New Zealand.

ANALYSIS.

1928, No. 10.

AN ACT to consolidate certain Enactments of the General Assembly relating to Noxious Weeds and the Trimming of Hedges. Title.

[*13th September, 1928.*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Noxious Weeds Act, 1928, and it shall come into force on the first day of January, nineteen hundred and twenty-nine. Short Title and commencement.

2. In this Act, if not inconsistent with the context,— Interpretation. 1908, No. 133, s. 2 1927, No. 56, s. 3

"Clear" means cutting down or grubbing or pulling up the stem or root of any noxious weed:

"Inspector" means any Inspector appointed under this Act:

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"Local authority" means a City or Borough Council, a Town Board, and a Road Board within their respective limits, a County Council within the limits of all parts of the county not comprised in a town district or a road district, and the Minister within the limits of any county where the Counties Act, 1920, is suspended, or has never been in operation (such last-mentioned limits being, however, exclusive of town districts or road districts); and each such local authority shall, for the purposes of this Act, have jurisdiction within the aforesaid limits accordingly:

"Minister" means the Minister of Agriculture:

"Noxious weeds" means the plants mentioned in the First Schedule hereto, and includes (but subject in every case to the provisions of section four hereof) the plants mentioned or included in the Second Schedule hereto:

"Noxious seeds" means the seeds or spores of the plants mentioned or included in the Third Schedule hereto:

"Occupier" means every person in occupation of land, and includes the owner of the land and any other person in receipt of the rents and profits thereof; it includes also any agent or trustee of an occupier.

Owner of road-frontage to clear half width of road.
1908, No. 133, s. 3

3. Where land abuts on a road or is intersected by a road, the boundaries of the land on each side of the road shall, for the purposes of this Act relating to the clearing of noxious weeds, be deemed to extend to the centre of the road, and the occupier of the land shall accordingly be deemed to be the occupier of so much of the road as is within such extended boundaries.

Plants in Second Schedule to be noxious weeds only in districts of such local authorities as so declare.
Ibid., s. 4

4. A local authority may at any time declare that all or any one or more of the plants mentioned in the Second Schedule hereto are noxious weeds within its jurisdiction, whereupon all the plants to which the declaration relates shall be deemed to be noxious weeds within the jurisdiction of such local authority accordingly.

Procedure thereon.
Ibid., s. 5
1910, No. 34, s. 2

5. For the purposes of such declaration the following provisions shall apply:—

(*a*) With respect to such portions of New Zealand as are within the jurisdiction of the Minister as the local authority thereof, such declaration shall be by notice by the Minister in the *Gazette*, and shall, according to the tenor of the notice, extend to all such portions of New Zealand or to any such one or more of them as are specified in the notice.

(*b*) The Minister may gazette such notice from time to time with respect to different portions of New Zealand within his jurisdiction.

(*c*) With respect to such portions of New Zealand as are within the jurisdiction of any local authority other than the Minister, such declaration shall be by special order, and shall in every case extend to all portions of New Zealand within the jurisdiction of the local authority making the special order. A copy of every such special order shall be forwarded to the Minister by the local authority making the same within one month after the making thereof, and the Minister shall thereupon cause the same to be gazetted.

"Occupier."

1. "Owner" does not include a lessee who has not gone into occuptn: BAILEY v. DEENE: 7 G.L.R. 73.

6. (1) A local authority may at any time in manner hereinafter provided declare that any of the plants mentioned in the First Schedule hereto, except blackberry and sweetbrier, shall be deemed not to be noxious weeds within the district of that local authority or within any specified portion of that district, and every such declaration shall have effect according to its tenor.

Local authority may declare certain plants not to be noxious weeds in its district.
1923, No. 31, s. 3

(2) Any declaration under this section and any declaration under section four hereof, whether made before or after the passing of this Act, may at any time be in like manner amended or revoked.

(3) Section five hereof shall apply to declarations under this section in the same manner as it applies to declarations under section four hereof.

7. The Governor-General may from time to time, by Order in Council gazetted,—

Governor-General may extend Second and Third Schedules.
1908, No. 133, s. 6

(*a*) Extend the Second Schedule hereto by including therein any plants other than those mentioned therein; and

(*b*) Extend the Third Schedule hereto by including therein any other plants than those mentioned therein, on the recommendation of the Parliamentary Committee known as the Joint Agricultural, Pastoral, and Stock Committee.

8. The planting of hawthorn is hereby prohibited, and every person commits an offence against this Act who propagates hawthorn in any manner, or who does any act with intent to propagate hawthorn, or who sells any seeds, plants, or cuttings of hawthorn.

Offence to plant hawthorn.
1921, No. 4, s. 4

9. (1) Every person commits an offence who knowingly sows, sells, or offers for sale—

No person to sow or sell noxious seeds or undressed seeds or grain.
1908, No. 133, s. 7

(*a*) Any noxious seeds, except in the case of gorse-seed to be sown for forage or fodder by permission in writing of the local authority, or for the planting of hedges or live fences; or

(*b*) Any grass-seed, or other seed or grain, which has not been thoroughly dressed by means of a seed-cleaning machine or other sufficient process for the purpose of removing all noxious seeds:

Provided that in any legal proceedings under paragraph (*b*) of this section for knowingly selling or offering for sale it shall be a sufficient defence if the defendant satisfies the Court that the person to whom he sold the seed or grain, or offered the same for sale, knew the same had not been dressed.

(2) In all legal proceedings taken against any person for any breach of this section knowledge on his part shall be presumed until the contrary is proved.

Burden of proof.

10. (1) Every person owning or being in charge of any machine (being a threshing-machine, clover-dresser, or chaff-cutter) which is used on more farms than one commits an offence if he fails to thoroughly clean out such machine immediately after using at each farm, and before removing such machine or any part thereof to another farm.

Threshing-machines, &c., to be thoroughly cleansed.
Ibid., s. 8

(2) It shall be sufficient compliance with the provisions of this section if the machine is thoroughly swept down, the second-dressing riddles removed and cleaned, the screen opened, the slide below the grain-elevator taken out and the grain and rubbish removed, and the machine run until empty.

Occupier required to trim hedges and to keep land cleared of noxious weeds.

1923, No. 31, s. 4
1927, No. 56, s. 4

11. (1) Every occupier of land on which there are hedges or live fences consisting of barberry, sweetbrier, gorse, broom, or hakea (whether the same are noxious weeds or not) shall in every year cut or trim such hedges or fences in a workmanlike manner:

Provided that where such cutting or trimming would destroy the effectiveness of any hedge or live fence for shelter purposes the Inspector may, by writing under his hand, suspend the operation of this subsection with respect to such hedge or live fence for such period as he thinks fit.

(2) Every occupier of land on which blackberry or sweetbrier is growing, otherwise than in small patches, shall clear so much thereof as is required by an Inspector by notice in writing under his hand within the time specified in that notice. Every occupier of land on which barberry, gorse, broom, or hakea are growing, otherwise than in small patches or as part of a hedge or live fence, shall, in districts in which such plants are noxious weeds, clear so much thereof as is required by an Inspector by notice in writing under his hand within the time specified in that notice.

(3) Every occupier who has received a notice under the last preceding subsection may, within fourteen days of the receipt thereof, appeal to the Minister, or such person as the Minister by notice in the *Gazette* appoints in that behalf, on the ground that the requirements of the Inspector are unreasonable.

(4) The Minister, or the person so appointed by the Minister, shall after inquiry either dismiss the appeal or reduce the requirements of the Inspector, who shall in the latter event thereupon serve upon the occupier an amended notice in writing setting forth his requirements as so reduced. The decision of the Minister or person appointed by him, as the case may be, shall be final.

(5) Subject to the foregoing provisions of this section, every occupier of land shall do all things necessary to clear his land within the time specified by an Inspector by notice in writing under his hand or by public notification in one or more newspapers circulating in the district in which the occupier's land is situated.

Special measures for control of noxious weeds may be agreed on.

1923, No. 31, s. 5

12. In any case where an occupier of land takes such measures for controlling the spread of noxious weeds as may be agreed upon between the occupier and an Inspector, the Inspector may, by notice in writing under his hand, suspend or modify to the extent set forth in such notice the operation of the provisions of the last preceding section with respect to such land. Any such notice may be at any time in like manner revoked.

Inspector may enter upon land to ascertain if weeds exist.

1908, No. 133, s. 10
1910, No. 34, s. 4

13. (1) An Inspector may at all reasonable times enter upon any land, whether enclosed or not, for the purpose of ascertaining if the requirements of section eleven hereof have been duly complied with by the occupier.

Notice to be served on occupier of infected land.

(2) In any case where default is made by the occupier in complying with any of the requirements of that section the Inspector may, by notice to the occupier in the form in the Fourth Schedule hereto, or to the like effect, specify the requirements as to which default has been made, and request him to comply with them by doing the necessary work within the period specified in the notice; and it shall be the duty of the occupier so to do.

Sec. 11.

1. As to technical points regardg service of notice and layg of informtn: GOODWIN v. ROSS: 24 N.Z.L.R. 961: 7 G.L.R. 545.

2. Covt to comply with this Sec. must be construed reasnbly and with regard to circs—Strict and literal compliance not always possible: LOMAX v. RUTHERFORD: 15 G.L.R. 370.

3. Pson not complyg with this Sec. may be prosecuted fthwth—Notice under Sec. 13 not a condon pcdent: WYBORN v. WATERS: 34 N.Z.L.R. 529: 17 G.L.R. 462.

See also: MELROSE v. SNODGRASS: 1917 G.L.R. 314.

(3) If the occupier fails or neglects to duly comply with such notice he commits an offence against this Act, and the Inspector may enter upon the said land and do the work at the expense in all things of the occupier; but nothing herein shall relieve the occupier from any fine he may have incurred by reason of his default, failure, or neglect.

Inspector may do work at occupier's expense, and recover cost.

(4) The amount of all such expenses shall be recoverable by the Inspector, or such other person as the Minister authorizes in that behalf, from the occupier, with costs, by action in any Court of competent jurisdiction.

14. A person convicted under section eleven hereof for failing to clear any noxious weeds within the time limited by notice or public notification shall not thereby be relieved from the necessity of clearing such weeds, but shall do so within two months after the date of such conviction. If he fails to comply with this requirement he shall be deemed to have committed a further offence, and shall be liable on conviction to a further fine of not less than five pounds and not more than fifty pounds.

Penalty for continued default.
1927, No. 56, s. 5

15. Subject to the provisions of his lease, the reasonable expenses incurred by an occupier under either section eleven or section thirteen hereof, including reasonable compensation for his own labour or superintendence, may be recovered by him as a debt from the owner to the extent following, that is to say:—

Proportion of cost of clearing to be borne by owner.
1908, No. 133, s. 11

(*a*) One-fourth of the total amount of such expenses where the unexpired term of the lease is not less than four years at the date when the expenses are incurred; or

(*b*) Where such unexpired term is then less than four years, such proportion of the aforesaid total amount as, in the absence of agreement between the parties, is fixed by a Magistrate on summons in that behalf issued and proceeded upon summarily under the Justices of the Peace Act, 1927.

16. (1) In the case of Maori land the title to which has not been individualized and partitioned, the Minister shall cause the land to be cleared as required by section eleven hereof, if the Maori occupants fail or neglect so to do to the satisfaction of the Inspector; and the cost thereby incurred by the Minister shall be paid by the Native Minister out of any moneys available for Native purposes.

As to Maori lands not individualized.
Ibid., s. 12

(2) In every case where the number of Maori owners of any block of Maori land exceeds ten the following special provisions shall apply:—

(*a*) The Minister may, by notice published in the *Gazette* and *Kahiti*, require the Maori owners to appoint a committee of not less than three nor more than seven persons.

(*b*) In addition to publishing such notice as aforesaid the Minister shall also cause a copy of the published notice to be served on one or more of the Maori owners.

(*c*) The committee may be appointed in such manner as the Minister directs.

(*d*) If within one month after the publication of such notice the Maori owners have not duly appointed a committee the Minister shall appoint one in such manner as he thinks fit.

(*e*) The publication by the Minister of the names of the members of the committee in the *Gazette* and *Kahiti* shall be conclusive evidence of their due appointment.

(*f*) Subject to the provisions of the next succeeding paragraph, it shall be the duty of the committee to clear the block, or cause the same to be cleared, as required by section eleven hereof; and if the committee fails or neglects so to do, then the Minister shall cause the block to be cleared in the same manner and with the same consequences as if such failure or neglect had been by the Maori occupants.

(*g*) In any case where the Minister is of opinion that the work of clearing the land cannot advantageously be undertaken by the Maori occupants, the committee, or himself, then the Governor-General in Council may authorize the land or any part thereof to be leased for such term, at such rental, and on such conditions as to clearing and otherwise (including a condition that the work of clearing may be accepted in or towards satisfaction of rent) as the Governor-General in Council thinks fit.

(*h*) The lease shall be in such form and shall be executed by such person or lessor on behalf of the Maori owners as the Governor-General in Council directs, and every such lease shall according to its tenor be deemed to be a valid and effectual lease of the land comprised therein, any restriction or provision in any Act to the contrary notwithstanding.

Cost of clearing a charge against Maori land.
1908, No. 133, s. 13

17. (1) The Native Minister may register in the Native Land Court a memorandum under his hand, in the form in the Fifth Schedule hereto, setting forth the amount paid by him under the last preceding section.

(2) Such memorandum shall operate as a charge against the said land, and thereafter no alienation thereof, whether by way of sale, lease, mortgage, or otherwise, shall have any validity unless and until such charge is satisfied.

Certain parts of section 16 may be extended to all Maori lands.
Ibid., s. 14

18. At the request of the Maori owners the Governor-General in Council may extend the provisions of paragraphs (*g*) and (*h*) of subsection two of section sixteen hereof to any Maori land, whatever its tenure or title or the number of its Maori owners.

Clearing of public reserves and Crown lands.
Ibid., s. 15

19. All lands being public reserves not vested in any trustees or local authority, and all unoccupied Crown lands, shall from time to time be cleared as required by section eleven hereof by the Minister or under his authority.

Local authority to clear lands under its control.
Ibid., s. 16

20. Every local authority other than the Minister shall, out of its general revenues, from time to time clear, as required by section eleven hereof, all lands under its control, and if it fails or neglects so to do the Minister may cause the same to be done at its expense.

Hindering or obstructing an Inspector.
Ibid., s. 17

21. (1) Every person commits an offence who obstructs or hinders any Inspector, or any person duly employed or authorized, in the exercise of any power or function conferred on him by or under this Act.

(2) No proceedings for the recovery of any fine in respect of any such offence shall be a bar to an action at law by any such Inspector or person in respect of any such act as aforesaid, but every such action may be commenced and proceeded with as if no such proceedings had been taken under this Act.

22. Every person who commits an offence against any of the provisions of this Act or of the regulations thereunder is liable to a fine not exceeding twenty pounds and not less than ten shillings.

Fine for offences. 1908, No 133, s. 18

23. Proceedings for the recovery of any fine under this Act shall be commenced only on the information or complaint of an Inspector, or of such other person as the Minister authorizes in that behalf, and all such proceedings shall be heard and determined before a Magistrate alone.

Inspector to commence proceedings. Ibid., s. 19

24. All fines recovered under this Act in respect of any offence shall be paid into the Public Account and form part of the Consolidated Fund.

Fines to be paid into Public Account. Ibid., s. 20

25. All sums expended by the Minister or under his direction in the administration of this Act shall be payable out of moneys appropriated by Parliament.

Expenses of Act. Ibid., s. 21

26. Any notice under this Act may be served either by delivering the same personally to the person upon whom the same is to be served, or by leaving the same or by posting the same addressed to him at his usual or last known place of abode in New Zealand, or by affixing the same in some conspicuous place on the land to which the notice relates.

Manner in which notices may be served. Ibid., s. 22

27. There may from time to time be appointed such Inspectors under this Act as are deemed necessary, and their powers and functions may be defined.

Inspectors. Ibid., s. 23 1912, No. 23, s. 60 (3)

28. (1) A Borough Council or a Town Board may from time to time appoint an Inspector or Inspectors under this Act.

Borough Councils and Town Boards may appoint Inspectors for their own districts. 1927, No. 56, s. 2

(2) An Inspector so appointed shall within the limits of the district of the Council or Board appointing him have all the powers of an Inspector appointed under the last preceding section:

Provided that no such Inspector shall have power to enforce within his district the provisions of sections nine and ten hereof.

(3) For the purposes of the enforcement of section eleven hereof, within the district of a local authority which has appointed an Inspector as aforesaid, the provisions of subsections three and four of the said section eleven shall be read as if the references to the Minister were references to the Borough Council or the Town Board, as the case may be, and as if the reference to the *Gazette* in subsection three were a reference to a newspaper circulating in the district.

(4) All sums expended by any Borough Council or any Town Board in enforcing the provisions of this Act within its district shall be paid out of its District Fund, and, notwithstanding the provisions of section twenty-four hereof, all fines recovered under this Act on information laid by an Inspector appointed by any Borough Council or Town Board shall be paid into its District Fund.

(5) Nothing in this section shall abridge or affect the powers of an Inspector appointed under the last preceding section, but no such Inspector shall exercise any powers or functions within any borough or town district except by direction of the Minister, and after written notice has been given to the Borough Council or Town Board, as the case may be.

(6) Every appointment of an Inspector for any borough or town district heretofore made under the Noxious Weeds Act, 1908, at the request of the Borough Council or Town Board and still in force shall

enure for the purposes of this section as if it had been made hereunder by the Borough Council or Town Board, as the case may be, and shall where necessary be deemed to have been so made.

Regulations.
1908, No. 133, s. 23

29. The Governor-General may from time to time make such regulations as he deems necessary in order to give full effect to the provisions of this Act.

Repeals.

30. The enactments mentioned in the Sixth Schedule hereto are hereby repealed, and with respect to those enactments the following provisions shall apply :—

Savings.
Ibid., s. 1 (2)

(*a*) All Orders in Council, regulations, appointments, orders, special orders, notices, instruments, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(*b*) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

Schedules.

SCHEDULES.

Sections 2, 6.
1908, No. 133, Second Schedule
1910, No. 34, s. 5 (1)

FIRST SCHEDULE.

NOXIOUS WEEDS.

Blackberry.
Californian or Canadian thistle (*Cnicus arvensis*).
Ragwort, or ragweed (*Senecio jacobaea*).
Sweetbrier (*Rosa rubiginosa*).

Sections 2, 4, 7.
1908, No. 133, Third Schedule
1910, No. 34, s. 5 (2)
Gazette—
1908, p. 2408
1910, p. 1745
1914, p. 2857
1915, p. 2279
1918, p. 1239
1919, p. 3584
1920, p. 557
1921, p. 1542
1922, pp. 766, 975, 1743
1924, p. 2599
1925, p. 2649

SECOND SCHEDULE.

NOXIOUS WEEDS WHEN SO DECLARED BY LOCAL AUTHORITY.

African boxthorn (*Lycium horridum*).
Barberry (*Berberis vulgaris*).
Bathurst burr (*Xanthium spinosum*).
Broom (*Cytisus scoparius*).
Burdock (*Arctium*, any species).
Capeweed or Cape daisy (*Cryptostemma calendulaceum*).
Cape honey-flower (*Melianthus major*).
Cut-leaved psoralea (*Psoralea pinnata*).
Dock (*Rumex*, any species).
Elderberry (*Sambucus nigra*).
Fennel (*Foeniculum vulgare*).
Foxglove (*Digitalis purpurea*).
Goat's rue (*Galega officinalis*.

Gorse (*Ulex europaeus*).
Hakea (*Hakea acicularis*).
Hemlock (*Conium maculatum*).
Japanese wineberry (*Rubus phoenicolasius*).
Kangaroo acacia (*Acacia armata*).
Lantana (*Lantana camara*).
Lupin (*Lupinus arboreus*).
Ox-eye daisy (*Chrysanthemum leucanthemum*).
Paterson's curse (*Echium plantagineum*).
Pennycress or Canadian stinkweed (*Thlaspi arvense*).
Pennyroyal (*Mentha pulegium*).
Periwinkle (*Vinca major*).
Prickly pear (*Opuntia*, any species).
St. John's wort (*Hypericum perforatum* or *H. humifusum*).
Spiderwort (*Leycesteria formosa*).
Tauhinu, or New Zealand cotton-wood (*Cassinia leptophylla*).
Thistles: Any species of *Carlina* (stemless thistle), *Carduus* (common plume or Scotch thistle), *Cnicus* (woolly-headed thistle), *Centaurea* (star thistle), *Silybum* (milk thistle).
Toad flax (*Linaria vulgaris*).
Tutsan (*Hypericum androsaemum*).
Viper's bugloss (*Echium vulgare*).
Wild turnip (*Brassica campestris*).
Winged thistle (*Carduus pycnocephalus*).
Woolly nightshade (*Solanum auriculatum*).
Gaz. 1930 p. 1838.
Stinking Mayweed (*Anthemis Cotula*)
Convolvulus (*Convolvulus Arvensis* and *Convolvulus sepium*).

THIRD SCHEDULE.

Sections 2, 7.
1908, No. 133, Fourth Schedule
1910, No. 34, s. 5 (3)

Noxious Seeds.

Bathurst burr (*Xanthium spinosum*).
Blackberry.
Broom (*Cytisus scoparius*).
Burdock (*Arctium*, any species).
Burr clovers (*Medicago hispida* and *M. arabica*).
Clover dodder (*Cuscuta trifolii*).
Dock (*Rumex*, any species).
Fat-hen, or white goosefoot (*Chenopodium album*).
Fennel (*Foeniculum vulgare*).
Gorse (*Ulex europaeus*).
Hemlock (*Conium maculatum*).
Ox-eye daisy (*Chrysanthemum leucanthemum*).
Pennyroyal (*Mentha pulegium*).
Ragwort, or ragweed (*Senecio jacobaea*).
St. John's wort (*Hypericum perforatum* or *H. humifusum*).
Sweetbrier (*Rosa rubiginosa*).
Thistles: Any species of *Carlina* (stemless thistle), *Carduus* (common plume or Scotch thistle), *Cnicus* (Californian thistle and woolly-headed thistle), *Centaurea* (star thistle), *Silybum* (milk thistle).
Tutsan (*Hypericum androsaemum*).
Wild turnip (*Brassica campestris*).

Section 13.
1908, No. 133, Fifth Schedule
1910, No. 34, s. 6

FOURTH SCHEDULE.

NOTICE TO OCCUPIER TO CLEAR LANDS OF NOXIOUS WEEDS.

The Noxious Weeds Act, 1928.

To A. B. [*Address and occupation*].

TAKE notice that in respect of the land occupied by you, and hereunder described, default has been made in duly complying with the requirements of the said Act as mentioned below; and I hereby call upon you to commence the necessary work within days from the date of this notice, and thereafter to continue the same until the said requirements are effectively complied with, being not later than the day of , 19 .

Land.	Description of Weeds to be cleared, or of Cutting or Trimming or other Work to be done.

Dated this day of , 19

C. D.,
Inspector.

Section 17.
1908, No. 133, Sixth Schedule.

FIFTH SCHEDULE.

MEMORANDUM OF CHARGE AGAINST MAORI LAND.

The Noxious Weeds Act, 1928.

THE undermentioned Maori land stands charged with £ , being the amount paid by the Native Minister on the day of , 19 , in respect of the cost of clearing noxious weeds on the said land under the provisions of section 16 of the above-mentioned Act.

[*Describe land.*]

Dated this day of , 19 .

E. F.,
Native Minister

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

1908, No. 133.—The Noxious Weeds Act, 1908.
1910, No. 34.—The Noxious Weeds Amendment Act, 1910.
1921, No. 4.—The Noxious Weeds Amendment Act, 1921.
1923, No. 31.—The Noxious Weeds Amendment Act, 1923.
1927, No. 56.—The Noxious Weeds Amendment Act, 1927.