

# Explanatory Statement

## WEEDS MANAGEMENT LEGISLATION AMENDMENT BILL 2022

### SERIAL NO. 46

#### LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

#### MINISTER FOR ENVIRONMENT

### GENERAL OUTLINE

This Bill amends the *Weeds Management Act 2001* and Weeds Management Regulations 2006. The purpose of the Bill is to improve efficiency in administration, improve weed management outcomes and improve compliance and enforcement capacity. The amendments will ensure appropriate environmental protections, while streamlining and improving regulatory processes, increasing certainty and creating efficiencies for the Department and land owners and occupiers.

### NOTES ON CLAUSES

#### **Part 1 Preliminary matters**

##### **Clause 1. Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Weeds Management Legislation Amendment Bill 2022*.

##### **Clause 2. Commencement**

This clause sets out how the amendment Act will be commenced. In this case this will be done by notice given by the Administrator in the Northern Territory Government Gazette. If a provision of the Act does not commence by 17 May 2024 it will automatically commence on that day.

#### **Part 2 Amendment of Weeds Management Act 2001**

##### **Clause 3. Act amended**

This is a formal clause which provides that amendments are made to the *Weeds Management Act 2001*.

##### **Clause 4. Section 3 amended (Purpose)**

This section amends section 3 of the Act which identifies the purpose of the Act. The amendments repeal an outdated reference to the Northern Territory Weed Strategy 1996-2005. The revised purpose provides a more holistic consideration of the matters addressed by the Act.

##### **Clause 5. Section 4 amended (Definitions)**

This clause amends various definitions to reflect changes in the Act, such as cross-referencing changes, and to modernise the drafting approach. It introduces new definitions required as a result of new sections in the Act.

The clause also inserts a new note advising readers of the legislation that the *Interpretation Act 1978* may contain other definitions and provisions relevant to the interpretation of the Act. This is a standard note in accordance with modern drafting practices.

**Clause 6. Section 5A inserted**

This clause inserts a new section 5A which identifies that Part IIAA of the Criminal Code applies to an offence against the Act.

This is a standard clause for Acts which are drafted in compliance with Part IIAA of the Criminal Code to provide certainty about the application of the Criminal Code to offences under the Act. The clause also includes a note identifying the purpose of Part IIAA of the Criminal Code.

**Clause 7. Section 7 replaced**

This clause repeals and replaces section 7 of the Act.

Section 7 provides for the declaration of weeds and potential weeds. The drafting of the section has been modernised and cross referencing errors have been addressed.

Section 7(1) allows the Minister to declare a weed by Gazette notice. The clause adopts a modernised drafting approach.

Section 7(2) allows the Minister to declare a potential weed by Gazette notice. The clause adopts a modernised drafting approach.

Section 7(3) provides that the Minister may only make the declaration under subsections (1) or (2) after consulting with the Minister responsible for the Parks and Wildlife Conservation Act 1976. (This amendment corrects a titling error in the name of the Act.)

Section 7(4) identifies that the Minister may classify a declared weed or potential weed, according to four classification types. The classifications are:

- (a) necessary to eradicate the plant
- (b) necessary to prevent the growing and spreading of the plant
- (c) necessary to prevent the introduction of the plant into the Territory
- (d) necessary to prevent the plant being spread by the actions of persons.

Classifications (a) to (c) existing in the Weeds Management Act 2001 prior to the introduction of the Weeds Management Legislation Amendment Bill 2022. Classification (d) is a new classification designed to provide greater flexibility in the declaration process. It will support weed management objectives by providing a specific declaration classification for those weeds that are typically considered to be of lower risk, and therefore requiring less regulatory attention, but which nevertheless have local impacts.

Section 7(5) allows the Minister to apply a nationally agreed classification scheme or code to any declaration made under section 7.

**Clause 8. Section 8 amended (Designated weed disposal areas)**

This clause amends section 8 of the Act.

Subclause (1) inserts a new subsection number (1). This is necessary as the section now contains multiple subsections.

Subclause (2) inserts the words “declared weeds or” before the word “potential” in the new subsection (1). This allows the Minister to declare a designated weed disposal area for both declared and potential weeds.

Subclause (3) inserts a new subsection (2). The new subsection identifies that declarations of designated weed disposal areas may be made in respect of particular species of declared to potential weeds – allowing disposal areas to be restricted for the use of certain types of weeds – or particular classifications of weeds under section 7(4). For example, the declaration might limit the use of the disposal area only to weeds that have been targeted for eradication.

## **Clause 9. Section 9 replaced**

This clause repeals and replaces section 9 of the Act with new sections 9 and 9A to 9L.

New section 9 of the Act identifies general duties associated with potential weeds. These general duties apply to all persons, including for example land owners and occupiers, businesses (such as nurseries), and the general public.

New section 9(1) identifies that a person must comply with any weed management plan for the potential weed, and ensure that any use of a potential weed is in accordance with its classification under section 7(4). For example, if a potential weed was classified as “necessary to prevent the introduction of the plant into the Territory” under section 7(4)(c), then a person would not be authorised to bring the plant into the Territory.

New section 9(2) identifies specific actions that a person must not take in relation to a potential weed unless the person holds an appropriate permit. These include: propagating or scattering the potential weed; or selling, offering to sell, hiring, or offering to hire, any equipment, device or other thing that contains a potential weed. These provisions are designed to prevent deliberate (in the case of propagation and scattering) and inadvertent (in the event of hiring etc.) spread of potential weeds in the Territory.

New section 9(3) identifies that a person must take all reasonable measures to secure and contain a potential weed while transporting it to a designated weed disposal area.

New section 9A of the Act establishes offences for failing to secure or contain a potential weed during transportation. Subsection (1) establishes a more serious offence associated with intentional behaviour for which the penalty is an environmental offence level 3; while subsection (2) establishes a strict liability offence, for which the penalty is an environmental offence level 4. The strict liability offence is also the subject of an infringement notice.

New section 9A(4) identifies that it is a defence to the prosecution of these offences if the person has a reasonable excuse. Under the Criminal Code, the person bears the evidentiary burden of establishing the excuse.

New section 9B of the Act establishes two offences associated with intentionally hiring or buying and offering for hire or sale equipment, devices or other things that contain a potential weed. The penalties for these offences are environmental offence level 3. There are no strict liability offences associated with these breaches as it is considered that enforcement action in relation to potential weeds should be restricted to the most serious breaches. Subsection (4) identifies that it is a defence to the prosecution of this offence if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

New section 9C of the Act identifies general duties for potential weeds for land owners and occupiers. These general duties apply only to land owners and occupiers because the nature of the duty is clearly linked to the establishment, control and management of potential weeds on the land.

New section 9C(1) identifies that owners and occupiers must take all reasonable measures to prevent land being infested with potential weeds, and where potential weeds are present, to prevent the potential weeds from spreading to other land, which may be land held by the owner occupier or may be neighbouring land.

New section 9C(2) reinforces that an owner or occupier must comply with any weed management plan that applies to the potential weed.

New section 9C(3) identifies that an owner or occupier must only destroy or dispose of potential weeds on the land where the potential weed is present, or at a designated weed disposal area. This ensures that clean land (i.e. land that is not infested with the potential weed) is not used for the disposal of potential weeds.

New section 9D of the Act establishes a number of offences for owners or occupiers in relation to their duties under section 9C. Subsection (1) establishes an offence for failing to take measures to prevent a potential weed from spreading on the land, while subsection (2) establishes an offence for failing to take measures to prevent a potential weed from spreading to other land. These offences attract an environmental offence level 3 penalty. Subsection (3) establishes an offence for deliberately (intentionally) disposing of a potential weed at a place that is not the land on which the potential weed is present or at a designated weed disposal area. This also attracts an environmental offence level 3 penalty. Subsection (4) establishes a strict liability offence, with an environmental offence level 4 penalty, for disposing of the potential weed other than on the land where the potential weed exists or a designated weed disposal area. This is an infringeable offence.

New section 9E of the Act identifies general duties associated with declared weeds. These general duties apply to all persons, including for example land owners and occupiers, businesses (such as nurseries), and the general public.

New section 9E(1) identifies that a person must comply with any weed management plan for the declared weed, and ensure that any use of a declared weed is in accordance with its classification under section 7(4). For example, if a declared weed was classified as “necessary to prevent the introduction of the plant into the Territory” under section 7(4)(c), then a person would not be authorised to bring the plant into the Territory.

New section 9E(2) identifies specific actions that a person must not take in relation to a declared weed unless the person holds an appropriate permit. These include: bringing the declared weed into the Territory; storing, growing or using the weed; propagating or scattering the weed; transporting the declared weed; or selling, offering to sell, hiring, or offering to hire, any equipment, device or other thing that contains a declared weed. These provisions are designed to prevent deliberate (in the case of propagation and scattering) and inadvertent (in the event of hiring etc.) spread of declared weeds in the Territory.

New section 9E(3) identifies that a person may transport or carry a declared weed without a permit if the transport is for the purposes of having the declared weed identified or if it is being taken to a designated weed disposal area. This ensures that people can obtain advice about, and dispose of the declared weed, without needing a specific permit.

New section 9E(4) identifies that a person must transport or carry a declared weed in a sealed container. This is to prevent inadvertent spread of the declared weed.

New section 9E(5) identifies that if a person transports a declared weed in accordance with a permit, the person must take all reasonable measures to secure and contain the declared weed during transport.

New section 9F(1) of the Act establishes an offence for failing to comply with the duties specified in section 9E. It attracts an environmental offence level 3 penalty. Subsection (3) provides a defence associated with the transport and carriage of the declared weed (the person has the evidentiary burden to establish the excuse).

New section 9G of the Act establishes specific offences associated with failing to secure or contain a declared weed during transportation. Subsection (1) establishes a more serious offence associated with intentional behaviour for which the penalty is an environmental offence level 3; while subsection (2) establishes a strict liability offence for which the penalty is an environmental offence level 4. The strict liability offence is also the subject of an infringement notice. Subsection (4) identifies that it is a defence to the prosecution of these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

New section 9H of the Act establishes an offence for spreading declared weeds by animals or vehicles. Subsection (2) identifies a defence for the offence (the person has the evidentiary burden to establish the defence). This offence is designed to ensure that people moving animals and vehicles adopt appropriate hygiene measures and take appropriate steps to ensure that weeds are not spread.

New section 9J of the Act establishes an offence for supplying a product that contains a declared weed. The offence uses the term 'product' to provide flexibility in the type of thing that may be provided. It could include for example fodder, hay or mulch. It attracts an environmental offence level 3 penalty. Subsection (3) identifies that it is a defence to the prosecution of this offence if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

New section 9K of the Act identifies general duties for declared weeds for land owners and occupiers. These general duties apply only to land owners and occupiers because the nature of the duty is clearly linked to the establishment, control and management of declared weeds on the land.

New section 9K(1) identifies that owners and occupiers must take all reasonable measures to prevent land being infested with declared weeds, and where declared weeds are present, to prevent the declared weeds from spreading to other land, which may be land held by the owner occupier or may be neighbouring land. Where a land owner or occupier identifies a declared weed that has not previously been present on the land, they are required to report it to a weed management officer within 14 days. The purpose of reporting the weed is to support the early detection of weed infestations, which can improve long-term control outcomes. It is particularly important where a declared weed has not previously been known in the Territory, or that part of the Territory.

New section 9K(2) reinforces that an owner or occupier must comply with any weed management plan that applies to the declared weed.

New section 9K(3) identifies that an owner or occupier must only destroy or dispose of declared weeds on the land where the declared weed is present, or at a designated weed disposal area. This ensures that clean land (i.e. land that is not infested with the declared weed) is not used for the disposal of declared weeds.

New section 9L establishes a number of offences for owners or occupiers in relation to their duties under section 9K. Subsection (1) establishes an offence for failing to take measures to prevent a declared weed from spreading on the land, while subsection (2) establishes an offence for failing to

take measures to prevent a declared weed from spreading to other land. These offences attract an environmental offence level 3 penalty. Subsection (5) establishes an offence for deliberately (intentionally) disposing of a declared weed at a place that is not the land on which the declared weed is present or at a designated weed disposal area. This also attracts an environmental offence level 3 penalty. Subsection (4) establishes a strict liability offence, with an environmental offence level 4 penalty, for disposing of the declared weed other than on the land where the declared weed exists or a designated weed disposal area. This is an infringeable offence. Subsection (5) establishes an offence for failing to notify a weed management officer of the presence of a declared weed on land where the weed has not previously been known to be present. It is also a strict liability offence with an environmental offence level 4 penalty. Subsection (7) identifies that it is a defence to the prosecution of these offences if the person has a reasonable excuse.

**Clause 10. Section 11 amended (Approval of weed management plans)**

Section 11 of the Act identifies the process associated with approving a weed management plan.

The clause repeals and replaces section 11(1) of the Act. Former subsection (1) identified that before approving a weed management plan, the Minister must publish a notice in a newspaper circulating in the Territory. The new subsection, in conjunction with a new subsection (1A) provides that the Minister must give public notice in the manner that the Minister determines, increasing flexibility in the notification provisions while maintaining transparency. The new provisions recognise that there are a modern range of tools by which public notice can be given.

The clause also repeals and replaces section 11(3) of the Act. Under the subsection the Minister is required to consider any comments received during the public consultation period and specifies that the plan may be approved, amended or approved and amended. This section reflects the existing requirements of the Act, while taking a more modern drafting approach.

**Clause 11. Section 12 amended (Review of weed management plans)**

This clause repeals sections 12(1), (2) and (4) of the Act and replaces them with new subsections (1), (2), (2A) and (4).

The new section 12(1) requires the Minister to commence a review of a weed management plan prior to its expiry and provides that a plan may be reviewed at any time. It replaces a requirement for plans to be reviewed every three years, reducing administrative burden on the Department.

The new section 12(2) and (2A) identify that the Minister must give public notice of the review in the manner that the Minister determines. These subsections replace a requirement for notices to be published in a newspaper, increasing flexibility in the notification provisions while maintaining transparency. The new provisions recognise that there are a modern range of tools by which public notice can be given.

New section 12(4) requires the Minister to consider any comments received during the public consultation period and specifies that the plan may be confirmed, revoked or amended. This section reflects the existing requirements of the Act, while taking a more modern drafting approach.

**Clause 12. Section 14 replaced**

This clause repeals and replaces section 14 of the Act with new sections 14, 14A and 14B.

New section 14 of the Act clarifies and simplifies processes associated with the development of remedial weed management plans. Remedial weed management plans are plans that apply to specific land, and are designed to ensure that appropriate weed management activities are

undertaken on the land consistent with the obligations specified in the Act and the weed management plan for the weed.

New section 14(1) gives the Minister the power to issue an owner or occupier of land who is considered to be non-compliant with, or in contravention of, a weed management plan with a notice that:

- (a) directs the person to comply with the weed management plan
- (b) directs the person to prepare a proposed remedial weed management plan, or
- (c) advises the person that the Minister will prepare a remedial weed management plan for the land.

New section 14(2) clarifies that a direction may include requirements to remedy any damage that has resulted from a failure to implement a weed management plan.

New section 14(3) identifies the matters that must be included in a remedial weed management plan.

New section 14(4) and (5) identify the processes for approving remedial weed management plans, including that plans cannot be returned to a land owner or occupier on more than two occasions. This is to prevent the ongoing recirculation of draft plans, preventing unwarranted burden on land owners and occupiers. If the Minister is unable to approve the proposed remedial weed management plan (for example because it does not contain the matters specified in section 14(3)), then the Minister may choose to prepare a remedial plan for the land on behalf of the owner or occupier under new section 14(6).

New section 14A of the Act provides for a number of matters associated with the implementation of a remedial weed management plan. It reflects matters that were contained in the former sections 14(9) to 14(11) and reflects a more modern drafting approach.

New section 14A(1) imposes an obligation on an owner or occupier of land to comply with any remedial weed management plan applying to the land. It is provided for certainty.

New section 14A(2) identifies that the cost of the Minister preparing a remedial weed management plan under section 14 is a debt due and payable by the owner or occupier and is an overriding statutory charge within the meaning of the *Land Title Act 2000*. This provision ensures that the costs of preparing plans fall on the land owners and occupiers and not Territorians.

New section 14A(3) identifies that remedial weed management plans impose restrictions on the use and occupation of land and imposes obligations on the Minister to lodge an appropriate memorandum on the land title.

New section 14A(4) is a technical clause that identifies that remedial weed management plans are binding on successive owners of the land.

The Minister would remove a remedial weed management plan from the title once all of the obligations under the plan had been satisfied.

New section 14B of the Act establishes a number of offences relating to breaches of requirements to comply with weed management plans and remedial weed management plans.

New section 14B(1) establishes a serious offence of intentionally engaging in conduct that results in a contravention, or failure to comply with, a weed management plan; while subsection (2) establishes a similar serious offence of intentionally engaging in conduct that results in a contravention, or failure to comply with, a remedial weed management plan. These offences attract an environmental offence level 3 penalty. Subsection (3) establishes an offence for failing to comply with a direction under

section 14(1)(a) to comply with a weed management plan; subsection (4) establishes an offence for failing to comply with a direction under section 14(1)(b) to prepare a remedial weed management plan; and subsection (5) establishes an offence for contravening or failing to comply with a remedial weed management plan. These are all strict liability offences attracting an environmental offence level 4 penalty. Infringement notices may be issued for these three offences.

Subsection (7) identifies that it is a defence to the prosecution of any of the offences contained in section 14B if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

New section 14B(4) establishes

**Clause 13. Section 15 amended (Emergency weed management plans)**

This clause makes a minor change to section 15(1) of the Act to reflect more modern drafting approaches.

It also repeals existing sections 15(5) and (6) which establish the offence and penalty for failing to comply with an emergency weed management plan. The offence has been replaced with new offences at section 15A of the Act.

**Clause 14. Section 15A and Part 4, Divisions 5 and 6 inserted**

This clause inserts a new section 15A of the Act. The new section establishes offences for breaching requirements associated with emergency weed management plans.

New section 15A(1) establishes a serious offence of intentionally engaging in conduct that results in a contravention, or failure to comply with, an emergency weed management plan. This offence attracts an environmental offence level 3 penalty. Subsection (2) establishes a strict liability offence for failing to comply with or contravening an emergency weed management plan. It attracts an environmental offence level 4 penalty, and an infringement notice may be issued. Subsection (4) identifies that it is a defence to the prosecution of these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

The clause also inserts a new Part 4, Division 5, comprising new sections 15B and 15C.

New section 15B of the Act allows the Minister to issue a weed control notice to a person that the Minister considers has failed to comply with a duty under the Act relating to a declared or potential weed. The notice may be issued in relation to any duty specified in Part 3, Division 1 (general duties).

It is a general duty to comply with a weed management plan, and therefore a notice could be issued in relation to an alleged failure to comply with a plan. However, in practice it is expected that the more specific notice powers under section 14 of the Act would be used if the failure or contravention was directly related to a weed management plan.

Subsection (1) identifies that the notice is to be issued in writing.

Subsection (2) identifies the types of matters that may be contained in a notice, including that the notice may:

- (a) notify the person of the alleged failure to comply with the duty and direct their compliance, and
- (b) direct the person to undertake work to remedy any damage resulting from the failure, which may include control or eradication of any declared or potential weed.



The matters identified in subsection (2) are not limiting and notices can contain other requirements as appropriate to the circumstance. The matters in subsection (2)(b) are included to provide certainty that directions can extend to requirements for remediation or rehabilitation of land and are not restricted to weed control activities themselves.

New section 15C of the Act establishes offences for failing to comply with a weed control notice.

Subsection (1) establishes a serious offence of intentionally engaging in conduct that results in a contravention, or failure to comply with, a weed control notice. It attracts an environmental offence level 2 penalty. Subsection (2) establishes a strict liability offence for contravening or failing to comply with a notice. It attracts an environmental offence level 3 penalty, and an infringement notice may be issued. Subsection (4) identifies that it is a defence to the prosecution of these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

These two offences attract higher penalties than most other offences under the Act. Weed control notices are a compliance tool 'of last resort'. That is, after other education and compliance activities, such as directions by weed management officers, have been used and non-compliance remains a concern. The penalties reflect the seriousness of breaching a notice once it has been issued.

The clause also inserts a new Part 4, Division 6, comprising new sections 15D to 15F.

New section 15D of the Act provides the Minister with the power to enter land to carry out weed management works where the owner or occupier in certain circumstances, relating to failures to comply with weed management plans (including remedial and emergency plans), directions associated with weed control notices and weed management officer directions to undertake weed control on the land.

New section 15E of the Act clarifies that the Minister may engage a third party to undertake the works under section 15D, recognising that the Minister is not themselves going to be undertaking the works. It also ensures that offices of the Department are not required to undertake the works.

New section 15F of the Act identifies that the costs of undertaking any weed management works are a cost due and payable to the Territory by the owner or occupier of the land on which the works are carried out and is an overriding statutory charge within the meaning of the *Land Title Act 2000*. This provision ensures that the costs of preparing plans fall on the land owners and occupiers and not Territorians.

New section 15F(2) identifies that the charge imposes restrictions on the use and occupation of land and imposes obligations on the Minister to lodge an appropriate memorandum on the land title. The Minister would remove any charge if paid by the land owner or occupier.

#### **Clause 15. Section 16 amended (Weed advisory committees)**

This clause amends section 16 of the Act. Clause (1) inserts additional words clarifying that a weed advisory committee can be established for specific areas of the Territory, for all of the Territory or for specific purposes. This is a technical amendment to address a concern that the Minister could not establish a Territory-wide advisory committee and was restricted to committees for specific areas or regions.

Clause (2) amends section 16(4) to identify that a person can be appointed to a weed advisory committee for a period not exceeding 3 years as specified in the instrument of appointment. Under the former section 16(4) a person could only be appointed for 3 years, reducing flexibility in appointments and limiting opportunities to ensure appropriate continuity of committees while

providing opportunities for consistency through the retention of current members and injection of new ideas through the appointment of new members.

#### **Clause 16. Section 20 replaced**

This clause repeals and replaces section 20 of the Act.

The former section 20 established an offence for a weed advisory committee member to breach confidentiality. The new section 20 replaces the offence with standard drafting for a confidentiality provision of this nature and imposes a penalty of 200 penalty units or 12 months imprisonment consistent with similar offences across the Territory's statute book.

#### **Clause 17. Section 21 amended (Quarantine areas)**

This clause repeals and replaces sections 21(3) and (4) of the Act. The former sections 21(3) and (4) provided for an offence and penalty associated with contravening or failing to comply with the requirements of a quarantine area. This offence is now established by new section 21B.

Section 21 allows the Minister to declare quarantine areas for the purposes of preventing a declared weed entering the Territory or to manage a declared weed in the Territory.

The new section 21(3) of the Act imposes obligations on the Minister to give public notice of the declaration of a quarantine area, and to take reasonable steps to advise each owner or occupier of land within the quarantine area or adjacent to the area of the declaration, of the declaration. These obligations are consistent with administrative practice, however given the importance of quarantine areas and the seriousness associated with breaching quarantine area declarations, it is considered appropriate that certainty is provided to landholders by including these obligations in the Act.

#### **Clause 18. Sections 21A and 21B inserted**

This clause inserts new sections 21A and 21B of the Act.

New section 21A(1) of the Act identifies that the declaration of a quarantine area imposes a restriction on the use and occupation of land and imposes obligations on the Minister to lodge an appropriate memorandum on the land title.

New section 21A(2) identifies that an owner or occupier of land within a quarantine area must notify the Minister before undertaking a specified transaction. Subsection (3) clarifies that a specified transaction is the sale, lease or sublease of land in the quarantine area to another person, and includes permitting another person to occupy an area or gifting or otherwise exchanging the land. These provisions are designed to ensure that new owners and occupiers are made aware of the quarantine area before the transaction occurs.

New section 21B of the Act establishes offences for breaching quarantine area requirements.

New section 21B(1) establishes a serious offence of intentionally engaging in conduct that results in a contravention, or failure to comply with, a restriction contained in a quarantine area declaration. It attracts an environmental offence level 2 penalty. Subsection (2) establishes a strict liability offence for contravening or failing to comply with a restriction contained in a quarantine area declaration. It attracts an environmental offence level 3 penalty. An infringement notice may be issued for this offence. Subsection (4) identifies that it is a defence to the prosecution for these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

These two offences attract higher penalties than most other offences under the Act. The declaration of a quarantine area can have a significant impact on a person's use and enjoyment of their land.

For this reason, they are rarely made and only where the consequences of failing to prevent the entry of, or control the declared weed could be devastating to the Northern Territory – environmentally or economically. Breaches of such declarations are therefore also viewed as potentially causing significant harm. The penalties reflect the seriousness of breaching such declarations.

#### **Clause 20. Sections 22A and 22B inserted**

This clause inserts new sections 22A and 22B of the Act.

An access permit may be granted under section 22 of the Act to allow a person to enter into or undertake activities in a quarantine area.

New section 22A(1) establishes a serious offence for intentionally contravening or failing to comply with an access permit. It attracts an environmental offence level 3 penalty. Subsection (2) establishes an offence for contravening or failing to comply with an access permit. It is a strict liability offence that attracts an environmental offence level 4 penalty. Subsection (4) identifies that it is a defence to the prosecution for these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). An infringement notice may be issued for this offence.

New section 22B(1) establishes an offence for failing to produce an access permit to a Weed Management Officer or Authorised Person at their request. It is a strict liability offence attracting a penalty of 50 penalty units (for an individual). In accordance with section 29 of the *Sentencing Act 1995*, the applicable body corporate penalty is 5 times the penalty specified; in this case 250 penalty units. Subsection (3) identifies that it is a defence to the prosecution for the offence if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). An infringement notice may be issued for this offence.

#### **Clause 20. Section 23 amended (Cleaning areas)**

This clause repeals and replaces sections 23(3) and (4) of the Act. The former sections 23(3) and (4) provided for an offence and penalty associated with contravening or failing to comply with the rules of a cleaning area. This offence is now established by new section 23B.

Section 23 of the Act identifies that the Minister may, by Gazette notice, establish cleaning areas for the purpose of preventing a declared or potential weed from entering the Territory or to manage a declared or potential weed in the Territory or part of the Territory. Cleaning areas are a hygiene measure designed to prevent the spread of weeds by providing an appropriately managed area for the cleaning of vehicles and equipment. Under section 23(2), the Minister may determine rules associated with the use of the cleaning area.

The new section 23(3) requires the Minister to give public notice of any rules that are made under section 23(2) and to reasonable steps to ensure a copy of the rules is available at the cleaning area. New section 23(4) identifies that the Minister may determine how the public notice is given, for example through newspaper or radio advertising, signage and communications with relevant industry representatives.

These obligations are consistent with administrative practice, however it is considered appropriate that certainty is provided to the potential users of cleaning areas by including these obligations in the Act.

#### **Clause 21. Sections 23A and 23B inserted**

This clause inserts new sections 23A and 23B of the Act.

New section 23A(1) of the Act identifies that the declaration of a cleaning area imposes a restriction on the use and occupation of land and imposes obligations on the Minister to lodge an appropriate memorandum on the land title.

New section 23A(2) identifies that an owner or occupier of land within a quarantine area must notify the Minister before undertaking a specified transaction. Subsection (3) clarifies that a specified transaction is the sale, lease or sublease of land in the cleaning area to another person, and includes permitting another person to occupy an area or gifting or otherwise exchanging the land. These provisions are designed to ensure that new owners and occupiers are made aware of the cleaning area before the transaction occurs.

New section 23B(1) establishes an offence for contravening or failing to comply with the rules of a cleaning area. It is a strict liability offence that attracts an environmental offence level 4 penalty. Subsection (3) identifies that it is a defence to the prosecution for these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). An infringement notice may be issued for this offence.

#### **Clause 22. Section 24 amended (Weed management officers)**

This clause makes minor amendments to section 24 of the Act.

Clause (1) repeals and replaces the current subsection (1) to remove a requirement that appointments of Weed Management Officers be made by Gazette notice. This amendment modernises appointment practices while removing unnecessary administration. Weed Management Officers are issued with an identity card (under section 24(2) of the Act) which is more meaningful evidence of the appointment when undertaken their duties than a Gazette notice. Appointments must still be made in writing under these amendments.

Section 24(4) identifies that a person only remains appointed as a Weed Management Officer while employed as a public sector employee. Clause (2) amends section 24(4) to modernise the wording consistent with current drafting practice without changing the purpose of the section.

Section 24(5) is repealed. The former subsection (5) established an offence for failing to return a Weed Management Officer's identity card. This has been replaced by an offence at new section 25A.

#### **Clause 23. Section 25 amended (Authorised persons)**

This clause repeals section 25(3) of the Act and inserts new sections 25(3), (4) and (5).

Section 25 of the Act identifies that the Minister may appoint a person, in writing, to be an Authorised Person. The former section 25(3) identified that an Authorised Person must show a copy of the appointment when exercising a power or function of appointment and requested to do so.

New section 25(3) identifies that the Minister may issue an Authorised Person with an identity card, while new section 25(4) specifies the information to be included on the card.

New section 25(5) identifies that an Authorised Person must show the identity card if requested to do so and must identify the powers of the Authorised Person to take the intended action.

The requirements in sections 25(3) to (5) are consistent with obligations relating to Weed Management Officers. The new provisions provide greater certainty about the appointment, and identity, of Authorised Persons.

#### **Clause 24. Section 25A inserted**

This clause inserts a new section 25A of the Act.

New section 25A of the Act establishes offences associated with failing to return an identity card within 10 days of the cessation of a person's appointment as a Weed Management Officer or Authorised Person. Subsection (1) establishes the offence relating to a Weed Management Officer while subsection (2) the offence for an Authorised Person. These are strict liability offences attracting a penalty of 20 penalty units. Infringement notices may be issued for these offences.

These are standard offences for regulatory officers and are designed to ensure that identity cards are returned in order to prevent unauthorised use of the cards and the purported exercise of regulatory powers and functions.

#### **Clause 25. Sections 26 and 27 replaced**

This clause repeals and replaces sections 26 and 27 of the Act.

The former section 26 established an offence for obstructing or hindering a Weed Management Officer or Authorised Person; while former section 27 established an offence for providing false or misleading information to a Weed Management Officer or Authorised Person.

The new sections 26 and 27 of the Act replace these offences with more modern versions and increased penalties consistent with similar offences across the Northern Territory statute book.

New section 26 establishes an offence for intentionally obstructing a Weed Management Officer or Authorised Person while the officer or person is acting in an official capacity (defined in subsection (3)). It attracts a penalty of 200 penalty units or 2 years imprisonment, reflecting the seriousness of the offence.

New section 27(1) establishes an offence for intentionally providing misleading information to a Weed Management Officer or Authorised Person acting in an official capacity (defined in subsection (5)). Subsection (2) establishes an offence for intentionally providing a document containing misleading information to a Weed Management Officer or Authorised Person acting in an official capacity (defined in subsection (5)). These offences attract a penalty of 200 penalty units or 2 years imprisonment, reflecting the seriousness of the offences.

Subsection (4) identifies that is a defence to these offences if the person draws the misleading aspect of the information to the officer or person's attention when providing the information or document and, to the extent possible, provides information to counter the misleading information. This is a standard defence for offences of this nature.

#### **Clause 26. Section 28 amended (Powers of officers)**

This clause amends section 28 of the Act.

Section 28 of the Act identifies the powers provided to Weed Management Officers to enable them to undertake activities required to ensure compliance with the Act. The drafting of former section 28(1) was limiting in that it required Weed Management Officers to enter land to exercise a number of their powers even when this was unnecessary. For example, it is possible to determine if weed control activities are – or are not – being undertaken on the land without physically entering the land; however a Weed Management Officer could not direct an owner or occupier to undertake weed control activities without first entering the land.

Clause (1) repeals sections 28(1)(a) and (b) and inserts a new sections 28(1)(a), (b), (ba) and (bb). These new sections reflect former sections as follows:

- new section 28(1)(a) – former section 28(1)(a)(vii)
- new sections 28(1)(b) and (ba) – former section 28(1)(b)
- new section 28(1)(bb) – former section 28(1)(a)(vi)

Clause (2) makes a minor grammatical amendment to section 28(1)(f) to enable the insertion of new sections 28(1)(g) to (n) as per clause (3).

Clause (3) inserts new sections 28(1)(g) to (n). This approach to drafting removes the current limitation requiring a number of Weed Management Officer powers to be exercised only while on the land for which the power is being exercised.

These new sections reflect former sections as follows:

- new section 28(1)(g) – former section 28(1)(a)(viii)
- new section 28(1)(k) – former section 28(1)(a)(ii).

The following sections are new and identify additional powers consistent with modern regulatory requirements:

- new section 28(1)(h) – a power to direct an owner or occupier transport a declared or potential weed to a designated weed disposal area (for appropriate disposal)
- new section 28(1)(i) – a power to mark or tag a declared or potential weed or a container with any notice of a requirement under the Act
- new section 28(1)(j) – a power to require a person to show a permit (associated with a declared or potential weed) or access permit
- new section 28(1)(l) – a power to take recordings using any means such as audio, visual or audio-visual, providing recognition of more modern means of recording information
- new section 28(1)(m) – a power to seize declared and potential weeds, documents or equipment required to access documents, in order to investigate alleged breaches of the Act
- new section 28(1)(n) – a power to authorise a person to assist the Weed Management Officer, such as by providing access to computer equipment that may have been seized under section 28(1)(m)(v).

The existing powers under sections 28(1)(c) to (f) are retained as part of these amendments.

#### **Clause 27. Sections 28A, 28B, 28C, 28D and 28E and Part 6A inserted**

This clause inserts new sections 28A to 28E of the Act.

New section 28A of the Act establishes an explicit power for Weed Management Officers to enter land and undertake certain activities. The power excludes the power to enter a dwelling. A number of these activities were previously authorised under the former section 28(1)(a).

The powers that can be exercised on the entry of land reflect former sections as follows:

- new section 28A(a) – former section 28(1)(a)(i)
- new section 28A(b) – former section 28(1)(a)(ii)
- new section 28A(d) – former section 28(1)(a)(iii)
- new section 28A(e) – former section 28(1)(a)(iv)
- new section 28A(f) – former section 28(1)(a)(v)

The new section 28A(c) includes a power to take recordings using any means such as audio, visual or audio-visual, providing recognition of more modern means of recording information. This power, and the power at section 28A(b) to take photographs reflect the general powers of officers in section 28. They are identified in both sections, 28 and 28A, to provide certainty that they can be exercised both on and off of the land that the power is exercised in respect of.

New section 28B of the Act provides that a Weed Management Officer may require the owner or occupier or another person on the land to provide the Officer with reasonable assistance to exercise or perform the Officer's powers under section 28A. This can include operating computers or other equipment, or providing access to computers or other equipment, such as passwords for computers or keys and entry codes for equipment. These powers reflect that most computing and other equipment will be protected by passwords and ensures that Officers are provided with the assistance to investigate breaches efficiently and with least disruption to the owner or occupier. For example, an owner or occupier who provides computing passwords and prints information may be able to retain their computer; while one who does not may find it seized under section 28(1)(m).

New sections 28C and 28D of the Act have been included to provide certainty for owners or occupiers who have had an item seized under section 29(1)(m).

New section 28C requires a Weed Management Officer to give a receipt, as soon as practicable and within 5 days, for any seized item. Subsection (2) identifies the matters to be included on the receipt. Subsection (3) identifies that a receipt may be left at the place of seizure if it cannot be provided to the person from whom the item was seized. Subsection (4) ensures that the person has access to inspect the seized item. Subsection (5) requires the return of the seized item after 2 years, or within 12 months of any enforcement action (including appeals) being finalised. Subsection (6) provides that the seized item must be returned immediately if it is not required for enforcement action, unless the Officer considers on reasonable grounds that it is required to be retained to prevent an offence being committed (subsection (7)). The Officer must give a further notice to the person if proposing to keep the item under subsection (7). These are all standard requirements when regulatory officers are provided with the power to seize items.

New section 28D provides that a Court may order an item seized under section 28(1)(m) to be forfeited to the Territory if the person is convicted of an offence. It allows the Chief Executive to destroy or dispose of the forfeited item, and specifies that the power does not limit any other power of the court. These are also standard provisions when dealing with seized items.

New section 28E establishes offences for failing to comply with an order or requirement under section 28. Subsection (1) provides the offence for failing to comply with the order; while subsection (2) provides the offence for failing to comply with the requirement. These are strict liability offences attracting a penalty of 100 penalty units. Subsection (4) identifies that it is a defence to a prosecution for these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). Infringement notices may be issued for these offences.

This clause also inserts a new Part 6A, Permits to use weeds, sections 28F to 28M of the Act.

The identification of a new Part in the Act is consistent with modern drafting practices. Information regarding permits for potential and declared weeds were contained in former section 30 of the Act. The identification of a new Part enables the provisions to be redrafted with a more modern approach and to clarify a number of matters associated with permitting.

New section 28F of the Act identifies that a person may apply to the Minister for a permit to use a potential weed or declared weed. The Minister may grant or refuse to grant a permit (subsection (3)) and impose conditions on the permit (subsection 4). The application must be in the approved form

(subsection (2)), and the Minister must give the person written notice of the decision, including reasons for the decision (subsection (5)). These are standard requirements for any modern permitting scheme. The inclusion of subsection (5) provides certainty that the person will receive a statement of reasons for the decision as part of the decision making process.

New section 28G provides that the Minister may, as a condition of granting a permit to use a declared weed, require a person to lodge a bond. The power to require a bond is limited to permits for declared weeds. Declared weeds pose a higher risk to the Territory environment and economy than potential weeds and it is not considered appropriate for bonds to be required for potential weeds.

The power to require a bond for a declared weed was included in former section 30(3), however the Act contained no provisions that would allow the Minister to call on a bond, rendering the power inoperable. The requirements contained in section 28G remedy this issue. The section identifies the purpose for which a bond can be sought, the matters that the Minister must consider when determining the quantum of the bond, the form in which the bond is provided (that is, cash, bank guarantee or other form acceptable to the Minister), the amount of the bond and any requirements to recalculate the bond, and that the Minister may make a claim on the bond. These are all standard provisions for permitting schemes that allow a bond to be required as a condition of the scheme.

New section 28H establishes that it is a condition of a permit that the person:

- (a) carry the permit while transporting the potential or declared weed, and
- (b) provides a permit on request of a Weed Management Officer or Authorised Person.

These conditions complement the requirements for a person to show a permit to a Weed Management Officer under section 28.

New section 28J provides for the variation, revocation and renewal of permits at the request of the permit holder. The Minister may vary or refuse to vary a permit, revoke or refuse to revoke a permit, or renew or refuse to renew a permit (subsection (3)) and may impose conditions on the permit as part of the decision (subsection 4). For example, the Minister may refuse to revoke a permit on request if there are outstanding reporting or other conditions associated with the permit that have not been met.

The application must be in the approved form (subsection (2)), and the Minister must give the person written notice of the decision, including reasons for the decision (subsection (5)). These are standard requirements for any modern permitting scheme. The inclusion of subsection (5) provides certainty that the person will receive a statement of reasons for the decision as part of the decision making process.

New section 28K allows the Minister to revoke or vary a permit on their own initiative. Before revoking or varying a permit the Minister must give the permit holder notice and an opportunity to make representations why the revocation or variation should not occur (subsection (3)). The Minister must give the person written notice of the decision, including reasons for the decision (subsection (5)). These are standard requirements for any modern permitting scheme. The inclusion of subsection (5) provides certainty that the person will receive a statement of reasons for the decision as part of the decision making process. For certainty, subsection (4) identifies that a condition imposed as part of the variation of a permit to use a declared weed may include a change to any bond imposed under section 28G.

The Act does not include a power to suspend a permit. The suspension of any permit would require the person to destroy or otherwise dispose of the declared weed, which in practical terms would have the same effect as a revocation. It is therefore considered inappropriate to suspend a permit.



New section 28L establishes offences for contravening or failing to comply with a permit.

Subsection (1) establishes a serious offence associated with intentional behaviour for which the penalty is an environmental offence level 3; while subsection (2) establishes a strict liability offence, for which the penalty is an environmental offence level 4. The strict liability offence is also the subject of an infringement notice. Subsection (4) identifies that it is a defence to the prosecution for these offences if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse).

New section 28M establishes an offence for failing to produce permit to a Weed Management Officer or Authorised Person at their request. It is a strict liability offence attracting a penalty of 50 penalty units (for an individual). In accordance with section 29 of the *Sentencing Act 1995*, the applicable body corporate penalty is 5 times the penalty specified; in this case 250 penalty units. Subsection (3) identifies that it is a defence to the prosecution for the offence if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). An infringement notice may be issued for this offence.

#### **Clause 28. Section 29 amended (Notification of presence of plants or weeds)**

Section 29 of the Act allows the Minister to, by notice to owners and occupiers or by Gazette notice, require owners and occupiers to provide information to the Minister about the presence of a plant, declared or potential weed.

Subclause (1) amends section 29(2) to remove a requirement for the Minister to publish a notice in a newspaper, if giving notice in the Gazette. It is replaced with a requirement for the Minister to give public notice, which may be in the form determined by the Minister. This approach increases flexibility in the notification requirement while maintaining transparency. The approach recognises that there are a modern range of tools by which public notice can be given. The public notice is to be given after the Gazette notice is published to ensure that owners and occupiers are informed of the requirement to provide information.

Subclause (2) makes a minor amendment to section 29(3) to identify that the matters that can be included in a notice apply equally whether the Minister provided the notice to identified owners and occupiers or through the Gazette and public notice approach.

Subclause (3) repeals sections 29(4) and (5). The former sections 29(4) and (5) established an offence and penalty for failing to comply with the obligation contained in the notice. These sections have been replaced by the offences at new section 29A of the Act.

#### **Clause 29. Section 29A inserted**

This clause inserts new section 29A of the Act.

New section 29A establishes an offence for failing to comply with the requirements of a notice given to an owner or occupier or published in accordance with sections 29(1) and (2) respectively.

It is a strict liability offence that attracts an environmental offence level 4 penalty. Subsection (3) identifies that it is a defence to the prosecution for the offence if the person has a reasonable excuse (the person has the evidentiary burden to establish the excuse). An infringement notice may be issued for this offence.

#### **Clause 30. Sections 30, 31 and 32 repealed**

This clause repeals sections 30, 31 and 32 of the Act. These sections are no longer required because the matters they addressed have been incorporated into new sections of the Act.

Former section established a power to issue a permit to use a declared or potential weed, which is addressed in the new Part 6A.

Former section 31 established an offence associated with cutting or mowing an area for the purpose of producing fodder or mulch. This has been replaced with the offence at section 9J which more appropriately targets the supply of products, which could include fodder or mulch, containing weeds than the action of cutting or mowing which is a necessary component of weed control.

Former section 32 established offences associated with moving animals and vehicles on roads. This has been replaced with the complementary offences at section 9H.

### **Clause 31. Sections 39A, 39B and 39C inserted**

This clause inserts new sections 39A to 39C of the Act.

New section 39A of the Act specifies the timeframe in which a prosecution for an alleged offence against the Act must be commenced. It provides a timeframe of 2 years which is required to enable appropriate investigations into alleged offences associated with the live plants. It replaces the existing default period of 6 months provided by section 52 of the *Local Court (Criminal Proceedings) Act 1928* which has been demonstrated to be insufficient to enable appropriate investigations.

New section 39B allows for certain statements of facts to be made and taken as evidence of certain physical elements of an offence (previously these were known as averments). These statements are limited to factual matters about plants being weeds, or potential weeds, or another plant.

New section 39C is a technical clause that identifies that a certificate purporting to be signed by an officer or authorised person making the declaration under section 39B is evidence of the matter specified in the certificate.

### **Clause 32. Section 40 amended (Regulations)**

This clause amends the Regulation making power at section 40 of the Act.

Section 40(2)(a) of the Act is amended to include the 'Minister', in recognition of the Minister's new power to issue a weed control notice under new section 15B of the Act and makes additional minor changes consistent with modern drafting practices.

Section 40(2)(e) and (f) are repealed and replaced consistent with modern drafting practices for matters associated with the provision of infringement notice schemes and penalties under the Regulations.

A new section 40(2)(g) is included to provide the Administrator with appropriate powers to make regulations regarding permitting requirements, including matters associated with making claims on bonds. These changes are provided to ensure that the Act contains sufficient powers to enable the Minister to require, and subsequently call-on, a bond as a condition of granted a permit to use a declared weed.

### **Clause 33. Part 7 inserted**

This clause inserts a new Part 7, Transitional provisions, including sections 43 to 47 of the Act. The new part provides for transitional arrangements required as a consequence of amending the Act.

New section 43 of the Act is a formal clause identifying that for the purpose of the transitional provisions, the commencement day is when Part 2 of the Amendment Bill (the amendments to the Act) come into effect.

New section 44 saves existing declarations of declared and potential weeds. This ensures that these declarations remain valid even with the changes to the Act.

New section 45 saves existing remedial weed management plans. This ensures that these plans remain valid and enforceable even with the changes to the Act.

New section 46 saves any existing orders made by a Weed Management Officer requiring an owner or occupier of land to treat the land to control or eradicate declared or potential weeds on the land. This ensures that these orders remain enforceable with the changes to the Act. It will ensure the continuity of weed management activities by those land owners and occupiers.

New section 47 is a technical clause that ensures that any offences that are committed before the amendments take effect can be prosecuted as an offence under the Act in accordance with the requirements of the law at the time the alleged offence was committed.

### **Clause 35. Act further amended**

This is a formal clause that identifies that the Schedule contains further amendments to the Act. The amendments are of a minor nature that do not need to be included in a substantive provision in the Amendment Bill.

## **Part 3 Amendment of Weeds Management Regulations 2006**

### **Clause 36. Regulations amended**

This is a formal clause which provides that amendments are made to the *Weeds Management Regulations 2006*.

### **Clause 37. Schedule amended**

This clause amends the Schedule to the *Weeds Management Regulations 2006*. The schedule identifies those offences for which a penalty infringement notice can be issued, and the penalty to be applied.

The amendments repeal all of the existing referenced offences and replaces them with appropriate offences under the reformed Act. The amendments amend associated penalties to reflect the level of risk associated with the offence and for consistency with other similar NT laws.

## **Part 4 Repeal of Act**

### **Clause 38. Repeal of Act**

This is a formal clause which provides that the Act is repealed on the day after it commences. As this is an amending Bill, once the proposed amendments to the *Weeds Management Act 2001* and *Weeds Management Regulations 2006* have been made by this Bill it no longer has any relevance and can be repealed.

**Schedule 1 Weeds Management Act 2001 further amended**

With reference to section 34 of the Bill, this Schedule sets out a further minor amendments to be made to the Act. These amendments are primarily to update language in the Bill to a more modern approach.