Land and Environment Court of NSW Practice Direction Number 1 of 2005 Court Appointed Experts - Practice Direction

Parties to proceedings in Class 1, 2 and 3 of the Land and Environment Court of NSW (the "Court"), and consultants with expertise in areas relevant to the LEC's jurisdiction, should be aware and become familiar with the new Practice Direction for Court Appointed Experts which imposes new obligations on parties, and sets new obligations for experts appointed by the Court.

Since the Honourable Justice Peter McClellan, CJ became Chief Judge of the Court a number of reforms have been instituted, some major and other less so, which have been intended to simplify Class 1, 2 and 3 proceedings, reduce the time required for a hearing, encourage pre-trial resolution and enhance the integrity of any decision which the Court is ultimately required to make.

As early as 1 March 2004, the Court imposed a presumption that in relation to any issue requiring expert evidence, a court appointed expert would be appointed. To date, in excess of 300 experts have been appointed and 156 cases involving court experts have been completed, of which 53 have settled without the need for a contested hearing.

Following initial reforms, *Practice Direction Number 1 of 2005 Court Appointed Experts - Practice Direction* came into operation on 1 February 2005. The stated purpose of this Practice Direction is to give guidance:

- to parties and to expert witnesses in relation to the process of appointment of experts by the Court in Class 1, 2 and 3 proceedings;
- as to how such experts are to conduct themselves and prepare their evidence, and how they are to provide evidence to the parties and at any hearing.

The Practice Direction provides that it is endeavouring to reduce costs and to ensure that the Court has the benefit of evidence from a person who is not engaged by only one party.

Some of the key components of the new Practice Direction include the following.

- At the first call over (or as soon as possible thereafter) the Court will consider whether it is appropriate to appoint a person as the court expert to give evidence with respect to any issue in the proceedings. Before a person is appointed it is expected that the parties, will have agreed with the expert the basis upon which that person will be paid and the amount of the payment. If there is no agreement on the basis for payment of the expert the Court will determine it.
- The parties must approach experts to discuss their possible appointment by the Court, identify their availability and agree upon the appropriate payment. Importantly, however, a party must not seek the preliminary views of the expert on any question before offering that person's name as an expert. If such an enquiry is made by a legal practitioner it may constitute professional misconduct or contempt of court and may disqualify the expert from giving evidence.
- If an expert is approached for appointment they must disclose to the party making the approach whether they have had any prior dealings with the applicant or respondent, the landowner or the developer of the project or otherwise in relation to the project itself. If the expert has concerns that he or she may not be able to bring an impartial mind to the issues in dispute, this must be disclosed to the party making the approach.
- The parties are jointly and severally liable for the expert's fees and the expert must look to the parties for payment.
- The evidence of an expert appointed by the Court will (subject to the objection of any party) be received as evidence in the proceedings. It will be considered by the Court together with any other evidence relating to the relevant issues.
- A Court expert may approach any party, at any time, to obtain information, but must inform the other parties. Any party may also approach the expert with relevant information, but must inform the other parties.

- To ensure that the expert is both perceived to be and remains independent from any party, discussions about the issues in the matter or any communication of the opinion of the expert should only occur when a representative of each party is involved in the discussion.
- Although the Court will decide whether an expert or experts should be appointed the Court expects the parties to agree on the particular person or persons to be appointed. Failing agreement the Court will make the appointment. Where there is no agreement the parties shall provide a list of up to three experts acceptable to that party and the fee arrangement which each expert requires.

The Practice Direction also contains detailed provisions about parties providing documents to experts, the provision of reports by experts to the parties and the Court and details the obligations which an expert appointed by the Court has.

A copy of the Practice Direction can be obtained from the Court's internet site at: http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_index. Interested readers should also see the keynote address by Justice Peter McClellan, featured later in this issue

Environmental Planning & Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005

In just two short weeks in June, the NSW Parliament passed fundamental and significant changes to the NSW planning system. Aimed at removing red tape from the current regime, the amendments not only introduce a much more streamlined assessment and approval process for major projects, they also implement a series of other reforms aimed at simplifying the planning instruments that control land uses. Together with the new State Environmental Planning Policy (State Significant Development) 2005 (discussed below), the reforms are some of the most significant in the 26 year history of the EP&A Act.

The Amendment Act introduces a new Part 3A which deals with major projects. Projects that will be covered by Part 3A are:

- those which are classified as major projects under a SEPP;
- development currently regulated by Division 4 of Part 5 (ie development under Part 5 which needs an EIS); and
- projects which are declared to be a Part 3A project.

The current provisions of the EP&A Act relating to state significant development and those provisions in Division 4 of Part 5 will be repealed.

Part 3A projects require the approval of the Minister for Infrastructure, Planning & Natural Resources. Instead of having to prepare and lodge an environmental impact statement, Part 3A projects will be assessed against environmental assessment requirements notified to the proponent by DIPNR. The assessment requirements will be based on new environmental guidelines currently being prepared by a forum of departmental CEOs.

Proponents will be notified of the particular requirements for environmental assessment after an application is lodged and following consultation with relevant government agencies.

The Director-General of DIPNR may require the proponent to include in their environmental assessment a statement of commitments (in effect draft approval conditions) the proponent is prepared to accept for environmental management and mitigation measures. Once an environmental assessment report is lodged with DIPNR, it may be assessed internally or the Minister may set up a panel of experts or a panel of departmental bureaucrats to help assist in the assessment of a project or a particular part of a project.

An independent assessment panel may (but need not) receive or hear public submissions and the panel must report to the Director-General. The environmental assessment must be made publicly available for 30 days and must be circulated to appropriate regulatory authorities where certain other approvals are required. The Director-General must prepare a detailed report to the Minister including advice from government agencies, any recommendations of an expert panel or government panel report, recommendations of a Commission of Inquiry (if any) and all the relevant environmental assessment reports.

The Act includes new provisions allowing the Minister to require or authorise a proponent to submit a concept plan for a project for approval. These concept plans are aimed at delivering more certainty at an earlier stage so that projects so they are more "bankable". Concept plans are not meant to be detailed descriptions of a project but emphasise the key strategic value of a project and its importance for the State. Concept plans must go through the same approval process as other Part 3A projects.

When approving a concept plan, the Minister has broad discretion as to the form and substance of any subsequent environmental assessment. The Minister may decide that subsequent stages of the project will be assessed under Part 4 or Part 5, or that no further assessment is required for the entire project or for a particular stage of it. The Minister may also make a stage of the project either exempt or complying development and may declare that a stage or part of the project is not designated development. If any subsequent part of the project is subject to other consents or approvals, those consents and approvals must be consistent with the terms of approval for the concept plan.

In the Upper House, there was considerable debate over changes to appeal rights. A proponent now can only appeal to the Land & Environment Court within three months of refusal (or deemed refusal) if a project is not a critical infrastructure project (which is discussed below), the proponent is not a public authority, there has been no Commission of Inquiry or expert panel report, and Part 4 would otherwise apply.

Objectors can only appeal within 28 days if they lodged an objection and if the project is not a critical infrastructure project, there has been no approval of a concept plan, there has been no Commission of Inquiry or expert panel report, and the project would otherwise be designated development.

Controversially, the amendment removes all merit appeal rights for proponents and third parties for critical infrastructure projects. For the first time since the introduction of open standing provisions, the Act removes the ability of any person to bring class 4 proceedings to restrain or remedy a breach of the EP&A Act or the *Protection of the Environment Operations Act* 1997 in relation to a critical infrastructure project except where the Minister approves the commencement of any such proceedings.

Critical infrastructure project are those projects that, in the Minister's opinion, are essential for the State for economic, environmental or social reasons. The government has indicated that the first such project is likely to be the proposed desalination plant which is being earmarked for construction at Kurnell in Sydney. In a significant philosophical shift in planning, the Government has stated that for critical infrastructure, it is not a question of whether projects should be approved, but rather how they will proceed. They are likely to be assessed on the basis of a concept plan and no other approvals for subsequent stages will be required.

The Act also simplifies the requirements for approvals under other legislation. A Part 3A project will not need separate approvals under eight other statutes. Where applicable, projects will still require a licence under the *Protection of the Environment Operations Act* 1997, a section 138 approval under the *Roads Act* 1993, an agriculture permit or a mining or petroleum lease. However, these approvals cannot be refused and must be substantially consistent with a Part 3A approval.

The Act does not stop there. It includes a range of detailed provisions relating to planning instruments, development control plans (DCPs) and development applications. These include provisions that allow the implementation of a standard local environment plan (LEP) which is currently being developed by DIPNR. This template LEP is likely to be gazetted later this year with the aim of providing a standard structure for the future gazettal of all LEPs in NSW. The template LEP will include standard zones reducing the current number of zones from over 3,000 down to about 25. For each zone, there will be a standard set of land uses that are permissible with consent in that zone. Councils will later be able to add to this list of land uses but will not be able to remove those gazetted in the standard LEP.

The template LEPs will reduce the number of definitions used in planning instruments in NSW from approximately 1700 at present down to about 300. The standard LEP will also include around 50 standard provisions dealing with various matters currently found in most LEPs. These will deal with the subdivision of land and other mandatory matters. There will be a range of discretionary provisions which can deal with particular issues in each local government area.

It is anticipated that DIPNR will focus on key local government areas with councils being funded to prepare new LEPs based on the template. Ultimately, the template LEP is expected to provide the model for all LEPs in NSW.

The Act also establishes a new hierarchy of planning instruments. Currently there is no established hierarchy between the various types of environmental planning instruments. However under the new provisions where planning instruments are inconsistent, generally:

- SEPPs will prevail over an REP or LEP.
- REPs will prevail over an LEP.
- The later environmental planning instrument of the same class will prevail over the earlier instrument.

The Act also rationalises the number of development control plans by requiring that only one DCP is to apply over any particular parcel of land. DCPs thus may cover the whole of the local government area, or a precinct or a particular site. DCPs will have no effect if they are inconsistent with LEPs. DCPs will also be used instead of masterplans. Provisions requiring masterplans will gradually be repeated.

In the future an environmental planning instrument may require a site specific DCP to be prepared by or on behalf of a landowner before development can occur. If councils fail to make the relevant DCP within 60 days, landowners will be entitled to submit a development application. In addition, under the new regime applicants can request a DA to be a staged DA. These development applications will set out the concept for the whole of the site and can include a stage 1 development application for the first stage of the project. When a stage development consent is in force, subsequent consents cannot be inconsistent with the initial consent. Staged development applications can be used instead of a site specific DCP.

The amendments are part of a major reform process that is changing the face of planning in NSW, in particular for major projects. The reforms, if supported by increased administrative resources with DIPNR and other agencies, have the potential to greatly reduce the time and cost of the approval process. Other ongoing reforms are also likely to reduce the overall complexity of the NSW system. While there has already been some backlash against the reduction in appeal rights, particularly for critical infrastructure projects, the reforms are here to stay. They are expected to commence no later than September of this year.

State Environmental Planning Policy (State Significant Development) 2005

As part of the planning reform process, DIPNR has undertaken a major review of those developments for which the approval or consent of the Minister is required. The result is a new State Significant Development SEPP. This instrument consolidates into one document the entire range of development which requires the approval of the Minister. It also changes the thresholds for certain types of development and adds a few new categories. In addition, the SEPP has the flexibility to be modified by the Minister to add new projects or types of development.

The SEPP includes three schedules. Schedule 1 contains an extensive array of industries and other types of development which, if they exceed a certain threshold, such as a certain monetary value or numbers of those employed, means they are state significant development. A new category is construction projects for the purpose of residential, commercial, retail or other construction projects that have a capital investment value of more than $50 million. A project above this level does not necessarily mean it is state significant development. The Minister must determine that this project is important for achieving state or regional planning objectives. Importantly, this category does not include major development within the meaning of section 31 of the *City of Sydney Act* 1988.

Schedule 2 identifies certain types of development on specified sites. These includes coastal areas, Chatswood Railway Interchange, the Kosciusco ski resorts, areas in Kurnell and Honeysuckle Bay in Newcastle, Penrith Lake and certain ports and related employment lands, roads peninsular, Fox Studios and Moore Park and Sydney Cricket Ground, Sydney Harbour foreshore sites, Toronga Zoo, Australian Museum, Redfern-Waterloo Authority sites, Sydney Olympic Park and certain areas identified for multi-unit housing in Ku-ring-gai.

Schedule 3 is a schedule which allows the Minister to add new sites or new projects. Currently it contains only the Opera House and importantly, this schedule allows the Minister to establish new planning controls for that particular site or project.

On the commencement of the amendments to the EP&A Act discussed above, the SEPP will be renamed as a Major Projects SEPP and will comprise the list of developments that will be subject to the new provisions in Part 3A of the EP&A Act.

Protection of the Environment Operations (Amendment Bill) 2005

A discussion draft of this bill has been released for public comment. Copies can be obtained from the website of the Department of Environment & Conservation. Some of the more significant proposed amendments include:

- Substantial increases in the penalties for tier 1 and tier 2 offences. These include penalties for companies of up to $5 million for wilful or negligent intentional pollution that harms or is likely to harm the environment. Tier 2 pollution offences will have penalties of up to $1 million for companies.
- Introduction of a new offence of causing or permitting land pollution with a maximum penalty of $1 million for companies.
- Amendments to section 169 under which company directors and managers will no longer be able to avoid a prosecution on the basis they had no actual or implied knowledge that the company breached the legislation.
- Additional powers for authorised officers including the power to compel the attendance of people to answer questions, the recording of questions asked and extended powers in relation to the taking of samples.
- A new system of "green offsets" whereby licence holders can be required to participate in schemes to mitigate the effects of their licensed activities.

It is anticipated the bill will be introduced into Parliament some time later in the year.

Amendments to the *Noxious Weeds Act* 1993 (NSW) [by Elisa Arcioni[1]]

In NSW the legislation on weed control is the *Noxious Weeds Act* 1993,[2] which is currently being amended by the NSW Parliament. What follows is an outline of those amendments.

The *Noxious Weeds Act* 1993 (NSW) grew out of various incarnations of weed control obligations that existed within the *Local Government Acts* in NSW and, before that, a range of legislation which addressed particular species as they became a problem in the Colony.[3] A number of policy documents grew up around the Act, encapsulating the detail of many of the processes established by the Act and providing strategic direction for weed control obligations.[4] The Act was subject to a Review in 1998, in which a range of relevant stakeholders took part, identifying deficiencies in the detail and structure of the Act itself, as well as noting problems in enforcement of the weed control obligations. Following calls by local government and environmental groups, a question in State Parliament and constant phone calls to the Cabinet office, the

---

1 Faculty of Law, University of Wollongong, member of the NSW Noxious Weeds Advisory Committee established under the *Noxious Weeds Act* 1993 (NSW) Email arcioni@uow edu au

2 See the outline of the history of weed issues set out in Elisa Arcioni, "What's in a name? The changing definition of weeds in Australia" (2004) 21 *Environmental & Planning Law Journal* 450 See also the National Weeds Strategy, currently under review by the Australian Weeds Committee Agriculture and Resource Management Council of Australia and New Zealand, Australian and New Zealand Environment and Conservation Council, Forestry Ministers, *The National Weeds Strategy, a strategic approach to weed problems of national significance* (2nd edition, March,1999) The legislation in other jurisdictions m Australia is *Catchment and Land Protection Act 1994* (Vic), *Land Protection (Pest and Stock Route Management) Act 2002* (Qld), *Agricultural and Related Resources Protection Act 1976* (WA), *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* (SA), *Weed Management Act 1999* (Tas), *Weed Management Act 2001* (NT), *Land (Planning and Environment) Act 1991* (ACT)

3 For example, *Prickly Pear Destruction Act* in 1886 (NSW) The legislation in other jurisdictions in Australia is *Catchment and Land Protection Act 1994* (Vic), *Land Protection (Pest and Stock Route Management) Act 2002* (Qld), *Agricultural and Related Resources Protection Act 1976* (WA), *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* (SA), *Weed Management Act 1999* (Tas), *Weed Management Act 2001* (NT), *Land (Planning and Environment) Act 1991* (ACT)

4 A range of policies were established by the Noxious Weeds Advisory Committee, one of the most significant ones being Noxious Weeds Advisory Committee, *Policy on declaration of weeds* NWAC Policy Paper 1 (reviewed Feb 2002) available at http //www agric nsw gov au/reader/1973

Report was made public in March this year,[5] more than five years after the publication date mandated by the Act itself.[6]

On 10 November 2004, the *Noxious Weeds Amendment Bill 2004* was introduced into the NSW Legislative Assembly and was passed in that House on 2 March 2005. The Bill was passed in the Legislative Council on 6 April, with some Greens amendments.[7] Those amendments are currently before the Legislative Assembly. It is expected that those amendments will be passed, to require a Review of the Act every five years, simply retaining the substance of the existing s76 which the Government's amendment Bill sought to delete.

The Bill seems to be an attempt to enshrine in law the developments that have occurred in weed control over the past decade and to reflect the policy documents that have grown up around the Act. The main changes are: the inclusion of more comprehensive objectives, details regarding the content of, and the process for imposing, weed control orders, and procedures with respect to the enforcement of control obligations. The Government Amendment Bill also sought to delete the Review provisions.[8] In addition, the Amendment Bill repeals the *Seeds Act* 1982 (NSW) and related *Seeds Regulation 1994*. Those repealed instruments covered the distribution of agricultural seed in the State. Each of the main amendments will be addressed in turn.

Objects – section 3

The new objects reflect the policy direction of strategic weed management in Australia. The original Act contained broad objects of specifying weed control obligations and establishing a framework within which those obligations were to be enforced. The new objects set out the goals of such control, namely, preventing the establishment of new weeds, restricting the spread of existing weeds and reducing the overall area affected by weeds. In contrast to the historical focus on agricultural weeds,[9] the new objects recognise the impact of weeds on "the economy, community and environment".

Weed control orders – sections 7-10

The existing listing process took place by the Minister naming a species as a weed of a particular category. However, the criteria for listing species was determined by Policy, created by the Noxious Weeds Advisory Committee, a statutory committee established under the Act.[10] The amendments insert further detail into the Act, providing for "weed control orders" which will do the following:[11]

(a) declare that the plant is a noxious weed

(b) apply a weed control class or classes to the plant

(c) specify the land … to which the order applies

(d) specify the control measures that are to be, or may be, used to control the plant in general or particular circumstances

5 It is available at http //www agric nsw gov au/reader/weed-legislation/review-of-noxious-weeds-act pdf?MIvalObj=25540&doctype=document&MItypeObj=application/pdf&name=/review-of-noxious-weeds-act pdf

6 See s76(3) which states that "A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years "

7 A range of other proposed Greens amendments failed to receive sufficient support to be passed in the Council They included amendments to address issues of the prohibition of sale of all listed weeds, the environmental impact of weed control measures, harmonisation of weed control with other natural resources legislation and entrenching details with respect to the Noxious Weeds Advisory Committee

8 Ie the repeal of s76, which requires as follows

"76 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years "

9 See eg Strang J, Chairman of Noxious Weeds Advisory Committee, Department of Local Government, Sydney, in his "Letter to the editor re noxious weeds",(1969) 5(2-3) *Farm Management Journal of Farm Management Sector of Australian Institute of Agricultural Sciences* 28, where the criteria for listing a species as a weed was restricted to impact on agriculture This changed with the development of policy within what was the Department of Agriculture (now the Department of Primary Industries), with Policy Paper 1 (see note 5 above) identifying the impact on the environment, human health or the economy as relevant As a result of the amendments recently passed by the Parliamen, the legislation will for the first time acknowledge the diversity of interests affected by weeds

10 See Part 5 Division 2, sections 56-58, Policy Paper 1 in note 5 above and Noxious Weeds Advisory Committee, *Role and Method of Operation of Noxious Weeds Advisory Committee* Noxious Weeds Advisory Committee Policy Paper 5 (Oct 2000) para 2 1 at http //www agric nsw gov au/reader/1972

11 s7(2)

(e) specify the control measures for the plant

(f) specify the term of the order (being a period not exceeding 5 years)"

The "classes" of weeds which are to be applied to each species, are set out in the new section 8:

"(1) The following weed control classes may be applied to a plant by a weed control order:

(a) Class 1, State Prohibited Weeds,

(b) Class 2, Regionally Prohibited Weeds,

(c) Class 3, Regionally Controlled Weeds,

(d) Class 4, Locally Controlled Weeds,

(e) Class 5, Restricted Plants.

(2) The characteristics of each class are as follows:

(a) Class 1 noxious weeds are plants that pose a potentially serious threat to primary production or the environment and are not present in the State or are present only to a limited extent.

(b) Class 2 noxious weeds are plants that pose a potentially serious threat to primary production or the environment of a region to which the order applies and are not present in the region or are present only to a limited extent

(c) Class 3 noxious weeds are plants that pose a serious threat to primary production or the environment of an area to which the order applies, are not widely distributed in the area and are likely to spread in the area or to another area.

(d) Class 4 noxious weeds are plants that pose a threat to primary production, the environment or human health, are widely distributed in an area to which the order applies and are likely to spread in the area or to another area.

(e) Class 5 noxious weeds are plants that are likely, by their sale or the sale of their seeds or movement within the State or an area of the State, to spread in the State or outside the State."

These new "control orders" therefore provide greater detail with respect to each species and give direction on how control obligations (dealt with below) are to be complied with. This is in contrast to the previous position, where landholders were given no guidance through the legislation or policy with respect to how to control the listed species.

Another major change is the process of consultation prior to any listing of weeds. "Before making a weed control order, the Minister is to cause the proposed order to be subject to public consultation."[12] The consultation procedures in the new section 9 are of a kind that would be familiar to those who have an understanding of NSW natural resources and planning legislation. The consultation will involve advertising, placing the draft order on public exhibition, calling for written submissions and then taking the submissions into account in finalising the weed control order. These procedures can be avoided if the Minister makes an "emergency control order", in situations where the threat posed by the plant in question requires immediate action.[13]

Obligations – sections 12-14, 17-17B

The amendments do not change the focus of weed control obligations, which remains on landholders. This is in keeping with the direction given by the National Weed Strategy, which places the weed control onus on private landholders, with government facilitating control but not responsible for it.[14] The amendments clarify that both occupiers and owners are subject to the control obligations.

12 s9(1)

13 s10

14 Agriculture and Resource Management Council of Australia and New Zealand, Australian and New Zealand Environment and Conservation Council, Forestry Ministers, *The National Weeds Strategy, a strategic approach to weed problems of national significance* (2nd edition, March,1999), pp25-27

One significant opportunity for reform, which did not take place with these amendments, was to bring public authorities' obligations in line with private landowner/occupier obligations. There is a distinction in control obligations based on whether the landholder is private or public. The public authorities only need to comply with the weed control orders to the extent of preventing the spread of weeds beyond their boundaries.[15] Private landholders must comply with the orders to the full extent, which may mean complete eradication of the weed from their property. Although the Report of the Review recommended that the obligations be uniform,[16] no-one introduced amendments to that effect.

The amendments retain the shared responsibility for weed control of roadsides,[17] the existing detail with respect to weed control in irrigation areas[18] and include specific obligations regarding aquatic weeds.[19]

Enforcement of control obligations – sections 18-18A, 20, 22-23
The enforcement mechanisms are essentially retained as they were in the existing Act.[20] The local control authorities (usually local councils or county councils) are the prime enforcers of the Act, with the Minister being responsible for the enforcement of the Act against public authorities (although these enforcement mechanisms against public bodies have never been used). The range of increasingly interventionist options are retained. The significant addition is the requirement of notice to be given to a landholder before enforcement takes place.[21] This reflects the practice that had emerged, of communicating with landholders in order to obtain compliance rather than automatically penalising landholders for any failure to control weeds.

Administration – section 24, 36, 37

The amendments incorporate a number of changes with respect to local control authorities, which are the bodies given the primary responsibility to ensure control takes place. The functions of those bodies have been extended.[22] Such authorities are now also subject to the appointment of an administrator by the Minister if they fail to exercise their functions under the Act.[23] A significant addition to the local authorities' role is that of record-keeping, with respect to the "presence and distribution of noxious weeds ... implementation of ... weed control policy and any weed control programs".[24]

Conclusion

Following a lengthy period of waiting, the NSW government has finally addressed its 1998 Report with respect to the *Noxious Weeds Act* 1993 (NSW). Although many of the recommendations within that Report have been ignored, some changes have been made through these amendments to bring the NSW legislation in line with the existing policy and practice of weed control. The eternal problem of insufficient funds and staff for local control authorities to conduct the necessary inspections to monitor weed control will remain, as will the interminable problem of ensuring that both public and private landholders are aware of their obligations and comply with the Act. The amendments, once assented to, will not come into force until a date set by proclamation. It is expected that the transitional period will be at least six months, to allow for all the currently-listed species to be migrated across to the new-look "weed control orders". Nevertheless, this is yet another small step towards more effective weed control to protect the Australian economy and natural environment from the threats posed by invasive plant species.

15 s13

16 NSW Government Review Group, *Review of Noxious Weeds Act 1993 Final Report* (October 1998) See Recommendation 14 and the discussion at p 44 [6 8]

17 s17

18 s17B

19 s17A

20 For an analysis of the enforcement options and their enforcement, see Elisa Arcioni "Out Damned Weeds! Weeds control in Australia – keeping them at bay" (2003) 8 *Australasian Journal of Natural Resources Law and Policy* 75 at 109-118

21 s18A

22 s36

23 s24

24 s37