

FORESTRY (AMENDMENT) ACT, 1984, No. 145

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 145, 1984.

An Act to amend the Forestry Act, 1916, with respect to royalties, compensation and other matters. [Assented to, 4th December, 1984.]

Forestry (Amendment) 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Forestry (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence on 1st January, 1985.

Principal Act.

3. The Forestry Act, 1916, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—
SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.
SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 55, 1916.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings and transitional provisions.

6. Schedule 2 has effect.
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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

Omit the section.

(2) Section 12 (3)—

Omit the subsection, insert instead:—

(3) The power of the commission under subsection (2) to expend money in a special deposits account includes the power to make payments, with the approval of the Treasurer—

(a) to any person entitled to compensation under Division 5 of Part III; or

(b) to any organisation established for the promotion or improvement of the use or marketing of timber or products produced in New South Wales,

of such part of the royalties paid by the holder of a timber licence, products licence or forest materials licence as is paid into a special deposits account established for the purpose of making those payments.

(3) (a) Section 27D (a) (i)—

Omit “conditional lease and not dedicated as a State forest or”, insert instead “a conditional lease applied for before 1st January, 1910, and not”.

(b) Section 27D (a) (ii)—

Before “conditional”, insert “a”.

(4) Section 30A (1)—

After “pay”, insert “to the commission”.

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SCHEDULE 1—*continued*—

AMENDMENTS TO THE PRINCIPAL ACT—*continued*.

(5) Section 30C—

Omit the section, insert instead:—

Compensation fund.

30C. The commission may from time to time determine, either generally or in a particular case or class of cases, to set aside such part of a royalty as is specified in its determination for payment of compensation under Division 5.

(6) Sections 30E, 30F, 30G—

Omit the sections, insert instead:—

Deductions from royalties.

30E. (1) Upon receipt of a royalty paid to it under section 30A (1), the commission shall—

(a) where it has made a determination with respect to the royalty under section 30C—set aside such part of the royalty as is specified in its determination for payment of compensation under Division 5; and

(b) where it has made a determination with respect to the royalty under section 30D—set aside such part of the royalty as is specified in its determination for payment to the organisation so specified.

(2) Such parts of a royalty as are set aside pursuant to subsection (1) (a) and (b) shall, pending their payment for the purposes referred to in those paragraphs, be paid into a special deposits account established for the purpose of making those payments.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 30H (2), (3)—

Omit the subsections.

(8) Section 30I—

Omit the section. insert instead:—

Taking of small quantities of timber, etc., from certain lands.

30I. (1) The commission may, otherwise than by the issue of a timber licence, products licence or forest materials licence, authorise a person, in such manner and on such terms and conditions as may be determined by the commission—

- (a) to take timber, products or forest materials (not having a value in excess of such value as may be prescribed) on or from land within a State forest, other than land set apart as a flora reserve; or
- (b) to take timber or products (not having a value in excess of such value as may be prescribed) on or from Crown lands.

(2) An authorisation under subsection (1) shall not be issued in respect of—

(a) land held under—

- (i) a conditional lease applied for before 1st January, 1910, and not reserved from sale; or
- (ii) a conditional purchase lease.

unless the lessee of that land consents to the issue of the authorisation: or

- (b) land in respect of which trustees have been appointed for a public purpose, unless those trustees consent to the issue of the authorisation.

*Forestry (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Part III, Division 5—

After Division 4, insert:—

DIVISION 5.—*Compensation.***Interpretation.**

30J. In this Division—

“holder”, in relation to prescribed land, means—

- (a) in the case of land held under a lease specified or described in the Second Schedule—the lessee of the land;
- (b) in the case of purchase-tenure land—the owner of the land; or
- (c) in the case of land under the control of a Pastures Protection Board, being land that consists of a travelling stock reserve, a camping reserve or a public watering-place—the Pastures Protection Board having control of the land;

“lessee” means the holder or owner of a lease, but does not include a mortgagee of land the subject of a lease;

“owner”, in relation to purchase-tenure land, has the meaning ascribed thereto in section 25c;

“prescribed land” means—

- (a) land held by a lessee under a lease specified or described in the Second Schedule;
- (b) purchase-tenure land; or
- (c) land under the control of a Pastures Protection Board, being land that consists of a travelling stock reserve, a camping reserve or a public watering-place;

“prescribed lease from the Crown” has the meaning ascribed thereto in section 25c;

*Forestry (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

“purchase-tenure land” has the meaning ascribed thereto in section 25c.

Commission to make assessments.

30K. (1) Where a timber licence, products licence or forest materials licence is in force in respect of prescribed land, the commission shall—

- (a) in the case of a licence which is in force for a period of 12 months or less—at the end of the period during which the licence is in force; or
- (b) in any other case—at the end of each period of 12 months during which the licence is in force,

make an assessment of the amount of compensation (if any) payable in respect of disturbance to the land occasioned by the taking of timber, products or forest materials on or from the land in pursuance of the licence during that period.

(2) Where the commission carries out operations on prescribed land for the purpose of taking timber or products on or from the land, the commission shall—

- (a) in the case of operations that continue for a period of 12 months or less—at the end of the period during which the operations are carried out; or
- (b) in any other case—at the end of each period of 12 months during which the operations are carried out,

make an assessment of the amount of compensation (if any) payable in respect of disturbance to the land occasioned by the taking of timber or products on or from the land during that period.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) In making an assessment pursuant to subsection (1) or (2) in respect of prescribed land, the commission shall take into consideration the effects (both beneficial and detrimental) on the land, and on any roads, fences, gates, buildings or works situated on the land, of—

- (a) the operations carried out on the land for the purpose of taking timber, products or forest materials, as the case may be, on or from the land;
- (b) the construction (whether or not on the land) of roads, bridges, gates and ramps, and any incidental works, associated with those operations; and
- (c) such other matters as may be prescribed,

in relation to the use of the land—

- (d) in the case of land held under a lease specified or described in the Second Schedule—for the purpose for which the lease was granted;
- (e) in the case of purchase-tenure land—for the purpose for which the relevant prescribed lease from the Crown was granted; or
- (f) in the case of land under the control of a Pastures Protection Board, being land that consists of a travelling stock reserve, a camping reserve or a public watering-place—for the purpose of such a reserve or watering-place, as the case may be.

(4) In subsection (3), a reference to a purpose for which a lease was granted is, in relation to a lease which has not been granted for any other purpose, a reference to the purpose of the grazing of stock.

*Forestry (Amendment) 1984*SCHEDULE 1--*continued.*AMENDMENTS TO THE PRINCIPAL ACT--*continued.*

(5) As soon as practicable after it has made an assessment pursuant to subsection (1) or (2) in respect of prescribed land, the commission shall cause written notice of the assessment to be given to the holder of the land.

(6) Where the holder of prescribed land—

- (a) has given written notice to the commission that the holder of the land accepts an assessment made by the commission in respect of the land; or
- (b) has not made an objection under section 30L (1) against such an assessment within 28 days after notice of the assessment was given under subsection (5),

the holder of the land is entitled to the amount of compensation specified in the assessment.

Review of assessments.

30L. (1) A holder of prescribed land who is dissatisfied with an assessment made by the commission pursuant to section 30K (1) or (2) may, except where the holder of the land has given notice under section 30K (6) (a) in respect of the assessment, make an objection against the assessment.

(2) An objection under subsection (1) shall be—

- (a) in writing; and
- (b) lodged with the commission not less than 28 days after notice of the assessment to which the objection relates was given under section 30K (5).

(3) Upon receiving an objection under subsection (1), the commission shall endeavour to reach agreement with the holder of the prescribed land to which the objection relates as to the appropriate amount of compensation payable in respect of that land.

*Forestry (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Where agreement (as referred to in subsection (3)) is not reached within 28 days after an objection under subsection (1) has been lodged with the commission, or within such further period as the commission and the objector may agree, the commission shall refer the objection to the Valuer-General for assessment of compensation by the Valuer-General.

(5) Upon the referral of an objection under subsection (4), the Valuer-General shall review the assessment the subject of the objection and make a new assessment.

(6) The provisions of section 30κ (3) and (4) apply to an assessment made by the Valuer-General in the same way as they apply to an assessment made by the commission.

(7) An assessment made by the Valuer-General is final and binds the commission and the holder of the prescribed land to which the assessment relates.

(8) A holder of prescribed land who has made an objection under subsection (1) against an assessment made by the commission is entitled—

- (a) where agreement (as referred to in subsection (3)) is reached between the holder of the land and the commission as to the appropriate amount of compensation payable in respect of the land—to the amount of compensation so agreed; or
- (b) where the objection is referred to the Valuer-General under subsection (4)—to the amount of compensation specified in the assessment made by the Valuer-General in respect of the land.

*Forestry (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Payment of compensation.**

30M. (1) The commission shall pay to the holder of prescribed land the amount of compensation (if any) to which the holder of the land is entitled under this Division.

(2) Nothing in this Division entitles a holder of prescribed land to compensation in respect of disturbance to the land occasioned by the taking of timber, products or forest materials on or from the land in pursuance of a timber licence, products licence or forest materials licence held by the holder of the land.

(10) (a) Section 39 (1)—

Omit “, other than any amount payable to a lessee, an owner of purchase-tenure land or a Pastures Protection Board, pursuant to a direction under section 30F (2) (a),”.

(b) Section 39 (2)—

Omit the subsection.

(11) Section 41 (1) (e1)—

After section 41 (1) (e), insert:—

(e1) regulating matters incidental to the assessment and payment of compensation under Division 5 of Part III;

(12) Section 46A (8), (9)—

Omit the subsections.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(13) Section 48 (5), (6)—

Omit the subsections.

SCHEDULE 2.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Royalties payable under licences in force as at 1st January, 1985.

1. Where, immediately before 1st January, 1985, a timber licence, products licence or forest materials licence was in force in respect of any land—

- (a) the Principal Act shall continue to apply to and in respect of any royalty payable under Division 3 of Part III of that Act in respect of timber, products or forest materials taken on or from any such land in pursuance of the licence in the same way as that Act would have applied to and in respect of any such royalty had this Act not been enacted; and
- (b) Division 5 of Part III of the Principal Act, as amended by this Act, shall not, while the licence remains in force, apply to or in respect of any such land in relation to compensation for disturbance to the land occasioned by the taking of timber, products or forest materials on or from the land in pursuance of the licence.

Authorisations under section 301 of the Principal Act.

2. An authorisation in force immediately before 1st January, 1985, under section 301 of the Principal Act shall, on and from that date, be deemed to be an authorisation in force under section 301 (1) of the Principal Act, as amended by this Act.

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Regulations.

3. A provision of a regulation in force immediately before 1st January, 1985, under the Principal Act for the purposes of section 30i (a) or (b) of that Act shall, on and from that date, be deemed to be a provision of a regulation in force under the Principal Act, as amended by this Act, for the purposes of section 30i (1) (a) or (b), as the case may require, of that Act, as so amended.
