Panetta and Scanlan (1995) found that humans contributed to the dispersal of nearly ninety percent, with twenty-one percent being dispersed by humans alone.

It is highly probable that many garden plants are also capable of naturalising. The increasing trend of bush dwellings and hobby farms close to bushland is likely to aid this process (Low 2002). Given the continual increase in the level of trade and development, the introduction, naturalisation and spread of weeds due to human activities is likely to increase (Huenneke 1999).

In addition, current provisions within State and Territory weeds legislation have the potential to further increase weed distribution by human mechanisms. Due to the complexity and inconsistencies of some of the legislation, it can be difficult for sellers of nursery stock and seeds to comply with regulations, especially for interstate trade²¹ (Thorp and Lynch 1999).

²⁰ The term sleeper weeds is used to describe a large subset of invasive plants that have naturalised, but not yet increased their population size exponentially (Groves 1999b).

²¹ This can be due to differences in weed classifications within and between States and Territories and access to this information.

The most obvious areas of improvement for legislation that would target human intervention as a major vector of weed spread is through:

- Preventing sales of declared weeds and potential weeds including as contaminants²²;
- Preventing distribution into, within and out of the State/Territory of declared weeds and potential weeds including as contaminants;
- Where necessary, the use of quarantine procedures and areas;
- Recognition of other State declared weeds as potential weeds; and
- A requirement for codes of practice for industry²³.

Precautionary Principle

In May 1992, all heads of government in Australia signed the Intergovernmental Agreement on the Environment that provides a statement on the precautionary principle:

“Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) Careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
- (ii) An assessment of the risk-weighted consequences of various options.”

The need to avoid environmental damage due to scientific uncertainty led to the development of the precautionary principle (Harding and Fisher 1999a). While the precautionary principle is often associated with potential environmental concerns, the principle has far wider application. The WRA system for weed prevention applies the precautionary principle (Pheloung 1999).

The philosophy of ‘wait and see’ that is often applied to potential weed problems and sleeper weeds or the reactionary approach to widespread weed problems have generally resulted in costly control programs (Csurhes and Edwards 1998, Environment and Natural Resources Committee 1998). With a greater focus on sustainable development there is a need to acknowledge the relationship between scientific uncertainty, risk management and the precautionary principle (Harding and Fisher 1999b).

Weeds can be very adaptable and it is a weed’s invasiveness that often distinguishes it as a significant weed (Thorp and Lynch 2000). However, it is not always possible to gauge the invasiveness of a weed or of a potential weed in new environments. Groves (1999b) concluded that there appeared to be no ‘hard boundaries’ between the biological attributes of those weeds that fail to establish, those naturalised, but are still localised and widespread invasive weeds.

There are inherent difficulties in accurately forecasting weed impact, invasiveness and distribution (Boersma *et al.* 1999), while the potential costs associated with plants that become widespread weeds can be substantial. There are however, significant costs associated with surveying and mapping those species starting to naturalise or colonise new areas. Williamson and Fitter (1996) found that the majority of species that naturalised had only minor ecological impacts.

²² One approach that would be less resource intensive would be a vendor declaration system backed by weeds legislation such as Queensland has adopted for certain serious weed pests.

²³ To keep the weeds legislation as enabling as possible and to reduce the resource requirements and timeframe for changes to industry codes of practice, details of industry codes of practice should be contained in regulations under the weeds legislation.

Low (2002) concluded that it was premature to predict that only ten percent of species naturalise. With the differences in ecological timescales and the increasingly rapid trade and movement of plant material, the naturalisation of species is “still in its early stages”.

Panetta (1999) listed three benefits from delaying action against an invading weed species:

- It allows time for observations and assessment of any impact, although this approach should not be employed for weeds with known serious impacts;
- It allows for opportunity costs of allocating resources elsewhere; and
- The savings generated at the outset.

Despite the potential benefits of delaying any action, he concluded that targeting species at low weed densities was the most cost effective approach.

It would appear a wise investment for the precautionary principle as now applied in the WRA system to be extended as an underlying principle in all weeds legislation. However, it must be recognised that in applying the precautionary principle, resources will always be the limiting factor and there will be a need to prioritise actions through the application of risk assessment. Therefore, it is important that in implementing such a principle, actions need to be based on a transparent, rational and equitable prioritisation process²⁴.

The Importance of Planning

The control and management of declared weeds can be resource intensive and a major expenditure commitment (Bishop and Harradine 1999). The NWS emphasises that a strategic approach to weed management is crucial in order to maximise the limited financial resources available for weed control (Anon. 1997).

Well-developed management plans should lay the foundations for a successful weed management program. Weed management plans can provide the following benefits:

- Identification of the underlying causes of the weed problem(s) and associated issues;
- Establishing priorities;
- Identification of best management practices to address the causes of the weed problem(s);
- Outlining the preferred outcomes from any action;
- Increased coordination amongst stakeholders;
- Community involvement and commitment;
- Identification and acceptance of roles and the allocation of responsibilities;
- Improved resource allocation; and
- Increased monitoring and evaluation of actions.

Successful weed management requires a coordinated, strategic approach which can be more readily achieved through the widespread adoption of weed management plans. Planning provides the mechanism for integration and management of weed issues within a wider natural resource management context by addressing the causes, and not just the symptoms, of weed problems.

Community Awareness and Consultation

The use of legislation often necessitates enforcement especially where the impacts of weeds are less obvious or not widely known and fewer people would therefore tend to voluntarily comply with the regulations. The Victorian Parliamentary Review of Weeds recommended that weeds legislation needed to be “rigorously” enforced (Environment and Natural Resources Committee

²⁴ A workshop held in Canberra in March 2002 agreed on a national framework for weed prioritisation processes. The national framework is still being drafted before seeking endorsement through the AWC.

1998). This can be resource intensive and at times counterproductive. These calls often follow community concerns related to widespread weeds.

Amor and Twentyman (1974) stated that weed laws that rely on a high level of enforcements could not achieve their objectives. From a cost benefit viewpoint, the benefits of enforcement for widespread weeds are generally low along with community compliance, but there is potentially greater political support (Carter 2000). The use of legislation to target weeds spread predominately through human vectors has the potential to deliver significant social benefits. However, non-compliance will result in the faster spread of that class of weeds (Panetta and Scanlan 1995).

As compliance is obviously a critical factor in the implementation of weeds legislation, community awareness and consultation is a necessary principle to underpin such legislation. This would also hopefully avoid the high level of community confusion that often exists with declared weed classifications (Environment and Natural Resources Committee 1998) along with the opposition to the use of the precautionary principle for potential weeds amongst various industry stakeholders (Dellow and Groves 1999, Groves 1999b).

While weed declarations or non-declarations will invariably involve emotive and financial issues for different stakeholders, the reasons for declaring a weed, the likely benefits and potential consequences need to be clearly conveyed to the community. Both the Tasmanian and Northern Territory weeds legislation incorporates this principle through the requirement for consultation in the development of weed management plans.

Queensland provides for pest survey programs to be advertised locally in a newspaper as the mechanism to gain the power of entry to inspect private land for the presence of declared pests. This is intended to create community awareness that control activity against declared pests is now required and will be enforced by a follow-up pest control notice if declared pests are found on the private land.

In Victoria, the advice of the Catchment Management Authorities on these issues is required before declaration or revocation of a weed.

Other Legislation Impacting on Weed Distribution

As highlighted in the introduction, there is other legislation in each State and Territory that relates to the control of weeds. These include legislation dealing with seeds, plant health, environment, biodiversity and nature conservation, soil conservation, natural resource management, quarantine and local government.

The principles described above can be severely undermined where other legislation has contradictory provisions to the weeds legislation. It can also lead to confusion amongst the community.

If the priority is to reduce the rate of spread of weeds, it is important that other State and Territory legislation that can have an impact on the spread of weeds be harmonised with the weeds legislation. Harmonisation of legislation can lead to a lack of conflict between discrete legislative instruments, but allows for judgement to be used in their application. This should result in the best outcome in any given situation.

Uniformity of Action Against Weeds

As outlined previously, the responsibility and legislative powers regarding declared weeds resides with the States and Territories. However, successful weed management often requires a coordinated national approach.

Examples of the value of uniform action by the States and Territories is demonstrated in a recent decision agreeing to the concept of consistent national declaration of certain weeds to prevent their trade and distribution²⁵ and the development of national strategies for the twenty weeds of national significance.

State and Territory governments have a major role in encouraging responsible weed management through the provision of suitable institutional and legislative frameworks (Anon. 1997). Weeds legislation does not have to be uniform, particularly given the differing ecosystems, land management practices, priorities, available resources and institutional arrangements. However, a level of consistency that leads to a degree of uniformity is needed to reduce the risk of weeds spreading and establishing in new areas, especially across borders. This will assist community compliance and minimise exploitation due to differences in State and Territory legislation.

CORE PRINCIPLES OF STATE AND TERRITORY WEEDS LEGISLATION

Based on the above discussion, the following is a list of nine interlinked, readily acceptable and achievable core principles that incorporate the main elements of the NWS principles that should form the basis of State and Territory weeds legislation. No attempt has been made to directly address the categorisation or control of widespread weeds noting that the final decision to declare a weed is often a political one. However, given the ever increasing priorities and competition for scarce government resources, as Panetta and Scanlan (1995) have stated, weed declarations should only occur when the “declarations can be expected to have a manifestly beneficial outcome”.

Legislation for weeds shall include:

1. A duty of care binding all persons.

A general duty of care applies to all persons not just landholders, and should be embodied in legislation.

2. Integrated action against the economic, environmental and social impacts of weeds.

Weed management is an integral part of managing agricultural systems, natural resources, biodiversity and components of human welfare (directly eg health and aesthetic values, or indirectly eg viability of local communities).

3. Actions to support preventive weed management.

Preventing the introduction of weeds into the country, a State/Territory, a region, a property or a paddock is the most cost effective weed management practice.

4. Actions against human activity as a major vector of the spread of weeds and plants with weed potential.

²⁵ The Standing Committee of Agriculture and Resource Management agreed out-of-session in March 2001 to the concept of consistent national declaration of certain weeds to prevent their trade and distribution.

Stopping human activity in moving contaminated objects, materials and plants with weed potential is a critical part of prevention.

5. A precautionary approach to weed management decisions.

Legislation should include a precautionary approach to decision-making when the impacts of weeds or the weed potential of plants is uncertain.

6. Weed management planning.

Specific weed planning, and/or the integration of planning for weed management in higher order planning, is necessary to ensure resources are targeted to priorities.

7. Community awareness and consultation.

Awareness and consultation are necessary to increase capacity, commitment and collaborative arrangements for weed management.

8. Precedence over other legislation where essential for minimising weed impact and spread.

Action to prevent or reduce weed impacts must be applicable across all land and human welfare to be effective.

9. Maximum uniformity of provisions with other States and Territories.

Uniform provisions across States and Territories make compliance easier for the community and minimises exploitation of gaps across borders.

REFERENCES

Alemseged, Y., Jones, R. and Medd, R. (1999). A survey of weeds of winter crops in Australia. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 349-350.

Amor, R.L. and Twentyman, J.D. (1974). Objectives of and objections to Australian noxious weed legislation. *The Journal of the Australian Institute of Agricultural Science* 40, 194-203.

Anon. (1997). *The national weeds strategy: a strategic approach to weed problems of national significance*. (Commonwealth of Australia, Canberra).

Auld, B. (1987). Weed spread and government intervention. *Proceedings of the Eighth Australian Weeds Conference*, pp. 309-314.

Bishop, A. and Harradine, A. (1999). Weedplan: structure, implementation and impacts on weed management in Tasmania. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 359-362.

Blood, K. (1999). Garden plants becoming weeds - initiatives with the nursery industry. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 657.

Boersma, M., Bishop, A., Gonion, C., Ong, C., Rudman, T. and Welsh, S. (1999). Establishment of a weed surveillance and response protocol for new pest plant incursions in Tasmania. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 651-654.

Carter, R.J (2000). Principles of regional weed management, legislation and quarantine. In *Australian weed management systems*. Ed. Sindel, B.M. (R.G. and F.J. Richardson, Melbourne). Pp. 83-104.

Csurhes, S. and Edwards, R. (1998). *Potential environmental weeds in Australia*. (Commonwealth of Australia, Canberra).

Dellow, J. and Groves, R. (1999). Some recent incursions of weeds to New South Wales. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 655-656.

Environment and Natural Resources Committee. (1998). *Report on weeds in Victoria*. (Government Printer, Victoria).

Groves, R.H. (1997). *Recent incursions of weeds to Australia 1971-1995*. Cooperative Research Centre for Weed Management Systems, Technical Series No. 3.

Groves, R.H. (1999a). Environmental weeds - past, present and future. *Plant Protection Quarterly*, 14, 92-95.

Groves, R.H. (1999b). Sleeper weeds. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 632-636.

Groves, R.H. and Panetta, F.D. (2002). Some general principles for weed eradication programs. *Proceedings of the Thirteenth Australian Weeds Conference*, pp. 307-310.

Groves, R.H. and Willis, A.J. (1999). Environmental weeds and loss of native plant diversity: some Australian examples. *Australian Journal of Environmental Management* 6, 164-171.

Harding, R. and Fisher, E. (1999a). Uncertainty, risk and precaution: exploring the links. In *Perspectives on the precautionary principle*. Eds. Harding, R. and Fisher, E. (The Federation Press, Sydney). Pp. 163-166.

Harding, R. and Fisher, E. (1999b). Introducing the precautionary principle. In *Perspectives on the precautionary principle*. Eds. Harding, R. and Fisher, E. (The Federation Press, Sydney). Pp. 2-25.

Huenneke, L.F. (1992). A helping hand: facilitation of plant invasions by human activities. *Proceedings of the Sixth International Rangeland Congress*, pp. 562-566.

Lazarides, M., Cowley, K. and Hohnen, P. (1997). *CSIRO handbook of Australian weeds*. (CSIRO, Australia).

Lonsdale, W.M. (1994). Inviting trouble: introduced pasture species in northern Australia. *Australian Journal of Ecology* 19, 345-354.

Low, T. (2002). Why are there so few weeds? *Proceedings of the Thirteenth Australian Weeds Conference*, pp. 1-6.

Medd, R.W. (1987). Impact of legislative actions on the invasion of *Carduus nutans*. *Proceedings of the Eighth Australian Weeds Conference*, pp. 290-294.

Moore, R.M. (1971). Weeds and weed control in Australia. *The Journal of the Australian Institute of Agricultural Science* 37, 181-191.

Moore, R.M. (1975). An ecologist's concept of a noxious weed: plant outlaw? *The Journal of the Australian Institute of Agricultural Science* 41, 119-121.

Mues, C., Chapman, L. and Van Hilst, R. (1998). *Promoting improved land management practices on Australian farms: a survey of Landcare and land management related programs*. ABARE Research Report 98.4. (Commonwealth of Australia, Canberra).

Nairn, M.E., Allen, P.G., Inglis, A.R. and Tanner, C. (1996). *Australian quarantine: a shared responsibility*. (Department of Primary Industries and Energy, Canberra).

National Weeds Strategy Website. (2001). <<http://www.weeds.com.au/>>.

Panetta, F.D. (1987). A rationale based on biological considerations for determining terrestrial noxious plant candidates. *Proceedings of the Eighth Australian Weeds Conference*, pp. 301-308.

Panetta, F.D. (1993). A system of assessing proposed plant introductions for weed potential. *Plant Protection Quarterly* 8, 10-14.

Panetta, F.D. (1999). Can we afford to delay action against weeds in valued natural areas? *Proceedings of the Twelfth Australian Weeds Conference*, pp. 144-148.

Panetta, F.D. and Scanlan, J.C. (1995). Human involvement in the spread of noxious weeds: what plants should be declared and when should control be enforced? *Plant Protection Quarterly* 10, 69-74.

Parnell, D.J. (1999). Paying for weeds: economics and policies for weeds in extensive land systems. *Proceedings of the Sixth International Rangeland Congress*, pp. 571-576.

Parsons, W.T. and Cuthbertson, E.G. (1992). *Noxious weeds of Australia*. (Inkata Press, Melbourne).

Pheloung, P. (1999). Preventing the introduction of potential new weeds to Australia. *Plant Protection Quarterly* 14, 96-99.

Quinlivan, B.J. (1972) An ecological basis for decision-making. *The Journal of the Australian Institute of Agricultural Science* 38, 283-286.

Roberts, E.J. (1987). The effectiveness of declared plant legislation - two benefit cost examples. *Proceedings of the Eighth Australian Weeds Conference*, pp. 326-336.

Shine, C., Williams, N. and Gundling, L. 2000. *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*. Environmental Policy and Law Paper No. 40. IUCN: Gland, Switzerland, Cambridge and Bonn.

Smith, L.W. (1987). The theory and practice of noxious weed declaration. *Proceedings of the Eighth Australian Weeds Conference*, pp. 315-320.

Steinke, E. and Walton, C. (1999). Weed risk assessment of plant imports to Australia: policy and process. *Australian Journal of Environmental Management* 6, 157-163.

Stone, S. (2001). Environment protection and biodiversity conservation amendment (wildlife protection) bill 2001: second reading speech. <<http://www.ea.com.au/>>.

Thorp, J. and Lynch, R. (1999). The impact of the national weeds strategy on weed management within Australia. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 490-495.

Thorp, J.R. and Lynch, R. (2000). *The Determination of weeds of national significance*. (National Weeds Strategy Executive Committee, Launceston).

Trumble, H.P.C. (1978). Principles of weed legislation. *Proceedings of the First Conference of the Council of Australian Weed Science Societies*, pp. 431-442.

Walton, C., Ellis, N. and Pheloung, P. (1998). *A manual for using the Weed Risk Assessment system (WRA) to assess new plants*. (Australian Quarantine and Inspection Service, Canberra).

Ward, D. and James, P. (1999). Taking responsibility...communities drive pest management planning for local government. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 351-354.

Weiss, J. (1999). Contingency planning for new and emerging weeds in Victoria. *Plant Protection Quarterly* 14, 112-114.

Welsh, S., Elliott, D. and Bishop, A. (1999). Community weed management in Tasmania. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 98-101.

Williamson, M. and Fitter, A. (1996). The varying success of invaders. *Ecology* 77, 1661-1666.

Wilson, B., Lazzarini, W., Cummings, J. and Willmott, J. (1999). Weed management planning - the Queensland approach. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 355-358.

Woods, L. and Carter, R. (1999). Implementing the NSW Weeds Strategy - a regional planning approach to noxious weed management. *Proceedings of the Twelfth Australian Weeds Conference*, pp. 95-97.

OBJECTIVES OF RELEVANT COMMONWEALTH LEGISLATION***Quarantine Act 1908***

There are no specific objectives listed in the Quarantine Act. The Act instead lists the scope (section 4) of quarantine as having:

- Relation to measures for the inspection, exclusion, detention, observation, segregation, isolation, protection, treatment, sanitary regulation, and disinfection of vessels, installations, persons, goods, things, animals, or plants, and having as their object the prevention of the introduction, establishment or spread of diseases or pests affecting human beings, animals, or plants.

Biological Control Act 1984

An Act to make provision for the biological control of pests in the Australian Capital Territory, and for related purposes.

Environment Protection and Biodiversity Conservation Act 1999

The objectives of the Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

OBJECTIVES OF STATE AND TERRITORY NOXIOUS WEEDS LEGISLATION

New South Wales

Noxious Weeds Act 1993

The objectives are of the Act are:

- (a) to identify noxious weeds in respect of which particular control measures need to be taken;
- (b) to specify those control measures;
- (c) to specify the duties of public and private landholders as to the control of those noxious weeds;
- (d) to provide a framework for the Statewide control of those noxious weeds by the Minister and local control authorities.

Victoria

Catchment and Land Protection Act 1994

The objectives of the Act are:

- (a) to establish a framework for the integrated and co-ordinated management of catchments which will
 - (i) maintain and enhance long-term land productivity while also conserving the environment; and
 - (ii) aim to ensure that the quality of the State's land and water resources and their associated plant and animal life are maintained and enhanced;
- (b) to establish processes that can be used to assess the condition of the State's land and water resources and the effectiveness of land protection measures;
- (c) to establish processes to encourage and support participation of land holders, resource managers and other members of the community in catchment management and land protection;
- (d) to establish and support the operation of the Victorian Catchment Management Council and the Catchment Management Authorities;
- (e) to provide for the control of noxious weeds and pest animals.

Queensland

Land Protection (Pest and Stock Route Management) Act 2001

The purpose of the legislation is to provide for:

- (a) pest management for land; and
- (b) stock route network management.

Western Australia

Agriculture and Related Resources Protection Act 1976

The objective of this Act is to protect primary industries and the resources related to primary industries.

South Australia

Animal and Plant Control (Agricultural Protection and other Purposes) Act 1986

An Act to provide for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public; to repeal the Vertebrate Pests Act, 1975, and the Pest Plants Act, 1975; and for other purposes.

Tasmania

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.

Northern Territory

Weeds Management Act 2001

The purpose of the Act is:

- (a) to prevent the spread of weeds in, into and out of the Territory and to ensure that the management of weeds is an integral component of land management in accordance with the Northern Territory Weeds Management Strategy 1996 - 2005 or any other strategy adopted to control weeds in the Territory;
- (b) to ensure there is community consultation in the creation of weed management plans; and
- (c) to ensure that there is community responsibility in implementing weed management plans.

Australian Capital Territory

Land (Planning and Environment) Act 1991

An Act relating to the use of land in the Territory, and for related purposes.

COMPARISON OF STATE AND TERRITORY NOXIOUS WEEDS LEGISLATION

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Main legislation	<i>Noxious Weeds Act 1993</i>	<i>Catchment and Land Protection Act 1994. There are numerous other Acts that contribute directly or indirectly to the management of weeds</i>	<i>Land Protection (Pest and Stock Route Management) Act 2001</i>	<i>Agricultural and Related Resources Protection Act 1976</i>	<i>Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986</i>	<i>Weed Management Act 1999</i>	<i>Weeds Management Act 2001</i>	<i>Land (Planning and Environment) Act 1991</i>
Objectives of legislation	-to identify noxious weeds in respect of which particular control measures need to be taken; -to specify those control measures; -to specify the duties of public and private landholders as -to the control of those noxious weeds; -to provide a framework for the Statewide control of those noxious weeds by the Minister and local control authorities (s3)	Includes one weeds objective and a community participation objective -to provide for the control of noxious weeds and pest animals -to establish processes to encourage and support participation of land holders, resource managers and other members of the community in catchment management and land protection (s4)	To provide for: -pest management for land; and - stock route network management	To protect primary industries and the resources related to primary industries	To provide for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public	To provide for the control and eradication of declared weeds and to promote a strategic and sustainable approach to weed management	-to prevent the spread of weeds in, into and out of the Territory and to ensure that the management of weeds is an integral component of land management in accordance with the Northern Territory Weeds Management Strategy 1996 - 2005 or any other strategy adopted to control weeds in the Territory -to ensure there is community consultation in the creation of weed management plans -to ensure that there is community responsibility in implementing weed management plans.	An Act relating to the use of land in the Territory, and for related purposes
Declared weeds the main focus of the Act?	Yes	No	No	No	No	Yes	Yes	No

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Weed control categories	<p>-W1-the presence of the weed on land must be notified to the LCA and the weed must be fully and continuously suppressed and destroyed;</p> <p>-W2-the weed must be fully and continuously suppressed and destroyed;</p> <p>-W3-the weed must be prevented from spreading and its numbers and distribution reduced; and</p> <p>-W4-the action specified in the declaration must be taken in respect of the weed. The action specified in relation to a W4 weed may be more or less stringent, and more specific, than the action required to be taken under the other control categories. There are currently seven sub-categories (a-g) of W4 noxious weeds (s9)</p>	<p>-State Prohibited Weeds</p> <p>-Regionally Prohibited Weeds are not widely distributed throughout the region, capable of spreading further and it is reasonable to expect eradication from the region</p> <p>-Regionally Controlled Weeds occur in the region, capable of spreading further and should be stopped from doing so and control measures are required to prevent its spread</p> <p>-Restricted Weeds are a serious threat to primary production, Crown land, the environment or community health in another State or Territory, has potential to spread into and within Victoria and if sold or traded would be an unacceptable risk (s60-63)</p>	<p>-Class 1 for weeds not commonly present or established in the State and have the potential to cause an adverse economic, environmental or social impact in the State, another State or a part of the State or another State</p> <p>-Class 2 for weeds found in the State that have serious impacts and require control.</p> <p>-Class 3 for weeds found in the State that are banned from sale or supply and may require management in environmentally significant areas (s39(2))</p>	<p>-P1-introduction prohibited</p> <p>-P2-eradicated in that area</p> <p>-P3-plant numbers/distribution to be reduced</p> <p>-P4-prevented from spreading</p> <p>-P5-public land control only (s36)</p>	<p>No specific categories defined under the Act. Classes of weeds are referred to in the proclamation</p>	<p>No specific categories defined under the Act. Required actions for each declared weed will be based on a weed management plan. Until weed management plans are finalised, an interim list of 86 weeds has been declared</p>	<p>-A-eradicate</p> <p>-B-prevent growth and spread</p> <p>-C-prevent introduction (s7)</p>	<p>Declared pest plants (s254). No categories specified in the Act</p>
Responsible authority for declared weeds	Local Control Authorities	Department of Sustainability and Environment	Local Governments (s125)	Agriculture Protection Board	Animal and Plant Control Commission	No	Department of Business, Industry and Resource Development	Weeds Working Group

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Responsible Agency / Department	NSW Agriculture	Department of Sustainability and Environment	Department of Natural Resources and Mines	Department of Agriculture	Department of Water, Land and Environment	Department of Primary Industries, Water and Environment	Department of Business, Industry and Resource Development	Department of Urban Services
State Weeds Coordinating Committee	Noxious Weeds Advisory Committee	No. There is a Catchment Management Council that advises the Minister and Catchment Management Authorities that guide the implementation of regional catchment strategies including regional weed action plans	No. There is the Land Protection (Pest and Stock Route Management) Council advises the Minister	No. There is a Agriculture Protection Board	South Australian Weeds Advisory Committee – outside of the legislation	Tasmanian Weed Management Committee-outside of the legislation	NT Weeds Advisory Committee (s16)	Weeds Working Group-outside of the legislation
Private landholders vs Public authorities	Private landholders must control noxious weeds on land, public landholders must control noxious weeds likely to spread (s12-13)	Same responsibilities (s5, 20)	Same responsibilities ((s17-24, 77)	Same responsibilities (s39, 42, 49)	Same responsibilities (s3-4, 57)	Same responsibilities (s3, 6). May depend on actions identified in a weed management plan	Same responsibilities (s5, 9). May depend on actions identified in a weed management plan	Same responsibilities (s255)
Control areas	The State is divided into 138 regions-Local Control Authorities-must control noxious weeds on land they occupy/manage (s14)	The State is divided into 10 regions-Regional Catchment Management Authorities responsible for advising on the management of region (s10-14)	Local Government 125 areas (s183 – 188)	10 Zones, divisions, regions (s13)	Animal and Plant Control Board Areas covers a single or combined council area (s15). The Commission is responsible for those areas not within a local Animal and Plant Control Board Area (s14)	Not specified in the Act. Lists infected areas (s25) and protected area (s30). The council of a municipal area to which a draft weed management plan applies must be notified (s16)	Not specified in the Act. To be listed in each weed management plan (s10)	Not specified in the Act
Sale of declared weeds	Only applies to certain categories and for those parts of the State (s28)	Prohibited (s71)	Supply and sale of declared weeds prohibited throughout State (s44)	Prohibited for those parts of the State in which the weed is declared (s75)	Prohibited for those plants to which the relevant section is applied (s54)	Prohibited if required to do so by a weed management plan (s56). In the interim, this applies to category A weeds	Prohibited (s9)	Not prohibited

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Distribution of declared weeds	Only applies to certain categories and for those parts of the State (s30)	Prohibited (s71)	Prohibited (s39, 42-43, 46)	Prohibited for that part of the State in which the weed is declared (s72)	Prohibited for those plants to which the relevant section is applied for the whole State (s52)	Prohibited if required to do so by a weed management plan (s56). In the interim, this applies to category A weeds	Prohibited (s9)	Not prohibited
Sale of contaminated material	Only applies to certain categories and for those parts of the State (s28)	Prohibited (s71)	Prohibited for Class 1 weeds; prohibited for some Class 2 weeds unless accompanied by a vendor declaration (s45)	Prohibited for those parts of the State in which the weed is declared (s75)	Prohibited for those plants to which the relevant section is applied (s54)	Prohibited if required to do so by a weed management plan (s56). In the interim, this applies to category A weeds	Prohibited (s9)	Not prohibited
Distribution of contaminated material	Only applies to certain categories and for those parts of the State (s30). Also applies to agricultural machinery for W1 weeds (s32)	Prohibited (s71)	Movement of contaminated vehicles or things prohibited on roads (s46)	Prohibited for those parts of the State in which the weed is declared (s75)	Prohibited for those plants to which the relevant section is applied and for that part of the State (s52). Can also apply to contaminated animals (s53)	Prohibited if required to do so by a weed management plan (s56). In the interim, this applies to category A weeds	Prohibited (s9)	Not prohibited
Interstate movement restrictions	Border restrictions apply to agricultural machinery for W1 weeds prevalent in Qld (s 31)	An offence to bring a noxious weed or part of a noxious weed into the State (s71)	Introduction of declared weed into the State is prohibited (s39)	An offence to bring a noxious weed into the State or part of the state where it is declared (s72)	Introduction of those plants to which the relevant section is applied is prohibited (s52).	Importations prohibited if required to do so by a weed management plan (s57). Exclusions for feed grain that complies with prescribed tolerance level requirements (s57)	Prohibited (s9)	No restrictions
Recognition of other state declared weeds	No	Yes. Sale of restricted weeds is prohibited. Declaration could be made in support of another State or Territory (s63)	Yes. Declaration can be made in support of another State or Territory (s38)	No, but under the <i>Plant Diseases Act 1989</i> , WA has a single list of permitted and prohibited plants	Yes. Declaration can be made in support of another State or Territory (s51)	No. Does have emergency declaration provisions (s10)	No	No

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Consultation process	Noxious Weeds Advisory Committee and Local Control Authorities (s56-58)	Occurs through the development of the regional catchment strategies (s23) & S13	Consultation and partnership is a Principle of the Act and required in planning process. (s9,27,28)	Regional Advisory Committees (to advise Zone Control Authorities) to advise Agriculture Protection Board (s8, 27,34)	Animal and Plant Control Commission and local Animal and Plant Control Boards (s13,24)	Requirement for Statement of Intent. Public notification requesting written submissions (s8). Notification and consideration of draft weed management plan (s16-17)	Requirement for public notification of weed management plans and a request for comments (s11). Weed Advisory Committees to develop draft weed management plans (s17)	Flora and Fauna Committee (s254). Although not specified, but assume through the Weeds Working Group and Land Management Agreements with rural lessees
Declared weed review process	Advice from the Noxious Weeds Advisory Committee (s57)	Advice from the Victorian Catchment Management Council and Catchment Management Authorities (s69)	Advice from the Land Protection (Pest and Stock Route Management) Council (s.190)	At least an annual list to be published by the Agriculture Protection Board (s37)	Advice from Animal and Plant Control Commission (s13)	Review of weed management plans at least once every 5 years if necessary or desirable to do so (s24)	Review of weed management plans at least every 3 years (s12). Advice from Weed Advisory Committees (s17). Consultation with Minister responsible for administration of the <i>Territory Parks and Wildlife Conservation Act</i> (s7)	Not specified
Enforcement provisions and penalties	Local Control Authority inspectors and authorised officers (s39-55, 59-63))	Authorised officers (s79-85) Penalties (s41, 71)	Local Government or Department authorised persons (s244)	Inspectors or authorised persons (s84-88)	Authorised officers (s25-27,58)	Inspectors (34-50)	Weed Management Officers (s24-28)	Minister can issue an Order (s255). Land Management Agreements are a requirement for all rural land leases (s171A)
Differences between rural and urban lands	No	No	No	No, but Act aimed at rural lands	No	No	No	No, but legislation is not enforced for urban properties
Quarantine provisions	Yes for W1 and W2 weeds (s34A). Local Control Authority may apply temporary restrictions (s36A)	No	Yes. Property quarantine provision for emergency situations and serious pests (s89-91)	No	Yes (s53)	Not specified in the Act. Lists infected areas (s25) and protected area (s30) and storage in approved facilities (s51-52)	Yes. Provisions for quarantine areas (s21-23). Provisions for designated weed disposal areas (s8)	No

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Agricultural vs Environmental weeds focus	Not specified. May apply to any weed	Protection of -agriculture -crown land -environment -community health (s58(4)). However, will depend on the Regional Catchment Management Authority/Board	Balanced focus on economic, environmental and social adverse impacts (s37-38)	Not specified, but Act is for the protection of primary industries	Protection of both agriculture and the environment	Protection of both agriculture and the environment (s9)	Protection of both agriculture and the environment	Not specified in the Act
Human welfare considerations	Not specified in the Act. As part of the Noxious Weeds Advisory Committee policy, is considered as one of the factors when determining advice for the Minister	Yes (s58(4), 63(a))	Social adverse impact (s37-38)	Not specified in the Act. Considered as part of the risk assessment process	Yes (within the objectives of the Act)	Yes (s9(1)(b))	Not specified in the Act. Considered as part of the factors in determining whether to declare a weed	Not specified in the Act
Weed management plans	Not specified	No specific requirement for weed management plans. There may be a requirement before declaration or revocation for advice that must take into account a number of considerations (s69). Also a requirement for regional catchment strategies (s23-26) and may also have special area plans (s27-32)	Yes. Requires Qld Weeds Strategy, pest management plans for Local Government areas and State Agencies. (s25, 17)	Not specified in the Act	Not specified in the Act	Yes (s15-24)	Yes (s10-15)	Yes (s254(4)(a))

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Links to other natural resource management acts	Not specified in the Act	Yes (s93). The Act itself is about integrated catchment management through land and water management	Integration and Planning principles (s.9). Links may also occur through Pest Management Guidelines (s.15)	Not specified in the Act	Not specified in the Act	Not specified in the Act	Not specified in the Act, but actions resulting in environmental offences are subject to the <i>Environmental Offences and Penalties Act</i>	Yes (s256A)

FURTHER BACKGROUND ON STATE AND TERRITORY NOXIOUS WEEDS LEGISLATION

NEW SOUTH WALES

Relevant legislation

The relevant legislation is the *Noxious Weeds Act 1993* (NWA). The NWA is administered by NSW Agriculture, with Local Control Authorities (LCAs) responsible for implementing the noxious weed control functions of the Act. The Act also established the Noxious Weeds Advisory Committee which:

- Provides a forum for all matters relating to control of noxious weeds;
- Provides advice to the Minister on all matters related to noxious weed control;
- Recommends to the Minister allocations from the Government's Noxious Weeds Grants and to ensure public authorities are accountable for those funds; and
- Recommends to the Minister plant species to be declared as noxious weeds.

A number of working groups support the Noxious Weeds Advisory Committee in these functions.

Extracts

Section 7 of the Act states:

- (1) This Act applies to a plant declared, by order of the Minister published in the Gazette, to be a noxious weed for the purposes of this Act.
- (2) The order may declare a plant to be a noxious weed in respect of the whole of the State or a part of the State.
- (3) An order takes effect from the date of its publication in the Gazette or on a later date specified in the order.
- (4) The Minister may not make an order declaring any tree, shrub, fern, creeper, vine, palm or 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*.

Section 28 of the Act states:

- (1) A person (including a public authority) must not sell or purchase any:
 - (a) notifiable weed material or other noxious weed material prescribed by the regulations;
 - or
 - (b) 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 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.

Noxious weeds are declared on either a statewide or regional basis, with the State being divided into 138 LCAs. The LCAs usually consist of municipal, city, shire or council areas except for Western Lands and Lord Howe Island. Depending on the size of the municipal, city, shire or council area, a number of these areas will form a LCA.

Private landowners and managers are responsible for control of noxious weeds on their land. The LCAs are responsible for implementation of the NWA on private land and for noxious weed control on council land. Public authorities are only required to control those weeds likely to spread onto other land.

Key points are that the Act:

- Includes provisions to prevent the spread of notifiable weeds prevalent in Queensland from entering NSW through the requirement for agricultural machinery to be thoroughly

cleaned at the border. This is aimed principally at reducing the risk of parthenium weed spreading into NSW;

- Includes provisions to prevent the sale of noxious weed seed and noxious weeds in the LCA;
- Refers to weeds occurring as a contaminant in produce; and
- Has provision to prohibit specific actions by prescribing them under a separate control category (W4).

There are four categories of noxious weeds defined under the NWA:

- **W1**-the presence of the weed on land must be notified to the LCA and the weed must be fully and continuously suppressed and destroyed;
- **W2**-the weed must be fully and continuously suppressed and destroyed;
- **W3**-the weed must be prevented from spreading and its numbers and distribution reduced; and
- **W4**-the action specified in the declaration must be taken in respect of the weed. The action specified in relation to a W4 weed may be more or less stringent, and more specific, than the action required to be taken under the other control categories. There are currently seven sub-categories (a-g) of W4 noxious weeds.
 - (a) The weed must not be sold, propagated or knowingly distributed and any part of the weed must be prevented from growing within 3 metres of the boundary of a property.
 - (b) The weed must not be sold, propagated or knowingly distributed and any existing weed must be prevented from flowering and fruiting.
 - (c) The weed must not be sold, propagated or knowingly distributed and the weed must be prevented from spreading to an adjoining property.
 - (d) The weed must not be sold, propagated or knowingly distributed and the weed must be fully and continuously suppressed and destroyed if it is: 3 metres in height or less, or within half a kilometre of remnant urban bushland, as defined by SEPP 19, and is not deemed by council as having historical or heritage significance or is over 3 metres in height and not included in a Management Plan approved by the local control authority.
 - (e) The weed must be fully and continuously suppressed and destroyed. All reasonable precautions must be taken to ensure produce, soil, livestock, equipment and vehicles are free of the weed before sale or movement from an infested area of the property.
 - (f) The weed must not be sold, propagated or knowingly distributed. Any biological control or other control program directed by a Local Control Authority must be implemented.
 - (g) The weed must not be sold, propagated or knowingly distributed.

VICTORIA

Relevant legislation

The principal legislation is the *Catchment and Land Protection Act 1994* (CaLP Act). The Act is administered by the Department of Sustainability and Environment (DSE). Noxious weeds are a component of the CaLP Act, which establishes a framework for the integrated management and protection of catchments through community participation in the management of land and water resources.

There is also provision under the *Local Government Act 1989* for councils to enact local by-laws targeting specific weeds.

Extracts

Section 58 of the CaLP Act states:

- (1) On the Minister's recommendation, the Governor in Council, by Order published in the Government Gazette, may declare-
 - (a) a plant to be a state prohibited weed, regionally prohibited weed, regionally controlled weed or restricted weed.

- (4) The Minister may only recommend a plant for declaration under this Part if satisfied that it is, or has or may have the potential to become, a serious threat to primary production, Crown land, the environment or community health in Victoria.

Section 71 of the CaLP Act states:

- (1) A person must not-
- (a) remove machinery, implements or other equipment for land onto a road without first taking reasonable precautions to ensure that the equipment is free from-
 - (i) the seeds of a noxious weed; or
 - (ii) any other part of a noxious weed which is capable of growing; or
 - (b) without a permit from the Secretary, buy or sell anywhere in Victoria-
 - (i) the seeds of a noxious weed; or
 - (ii) any other part of a noxious weed which is capable of growing- whether or not packed or mixed with the seeds or parts of any other plants;
 - (f) without a permit from the Secretary, wilfully bring or cause to be brought into Victoria or transport within Victoria the seeds or any other part of a noxious weed whether or not for sale.

Key points are that the Act:

- Regulates entry and movement of noxious weeds;
- Prevents the sale of noxious weeds of all categories anywhere in the State; and
- Covers weed seeds occurring as contaminants in seed lots or other plant products.

There are four categories of noxious weeds defined under the CaLP Act:

- **State Prohibited Weeds.** These are weeds that either do not occur in Victoria and pose a significant threat if they were to establish or if present in Victoria, pose a significant threat and eradication is considered feasible. DSE is responsible for control of these weeds;
- **Regionally Prohibited Weeds.** Weeds that are (generally) not widely distributed in a region, are capable of spreading further and eradication from the region is considered a possibility. Landowners and public land authorities are responsible for control of these weeds on their lands;
- **Regionally Controlled Weeds.** Weeds that are usually widespread in a region, but with sufficient impact that control to prevent further spread is considered important. Landowners and managers are required to take all reasonable steps to control and prevent the spread of these weeds on their land and adjoining roadsides; and
- **Restricted Weeds.** Plants that pose an unacceptable risk of spread if they were sold or traded. No Weeds have yet been declared under this category.

There are nine Regional Catchment Management Authorities in rural Victoria and one Catchment and Land Protection Board. The Regional Catchment Management Authorities are responsible for the management and protection of land and water resources within each catchment. With the Victorian Catchment Management Council, they advise the Minister on which weeds to proclaim and within which category.

QUEENSLAND

Relevant legislation

The relevant legislation is the *Land Protection (Pest and Stock Route Management) Act 2001* (LPA), that focuses on pest and stock route management, including weeds. This Act is administered by the Department of Natural Resources and Mines.

Under the Local Law provisions of the *Local Government Act 1993*, a local government can declare any plants not declared under the LPA and enforce their control.

The *Land Act 1994* also has provisions requiring control of weeds declared under the LPA on leasehold land as a condition of lease.

Extracts

Section 4 states how the purposes of the Act for pest and stock route management are to be achieved:

- (a) establishing principles of pest management for land and stock route network management;
- (b) providing for pest management planning and stock route network management planning;
- (c) declaring animals and plants to be declared pests;
- (d) restricting the introduction, keeping or sale of declared pests;
- (e) preventing the spread of declared pests in the State, including, for example, preventing their spread by human activity;
- (f) establishing responsibilities for pest and stock route network management
- (g) building and maintaining fences to prevent pest animals moving from a part of the State to another part;
- (h) establishing the Land Protection (Pest and Stock Route Management) Council to give advice and make recommendations to the Minister about managing pests and the stock route network
- (i) providing for the establishment of pest operational boards;
- (j) constructing and maintaining travelling stock facilities on the stock route network;
- (k) monitoring, surveying and controlling pests and the movement of travelling stock.

Section 9 establishes the Principles to be used particularly in policy and planning processes:

- Integration – Pest management is an integral part of managing natural resources and agricultural systems.
- Public awareness – Public awareness and knowledge of pests must be raised to increase the capacity and willingness of individuals to manage pests.
- Commitment – Effective pest management requires a long-term commitment to pest management by the community, industry groups and government entities.
- Consultation and Partnership – Consultation and partnership arrangements between local communities, industry groups, State government agencies and local governments must be established to achieve a collaborative approach to pest management.
- Planning – Pest management planning must be consistent at local, regional, State and national levels to ensure resources target priorities for pest management identified at each level.
- Prevention – Preventative pest management is achieved by:
 - (a) preventing the spread of pests, and viable parts of pests, especially by human activity; and
 - (b) early detection and intervention to control pests.
- Best practice – Pest management must be based on ecologically and socially responsible pest management practices that protect the environment and the productive capacity of natural resources.
- Improvement – Research about pests, and regular monitoring and evaluation of pest control activities, is necessary to improve pest management practices.

Key points of the legislation are:

- Section 10 sets out the requirement to prepare State Strategies for animals and plants;
- Section 15 provides that Guidelines may be prepared about managing a declared pest species;
- Sections 17 – 20 requires State Agencies to develop plans about managing declared pests;
- Sections 25 – 35 requires local governments (125) to develop plans using consultative planning processes to manage declared pests within their areas;
- Sections 37 – 38 provides for declaration of pests for adverse economic, environmental or social impacts in the State or another State or Territory within three (3) classes named: Class 1, Class 2 and Class 3;

- Sections 39 – 46 outline a range of offences in relation to declared pests including:
 - Introducing, keeping, releasing, taking for commercial use, supplying, supplying as a contaminant within a product (for serious weeds) and moving or transporting other things on roads when weed seed is present as a contaminant;
- Section 77 creates the obligation of landowners to control declared pests upon their land;
- Section 78 provides the instrument “the pest control notice” to require control against a declared pest upon the private land. When a declared pest (under the three classes) is present upon private land adjacent or within an environmentally significant area a pest control notice can be issued on the private landowner if area is threatened;
- Sections 87 – 88 provide for emergency control situations and for emergency declaration as a pest;
- Sections 89 – 91 provide for emergency property quarantine powers for serious weeds; and
- Section 241 provides for pest survey programs to be undertaken within a local government area or part of the State. This is to be advertised in a newspaper circulating within the area and gives the power to enter properties to survey for the presence of declared pests. It alerts the public to the need to control declared pests in advance of any requirement to issue the instrument called “the pest control notice”.

WESTERN AUSTRALIA

Relevant legislation

The principle legislation is the *Agricultural and Related Resources Protection Act 1976* (ARRPA). This Act is administered by the Agriculture Protection Board (APB), which is now incorporated into the Department of Agriculture. Regional Advisory Committees advise the APB on weed and other protection issues within WA and the Board has the authority to declare plants for part or all of the State under five different categories. The State’s quarantine responsibilities are handled by the Western Australian Quarantine Inspection Service (WAQIS) operating within the Department of Agriculture.

Accompanying legislation is the *Plant Pests and Diseases (Eradication Funds) Act 1974*. This Act was originally established to provide funds, via a levy on cereal grain, for a skeleton weed eradication campaign. It now allows for plants to be designated under the Act and for the raising of funds through a levy to eradicate that plant or disease.

Related legislation is the *Plant Diseases Act 1989* (PDA). This Act is concerned primarily with pests and diseases. However, weeds are regarded as a form of plant disease under this Act with provisions allowing for plants to be permitted or excluded for quarantine purposes.

The Department of Agriculture has a single list of plants which currently operates under the PDA. This list contains permitted and prohibited plants, with any species not on the list being prohibited unless assessed to be eligible for addition to the list.

In addition to declared plants under the ARRPA, there is also provision for a shire council to prescribe any plant, other than a declared plant, as a pest plant within its municipality.

The Department of Agriculture is currently reviewing its regulatory legislation with the aim of a single act that will encompass all of its regulatory requirements.

Extracts

Section 36 of the ARRPA states:

- (1) ...a class of declared plants...may, by declaration under section 35, be assigned to one or more categories for the purposes of this Act according to the measures that, in the opinion of the Protection Board, need to be taken in relation to declared plants...of that class in order to achieve the object of this Act.

- (2) A class of declared plants...may, by declaration under section 35, be assigned to different categories in respect of different parts of the State

Section 72 of the ARRPA states:

- Any person who, for any purpose or in any manner, brings any prohibited material-
- (a) into the State from elsewhere; or
 - (b) into any part of the State from some other part of the State or from elsewhere, commits an offence.

Section 75 states:

- (1a) A person who, in any part of the State, sells or offers or exposes for sale any coat, fodder, machinery, sack, seed, wool pack, or restricted animal, shall first examine it or cause it to be examined for the presence of material that is prohibited material in that or any other part of the State.

Subsequent owners of items are also required to have them examined for the presence of material prohibited in that part of the State.

Section 75 states:

- (1b) ...a person shall not, in any part of the State, sell or offer or expose for sale any coat, fodder, machinery, sack, seed, wool pack, or restricted animal in or on which there is any material that is prohibited material in that part of the State except pursuant to approval

Key points of the ARRPA are that it:

- Regulates entry and movement of declared plants;
- Includes provisions to prevent the sale of declared plants in the declared area; and
- Covers weed seeds as a contaminant in produce.

There are five categories of noxious weeds defined under the ARRPA:

- **P1**-Prevention of trade, sale or movement of plants into the State or that area of the State;
- **P2**-Plants to be eradicated from the State or that area of the State;
- **P3**-Plant numbers and/or distribution to be reduced from the State or that area of the State;
- **P4**-Plants that should be prevented from spreading from that area of the State; and
- **P5**-Plants to be controlled on public land or land under the control of a local government.

SOUTH AUSTRALIA

Relevant legislation

The relevant legislation is the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*. The Act is administered by the Animal and Plant Control Commission, with local Animal and Plant Control Boards responsible for implementing the Act within the local government incorporated areas of the State. The Commission administers the Act in those areas of the State not within a local Animal and Plant Control Board area.

Extracts

Section 51 of the Act states:

- (1) The Governor may, by proclamation-
- (a) on the recommendation of the Commission, declare that a specified provision of this Part applies to a specified class of plants, and
 - (b) in addition, if so recommended by the Commission, do either or both of the following:
 - (i) declare that a specified area (which may be the whole or a part of the State) is a control area for that class of plants for the purposes of that provision; or
 - (ii) declare that a prohibition contained in that provision operates as an absolute prohibition in relation to that class of plants and control area (if any).

Section 52 of the Act states

- (1) Subject to this Act, a person shall not bring a plant of a class to which this subsection applies, or cause or permit a plant of that class to be brought, into a control area for that class of plants.
- (2) Subject to this Act, a person shall not transport or move, or cause or permit to be transported or moved, on a public road within a control area for a class of plants to which this subsection applies-
 - (a) a plant of that class; or
 - (b) any animal, plant, soil, vehicle, farming implement or other produce or good carrying a plant of that class.

Section 54 states:

- (1) Subject to this Act, a person shall not sell a plant of a class to which this subsection applies.
- (2) Subject to this Act, a person shall not sell any animal, plant, soil, vehicle, farming implement or other produce or goods carrying a plant of a class to which this subsection applies.

Key points are that the Act:

- Regulates entry and movement of proclaimed plants within the State;
- Prevents the sale of products contaminated with proclaimed plant seeds of all categories anywhere in the State; and
- Refers to the potential of seeds of proclaimed plants to occur as a contaminant in produce.

The governing legislation does not have specific categories for proclaimed plants defined under the Act. Instead, the Act has a number of sections regarding different control levels for proclaimed plants:

- Section 52 restricting the movement of plants or produce or goods carrying such plants;
- Section 53 covering the prohibition against transporting animals, plants, soils, or any other specified thing from certain parts of the State for the purpose of preventing the spread of a plant;
- Section 54 restricting the sale of plants or produce or goods carrying such plants;
- Section 56 requiring the notification of the presence of plants;
- Section 57 requiring the owner of land to destroy or control plants; and
- Section 58 enforcing the owner's duty to destroy or control plants;

While proclaimed plants are currently grouped under 11 different classes plus subclasses in the Governor's proclamation according to the different provisions of the Act applying to different classes or subclasses, these are generalised groupings rather than specific classes. Different provisions of the Act can apply to the same class of proclaimed plants. A generalisation of the classes is as follows:

- **Class 1**-generally requiring notification and destruction of the plant throughout the whole State (although, sometimes only control in part of the State);
- **Class 2 and 4**-generally requiring notification in at least part of the State and control of the plant throughout the whole State;
- **Class 3,5 and 7**-generally requiring control of the plant in part of the State;
- **Class 6,8 and 9**-special provisions apply;
- **Class 10 and 11**-restricting sale only.

It should be noted that the Animal and Plant Control Commission and the local Animal and Plant Control Boards do not refer to these numbered classes in policy documents, fact sheets or other publicly available information. It is likely that the numbered classes will not be used following the next review and overhaul of the proclamation for proclaimed plants.

Landowners and managers are responsible for the control of proclaimed plants on private land. This includes government departments and instrumentalities on land that they own

and/or manage. The local Animal and Plant Control Board is responsible for the control of proclaimed plants on road reserves and is required to invoice the adjoining landowner for the cost of that control. The Animal and Plant Control Commission is responsible for the control of proclaimed plants on unalienated Crown lands, although the local Animal and Plant Control Board usually undertakes this work on behalf of the Commission.

TASMANIA

Relevant legislation

The relevant legislation is the *Weed Management Act 1999* (WMA) which was enacted on 1 September 2000. The Act is administered by the Department of Primary Industries, Water and Environment.

Extracts

Section 9 of the Act states:

- (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) the plant may have an adverse impact on—
 - (i) Tasmania's productive capacity; or
 - (ii) any natural or physical resources; or
 - (iii) genetic diversity of an indigenous plant; or
 - (iv) the genetic integrity of an indigenous plant; or
 - (v) the maintenance of indigenous ecological processes; 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) the end of a period of 12 months after the order is made and no weed management plan exists in relation to the plant.

Section 15 of the Act states:

- (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 anything 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.

Under the WMA, the State Government may:

- Prohibit the introduction of declared weeds into Tasmania;
- Undertake the eradication of declared weeds;
- Take action aimed at preventing the spread of declared weeds within Tasmania; and
- Require that action be taken against declared weeds where this is necessary to alleviate or prevent a particular problem.

The WMA provides the legislative backing to the State's strategic approach to weed management, 'WeedPlan', and furthers the community consultative approach through the requirement for a Ministerial Statement of Intent to declare a plant that is then available for

public comment. In addition, following declaration of a weed, a weed management plan for the weed must be prepared within twelve months. The development of the weed management plan also requires a period of public consultation.

There are currently 86 weeds declared in Tasmania. The current list of declared weeds was derived from the schedule of declared weeds under the repealed *Noxious Weeds Act 1964*. This list also includes species of national significance, some of which are not present in Tasmania, but require a national declaration. Each of the declared weeds is currently being reviewed with weed management plans developed within 12 months where appropriate.

NORTHERN TERRITORY

Relevant legislation

The relevant legislation is the *Weeds Management Act 2001* (WMA) which commenced on 1 July 2001 replacing the *Noxious Weeds Act 1962*. No regulations currently exist. The Department of Business, Industry and Resource Development administer the Act.

Extracts

The purpose of the Act is-

- (a) to prevent the spread of weeds in, into and out of the Territory and to ensure that the management of weeds is an integral component of land management in accordance with the Northern Territory Weeds Management Strategy 1996 - 2005 or any other strategy adopted to control weeds in the Territory;
- (b) to ensure there is community consultation in the creation of weed management plans; and
- (c) to ensure that there is community responsibility in implementing weed management plans.

Under Section 7 of the WMA:

- (1) The Minister may, by notice in the *Gazette*, declare a plant to be a declared weed and may classify the declared weed for the purposes of preventing the plant entering into, or managing the plant in, the Territory or a part of the Territory.
- (2) The Minister may, by notice in the *Gazette*, declare a plant to be a potential weed for the purposes of managing the plant in the Territory or a part of the Territory.
- (3) The Minister may only make a declaration under subsection (1) or (2) after he or she has consulted with the Minister responsible for the administration of the *Territory Parks and Wildlife Conservation Act* concerning the proposed declaration.
- (4) A declaration under subsection (1) may classify a declared weed having regard to whether it is-
 - (a) necessary to eradicate the declared weed;
 - (b) necessary to prevent the growing and spreading of the declared weed; or
 - (c) necessary to prevent the introduction of the declared weed into the Territory.
- (5) The classification of a declared weed may be in accordance with a nationally agreed classification scheme or code.

Under section 9 of the WMA:

- (4) A person must not, except in accordance with a permit -
 - (a) bring a declared weed or take part in, or be responsible for, bringing a declared weed into the Territory;
 - (b) propagate or scatter a declared weed;
 - (c) sell or offer to sell a declared weed or anything that contains or carries a declared weed;
 - (d) hire any equipment, device or thing that contains or carries a declared weed or potential weed;
 - (e) purchase or offer to purchase a declared weed or anything that contains or carries a declared weed;

- (f) store, grow or use a declared weed or anything that contains or carries a declared weed; or
- (g) transport or carry on his or her person a declared weed or anything that contains or carries a declared weed.

Key points are that the WMA:

- Has direct links with the Territory's weed management strategy;
- From a Territory functionality perspective, the legislation is consistent with the goals and objects of the National Weeds Strategy;
- Weed management is the responsibility of owners and occupiers of land and they have a general duty to control weeds;
- In order to overcome potential environmental weeds, plant material can only be disposed of on a person's own land or designated weed disposal areas;
- Moving, selling or growing declared weeds is prohibited without a permit;
- The Act binds the Crown so that the government is under the same obligations as other landowners and managers; and
- Has provisions for:
 - Weed management plans;
 - Weed advisory committees;
 - Designated quarantine and cleaning areas; and
 - Use of a declared weed under permit.

On commencement of the WMA, weeds that were declared under the repealed *Noxious Weeds Act 1962* became declared weeds under the new Act. The same weed categories were retained, but with the increased provisions preventing trade and distribution under the new Act.

AUSTRALIAN CAPITAL TERRITORY

Relevant legislation

The relevant legislation is the *Land (Planning and Environment) Act 1991* (LPEA), with only a small section of the Act devoted to "Pest Plants". The Act is administered by the Department of Urban Services, although officers of other departments may be authorised by the Minister to assist with implementation of the legislation.

Extracts

Section 254 of the Act states:

- (1) The Minister may, by instrument-
 - (b) declare a class of plants to be pest plants; either generally or in a specified area.
- (3) The Minister shall not make a declaration under subsection (1) unless the Minister has consulted with-
 - (a) the Flora and Fauna Committee established under the *Nature Conservation Act 1980*;
- (4) After making a declaration under subsection (1), the Minister-
 - (a) shall cause to be prepared a plan for the control of the propagation of animals or plants of the relevant class.

Section 256 of the Act states:

- (1) A person may apply to the Minister for an order against-
 - (a) the lessee or occupier of a place on which a controlled activity was, is being, or is to be, conducted; or
 - (b) any person by whom or on whose behalf the activity was, is being, or is to be, conducted.

Amendments in 1996 to the LPEA provide for a plant to be declared a pest plant by the Minister – either generally, or in a specific area. A Weeds Working Group advises the Minister on which plants should be declared pest plants after consulting with the Flora and

Fauna Committee. After declaration of a pest plant, a strategic plan for controlling the weed must be developed.

The Weeds Working Group consists of representatives responsible for government and private managed land and representatives of community groups. The Weeds Working Group is responsible for implementing the ACT Weeds Strategy; a ten-year strategy for controlling weeds in the ACT.

Specific actions that are required for declared pest plants will either be detailed in any order granted by the Minister or in the case of rural lands, those actions identified in a Land Management Agreement.

While a person may apply to the Minister for an order against another who is using or managing land in a way that fails to control the propagation of a pest plant, legislation is seen as providing a 'last resort' means of achieving weed control when all other measures have failed. An order will not be granted where the land manager or occupier is giving effect to a written agreement relating to the control of the pest plant.