

# **FORESTRY (AMENDMENT) ACT 1989 No. 111**

**NEW SOUTH WALES**



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**FORESTRY (AMENDMENT) ACT 1989 No. 111**

NEW SOUTH WALES



**Act No. 111, 1989**

An Act to amend the Forestry Act 1916 with respect to the payment and apportionment of royalties; to repeal the Forestry (Amendment) Act 1984; and for other purposes. [Assented to 24 August 1989]

*Forestry (Amendment) 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Forestry (Amendment) Act 1989.

**Commencement**

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

**Amendment of Forestry Act 1916 No. 55**

3. The Forestry Act 1916 is amended as set out in Schedule 1.

**Repeal of Forestry (Amendment) Act 1984 No. 145**

4. The Forestry (Amendment) Act 1984 is repealed.

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**SCHEDULE 1 - AMENDMENTS**

(1) Section 30 (**Definitions**):

(Sec. 3)

Insert in alphabetical order:

"landholder", in relation to prescribed land, means:

- (a) in the case of land held under a lease specified in the Second Schedule - the lessee of the land; or
- (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 - 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;

"prescribed land" means:

- (a) land held by a lessee under a lease specified in the Second Schedule; or
- (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;

(2) Section 30c (**Compensation fund**):

Omit the section.

(3) Sections 30E, 30F:

Omit section 30E, insert instead:

**Apportionment of royalty - certain land**

30E. (1) This section applies to a royalty payable in respect of timber, products or forest materials taken on or from prescribed land.

(2) When a royalty to which this section applies is paid to the commission, the commission is required to pay to the landholder concerned one-third of the balance of the royalty remaining after deduction of the following amounts:

- (a) any part of the royalty that is payable pursuant to a determination under section 30D (payments to certain timber organisations);
- (b) any costs incurred by the commission in connection with the establishment, planting, maintenance, improvement and protection of the timber, products or forest materials;
- (c) any costs incurred by the commission in connection with the facilitation of the taking of the timber, products or forest materials, including the costs of construction and maintenance of roads, bridges, gates, ramps and incidental works.

(3) The costs that are deductible under subsection (2) (b) and (c) are to be as determined by the commission.

(4) A share of royalty payable by the commission to a landholder under this section must be paid before the expiration of 1 month after the end of the financial year of

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the commission that is current when the royalty concerned is paid to the commission.

(5) Nothing in this Division entitles a landholder to be paid an amount of royalty in respect of the taking of timber, products or forest materials under a licence held by the landholder.

**Royalty payments by commission**

30F. If the commission takes timber or products from prescribed land, the commission is required:

- (a) to pay to an organisation specified in a determination under section 30D the amount that would have been payable under the determination; and
- (b) to pay to the landholder concerned the amount that would have been payable to the landholder under section 30E,

if the timber or products had been taken under a timber licence or products licence and a royalty had been paid to the commission in respect of the timber or products in accordance with this Division.

- (4) **Section 30H (Liability for royalty if timber etc. taken without licence):**

After section 30H (1), insert:

(2) Section 30E applies in respect of an amount recovered by the commission under this section as if the amount were a royalty paid to the commission under section 30A.

(3) Subsection (2) does not require the commission, in respect of an amount recovered by it under this section, to make a payment out of the amount to the person from whom the amount is recovered.

- (5) **Section 30I (Taking of small quantities of timber etc. from certain lands):**

From section 30I (1), omit "such value as may be prescribed" wherever occurring, insert instead "\$400 or such other amount as may be prescribed".

(6) Part 3, Division 5:

Omit the Division, insert instead:

**Division 5 - Savings and transitional provisions**

**Definitions**

30J. In this Division:

"amending Act" means the Forestry (Amendment) Act 1989;

"former compensation provisions" means the provisions of this Division as in force immediately before their repeal by the amending Act, including any regulations in force for the purposes of those provisions.

**Phasing-in of royalty apportionment scheme**

30K. The former compensation provisions continue to apply in respect of land to which those provisions applied immediately before their repeal, but only so as to enable:

- (a) the assessment of compensation in respect of that land on one occasion only after the repeal of the former compensation provisions; and
- (b) the payment of any compensation so assessed.

**Prevention of payment of compensation and royalty apportionment for same period**

30L. Section 30E (2) (payment of one-third of royalty to landholder) applies only in respect of a royalty that becomes payable after whichever of the following events is applicable in the particular case:

- (a) the repeal of the former compensation provisions if those provisions do not continue to apply to the land concerned under section 30K;
- (b) if those provisions do continue to apply to the land - the first occasion following their repeal on which the commission is required to make an assessment of compensation under those provisions in respect of the land.

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(7) Section 41 (**Regulations**):

Omit section 41 (1) (e1).

(8) Section 46A (**Penalty notice for certain offences**):

After section 46A (7), insert:

(8) Section 30E applies in respect of any royalty paid to the commission under this section as if it were a royalty paid to the commission under section 30A.

(9) Subsection (8) does not require the commission, in respect of any royalty paid to it under this section, to make a payment out of the royalty to the person by whom the royalty was paid.

(9) Section 48 (**Compensation**):

After section 48 (4), insert:

(5) If an amount is ordered to be paid to the commission under subsection (2) (c), section 30E applies in respect of an amount paid pursuant to the order as if it were a royalty paid to the commission under section 30A.

(6) Subsection (5) does not require the commission, in respect of an amount paid as ordered under subsection (2) (c), to make a payment out of the amount to the person by whom the amount was paid.

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[*Minister's second reading speech made in -  
Legislative Assembly on 25 July 1989  
Legislative Council on 1 August 1989*]