

Approved for Reprint 30th May, 1974

WESTERN AUSTRALIA.

NOXIOUS WEEDS.

14° and 15° Geo. VI. No. LX.

No 60 of 1950.

(Affected by Act No. 76 of 1950.)

[As amended by Acts:

No. 7 of 1951, assented to 12th October, 1951;
No. 6 of 1953, assented to 3rd November, 1953;
No. 73 of 1954,¹ assented to 14th January, 1955;
No. 48 of 1957, assented to 26th November, 1957;
No. 11 of 1958, assented to 29th September, 1958;
No. 54 of 1958, assented to 23rd December, 1958;
No. 27 of 1959, assented to 15th October, 1959;
No. 30 of 1960, assented to 21st October, 1960;
No. 33 of 1963, assented to 13th November, 1963;
No. 113 of 1965,² assented to 21st December, 1965;
No. 44 of 1969, assented to 21st May, 1969;
No. 21 of 1970,³ assented to 8th May, 1970;
No. 96 of 1970,⁴ assented to 8th December, 1970;
No. 15 of 1971, assented to 4th October, 1971;
No. 51 of 1972,⁵ assented to 2nd October, 1972;
No. 19 of 1973,⁶ assented to 6th June, 1973;
and reprinted pursuant to the Amendments Incorporation Act,
1938.]

AN ACT to provide for the Control, Prevention and Eradication of Noxious Weeds.

[Assented to 18th December, 1950.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Noxious Weeds Act, 1950-1973*.

Short title.
Amended by
No. 19 of
1973, s. 1.

¹Came into operation 1st March, 1955. See *Gazette* 18/2/55, p. 343.

²Decimal Currency Act, 1965, s. 4 (1). Came into operation 14/2/66.

³Came into operation 1st July, 1970. See *Gazette* 26/6/70, p. 1831.

⁴Came into operation 30th June, 1970. See Act 96 of 1970, s. 2.

⁵Came into operation 6th April, 1973. See *Gazette* 6/4/73, p. 886.

⁶Came into operation 22nd March, 1974. See *Gazette* 22/3/74, p. 965.

-Construc-
tion.
Amended by
No. 7 of
1951, s. 3.

2. (1) In this section reference to the provisions of an Act includes reference to the provisions of any regulation, by-law, Order in Council, proclamation, declaration, and notice, made, given or promulgated under the provisions of that Act.

(2) This Act shall be construed—

- (a) so as not to exceed the legislative power of the State, the intention being that where any enactment herein would, but for this provision, have been construed as being in excess of that power, it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power; and
- (b) in conjunction with the Agriculture Protection Board Act, 1950, as if that Act had been incorporated with and formed part of this Act but where the provisions of this Act are in conflict or inconsistent with, those of that Act, the provisions of that Act shall to the extent of the conflict or inconsistency prevail.

Cf. s. 49
(1) (c) post.

(3) Where the provisions of the Bush Fires Act, 1937-1950,¹ are in conflict or inconsistent with those of this Act, the provisions of that Act, shall, to the extent of the conflict or inconsistency, prevail.

Arrange-
ment.
Amended by
No. 33 of
1963, s. 2;
No. 51 of
1972, s. 3.

3. This Act is arranged as follows:—

PART I.—ss. 1-6—PRELIMINARY.

PART II.—s. 7—DECLARATIONS RELATING TO
PRIMARY NOXIOUS WEEDS.

PART III.—ss. 8-25A—LAND UNDER THE CONTROL
OF A LOCAL AUTHORITY, PUBLIC LAND AND
PRIVATE LAND.

*Division 1—ss. 8-16—Land under the Control
of a Local Authority.*

Division 2—ss. 17-19—Public Land.

Division 3—ss. 20-25A—Private Land.

¹Now Bush Fires Act, 1954.

PART IV.—ss. 26-29—PREVENTION OF INTRODUCTION AND SPREAD OF PRIMARY AND SECONDARY NOXIOUS WEEDS.

PART V.—ss. 30-48—GENERAL.

Division 1—ss. 30-32—Powers of Inspectors.

Division 2—ss. 33-37—Persons Having Interests in Land and Their Representatives.

Division 3—ss. 38-45—Procedure.

Division 4—ss. 46-47—Accounts.

Division 5—ss. 48—Functions Affecting Other Government Departments.

Division 6—ss. 48A-48B—Finance.

PART VI.—s. 49—REGULATIONS.

PART VII.—ss. 50-67—SECONDARY NOXIOUS WEEDS.

Division 1—ss. 50-55—Administration and Finance.

Division 2—ss. 56-64—Destruction and Prevention of Secondary Noxious Weeds.

Division 3—ss. 65-66—General.

Division 4—s. 67—By-laws.

PART VIII.—s. 68—SAVINGS.

4. The Acts specified in the Schedule to this Act are repealed. Acts repealed.

5. In this Act unless the context otherwise indicates or requires—

“declaration” means a declaration made by the Protection Board and published in the *Gazette* and the verb “to declare” and inflexions and other derivatives have correlative meanings;

“Department” means the department of the State known as the Department of Agriculture;

“destroy” includes do or cause to be done, such acts, matters and things as may be prescribed generally or in respect of any locality, premises or person, for the

Interpretation.
Amended by
No. 7 of
1951, s. 4;
No. 51 of
1972, s. 4.

freeing of land and keeping the land free from primary or secondary noxious weeds or both and preventing the growth in and upon, and spread from the land of those weeds and generally for the control, prevention and eradication of those weeds;

“district” in relation to local authorities means a municipal district constituted under the Municipal Corporations Act, 1916-1947,¹ or a road district constituted under the Road District Act, 1919-1948;¹

“fund” means The Agriculture Protection Board Fund established under the Agriculture Protection Board, 1950;

“Government department” means a Minister of the Crown acting in his official capacity, a State Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or non-corporate, who or which under the authority of an Act, administers or carries on for the benefit of the State a public social service or utility;

“Government inspector” means an inspector and includes the Chief Weed Control Officer, and weed control officers appointed by the Governor pursuant to the provisions of this Act;

“holding” means a parcel of land as defined and identified by metes and bounds and by a number or other particulars in the certificate of title, Crown lease or other instrument of title by which the ownership of the parcel is evidenced, whether the parcel of land is held or used or occupied—

(a) in fee simple;

(b) under pastoral lease, conditional purchase lease or other lease granted by the Crown or as a homestead farm;

¹Repealed by Local Government Act, 1960.

- (c) as a public reserve;
- (d) as a timber lease or timber concession;
- (e) as land under a sawmill or other permit under the Land Act, 1933-1950,¹ or under the Forests Act, 1918-1931;² or
- (f) as land held for any tenure under the Mining Act, 1904-1950;³

“inspector” means a Government inspector or a local government inspector;

“land under the control of a local authority” means land vested in or leased by a local authority, or within a public place, including a road, or within a public reserve under the care, control and management of a local authority or vested in a local authority as trustee or of which a local authority has been appointed the trustee;

“local authority” means the council of a municipal district or the board of a road district;

“local government Act”⁴ means the Municipal Corporations Act, 1906-1947,⁴ or the Road Districts Act, 1919-1948;⁴

“local government inspector” means an inspector appointed by a local authority under this Act;

“occupier” means the person by whom or on whose behalf land is actually occupied, or, if there is no occupier, the person entitled to possession, and includes a person in the unauthorised occupation of Crown land, and a person who, under a license or concession relating to specific land belonging to the Crown, has the right of taking a profit of the land;

¹Now Land Act, 1933-1972.

²Now Forests Act, 1918-1972.

³Now Mining Act, 1904-1973.

⁴Repealed by Local Government Act, 1960.

“owner” as applied to land means—

- (a) (i) a person who is in possession as—
 - (A) the holder of a legal or equitable estate of freehold in possession in the land, including an estate or interest under a contract or arrangement with the Crown or any other person by virtue of which the land is held or occupied with a right to acquire the fee simple by purchase or otherwise;
 - (B) a Crown lessee or a lessee or tenant under a lease or tenancy agreement of land;
 - (C) a mortgagee of the land;
 - (D) a trustee, attorney or authorised agent of such a holder, lessee, tenant or mortgagee; or
- (ii) where there is no such person in possession, the person who is entitled to possession in any of those capacities,

and for the purposes of this interpretation, receipt of the rents and profits shall be regarded as possession;

- (b) a person, who—
 - (i) under a license or concession relating to specific Crown land, has the right of taking a profit of the land;
 - (ii) is lawfully entitled to occupy land which is vested in the Crown, and which has no other owner within the meaning of this interpretation;

- (iii) is in the actual occupation, with or without title, of the surface of the whole or portion of a mining tenement within the meaning of the Mining Act, 1904-1950;¹
- (iv) has, without title, a tent, camp or other habitation on the land which belongs to another person; or
- (v) is in the unauthorised occupation of the land which is Crown land;

“own” and “occupy” and inflections and derivatives, have, in relation to land, meanings co-relative to “owner” and “occupier” respectively;

“plant” means vegetation of any kind and the product of a plant and every part of a plant which is capable of germination or vegetative growth or both;

“primary noxious weed” means a plant, declared to be a primary noxious weed under this Act;

“private land” means land alienated by the Crown or land which the holder is in the course of purchasing or has the right to purchase from the Crown, or land held under lease or license or permit from the Crown for any period or reserved or dedicated for a public purpose and vested in trustees, other than a local authority, or committed to the control and management of a Board appointed pursuant to the provisions of the Parks and Reserves Act, 1895-1947,² or land held or used by a person in any of the cases referred to in paragraph (b) of the foregoing interpretation, “owner”;

¹Now Mining Act, 1904-1973.

²Now Parks and Reserves Act, 1895-1972.

“public land” means land other than private land and other than land under the control of a local authority;

“prohibited material” means—

- (a) a primary or secondary noxious weed;
- (b) any part of a primary or secondary noxious weed; or
- (c) the seed of a primary or secondary noxious weed,

and includes any packet, parcel, packing material, seeds, soil, vegetable matter or other substance in or with which that weed, part of a weed, or seed is packed or associated;

“Protection Board” means the Agriculture Protection Board constituted under the provisions of the Agriculture Protection Board Act, 1950;

“secondary noxious weed” means a plant declared under this Act to be a secondary noxious weed;

“townsite” means a townsite as defined in the Road Districts Act,¹ and includes subdivided private land, declared by proclamation to be deemed to be included in a townsite for the purposes of this Act.

Administration.
Amended by
No. 7 of
1951, s. 5.
Cf. s. 2 ante
and Pt. VII
post.

6. (1) Subject to its provisions, this Act shall be administered by the Minister through the Protection Board.

(2) The Governor may, from time to time, appoint a Chief Weed Control Officer and such other weed control officers and other officers and inspectors as shall be necessary for carrying this Act into effect.

(3) (a) The Minister may, in relation to any matters, or class of matters, or in relation to the whole or any particular part of the State, by writing

Delegation
of powers
to Chief
Weed
Control
Officer.

¹Repealed by Local Government Act, 1960.

signed by him, delegate all or any of his powers and functions under this Act, or any by-laws or regulation in force by virtue of this Act, except this power of delegation, so that the delegated powers or functions may be exercised by the Chief Weed Control Officer with respect to the matters or class of matters, or the whole or that part of the State specified in the instrument of delegation.

(b) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.

(c) Where, by any of the provisions of this Act, or any by-law or regulation in force by virtue of this Act, the exercise of any power or function by the Minister, or the operation of any provision of the Act or that by-law or regulation is dependent upon the opinion, belief, satisfaction or state of mind of the Minister in relation to any matter, that power or function may be exercised by the Chief Weed Control Officer or that provision may operate, as the case may be, upon the opinion, belief, satisfaction or state of mind of the Chief Weed Control Officer.

(3a) The Protection Board may, in the same manner and to the same extent as is provided in the last preceding subsection for the delegation by the Minister of all or any of his powers and functions under or by virtue of this Act, delegate to the Chief Weed Control Officer all or any of its powers and functions exercisable under or by virtue of this Act and the provisions of the last preceding subsection shall apply in respect of the powers and functions of the Protection Board and the delegation to and the exercise by the Chief Weed Control Officer of any of those powers and functions as if those provisions were repeated at length *mutatis mutandis* in this subsection.

(4) Subject to the provisions of this Act, the cost of administration of this Act shall be paid out of revenue from rates made and levied as hereinafter provided and out of moneys appropriated by Parliament to the purposes of this Act.

Revenue.
Cf. s. 2 ante
and Pt. viii
and s. 52
post.

PART II.—DECLARATIONS RELATING TO PRIMARY NOXIOUS WEEDS.

Declarations of primary noxious weeds. Amended by No. 7 of 1951, s. 6; No. 51 of 1972, s. 5.

7. (1) The Protection Board may from time to time, by declaration, declare a plant to be a primary noxious weed, generally or in particular circumstances only which circumstances shall be specified in the declaration, throughout the whole or part or parts of the State.

Declaration may be varied or revoked.

(2) The Protection Board may from time to time, by declaration vary the provisions and operation of a declaration made pursuant to the power conferred upon it by this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

Notice of declaration to be served and advertised.

(3) The Protection Board shall cause a notice of a declaration which is made under the provisions of this section, to be served on every local authority constituted for every district in which there is land affected by the declaration and to be advertised once in a newspaper circulating where that land is situated.

Application of this Act as affected by declarations.

(4) The provisions of this Act relating to—

(a) the destruction of a plant in or upon land; and

(b) the prevention of the introduction into the State or any part of the State, of a plant,

shall, subject to the provisions of this Act, have effect while and to the extent that the land and the plant are affected by a declaration which is in operation pursuant to the provisions of this section.

Cf. ss. 13 and 29 (3) post.

PART III.—LAND UNDER THE CONTROL OF A LOCAL AUTHORITY, PUBLIC LAND AND PRIVATE LAND.

Division 1—Land under the Control of a Local Authority.

Cost of administration of this Part. Cf. s. 2 ante.

8. Subject to the provisions of this Act, a local authority shall pay the expenses of the administration and the carrying into effect of the obligations

imposed upon it by the provisions of this Part, wholly out of its ordinary revenue or wholly out of the revenue made up of the noxious weed rate hereinafter referred to, or partly out of each.

Cf. s. 52 post.

9. Where at the time of the service, pursuant to the provisions of this Act, upon a local authority of notice of a declaration declaring a plant to be a primary noxious weed, land which is under the control of a local authority is free from the plant, the local authority shall, while the land is under its control, keep the land free from the plant.

Duty of local authority to keep clean land free from primary noxious weeds. Amended by No. 7 of 1951, s. 7. Cf. s. 7 (3) ante.

10. Subject to the provisions of this Act, where there are primary noxious weeds in or upon land which is under the control of a local authority, the local authority shall destroy them and if the Protection Board is of opinion that a local authority is not complying with the requirements of this section, the Protection Board may direct the local authority to destroy them.

Duty of local authorities to destroy primary noxious weeds and power of direction by the protection Board. Cf. s. 13 post.

11. Where primary noxious weeds in or upon land which is under the control of a local authority have been destroyed, the local authority shall, while the land is under its control, keep the land free from them.

Duty of local authorities, having destroyed primary noxious weeds, to maintain land free therefrom.

12. The Protection Board may, subject to the provisions of this Act, direct two or more local authorities to act in conjunction in destroying primary noxious weeds in or upon land under the control of each of them respectively, and the Protection Board may fix the proportion of the expense of so doing to be paid by each of them.

Protection Board may direct two or more local authorities to act in conjunction. Cf. s. 13 post.

13. A local authority shall not be directed nor liable to destroy primary noxious weeds in or upon land under its control within a distance of 400 metres of the common boundary of the land and public land in or upon which there are primary

Limitation of power to direct local authorities as to land within 400 metres of untreated public land. Amended by No. 19 of 1973, s. 4.

noxious weeds, until necessary work has been commenced to destroy the primary noxious weeds in or upon the public land.

On failure of local authority to comply with direction, Protection Board may carry out requirements and recover cost.

14. If a local authority fails to comply with the requirements of a direction given under the provisions of this Division, the Protection Board may carry out the requirements of the direction and the expense of doing so shall be a debt due by the local authority to the Protection Board, and shall be recoverable in proceedings in a local Court.

Failure to comply with direction an offence. Amended by No. 113 of 1965, s. 4 (1).
Penalty.

15. Failure to comply with the requirements of a direction given under the provisions of this Division constitutes an offence.

Penalty: For a first offence, forty dollars and for any subsequent offence, one hundred dollars.

Agreements between Protection Board and local authorities.

16. (1) Subject to the provisions of the local government Act, under which the local authority is constituted, the Protection Board and a local authority may enter into agreements—

- (a) for the supply by the Protection Board to the local authority of materials, appliances and services for the destruction and prevention of primary noxious weeds, either free of cost or at such cost as shall be agreed; and
- (b) for loans of money from the fund by the Protection Board to the local authority in such amounts as the Protection Board shall think fit to be expended in the destruction of primary noxious weeds, for payment of interest on and for repayment of loans,

and subject to such other terms and conditions as may be prescribed, or until prescribed, as shall be agreed.

(2) Subject to such limitations as may be prescribed, and to the provisions of the local government Act, under which the local authority is constituted, the Protection Board and the local authority, as parties to an agreement referred to in the next preceding subsection, may agree, from time to time, to extend, modify or otherwise vary the agreement.

Power to extend, modify or otherwise vary agreements.

Division 2—Public Land.

17. Where public land is under the control of a Government department but is not held or used in any of the cases referred to in paragraph (b) of the interpretation, "owner" in section five of this Act, the Government department shall destroy primary noxious weeds in or upon the land.

Duty of Government departments.

18. Subject to the local government Act, under which the local authority is constituted, a Government department and a local authority may enter into agreements for the destruction by the local authority of primary noxious weeds in or upon public land which is not held or used by any person in any of the cases referred to in paragraph (b) of the interpretation, "owner" in section five of this Act, at the expense of the Government department, subject to such terms and conditions as may be prescribed, or until prescribed, as may be agreed.

Government departments and local authorities may enter into agreements.

19. The Protection Board and a Government department may enter into an agreement for the supply by the Protection Board to the Government department of materials, appliances, and services for the destruction of primary noxious weeds, either free of cost or at such costs as shall be agreed.

Agreements between Protection Board and Government departments.

Division 3—Private Land.

20. (1) For the purposes of this Division, an owner or occupier of private land shall be regarded, subject to the provisions of the next succeeding sub-

Application of this division to certain roads.

section, as owning or occupying, as the case may be, in addition to that land, the land comprising any road which—

- (a) intersects the private land;
- (b) bounds the private land and is fenced only on the side further from the common boundary of the road and the private land; or
- (c) bounds the private land and is fenced on both sides but as to that half only of the width of the road nearer the common boundary of the road and the private land.

(2) The provisions of this section shall not apply to a road which is dedicated to public use and fenced on both sides.

Duty of occupier of private land to destroy primary noxious weeds.
Amended by No. 7 of 1951, s. 8; No. 113 of 1965, s. 4 (1).
Cf. ss. 7 ante and 24 post.
Offence.

21. (1) Where a declaration declares plants to be primary noxious weeds and affects private land, the occupier shall, subject to the provisions of this Act, destroy the plants in or upon the land.

(2) An occupier who fails to observe the provisions of the last preceding subsection, commits an offence.

Penalty.

Penalty: For a first offence, forty dollars and for any subsequent offence, one hundred dollars.

Defence.

(3) It shall be a defence to a charge made under the provisions of this section to prove that all reasonable endeavours have been made by the person charged to comply with its requirements.

Protection Board may direct private land be freed from primary noxious weeds.
Amended by No. 6 of 1953, s. 2; No. 30 of 1960, s. 2; No. 113 of 1965, s. 4 (1); No. 44 of 1969, s. 2.
Cf. s. 24 post.

22. (1) When the Protection Board is satisfied that the occupier of private land is not making all reasonable endeavours to comply with the requirements of the last preceding section, the Protection Board may, subject to the provisions of this Act, direct by notice in writing, that primary noxious weeds on the land be destroyed in manner specified in the notice.

(2) The Protection Board may cause notice of the direction referred to in the last preceding subsection to be served on the owner or occupier of the private land affected by the direction or on both of them.

(2a) [*Repealed by No. 44 of 1969, s. 3.*]

(3) Every owner and occupier who is served with a notice mentioned in the last preceding subsection and who fails to comply with the requirements of the direction, commits an offence.

Penalty: For a first offence, one hundred dollars and for any subsequent offence, two hundred dollars.

(4) It is a defence to a charge made under subsection (3) of this section to prove that the requirements of the direction as to the manner in which the primary noxious weeds to which the direction relates are to be destroyed, have been complied with either by the owner or the occupier served with notice of the direction.

22A. (1) Without prejudice to the operation of the provisions of section twenty-two of this Act, the notice referred to in subsection (1) of that section may be served—

Protection Board may direct by public notice the destruction of primary noxious weeds.
Added by No. 30 of 1960, s. 3.
Amended by No. 113 of 1965, s. 4 (1); No. 44 of 1969, s. 3.

(a) by publishing a copy of the notice in the *Government Gazette* not less than fourteen days before the date on which the measures to be taken by the owner or occupier to destroy the primary noxious weed as specified in the notice, shall commence; and

(b) by publishing an abstract of the notice in a newspaper circulating generally in the district where the private land specified in the notice is situated, not less than fourteen days before the date so specified.

(2) Any owner or occupier to whom the notice is directed who

- (a) does not forthwith after the date specified in the notice so served commence to comply therewith; or
- (b) having so commenced does not continue such compliance,

commits an offence.

Penalty: For a first offence, one hundred dollars and for any subsequent offence, two hundred dollars.

(3) The notice may be directed to any number of owners or occupiers of private land.

On failure of person served with notice the Protection Board may carry out the work and recover the cost.
Amended by No. 30 of 1960, s. 4.

23. If an owner or occupier of private land fails to comply with the requirements of a direction given under this Division, and of which, notice mentioned in section twenty-two or twenty-two A of this Act, has been served on him, the Protection Board may carry out the requirements of the direction and the expense of doing so shall be a debt due by the owner or occupier served with the notice, and if both are served, by them jointly and each of them severally, to the Protection Board, and the debt shall be recoverable in proceedings in a local Court.

Power of Protection Board to delegate powers.
Added by No. 27 of 1959, s. 2.

23A. (1) The Board may, from time to time with the written approval of the Minister, by written authorisation under the seal of the Board, delegate to any local authority, power to exercise any of the powers conferred, or to carry out any of the duties imposed on the Board by the provisions of sections twenty-two and twenty-three of this Act in relation to any private land situate within the district of the local authority and the owner or occupier thereof, except this power of delegation.

(2) A delegation of power conferred by this section has the effect and may be exercised according to its tenor, but is revocable at the will of the Board and does not preclude the Board from exercising the power.

(3) Where an owner or occupier of private land fails to comply with the requirements of a direction given to him under this Division, by a local authority under the powers conferred on it by delegation under the provisions of this section, if the local authority carries out the requirements of the direction, the expense of so doing—

Power of local authority to expend moneys and recover them.

- (a) may, at the discretion of the local authority, be paid wholly out of its ordinary revenue or wholly out of the revenue made up by the noxious weeds rate referred to in section fifty-two of this Act, or partly out of each; and
- (b) is a debt due by the owner or occupier served with the notice of direction and if both are served, by them jointly and each of them severally, to the local authority, and the debt is recoverable in proceedings in a Court of competent jurisdiction.

(4) The provisions of this section are in addition to and not in derogation of any of the provisions of section twenty-five A of this Act.

24. An owner or occupier of private land shall not be directed nor liable to destroy primary noxious weeds in or upon that land within a distance of 400 metres from the common boundary of that land and any public land in or upon which there are primary noxious weeds, until necessary work to destroy the primary noxious weeds in or upon the public land has been commenced.

Limitation of power to direct owner or occupier of private land as to land within 400 metres of untreated public land. Amended by No. 19 of 1973, s. 4.

25. (1) The Protection Board or, subject to the provisions of the local government Act under which it is constituted, a local authority and owners or occupiers or both, of private land, may enter into agreements for the supply by the Protection Board or local authority to the owner or occupier or both, of materials, appliances and services for the destruction of primary noxious weeds, either free of cost or at such cost as shall be agreed and subject to such other terms and conditions as may be prescribed, or, until prescribed, as shall be agreed.

Agreements between Protection Board and owners and occupiers. Amended by No. 11 of 1958, s. 2.

Power to extend, modify or otherwise vary agreements.

(2) Subject to such limitations as may be prescribed, the Protection Board or, subject to the provisions of the local government Act under which it is constituted, a local authority and owners or occupiers, or both, of private land as parties to an agreement mentioned in the last preceding subsection, may agree, from time to time, to extend, modify or otherwise vary the agreement.

Local authority may enter upon land. Added by No. 48 of 1957, s. 2.

25A. Notwithstanding any other provision of this Act, where there are primary noxious weeds in or upon any public or private land, the local authority, in the district of which the land is situate, may enter upon the land and carry out such work thereon as it considers necessary or expedient for the control, destruction and eradication of the primary noxious weeds; and for the purposes of this section the local authority may at its discretion pay the expenses of such work wholly out of its ordinary revenue or wholly out of the revenue made up of the noxious weed rate hereinafter referred to, or partly out of each.

PART IV.—PREVENTION OF INTRODUCTION AND SPREAD OF PRIMARY AND SECONDARY NOXIOUS WEEDS.

Prohibition of introduction or spread of primary or secondary noxious weeds. Repealed and Re-enacted by No. 51 of 1972, s. 6. Cf. No. 19 of 1924, s. 20.

26. 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,

commits an offence.

Penalty: Two hundred dollars.

Government inspector may detain and deal with contaminated animals or things. Added by No. 51 of 1972, s. 7.

26A. Any animal or thing which is intended to be, is being, or has been brought—

- (a) into the State from elsewhere; or
- (b) into any part of the State from some other part of the State,

and which is found by a Government inspector to carry or contain prohibited material, may be detained and dealt with in accordance with the regulations.

26B. (1) In sections twenty-seven and twenty-eight of this Act—

Interpre-
tation and
declara-
tions.
Added by
No. 51 of
1972, s. 7.

“coat” means wool, or the coat of a restricted animal;

“fodder” means hay, chaff, meal or grain or any animal feed preparation of which hay, chaff, meal or grain is an ingredient or to which the provisions of sections twenty-seven and twenty-eight of this Act are declared to apply;

“machinery” means a vehicle or machine which has been used for agricultural, excavation or earthmoving purposes;

“restricted animal” means a sheep, a bovine or equine animal, or any other animal to which the provisions of sections twenty-seven and twenty-eight of this Act are declared to apply;

“sack” means an empty, used sack;

“wool pack” means an empty, used wool pack.

(2) The Protection Board may from time to time by declaration—

- (a) declare that the provisions of sections twenty-seven and twenty-eight of this Act apply to such animal feed preparations and animals as it thinks fit; and
- (b) vary the provisions and operation of a declaration made pursuant to the power conferred by this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

Notice to be given of import of certain animals and things. Repealed and re-enacted by No. 51 of 1972, s. 8.

27. (1) A person shall not bring or receive into the State from elsewhere any coat, fodder, machinery, sack, wool pack or restricted animal without first giving—

- (a) notice, in the manner prescribed, of his intention to do so; and
- (b) such particulars relating to that coat, fodder, machinery, sack, wool pack or animal as may be prescribed,

to the Protection Board.

(2) All coats, fodder, machinery, sacks, wool packs and restricted animals entering the State from elsewhere shall immediately on arrival be delivered into the custody of a Government inspector.

(3) A person who contravenes or fails to comply with a provision of subsection (1) or (2) of this section commits an offence.

Penalty: Two hundred dollars.

Owner or person in possession or control of certain animals or things to inspect for, and report presence of noxious weeds. Repealed and re-enacted by No. 51 of 1972, s. 9.

28. (1) A person who becomes the owner of, or takes possession or control of any coat, fodder, machinery, sack, wool pack or restricted animal shall examine it or cause it to be examined for the presence of prohibited material.

(2) Where an examination carried out as required by subsection (1) of this section discloses the presence of prohibited material the person referred to in that subsection shall notify the Protection Board or a Government inspector giving details of—

- (a) the number and description of coats, sacks, wool packs or animals affected and the place where they may be inspected; or
- (b) the quantity and description of fodder or machinery affected and the place where it may be inspected,

and describing the prohibited material which has been found.

(3) Any coat, fodder, machinery, sack, wool pack or animal mentioned in a notification given under the provisions of subsection (2) of this section may be inspected by a Government inspector.

(4) A person who contravenes or fails to comply with a provision of subsection (1) or (2) of this section commits an offence.

Penalty: One hundred dollars.

29. (1) An inspector who discovers or is notified of the discovery of any prohibited material may seize and destroy that prohibited material forthwith or may notify the Protection Board of the discovery.

Destruction or disposal of noxious weeds.
Repealed and re-enacted by No. 51 of 1972, s. 10.

(2) On being notified under the provisions of this section or of section twenty-eight of this Act of the discovery of prohibited material, the Protection Board may cause the prohibited material to be destroyed or otherwise dealt with, or may direct that the prohibited material be destroyed or otherwise dealt with by the owner, consignor, consignee or person in possession, or control of it.

(3) A plant may be dealt with under this section notwithstanding that the plant may not be declared a primary or secondary noxious weed in respect of the part of the State in which the plant is discovered if the plant is declared a primary or secondary noxious weed in respect of any part of the State.

PART V.—GENERAL.

Division 1.—Power of Inspectors.

30. (1) A Government inspector may, by virtue of and without other warrant than the provisions of this Act, enter upon land at any time, with or without assistants, in order to ascertain if primary noxious weeds are in or upon the land and to exercise any power or authority conferred on him by or pursuant to the provisions of this Act.

Powers of Inspectors.
Cf. s. 65 post.

(2) Where, under the provisions of this Act, an inspector is authorised to enter upon land for a purpose—

- (a) he may, with or without assistants, enter and remain thereon for such period as is reasonable for carrying out the purpose; and
- (b) he shall have for himself and his assistants, such right of ingress, regress and egress, into, over and across the land for that period, with such vehicles, horses, instruments, appliances and materials as are reasonable for carrying out the purpose.

Occupier to furnish name and address of owner of land.

Amended by No. 113 of 1965, s. 4 (1).
Cf. No. 19 of 1924, s. 19.

31. An occupier of land who fails, on being asked by an inspector or other person carrying out his duty under this Act, for the name or address of the owner of the land, to answer the question truthfully to the best of his knowledge, information and belief, commits an offence.

Penalty—One hundred dollars.

Power to stop and search conveyances or vessels.

Added by No. 51 of 1972, s. 11.

31A. (1) A Government inspector may at any time stop any conveyance or vessel and, with or without assistants, enter into or upon the conveyance or board the vessel and thoroughly search and inspect the same and every part thereof, and everything in or on the same, in order to ascertain if any prohibited material is in or upon that conveyance or vessel.

(2) A person who, being in charge of a conveyance or vessel, fails to stop the conveyance or vessel, when required to do so by a person who makes himself known as being a Government inspector, commits an offence.

Penalty: One hundred dollars.

32. A person who obstructs or hinders an inspector or other person in the exercise of his duty under this Act, commits an offence.

Penalty for obstructing inspector or other person.
Amended by No. 113 of 1965, s. 4 (1).
Cf. No. 19 of 1924, s. 18 and s. 27 (9) ante.

Penalty, unless otherwise provided—One hundred dollars.

Division 2.—Persons having Interests in Land and their Representatives.

33. (1) As between the owner and occupier or successive owners and occupiers of private land, the expense of destroying primary noxious weeds in or upon the land upon notice of direction by the Protection Board under this Act, whether the destroying be done by the owner or occupier or the Protection Board, shall, subject to the provisions of any agreement between the owner and occupier or successive owners and occupiers, be borne in such proportions as shall be prescribed, and until prescribed, as shall be determined by the Protection Board, which shall notify the parties concerned of its decision forthwith on the making thereof.

Apportionment of expense between persons interested in land.
Cf. No. 19 of 1924, s. 11.

(2) A party dissatisfied with the decision of the Protection Board may, within one month of being notified thereof, appeal therefrom in the prescribed manner to the Local Court having jurisdiction where the land is situated, and the Local Court may modify or otherwise vary the decision and make such order as to costs as is thought fit.

Appeal.

(3) A party paying more than his proportion, may recover the excess from the other by action in a court of competent jurisdiction.

(4) An owner, having only a partial interest or a particular estate in the land, may apply to a local Court having jurisdiction for an order declaring what portion of any expense of or incidental to the destruction of primary noxious weeds on the land paid or to be paid by the owner shall be borne by any other person having a partial interest or an estate in the land, and the Magistrate may, subject

to the provisions of this Act, make such order as in the premises he considers just, and an owner paying, or who has paid, more than his proportion of the expenses as determined by the order, may recover the excess from any person declared by the order liable therefor, by action in a court of competent jurisdiction.

Provision in case occupier hinders owner or vice versa. Amended by No. 113 of 1965, s. 4 (1). Cf. No. 19 of 1924, s. 12.

34. (1) An owner or occupier shall have full power to do all that is necessary to comply with the requisition of a notice binding on him under this Act.

(2) If an occupier of land prevents or obstructs an owner of the land from or in obeying or carrying into effect the requisition, a Court of Petty Sessions to which complaint is made shall, by order in writing, require the occupier to permit and facilitate the doing of anything necessary to be done in order to comply with the requisition, and the occupier shall comply with the order.

Daily penalty—Four dollars.

(3) If, in the performance, or attempted performance, of a duty imposed on him by the notice, the occupier of land is obstructed or hindered by the owner of the land, the owner shall be guilty of an offence against this Act.

Daily penalty—Four dollars.

Mortgages. Cf. No. 19 of 1924, s. 13.

35. Where a mortgagee of land, pursuant to any obligation imposed on him by this Act, has paid an amount of money which otherwise would have been payable by the mortgagor, he may add the amount paid to the debt, the subject of the mortgage.

Powers of trustees. Cf. No. 19 of 1924, s. 14.

36. A trustee who is an owner of land in accordance with the interpretation "owner" in section five of this Act, may apply any of the funds under his control as trustee for the owner of the land, in

defraying the charges, costs and expenses necessarily or properly incurred by him pursuant to or by virtue of the provisions of this Act in that capacity.

37. (1) An attorney or agent of an owner who is absent from the State, shall be deemed to represent his principal for the purposes of this Act, so far as regards land which the attorney or agent is authorised to manage, or of which he is authorised to hold possession, or the rents and profits of which he is authorised to collect on behalf of the owner.

Attorney to represent principal. Cf. No. 19 of 1924, s. 15.

(2) Service on such a representative of the owner of land of—

- (a) a notice required or authorised to be served on the owner;
- (b) a summons or legal process for the recovery of moneys payable by the owner in respect of the land,

pursuant to the provisions of this Act, shall be regarded as effective service on the owner.

Division 3.—Procedure.

38. (1) Service of a notice the giving of which is authorised or required pursuant to the provisions of this Act, may be effected—

- (a) by delivering it personally to the person upon whom it is to be served;
- (b) by leaving it for him at his usual or last-known place of abode or business, with a person of the apparent age of not less than fourteen years;
- (c) by forwarding it by post in a prepaid letter addressed to him at his last-known place of abode or business,

Manner in which notices may be served. Amended by No. 7 of 1951, s. 11; No. 113 of 1965, s. 4 (1). Cf. No. 19 of 1924, s. 16.

and shall be regarded as effective whether the notice comes or does not come to the hands or knowledge of the person for whom it is intended.

(2) When a person on whom it is desired to serve a notice relating to land is not within the State and has no attorney authorised, by power of attorney filed and noted under the Transfer of Land Act, 1893-1950,¹ or deposited under the Powers of Attorney Act, 1896,² to represent him for the purposes of this Act in respect of the land, then the notice shall be deemed to have been effectively served on the owner if—

- (a) it has been affixed or displayed on or over a conspicuous part of the land, and left so affixed or displayed for at least fourteen days; and
- (b) a copy of the notice has been posted to the person appearing to be the owner on search made in the Office of Titles, the Department of Lands and Surveys, the Department of Mines, or the Register of Deeds, as the case may be, addressed to him at his place of abode or business as disclosed by the search.

(3) Where an occupier of land, who is not the owner of the land, is served with a notice, he shall inform the owner of the fact as soon as practicable after being served.

Penalty—Twenty dollars.

(4) A notice by this Act required to be given to the owner or occupier of any land may, if the name of the owner or occupier is not known, be addressed to him by the description of the "owner" or "occupier" of the land, describing it, in respect of which the notice is given, without further name or description.

(5) If there are more owners or occupiers than one, it shall be sufficient, if notice is served on one of them and is addressed to that one with the addition of the words "and another" or "and others" as the case may require.

¹Now Transfer of Land Act, 1893-1972.

²Repealed by Property Law Act, 1969.

(6) Non-service on the owner shall not affect the validity of service on the occupier, nor shall non-service on the occupier affect the validity of service on the owner.

(7) In a notice, a description of the land affected by it, shall be sufficient, if the description allows of no reasonable doubt as to the land affected, notwithstanding that the description does not particularly define the land.

(8) The provisions of this section shall be in addition to and not in derogation of, those of section thirty-one of the Interpretation Act, 1918-1948.¹

39. (1) For the purposes of this section, "document" includes a requisition, notice, order, demand, summons or other process under the Justices Act, 1902-1948,² issued or made for any of the purposes of this Act or any by-law or regulation made pursuant to the provisions of this Act, and "serve" includes "deliver," "give," and "send".

Service of documents. Cf. No. 38 of 1919, s. 352 (4), (5), (6) and (7), 1943 reprint.

(2) In all proceedings in which the document has to be proved, the defendant shall be deemed to have received notice to produce it; and, until the contrary is shown, the document and its effective service may be sufficiently proved by or on behalf of the complainant by the production of what purports to be a copy, bearing what purports to be a certificate signed by the officer authorised to issue the original, that the copy is a true copy of the original, and that the original was served on the date specified in the certificate.

(3) The validity of any document or of the effective service of it shall not be effected by any error, misdescription, or irregularity which does not mislead, or which is not likely to mislead.

40. (1) In proceedings brought pursuant to the provisions of this Act, in addition to other methods of proof available—

Proof of ownership or occupancy. Amended by No. 7 of 1951, s. 11. Cf. No. 38 of 1919, s. 358, 1943, reprint.

¹Now Interpretation Act, 1918-1972.

²Now Justices Act, 1902-1973.

- (a) evidence that the person proceeded against is rated as owner or occupier in respect of land to rate; or
- (b) evidence by the certificate of—
 - (i) the Registrar of Deeds and Transfers, or his substitute or Assistant Registrars of Deeds and Transfers, that a person appears from a memorial of registration of a deed, conveyance or other instrument, to be the owner of land;
 - (ii) the Registrar of Titles, or an Assistant or Deputy Registrar of Titles that a person's name appears in a registry book kept under the Transfer of Land Act, 1893-1950,¹ as owner of land;
 - (iii) the Under Secretary for Lands or the Under Secretary for Mines, that a person is registered in the Department of Lands and Surveys, or the Department of Mines, as the case may be, as the lessee or occupier of land; or
 - (iv) the Conservator of Forests, that a person is registered in the Forests Department as the holder of a timber lease concession or permit,

shall, until the contrary is proved, be evidence that such person is the owner, lessee or occupier, as the case may be, of the land.

(2) All courts and all persons having by law, or by consent of parties, authority to hear, receive and examine evidence, shall, for the purposes of this Act, take judicial notice of the signature attached to the certificate.

(3) The averment in a claim, complaint, or other document in proceedings instituted for the purposes of this Act that a person is or was at any time the owner or occupier of land, shall be deemed to be proved in the absence of proof to the contrary.

¹Now Transfer of Land Act, 1893-1972.

41. Subject to the provisions of the next succeeding subsection, no matter or thing done by the Minister or Protection Board, or by an officer or other person appointed or employed by the Minister or Protection Board, if done *bona fide* in the exercise of his powers or in the performance of his duties pursuant to the provisions of this or any other Act, shall subject the Minister, Protection Board, officer or other person, to personal liability in respect of that matter or thing.

Protection of Minister.
Protection Board and officers, etc.
Cf. No. 60 of 1945, s. 60.

42. [*Repealed by No. 73 of 1954, s. 8.*]

43. No action shall lie or be brought or continued against the Minister or Protection Board in respect of any injury to the person, unless the person injured submits himself to examination by a medical practitioner or medical practitioners appointed by the Minister or Protection Board at all reasonable times as the Minister or Protection Board may require.

Plaintiff in action for personal injuries to submit to medical examination.
Cf. No. 60 of 1945, s. 62.

44. All persons acting judicially shall take judicial notice of the signature of the Permanent Head, as defined in the Public Service Act, 1904-1950,¹ of the Department and of the Chief Weed Control Officer and of any person acting for the time being in those offices as well as that of the Minister.

Judicial notice of signatures.
Amended by No. 7 of 1951, s. 11.

45. Subject to the provisions of this Act, every document required or used for or in connection with, the purposes of this Act, may be authenticated by the signature of the Minister or the Permanent Head of the Department and the Chief Weed Control Officer or any person acting in those offices from time to time, or as provided by the Agriculture Protection Board Act, 1950.

Authentica-
tion of documents.

¹Now Public Service Act, 1904-1973.

Division 4.—Accounts.

Accounts.
Amended by
No. 7 of
1951, s. 12.

46. (1) The Protection Board shall cause to be kept true and regular accounts of all sums received and paid by the Protection Board under this Act and the purposes for which the sums shall have been received and paid.

(2) The Minister shall cause the accounts to be balanced on the thirtieth day of June in every year.

(3) The Minister and the Auditor General and any person authorised by either of them may inspect and take copies or extracts of the records of the accounts.

Audit.

(4) The accounts shall be audited at least once in every year by the Auditor General, who shall have, in respect of the accounts, all of the powers conferred upon him by the Audit Act, 1904-1950.²

Annual
report.

47. The Minister shall cause to be prepared annually, a report of the operations carried out under this Act during the preceding year, other than operations carried out by local authorities under Part VII. of this Act, and shall cause copies of the report together with the accounts as balanced and audited by the Auditor General, to be laid before both Houses of Parliament so soon as practicable in each year.

*Division 5.—Functions Affecting Other Government
Departments.*

Minister to
confer and
co-operate
with other
depart-
ments.
Amended by
No. 7 of
1951, s. 13.
Cf. No. 60 of
1945, s. 59.

48. (1) Where, pursuant to the provisions of this Act, the exercise of any rights, powers or authorities, or the discharge of any duties by the Protection Board, may affect the exercise of any rights, powers or authorities or the discharge of any duties by any other Government department, the Protection Board shall, so far as practicable, confer and co-operate with that department.

²Now Audit Act, 1904-1966.

(2) A question, difference or dispute arising or about to arise under this Act between the Minister or the Protection Board and another Government department with respect to the exercise of rights, powers or authorities, or the discharge of duties by either or both of them, may be finally and conclusively determined by the Governor.

Division 6.—Finance.

48A. (1) Subject to the provisions of subsection (2) of this section, every person who, at noon on the thirtieth day of June, one thousand nine hundred and sixty-six, and at that time in each year thereafter, is the owner of a holding shall pay to the Commissioner of State Taxation a rate (in this Division called "the weed rate"), chargeable on the holding, of such amount as may, from time to time by notice published in the *Government Gazette*, be fixed by the Protection Board, not exceeding, in the case of a pastoral lease, one and one-quarter cents, and, in the case of other land, five twenty-fourths of a cent in the dollar of the unimproved value of the holding as from time to time determined by the Commissioner of State Taxation, but no rates shall be payable under this section in respect of the year commencing on the first day of July, one thousand nine hundred and seventy or any year thereafter.

Special rates for the destruction of noxious weeds.
Added by No. 33 of 1963, s. 3.
Amended by No. 113 of 1965, s. 4 (1); No. 21 of 1970, s. 18; No. 96 of 1970, s. 3; No. 15 of 1971, s. 2; No. 19 of 1973, s. 4.

(2) The weed rate shall not be imposed, or be chargeable, on any holding that is exempt, under the provisions of section one hundred and three of the Vermin Act, 1919, from the rate imposed by that section.

(2a) Notwithstanding anything contained in subsection (2) of this section, where, on the thirtieth day of June, one thousand nine hundred and sixty-four or on the thirtieth day of June in any year thereafter up to and including the year one thousand nine hundred and seventy—

- (a) a person was the owner of two or more holdings which were contiguous or constituted, or were worked as one property, and of which the area, in the aggregate, exceeded two hectares; and
- (b) any one or more of those holdings was less than two hectares in area,

that owner shall be deemed for all purposes to have always been liable to pay the weed rate for every such year on all those holdings so owned by him, and the provisions of the first proviso to subsection (1) of section one hundred and three of the Vermin Act, 1919, as applied by subsection (2) of this section, shall be deemed for all purposes never to have applied to him in respect of every such year.

(2b) The provisions of subsection (2a) of this section do not apply so as to affect the liability of a person to pay the weed rate in respect of any holding for a year unless the weed rate so payable has been assessed and paid prior to the coming into operation of the Noxious Weeds Act Amendment Act, 1971.

(3) The Commissioner of State Taxation may, by one assessment, assess both the weed rate and the rate payable under the provisions of section one hundred and three of the Vermin Act, 1919, and the sum of the two rates as so assessed is payable on demand and is recoverable as if it were land tax of which payment is in default.

(4) Notwithstanding the provisions of any other law of the State, the sum that the Commissioner of State Taxation treats as having been received, by virtue of this section, in any financial year, is the sum of the rates that becomes payable in that year; but the Commissioner of State Taxation may, with the approval of the Protection Board, write off arrears of rates assessed under this section.

(5) All weed rates recovered shall be paid to the credit of an account to be kept by the Treasurer and shall, subject to the regulations, be applied under the direction of the Protection Board in payment of

salaries and wages of its officers and other employees engaged in the destruction of noxious weeds and in payment of other expenses incurred by the Protection Board in the exercise of the powers conferred, and in carrying out the duties imposed on it by any Act, for the purposes of this Act.

48B. There shall be paid, in each financial year, into a Treasury trust fund established for the purposes of this Act, a sum equal to the weed rates recovered by the Commissioner of State Taxation in that year to be appropriated from the Consolidated Revenue Fund, without authority other than that of this section.

Sums equal to weed rates to be appropriated. Added by No. 33 of 1963, s. 3. Amended by No. 21 of 1970, s. 19.

PART VI.—REGULATIONS.

49. (1) The Governor may make regulations prescribing forms and fees and all matters which by this Act are required or permitted to be prescribed, for carrying this Act into effect, and, in particular and without prejudice to the generality of the foregoing power, may make regulations with respect to—

Governor may make regulations. Amended by No. 7 of 1951, s. 14; No. 54 of 1958, s. 2; No. 113 of 1965, s. 4 (1); No. 51 of 1972, s. 12.

- (a) (i) measures, whether mechanical, biological, chemical or otherwise, to be taken and the things to be done with respect to the destruction, control, prevention and eradication of primary noxious weeds;
- (ii) dissemination of information and the giving of directions relating to the matters referred to in the last preceding subparagraph;
- (iii) the time at which or the period within which, those measures shall be taken, those directions shall be complied with and those things shall be done;
- (iv) enforcement of the taking of such measures or directions or the doing of such acts;

- (b) the use of appliances and materials and the manner of mixing materials;
- (c) the disposal of primary noxious weeds by incineration and other methods;
- (d) the disposal or sale of hay, chaff, fodder or grain made or produced from any crop grown on land in or upon which there are primary noxious weeds;
- (e) the branding or labelling of packages containing hay, chaff, fodder or grain made or produced from any crop grown on land in or upon which there are primary noxious weeds;
- (f) the agistment of stock on land in or upon which there are primary noxious weeds;
- (g) the movement of stock from land in or upon which there are primary noxious weeds;
- (h) the keeping of stock on land in or upon which there are primary noxious weeds;
- (i) the fencing of land in or upon which there are primary noxious weeds;
- (j) the use of land in or upon which there are primary noxious weeds;
- (k) the time or period of keeping stock on land in or upon which there are primary noxious weeds;
- (l) the time, period or method of cultivating land in or upon which there are primary noxious weeds;
- (m) the use, storage, or carriage in any area of any vehicle, machine, including an aeroplane, or thing which harbours or is likely to harbour, the seeds of any primary noxious weed;
- (n) the inspection of stock, hay, chaff, fodder or grain and the granting of certificates as to the freedom thereof from the seeds of primary noxious weeds;

- (na) the shearing or clipping of wool or other animal coats known or likely to be carrying the seeds of primary noxious weeds;
- (o) the inspection, detention, treatment and disposal of any thing which is likely to carry primary noxious weeds with a view to destroying, controlling, preventing and eradicating primary noxious weeds;
- (p) the branding of stock moved from or through land in or upon which there are primary noxious weeds;
- (q) prohibiting or regulating the use of any particular chemicals or spray in or for the control or destruction of noxious or other weeds whether by means of aircraft or otherwise, at any time, or during particular periods or in relation to any specified area or boundary;
- (r) the prevention of the introduction into the State, or into any part of the State from some other part of the State, of any prohibited material, and, without limiting the generality of the foregoing—
 - (i) the shearing or clipping of wool or other animal coats known or likely to be carrying the seeds of primary or secondary noxious weeds;
 - (ii) the inspection, detention, cleansing treatment and disposal by release, export from the State, sale, destruction or other means, of animals or things found or likely to carry or contain prohibited material; and
 - (iii) the recovery by the Protection Board from the owner, consignor, consignee, or person in possession or control of any animal, thing or prohibited material, of the expenses incurred by officers and other employees of the Protection Board in connection with that animal, thing or prohibited material.

Scope of application of regulations.

(2) Any regulation may be made under this section to apply to the whole or any part of the State.

(3) Any regulation made under this section may impose a maximum penalty only or a maximum penalty and, also, a minimum penalty irreducible in mitigation for any breach thereof, but no maximum penalty for any offence shall exceed two hundred dollars.

PART VII—SECONDARY NOXIOUS WEEDS.

Division 1.—Administration and Finance.

This Part to be administered by local authorities. Cf. ss. 2 and 12 ante.

50. (1) Subject to the provisions of this Act, this Part shall be administered by each local authority—

- (a) in respect of the district, for which it is constituted the local authority; and
- (b) under the appropriate provisions of the local government Act under which it is constituted, as effectually as if those provisions were expressly enacted in this Part of this Act.

Cf. No. 38 of 1919, s. 160 (25), 1943, reprint.

(2) Any local authority may, subject to the provisions of the local government Act under which it is constituted, and with the approval of the Protection Board, enter into agreements with other local authorities for carrying into effect the purposes of this Part.

Cost of administration. Cf. No. 38 of 1919, s. 216, 1943 reprint, and No. 32 of 1906, s. 379, 1939 reprint. Cf. s. 2 ante.

51. Subject to the provisions of this Act, a local authority shall pay the expenses of the administration and the carrying into effect of this Part wholly out of its ordinary revenue or wholly out of the revenue made up of the noxious weeds rate referred to in the next succeeding section, or partly out of each.

52. (1) A local authority may exercise the provisions relating to rates of the local government Act under which it is constituted, to make and levy, in addition to any other rates, which it is thereby authorised to make and levy, a rate, to be called the noxious weeds rate, on all rateable land in the district of which it is constituted the local authority, for the purposes of this Part of this Act.

Power to levy noxious weed rate. Amended by No. 7 of 1951, s. 15; No. 113 of 1965, s. 4 (1); No. 19 of 1973, s. 4. Cf. No. 34 of 1911, s. 39, 1939 reprint.

(2) The noxious weeds rate—

Secondary noxious weed rate in any financial year limited. Financial year. Cf. No. 32 of 1906, s. 398, 1939 reprint and No. 38 of 1919, s. 245, 1943 reprint.

(a) made on rateable land in a district in any financial year shall not exceed—

(i) in the case of land held under pastoral lease issued under the Land Act, 1933-1950,¹ or any Act or regulations repealed by that Act, ten cents for every forty hectares of the land any number in excess of any multiple of, but less than forty to be regarded as forty hectares;

(ii) in the case of any other holding, five-sixths of a cent for each dollar of the unimproved capital value of the holding, any amount in excess of any multiple of, but less than one dollar to be regarded as one dollar; and

(b) may be so made as to differentiate between rateable land which is inside and that which is outside the boundaries of a townsite.

(3) A minimum noxious weeds rate of twenty-five cents in any financial year may be made and levied under this section on rateable land, or on each of the several lots into which the land is subdivided, when the rate, if made under the last preceding subsection, would be less than twenty-five cents.

¹Now Land Act, 1933-1972.

(4) (a) The Governor may from time to time, by Proclamation, declare that subdivided private land is deemed to be included in a townsite for the purposes of this Act.

(b) The Governor may from time to time, by Proclamation, vary the provisions and operations of a Proclamation promulgated pursuant to the power conferred upon him by this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

Supple-
mentary
secondary
noxious
weeds rates.
Cf. No. 34 of
1911, s. 41,
1939 reprint.

53. A local authority may, and when required by the Governor to do so, shall make and levy in the manner provided by and within the authorisation of the preceding sections of this Part, supplementary noxious weeds rates to meet extraordinary or unanticipated expenditure authorised by this Part.

Application
of rating
provisions
for general
rates of
local
government
Acts.

54. (1) Subject to the provisions of this Part with respect to noxious weeds rates and supplementary noxious weeds rates made and levied under this Act by a local authority, all the provisions of the local government Act under which it is constituted relating to the making, levying, payment, liability for payment, recovery, writing off and refund of general rates and to the adjustment thereof between owner and occupier, successive owners and occupiers and mortgagors and mortgagees shall apply and be deemed to be incorporated with this Act.

(2) A local authority, in the exercise of its powers conferred by this Part may, without prejudice to the provisions of section fifty-two, subsection (2) paragraph (b) of this Act, make and levy noxious weeds rates and supplementary noxious weeds rates of different amounts in respect of different portions of its district, defined for the purpose by proclamation.

(3) A local authority may use the same valuation, rate book, notice of or valuation and process for recovery of noxious weeds rates made under this Act as is used in respect of general rates made under the Act under which it is constituted.

(4) (a) The Governor may from time to time by Proclamation define portions of the district of a local authority for the purpose of the exercise of the power conferred upon the local authority by subsection (2) of this section.

(b) The Governor may from time to time, by Proclamation vary the provisions and operation of a Proclamation promulgated pursuant to the power conferred upon him by this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

55. (1) On the exercise by the Governor of any of the powers conferred by the local government Acts relating to the abolition or alteration of a district, the several local authorities affected may, by agreement, make adjustment of property acquired, liabilities incurred, and contracts and engagements made under this Part of this Act between or among themselves, but failing agreement the Protection Board may, at such time as the Protection Board shall think fit, make the adjustments and finally determine all rights and liabilities arising from the abolition or alteration.

Financial adjustment. Cf. No. 34 of 1911, s. 51, 1939 reprint. Abolition of other alteration of districts. Cf. No. 32 of 1906, s. 12, 1939 reprint, and No. 38 of 1919, s. 8, 1943 reprint.

(2) On the abolition or alteration of a district, all noxious weeds rates then unpaid in respect of rateable land situated therein or in any portion thereof affected by the abolition or alteration, shall vest in and be payable to and recoverable by, such local authority as the Protection Board may determine and shall be applied as the Protection Board may direct.

*Division 2—Destruction and Prevention of Secondary
Noxious Weeds.*

Declaration
of plants as
secondary
noxious
weeds.
Amended by
No. 7 of
1951, s. 16.

56. (1) From time to time the Protection Board may at the request of a local authority, declare any plant to be a secondary noxious weed generally or in particular circumstances only which shall be specified in the declaration, throughout the whole or any part of the district for which it is constituted as the local authority.

(2) From time to time the Protection Board may, by declaration vary the provisions and operation of a declaration made pursuant to the provisions of this section by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

Notice of
declaration
to be
published.

(3) The Protection Board shall cause notice of a declaration and of every variation of a declaration made pursuant to the provisions of this section to be published in the *Government Gazette*, and when so published the declaration shall be in operation.

Application
of this Part
as affected
by
declarations.

(4) The provisions of this Part relating to—

(a) the destruction of a plant in or upon land;
and

(b) the prevention of the introduction into a district or part of a district of a plant,

shall have effect while and to the extent that the land and the plant are affected by a declaration which is in operation pursuant to the provisions of this section.

Private
land to be
regarded as
including
certain
roads.

57. (1) For the purposes of this Part, an owner or occupier of private land shall be regarded subject to the provisions of the next succeeding subsection, as owning or occupying in addition to that land, the land comprising any road—

- (a) which intersects the private land; or
- (b) which bounds the private land and is fenced only on the side further from the common boundary of the road and the private land; or
- (c) which bounds the private land and is fenced on both sides but as to that half only of the width of the road nearer the common boundary of the road and the private land.

Cf. s. 20 ante.

(2) The provisions of this section shall not apply to a road which is dedicated to public use and fenced on both sides.

58. Where at the time of the publication, pursuant to the provisions of this Act, of a notice of a declaration, declaring a plant to be a secondary noxious weed, land which is under the control of a local authority, is free from the plant, the local authority shall, while the land is under its control keep the land free from the plant.

Duty of local authorities to keep clean land free from secondary noxious weeds. Cf. s. 56 (3), ante.

59. When public land is under the control of a Government department and is not held or used in any of the cases referred to in paragraph (b) of the interpretation "owner" in section five of this Act, the Government department shall destroy secondary noxious weeds in or upon the land.

Duty of Government departments.

60. (1) When a declaration, which is made and published pursuant to the provisions of this Act, declares any plant to be a secondary noxious weed and affects private land in a district or part of a district the occupier shall, subject to the provisions of this Act, destroy in or upon the land the plant.

Duty of occupier of private land to destroy in and keep land free from secondary noxious weeds.

Amended by No. 7 of 1951, s. 17; No. 113 of 1965, s. 4 (1); Cf. ss. 56 ante and 63 post. Offence.

(2) An occupier who fails to observe the provisions of the last preceding subsection, commits an offence.

Penalty. Penalty: For a first offence, twenty dollars and for any subsequent offence, fifty dollars.

Defence. (3) It shall be a defence to a charge made under this section, to prove that all reasonable endeavours have been made by the person charged to comply with its requirements.

Local authority may direct private land be freed from secondary noxious weeds.
Cf. s. 63 post.
Amended by No. 113 of 1965, s. 4 (1).

61. (1) When the local authority is satisfied that the occupier of private land is not making all reasonable endeavours to comply with the requirements of the last preceding section, it may, subject to the provisions of this Act, direct in manner prescribed, that secondary noxious weeds in or upon the land be destroyed in manner prescribed.

(2) The local authority may cause notice of the direction referred to in the last preceding subsection, to be served on the owner or occupier of the private land or on both of them.

(3) Every owner and occupier who is served with a notice mentioned in the last preceding subsection and who fails to comply with the requirements of the direction commits an offence.

Penalty. Penalty: For a first offence, twenty dollars and for any subsequent offence, fifty dollars.

Defence. (4) It shall be a defence to a charge made under this section, to prove that all reasonable endeavours have been made by the person charged to comply with its requirements.

On failure of person served with notice local authority may carry out the work and recover the cost.

62. If an owner or occupier of private land fails to comply with the requirements of a direction given under this Division, and of which notice mentioned in the last preceding section, has been served on him, the local authority may carry out the requirements of the direction and the expense of doing so shall be a debt due by the owner or occupier so served with the notice, and if both are served, by them jointly and each of them severally, to the local authority, and the debt shall be recoverable either

in proceedings in a Court of petty sessions in respect of an alleged offence referred to in the last preceding section, in addition to any penalty inflicted pursuant to the provisions of that section, or, without prejudice to any liability for such penalty, in proceedings in any other court of competent jurisdiction.

63. An owner or occupier of private land shall not be directed nor liable to destroy secondary noxious weeds in or upon that land within a distance of 400 metres from the common boundary of that land and any public land, or land under the control of a local authority, in or upon which there are secondary noxious weeds, until necessary work to destroy the secondary noxious weeds in or upon the public land, or in or upon the land under the control of the public authority, has been commenced.

Limitation of power to direct owner or occupier of private land as to land within 400 metres of untreated public land. Amended by No. 19 of 1973, s. 4.

64. (1) Subject to the provisions of the local government Act under which it is constituted a local authority and an owner or occupier, or both, of private land may enter into agreements for the supply by the local authority to the owner or occupier, or both, of materials, appliances and services for the destruction of secondary noxious weeds, either free of cost or at such cost as shall be agreed and subject to such other terms and conditions as may be prescribed, or, until prescribed, as shall be agreed.

Agreements between local authorities and owners and occupiers.

(2) Subject to the provisions of the local government Act under which it is constituted and to such limitations as may be prescribed, a local authority and an owner or occupier, or both, of private land, as parties to an agreement mentioned in the last preceding subsection, may agree, from time to time, to extend, modify or otherwise vary the agreement.

Power to extend, modify or otherwise vary agreements.

Division 3—General.

65. A local government inspector may by virtue of and without other warrant than the provisions of this Act enter upon land at any time with or without assistants in order to ascertain if secondary

Power of entry. Cf. s. 30 ante.

weeds are in or upon the land and to exercise any power or authority conferred upon him by or pursuant to the provisions of this Part or by subsection (2) of section thirty of this Act.

Apportionment of expense between persons interested in land. Amended by No. 7 of 1951, s. 18. Cf. No. 19 of 1924, s. 11.

66. (1) As between the owner and occupier or successive owners and occupiers of private land the expense of destroying secondary noxious weeds in or upon the land upon notice of direction by a local authority under this Act, whether the destroying be done by the owner or occupier or a local authority, shall, subject to the provisions of any agreement between the owner and occupier or successive owners and occupiers, be borne in such proportions as shall be prescribed and until prescribed, as shall be determined by the Protection Board and the decision of the Protection Board shall be notified to the parties concerned, forthwith on the making thereof.

Appeal.

(2) A party dissatisfied with the decision of the Protection Board may, within one month of being notified thereof appeal therefrom in the prescribed manner to the Local Court having jurisdiction where the land is situated, and the Local Court may modify or otherwise vary the decision and make such order as to costs as is thought fit.

(3) A party paying more than his proportion, may recover the excess from the other by action in a Court of competent jurisdiction.

(4) An owner having only a partial interest or a particular estate in the land, may apply to the local Court having jurisdiction for an order declaring what portion of any expense of or incidental to the destruction of secondary noxious weeds on the land paid or to be paid by the owner shall be borne by any other person having a partial interest or an estate in the land, and the Magistrate may, subject to this Part, make such order as in the premises he considers just, and any owner paying, or who has

paid, more than his proportion of the expense as determined by the order, may recover the excess from any person declared by the order liable therefor, by action in a Court of competent jurisdiction.

Division 4—By-laws.

67. (1) Subject to the provisions of this Part and to subsection (4) of this section and to the power conferred upon the Governor to make regulations prescribing all matters which are required or permitted to be prescribed for carrying this Act into effect and to the provisions of the local government Act, under which a local authority is constituted, a local authority may make by-laws prescribing forms, fees and all matters, which by this Part are required or permitted to be prescribed for carrying it into effect and in particular and without prejudice to the generality of the foregoing power, may make by-laws with respect to all or any of the matters referred to in paragraphs (a) to (q), both inclusive of subsection (1) of section forty-nine of this Act, as if the provisions of those paragraphs were repeated in this section but with the words "secondary noxious weeds" substituted for the words "primary noxious weeds" wherever they occur in those paragraphs.

Amended by
No. 7 of
1851, s. 19;
No. 33 of
1863 s. 4;
No. 113 of
1865, s. 4 (1).
Cf. s. 49 ante.

(2) A by-law may be made under this section to apply to the whole or a part of a district for which the local authority making it is constituted.

(3) A by-law made pursuant to the provisions of this section, may impose a maximum penalty only or a maximum penalty and also a minimum penalty irreducible in mitigation for any breach thereof but no maximum penalty shall exceed for a first offence, twenty dollars, nor for any subsequent offence, fifty dollars.

(4) Where the provisions of any by-law made under this Part are in conflict or are inconsistent with, any regulation made under this Act, the latter shall prevail to the extent of the conflict or inconsistency.

Heading
added by
No. 51 of
1972, s. 13.
Saving of
existing
districts
appoint-
ments, etc.
No. 30 of
1918, s. 15.

PART VIII.—SAVINGS.

68. Without prejudice to the operation of the other provisions of the Interpretation Act, 1918-1948,¹ those of section fifteen of that Act are expressly declared to apply in respect of all acts, matters and things whatsoever which at the commencement of this Act are respectively in existence or in force or operation pursuant to the provisions of the Acts repealed by this Act and specified in the Schedule to this Act.

THE SCHEDULE.

Noxious Weeds Act, 1924	Act No. 19 of 1924.
Noxious Weeds Act Amendment Act, 1939	Act No. 38 of 1939.

¹ Now Interpretation Act, 1918-1972.