



Ministry of Agriculture and Fisheries delays finding options to resolve infestation incurring loss to landowner

Legislation	Ombudsmen Act 1975, Noxious Plants Act 1978
Agency	Ministry of Agriculture and Fisheries
Ombudsman	Sir Brian Elwood
Case number(s)	W30624
Date	1994

Imposition of quarantine restrictions on land due to noxious plant infestation—no entitlement to compensation for loss of production—unreasonable delay in implementing effective remedy

Noxious plants had been found infesting a farmer's property. The Ministry of Agriculture and Fisheries (MAF) imposed quarantine restrictions. The farmer complained about the rigour of these and that there was no provision for management of the particular kind of infestation. He further complained that procedures for dealing with the infestation were ineffective and inadequate and were causing delays in the return of the quarantined land into production.

It was established that the applicable Management Plan was prepared in accordance with section 18 of the *Noxious Plants Act 1978* which made no provision for compensation for loss of production. The Ministry did not have the statutory discretion to provide compensation nor had compensation payments ever been made for loss of production due to quarantine restrictions being imposed. Accordingly, the first ground of complaint was not sustainable.

It was established that the 1985 Management Plan clearly did not envisage a situation where part of a landholder's productive land was subject to quarantine. While the time frame for eradication stipulated in the Management Plan might be acceptable where small areas of land are quarantined, in this particular case the landowner's livelihood was put at risk because of the rigorous quarantine requirements.

The Ombudsman formed the view that MAF had a responsibility to explore all available options for eradication of the noxious plants and to consider the use of the best available method to minimise the inevitable losses incurred by the landowner, rather than continue to rely upon an

existing management plan. By the time the investigation was concluded, an effective remedy had been applied to enable the land to be returned to production. MAF conceded that the treatment had been considered at an earlier date but had not been undertaken because of the high cost involved. If this course of action had been followed at an earlier date the land could have been returned to full production sooner. The complaint against MAF was sustainable on the basis that an effective remedy had been available and its use should have been given full consideration, even on a cost sharing basis with the complainant. It was recommended to MAF that the circumstances of this case be drawn to the attention of the Minister of Agriculture in the hope that a strategy could be formulated to minimise in the future the kind of difficulties faced by the farmer in this case.

Comment

The *Noxious Plants Act* has since been repealed by the *Biosecurity Act 1993* and issues of funding and compensation are two matters which are required to be considered in the preparation of proposals for pest management strategies.

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