



New South Wales

Visy Mill Facilitation Act 1997 No 139

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New South Wales

Visy Mill Facilitation Act 1997 No 139

Act No 139, 1997

An Act to facilitate the establishment and operation of a kraft pulp and paper mill in southern New South Wales by Visy Industries Holdings Pty Limited.
[Assented to 17 December 1997]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Visy Mill Facilitation Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Agreement means the timber supply agreement or proposed timber supply agreement between the Commission and the Company relating to the supply of timber to the Company in connection with a kraft pulp and paper mill at or near Tumut, and includes any agreement amending or replacing that agreement.

Commission means the Forestry Commission of New South Wales, which trades as State Forests.

Company means Visy Industries Holdings Pty Limited (ACN 005 787 968), and includes any successors to or assignees of that company.

designated activities means any activities or proposed activities to which the Agreement relates or that are declared to be designated activities in an order under subsection (2).

external event means an event, act, omission or state of affairs that occurs outside the control of the Commission, and includes any decision, direction or other act of the State or of an agency of the State (other than the Commission), and also includes the enactment of an Act or the making of a statutory rule under an Act.

State includes the Crown in right of New South Wales and the Government of New South Wales.

- (2) The Minister may, by order published in the Gazette, declare any activities (or proposed activities) connected with the Agreement, or with the kraft pulp and paper mill (or the proposed kraft pulp and paper mill) to which the Agreement relates, to be designated activities for the purposes of this Act.

4 Purpose of Act

- (1) The principal purpose of this Act is facilitate the establishment and operation of a kraft pulp and paper mill in southern New South Wales by the Company.
- (2) It is the intention of Parliament that the State and its agencies will act to promote the principal purpose of this Act, and in particular will use their best endeavours:
- (a) to assist the Company and any other persons to obtain any approvals that are necessary for or relevant to any of the designated activities, and
- (b) to ensure that, within the applicable legislative structures, any such approvals will be granted.
- (3) In this section:

approval means a consent, licence, permit, permission or any form of authorisation.

grant an approval includes give or issue an approval.

5 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 2 The Agreement

6 Term of timber licences

- (1) The Agreement may be entered into by the Commission despite anything in section 27A (2) of the *Forestry Act 1916*.
- (2) The Agreement may provide that section 27A (2) of the *Forestry Act 1916* does not apply to any timber licences issued or to be issued to the Company. Such a provision has effect according to its tenor.

7 Amendment of Agreement

- (1) The Agreement may be amended only by agreement between the Commission, with the approval of the Minister, and the Company.
- (2) If the Commission is dissolved, or functions of the Commission are transferred or devolve as referred to in section 11, the reference in subsection (1) of this section to the Commission is to be read as a reference to:
 - (a) an agency of the State specified by the Minister by order published in the Gazette, or
 - (b) (with the consent of the Company) another body or person so specified.

8 Certain events not to cause or permit termination of Agreement

- (1) The Agreement may contain provisions to the effect that it is neither terminated by, nor terminable by reference to, external events specified or described in the Agreement. Such a provision has effect according to its tenor.
- (2) The Agreement may (but need not) limit the operation of such a provision.

Part 3 Guarantees and undertakings

9 Guarantees

- (1) The State may guarantee the due performance by the Commission of any obligations or liabilities incurred by the Commission under the Agreement.
- (2) The form of such a guarantee (including its terms and conditions) is to be as determined by the Treasurer.
- (3) The State may, in relation to any matters arising under or in connection with the Agreement, agree to make a payment to the Company pursuant to such a guarantee even though the Commission may be precluded by the law of New South Wales from making such a payment.
- (4) The Treasurer may act on behalf of the State for the purposes of giving a guarantee under this section or entering into an agreement under this section. The Treasurer (or a person appointed by the Treasurer) may execute any relevant document relating to the guarantee or agreement.

10 Undertakings

- (1) The State may undertake to reimburse the Commission, in circumstances specified or described in the undertaking, for present or future liabilities incurred by the Commission to the Company under the Agreement and arising from external events. Such a liability may relate to increases in costs or to any other matters.
- (2) The form of such an undertaking (including its terms and conditions) is to be as determined by the Treasurer.
- (3) The State may enter into agreements in connection with such an undertaking, and may, in relation to any matters arising under or in connection with the Agreement, agree to make a payment pursuant to such an undertaking even though the Commission has acted in accordance with law or has been constrained or otherwise affected by the operation of law.

- (4) The Treasurer may act on behalf of the State for the purposes of giving an undertaking under this section or entering into an agreement under this section. The Treasurer (or a person appointed by the Treasurer) may execute any relevant document relating to the undertaking or agreement.
- (5) Nothing in this section prevents the State from giving undertakings, or entering into agreements, in relation to other matters.

Part 4 Miscellaneous

11 Provisions applying if Commission is dissolved or its functions are transferred

- (1) If the Commission is dissolved, the obligations and liabilities of the Commission under the Agreement, including obligations and liabilities relating to the supply of timber to the Company, become the obligations and liabilities of
 - (a) the State or an agency of the State specified by the Minister by order published in the Gazette, or
 - (b) (with the consent of the Company) another body or person so specified.
- (2) If any of the functions of the Commission affecting the obligations and liabilities of the Commission under the Agreement, including obligations and liabilities relating to the supply of timber to the Company, are transferred to or devolve on another body or person, those obligations and liabilities become the obligations and liabilities of
 - (a) the State or an agency of the State specified by the Minister by order published in the Gazette, or
 - (b) (with the consent of the Company) another body or person so specified.

12 Legal rights not affected

Nothing in section 4:

- (a) gives rise to any right or obligation enforceable in a court of law or administrative review body, or
- (b) can be taken into account in any civil proceedings (including, without limitation, administrative review proceedings).

13 Consent authority

- (1) Despite anything in the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument under that Act, the Minister is the consent authority for development (as defined in that Act) connected with any of the designated activities.
- (2) Subsection (1) ceases to have effect on a day to be appointed by the Minister by order published in the Gazette.

14 Application of amending Act

- (1) In this section:

amending Act means the Act, if enacted, resulting from the *Environmental Planning and Assessment Amendment Bill 1997* introduced into the Legislative Assembly on 15 October 1997, and includes any amendments made to that Bill before enactment, and also includes any amendments made to that Act after enactment.

- (2) The regulations may declare that any specified uncommenced provisions of the amending Act apply to and in respect of any of the designated activities.
- (3) The provisions apply accordingly, and so apply with any necessary adaptations and with any adaptations specified in the regulations.
- (4) Subsections (1)–(3) cease to have effect on a day to be appointed by the Minister by order published in the Gazette.

15 Timber plantations

- (1) The *Timber Plantations (Harvest Guarantee) Act 1995* has effect as if that Act were modified as set out in Schedule 1, but only in relation to proposed timber plantations that the Minister, by order published in the Gazette, declares to be timber plantations that are relevant to any of the designated activities.
- (2) Subsection (1) ceases to have effect on a day to be appointed by the Minister by order published in the Gazette.

16 Regulations

- (1) The Governor may make regulations for the purposes of section 14 and regulations that contain provisions of a savings or transitional nature consequent on the making of an order under this Act.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

17 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Modification of Timber Plantations (Harvest Guarantee) Act 1995

(Section 15)

[1] Section 3 Object of Act

Insert “and proposed timber plantations” after “plantations” in section 3 (2) (a).

[2] Section 5, definitions of “accredited timber plantation”, “manager” and “owner” and sections 12 (2) (b) and (c), 13, 14 (1), 15 (1) and (2), 16 (2), 17 and 18 (1)

Insert “or proposed timber plantation” after “plantation” wherever occurring (except where firstly occurring in the definition of *accredited timber plantation* in section 5).

[3] Section 12 Application for accreditation of timber plantation or proposed timber plantation

Omit section 12 (1). Insert instead:

- (1) The owner or manager of a timber plantation, or of any area or areas of land on which it is proposed to establish a timber plantation, may apply to the Director-General for the accreditation of the timber plantation or proposed timber plantation under this Part, whether or not the timber plantation has been established at the time of application.

[4] Section 12 (2) (d)

Insert after section 12 (2) (c):

, and

- (d) in the case of an application for the accreditation of a timber plantation that has not been established, be accompanied by proof of any consent granted under the EPA Act, any law dealing with native vegetation management and control, or any other relevant law, in relation to the establishment of the timber plantation.

[5] Section 13 Determination of applications for accreditation

Insert after section 13 (1):

- (1A) The accreditation of a proposed timber plantation may be granted subject to conditions relating to the manner in which the proposed timber plantation is to be established.

[6] Section 13 (3) (a)

Insert “, or is not being established,” after “established”.

[7] Section 13 (3) (b)

Omit the paragraph. Insert instead:

- (b) it has been, or is being, established in contravention of any law dealing with native vegetation management and control that applies to the timber plantation.

[8] Section 13 (3A)

Insert after section 13 (3):

- (3A) Without limiting subsection (1), the Director-General must not accredit a timber plantation that has not been established unless the Director-General is satisfied that any consent required under the EPA Act, any law dealing with native vegetation management and control, or any other relevant law, in relation to the establishment of the proposed timber plantation has been obtained.

[9] Section 16 (1A) and (1B)

Insert after section 16 (1):

- (1A) In addition, the accreditation of a timber plantation (or any part of a timber plantation) that was not established at the time of its accreditation may be cancelled by the Director-General if the Director-General is satisfied:

- (a) that the timber plantation has not been established, or is not being established, in accordance with the requirements of the EPA Act or any other relevant law, or
 - (b) that the timber plantation has been, or is being, established in contravention of any law dealing with native vegetation management and control that applies to the timber plantation.
- (1B) In addition, the accreditation of a timber plantation (or any part of a timber plantation) that was not established at the time of its accreditation must be cancelled by the Director-General on a date that is 3 years after the date of the grant of accreditation unless, before that date:
- (a) the Director-General has been notified by the owner or manager of the timber plantation that the planting of trees forming the timber plantation has been completed, and
 - (b) the Director-General is satisfied, either by the evidence provided by the owner or manager or by his or her own investigations, that the planting of trees forming the timber plantation has been completed in accordance with any conditions of the accreditation imposed under section 13 (1A).

[10] Section 16 (3)

Insert “or the accreditation of any proposed timber plantation to be established on the land” after “land”.

[Minister's second reading speech made in—
Legislative Assembly on 25 November 1997
Legislative Council on 4 December 1997]