

Land Protection Bill (No 2)

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states the purpose of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 contains definitions.

Clause 4 states the objectives of the Act.

Clause 5 provides that the Act is to bind the Crown.

PART 2—LAND PROTECTION ADVISORY SYSTEM

Division 1—Land Protection Council

Clause 6 provides for the establishment of a Land Protection Council and sets out its functions. This provision is based on section 5B of the *Vermin and Noxious Weeds Act* 1958.

Division 2—Land Protection Regional Advisory Committee

Clause 7 provides for the determinations of area as land protection regions.

Clause 8 establishes a Land Protection Regional Advisory Committee for each land protection region. This clause is similar to section 5CA of the *Vermin and Noxious Weeds Act*.

Division 3—Advisers

Clause 9 enables the Governor in Council to appoint two persons to be Land Protection Advisers. The appointments are on a full time basis. The appointees must have knowledge of and practical experience in land protection.

PART 3—DUTIES OF LAND OWNERS AND THE DIRECTOR-GENERAL

Clause 10 states the duty of land owners to take reasonable steps to achieve land protection. This clause is similar to sections 6 (1) and 6 (2) of the *Vermin and Noxious Weeds Act*.

Clause 11 provides that a land owner's obligation to control or destroy various kinds of pest plants and pest animals extends to the adjoining half-width of road. This is based on section 6 (5) of the *Vermin and Noxious Weeds Act*. It also sets out certain duties of the Director-General.

PART 4—CATCHMENT PROTECTION

Clause 12 provides for the Governor in Council on the Minister's recommendation to declare an area to be a catchment area after consultation with the Land Conservation Council. This is similar to the provision contained in section 22 (1) of the *Soil Conservation and Land Utilization Act*.

Clause 13 lists the matters to which the Minister must have regard in determining whether to recommend the declaration of an area as a catchment area.

Clauses 14 and 15 state that the Minister may prepare a catchment protection plan for a catchment and specify what a catchment protection plan must contain. The content of section 23 (1) of the Soil Conservation and Land Utilization Act is similar.

Clause 16 requires the Minister to consult with the Land Conservation Council, the Land Protection Council, and any interested Minister before approving a catchment protection plan. The Minister is to take appropriate action to inform any other interested party about the preparation of a plan.

Clauses 17, 18 and 19 deal with procedure for the approval, amendment and revocation of a plan.

Clause 20 deals with evidential matters relating to the validity of catchment protection plans.

Clause 21 obliges the Minister to make a catchment protection plan available for public inspection at appropriate locations.

Clause 22 specifies when a catchment protection plan is to come into effect.

Clause 23 requires a land owner that is the Crown or a public authority to give effect to a catchment protection plan in force in relation to the land owned by them. This provision has the same effect as section 23 (3) of the Soil Conservation and Land Utilization Act.

PART 5—LAND PROTECTION ORDERS

Division 1—General

Clause 24 authorises the Director-General to issue a land protection order to a land protection manager where the Director-General is satisfied that the land owner has failed to adopt necessary land protection measures.

Clause 25 sub-clause (1) specifies actions that a land owner may be required to carry out or refrain from when a land protection order is issued. This provision replaces existing requirements in sections 17 (1) and 23 (4) (a) of the Soil Conservation and Land Utilization Act and sections 8, 9 and 13 of the Vermin and Noxious Weeds Act.

Clause 25 sub-clause (2) details the procedural formalities to be observed in the issue of an order.

Clause 25 sub-clauses (3), (4) and (5) provide for the apportionment of costs of compliance to any decrease in value of land or other financial cost resulting from compliance with any land protection order relating to soil conservation. This continues a similar entitlement in sections 17 (3) and 23 (4) (c) of the Soil Conservation and Land Utilization Act.

Clause 25 sub-clause (6) enables a land protection order to be served requiring a land owner to remedy damage caused to land of a third party. Section 14 (3) (e) of the Soil Conservation and Land Utilization Act is similar.

Clause 26 requires the Director-General to consult before issuing a land protection order. Sub-clause (1) provides for consultation with the relevant Land Protection Regional Advisory Committee before the issue of any order (other than those about pest plants or pest animals). Sub-clause (2) states that orders (other than those about pest animals or pest plants) that concern operations under the *Mines Act* 1958 are to be first referred to the Director-General of Industry, Technology and Resources.

Clause 27 specifies the matters which the Director-General must consider in preparing a provision of an order which determines or apportions amounts associated with compliance with the order (see clause 25 (3)). The matters specified are similar to those set out in sections 17 (3), 23 (4) (c) and 32A of the Soil Conservation and Land Utilization Act.

Clause 28 deals with the effect of a land protection order and makes it an offence not to comply with the order. This replaces the provisions in sections 14 (6), 17 (2) and 23 (4) of the Soil Conservation and Land Utilization Act and sections 8 (2), 9 (4) and 13 (2) of the Vermin and Noxious Weeds Act.

Clause 29 outlines the process for the service of notice of a land protection order.

Clause 30 provides for commencement of a land protection order.

Clause 31 allows a third party in relation to whose land an order has been served on another owner to carry out and recover the cost of works required in the order which have not been done.

Clause 32 enables an authorised officer to give effect to a land protection order where a land owner has failed to comply with the order.

Clause 33 enables the Director-General to take action to recover costs incurred by an authorised officer under the preceding clause.

Clause 34 requires the Director-General to pay to a land owner the amount specified in a land protection order and enables a land owner to take action to recover the amount.

Division 2—Interim Orders

Clause 35 provides for the issue of an interim land protection order in urgent matters.

Clause 36 states that an interim land protection order will cease to have effect after 90 days unless it is earlier revoked or replaced by an order under Division 1. Provision is made for the Minister to approve one extension of an interim order of up to 90 days.

PART 6—REVIEW

Clauses 37–39 enable a land owner to apply to the Administrative Appeals Tribunal for review of a decision of the Director-General to issue a land protection order or review of the contents of an order or review of a decision as to amounts payable under an order. Orders relating to pest plants or pest animals are excepted; as at present these are not reviewable.

PART 7—EXTRACTIVE ACTIVITIES

Clauses 40 and 41 define an extractive activity and who is responsible for it.

Clause 42 makes it an offence to carry out an extractive activity without permission. It is based on section 17A of the Soil Conservation and Land Utilization Act.

Clause 43 details the procedure for obtaining consent to carry on an extractive activity and the manner in which consent may be granted. Consent may be granted subject to conditions.

Clause 44 describes the process for the return of or the application of any bond or security lodged for an extractive activity.

Clauses 45 and 46 deal with the renewal, suspension or revocation of consent to carry on an extractive activity.

Clause 47 outlines the relationship of Part 7 to other legislation. Sub-clause (3) ensures that where consent to carry on an extractive activity and a licence under section 138 of the Land Act are both required then the issue of the consent is also treated as if it was the issue of a licence.

PART 8—GROUP LAND PROTECTION AREA

Clause 48 sets out the requirements and mechanism for the declaration of group land protection areas. The provisions of this Part are similar to those contained in sections 24A–24F of the Soil Conservation and Land Utilization Act dealing with group conservation areas, although their scope has been broadened to include pest plants and pest animals.

Clauses 49 and 51 describe the procedures to be observed in order to constitute a group land protection area.

Clause 50 lists what a project for land protection must contain.

Clause 52 sets out the mechanism for variation of an approved project.

Clause 53 provides for compliance with projects.

Clause 54 provides for the Director-General to be able to undertake works for land owners if the land owner is unable to carry out the works required by a project.

PART 9—PEST PLANTS AND PEST ANIMALS

Clause 55 explains how this Part relates to the rest of the Act and other legislation.

Clause 56 sets out how pest plants are defined. There are three categories of pest plants—“prohibited”, “priority”, and “restricted”.

Clause 57 describes the responsibility of the Director-General to eradicate prohibited pest plants.

Clause 58 describes the responsibility of land owners to eradicate priority pest plants.

Clause 59 describes the responsibility of land owners to control or prevent the spread of restricted pest plants.

Clause 60 enables the Director-General to give directions to a land owner about movement from, on, or to land, so that the spread of pest plants can be controlled.

Clause 61 allows for a provision requiring the Director-General and land owner to share the cost of eradicating or controlling pest plants to be included in an order under clauses 58 to 60.

Clause 62 provides for the declaration of animals as pest animals.

Clause 63 states that the Director-General may agree with a land owner that is a public authority to carry out required land protection measures on its behalf.

Clauses 64 and 65 set out the elements involved in a pest destruction scheme. These schemes may apply to pest animals or pest plants and require the eradication or control of the pest concerned over the whole or a part of the State. The clauses integrate the previously separate schemes for vermin contained in section 7 of the Vermin and Noxious Weeds Act and for noxious weeds in section 14 of that Act.

Clause 66 requires a land owner to take all reasonable action to eradicate or control pest plants and pest animals in accordance with a pest destruction scheme.

Clause 67 allows an authorised officer to enter land and carry out the scheme if the land owner fails to comply with it.

Clause 68 stipulates that notice must be given to warn the public if a pest animal destruction scheme requires the use of chemicals dangerous to humans.

Clause 69 makes it an offence to take a pest animal in an area to which and during which a warning notice under the preceding clause applies. This replaces a similar offence in section 7 (8) of the Vermin and Noxious Weeds Act.

Clause 70 states that nothing in this Part interferes with the ability of the Director-General to issue a land protection order.

Clause 71 creates certain offences relating to keeping, transporting or disposing of pest animals or fraudulently obtaining a reward offered for their eradication. These offences replace those contained in section 12 of the Vermin and Noxious Weeds Act.

Clauses 72 and 73 allow the Director-General to issue permits for the keeping of pest animals or the growing of pest plants.

Clause 74 provides for general matters relating to the issue of any permits under this Part.

Clause 75 deals with the situation where pest animals are kept illegally and allows a pest animal to be impounded or destroyed on the motion of an authorised officer.

Clause 76 sets out a number of offences that are required to contain the spread of pest plants. These provisions are similar to those in section 16 of the Vermin and Noxious Weeds Act.

Clause 77 provides that if the Director-General considers on reasonable grounds that the preceding clause has been contravened the Director-General may require:

- removal of the pest plants from any infested goods;
- destruction of the pest plants; or
- impoundment of infested goods pending the removal or destruction of the pest plants.

Clause 78 sets out a number of offences that are required to contain the spread of pest animals and exotic animals.

PART 10—GENERAL

Division 1—Enforcement

Clauses 79 and 80 provide for the recovery of expenses incurred by the Director-General at a land owner's request or because of a failure to comply with the Act.

Clauses 81 and 82 provide for amounts due to the Director-General under this Part to be a charge over the land concerned until they are paid and for enforcement of a charge in default of payment.

Clauses 83 and 84 list the powers conferred on an authorised officer for the purpose of enforcing the Act.

Clause 85 creates a number of offences relating to authorised officers, including assaulting or obstructing an authorised officer, contravening a lawful direction of an authorised officer, destroying signs or traps placed by an authorised officer and giving false information.

Clauses 86 and 87 describe procedures relating to notices used under the Act and for entering on land.

Clause 88 provides for the payment of certain amounts by the Director-General.

Division 2—Simplification of Proof

Clauses 89–91 provide for evidence in legal proceedings of possession of a pest animal or a device for the taking of pest animals.

Clause 92 enables the Director-General to provide certain information by certificate.

Division 3—Regulations

Clause 93 enables the Governor in Council to make regulations.

PART 11—TRANSITIONAL PROVISIONS

Clause 94 repeals the Acts referred to.

Clause 95 amends or repeals Acts referred to in Schedule 7 to the extent expressed in that Schedule.

Clauses 96 and 97 contain savings provisions concerning the Land Protection Council and Land Protection Advisory Committees.

Clause 98 applies section 16 of the Interpretation of Legislation Act to Part 8 of the Bill.

Clauses 99 and 100 contain transitional provisions relating to catchment areas.

Clause 101 requires certain actions under the Soil Conservation and Utilization Act and the Vermin and Noxious Weeds Act to be given effect to as if they were land protection orders under Part 5.

Clause 102 abolishes certain committees provided for under the repealed Acts.

Clause 103 contains transitional provisions requiring references to “vermin” to be treated as references to “pest animals” and references to “noxious weeds” to be treated as references to “pest plants”.

Clause 104 contains transitional provisions about references in the legislation to be repealed to water supply catchments, the Land Protection Council and various conditions, directions, notices and proclamations that are to be treated as land protection orders under the proposed legislation.

Clause 105 contains transitional provisions about the *Agricultural Chemicals Act 1958*.

Clause 106 provides for a consent given or permit issued under section 17A or 26 respectively of the Soil Conservation and Land Utilization Act to be treated as a consent under Part 7.

Clause 107 contains savings provisions for grants or loans made under section 14 (3) (c) of the Soil Conservation and Land Utilization Act.

Clause 108 contains savings provisions about the employment of staff engaged under and works or demonstrations carried out under the provisions of the Soil Conservation and Land Utilization Act.

Clauses 109–111 set out transitional provisions about financial matters consequent on the repeal of the *Vermin and Noxious Weeds Act 1958*.

Clause 112 requires the Director-General to surrender to the Crown any land purchased or acquired under section 30 of the Soil Conservation and Land Utilization Act.

Clause 113 contains savings provisions concerning certain rights of appeal under the Soil Conservation and Land Utilization Act.

Clause 114 continues certain existing regulations in force for a limited period.

SCHEDULES

Schedule 1 sets out the membership of and procedures concerning the Land Protection Council.

Schedule 2 sets out the membership of and procedures concerning Land Protection Regional Advisory Committees.

Schedule 3 sets out the extent of amendments or repeals.

Schedule 4 sets out the list of water supply catchments proclaimed under section 22 of the *Soil Conservation and Land Utilization Act 1958* which are to be treated as catchment areas under Part 4.

