



New South Wales

Timber Plantations (Harvest Guarantee) Act 1995 No 92

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New South Wales

Timber Plantations (Harvest Guarantee) Act 1995 No 92

Act No 92, 1995

An Act relating to the harvesting of timber plantations. [Assented to 21
December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Timber Plantations (Harvest Guarantee) Act 1995*.

2 Commencement

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

3 Object of Act

- (1) The object of this Act is to remove impediments to the harvesting of plantation timber (that is, trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations.
- (2) In order to achieve this object, this Act:
 - (a) provides a scheme for the accreditation of timber plantations, and
 - (b) removes the need to obtain licences under the NPW Act in connection with the carrying out of harvesting operations on accredited timber plantations, and
 - (c) removes the need for development consent under Part 4 of the EPA Act, or environmental assessment under Part 5 of that Act, in relation to the carrying out of harvesting operations on accredited timber plantations, and
 - (d) provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes.

4 Application of Act

- (1) This Act applies to timber plantations established before or after the commencement of this section.

- (2) This Act does not apply to any land on which logging operations (within the meaning of the *Timber Industry (Interim Protection) Act 1992*) are prohibited by or under that Act.

5 Definitions

In this Act:

accredited timber plantation means a timber plantation accredited for the time being under this Act.

Code means a timber plantation (environment protection) harvesting code in force under this Act.

Crown timber land has the same meaning as in the *Forestry Act 1916*.

Director-Generat means the Director-General of the Department of Urban Affairs and Planning.

EPA Act means the *Environmental Planning and Assessment Act 1979*.

harvesting operations is defined in section 7.

manager of a timber plantation means the person in charge of harvesting operations on the timber plantation.

NPW Act means the *National Parks and Wildlife Act 1974*.

owner of a timber plantation includes:

- (a) a lessee of the land comprising the timber plantation, or
- (b) in the case of a timber plantation which is a State Forest or other Crown timber land under the management of the Forestry Commission—the Forestry Commission, or
- (c) a person who has a forestry right (within the meaning of section 87A of the *Conveyancing Act 1919*) in relation to the timber plantation.

timber plantation is defined in section 6.

6 Definition of timber plantation

- (1) In this Act, **timber plantation** means an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted (whether by sowing seed or otherwise) for the purpose of timber production.

- (2) To avoid doubt, a natural forest is not a timber plantation. However, an area is not a natural forest merely because it contains some native trees that have not been planted.
- (3) A timber plantation can be a privately owned area of land, or it can be a State Forest or other Crown timber land, or any other land.
- (4) A timber plantation can comprise more than one area of land if those areas are under the same ownership or management.

7 Definition of harvesting operations

- (1) In this Act, *harvesting operations* means the cutting and removal of timber for the purpose of timber production, and includes:
 - (a) the provision of access roads after establishment of a timber plantation to enable or assist the cutting and removal of timber, or
 - (b) the carrying out of such activities as are necessary for the efficient cutting and removal of timber, or
 - (c) the carrying out of activities relating to the on-going management of the timber plantation (eg silvicultural thinning, weed control and similar maintenance operations).
- (2) An activity carried out for the purpose of establishing a timber plantation (eg, the clearing of natural forests and the use of pesticides, herbicides and fertilisers in establishing a timber plantation) is not, for the purposes of this Act, an activity constituting harvesting operations.

Part 2 Timber harvest guarantee

Division 1 Harvesting operations on accredited timber plantations

8 Harvesting operations not subject to Parts 4 and 5 of the EPA Act

- (1) Development consent under Part 4 of the EPA Act is not required for harvesting operations on an accredited timber plantation.
- (2) Part 5 of the EPA Act does not apply in respect of the carrying out of harvesting operations on an accredited timber plantation (including the giving of any approval to carry out those operations).
- (3) Harvesting operations carried out on an accredited timber plantation cannot be prohibited or restricted by an environmental planning instrument (whether made before or after the commencement of this section) under the EPA Act.

9 Harvesting operations not subject to certain provisions of the NPW Act and Heritage Act 1977

- (1) A person carrying out harvesting operations on an accredited timber plantation is exempt from the provisions of sections 98 (2) and 99 (1) of the NPW Act (relating to protected and endangered fauna) and section 117 (1) of that Act (relating to native plants).
- (2) Subsection (1) exempts the person only:
 - (a) if the harvesting operations are carried out in accordance with the Code (or Codes) applying to the timber plantation, and
 - (b) in relation to things that are reasonably connected with the carrying out of the harvesting operations.
- (3) An interim protection order (within the meaning of the NPW Act) may not be made so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation.

- (4) An order under section 92E (stop work order) of the NPW Act may not be made so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation.
- (5) A conservation instrument (within the meaning of the *Heritage Act 1977*) may not be made so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation.
- (6) However, nothing in this section affects the making of any such order or instrument that is made for the purpose of protecting any Aboriginal relic or place specified in a Code applying to the timber plantation concerned.

10 Harvesting operations not subject to certain orders under the Local Government Act 1993

A local council may not give an order under section 124 of the *Local Government Act 1993* so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation.

11 Harvesting operations subject to Codes and other laws

Harvesting operations on an accredited timber plantation are subject to the Code (or Codes) applying to the timber plantation and, except as provided by this Act, are subject to the provisions of any other law that relate to the management or harvesting of timber.

Division 2 Accreditation of timber plantations

12 Application for accreditation

- (1) The owner or manager of a timber plantation may, at any time after the timber plantation is established, apply to the Director-General for the accreditation of the timber plantation under this Part.
- (2) An application for accreditation must:
 - (a) be in such form, and be accompanied by such fee, as the Director-General may determine, and

- (b) identify the area or areas of land comprising the timber plantation by way of a map or other suitable means, and
- (c) be accompanied by such particulars and supporting evidence relating to the timber plantation as may be required by the Director-General.

13 Determination of applications for accreditation

- (1) Within 60 days after receiving an application for accreditation, the Director-General is to determine the application:
 - (a) by accrediting the timber plantation concerned, or
 - (b) by refusing to accredit the timber plantation.
- (2) Written notice of the Director-General's decision is to be given to the owner or manager of the timber plantation as soon as practicable after the decision is made.
- (3) Without limiting subsection (1), the Director-General may refuse to accredit the timber plantation if the Director-General makes a determination that:
 - (a) it has not been established in accordance with the requirements of the EPA Act and any other relevant law, or
 - (b) it has been established in contravention of State Environmental Planning Policy No. 46—Protection and Management of Native Vegetation (or any similar law dealing with native vegetation management and control) if that Policy (or similar law) applies to the timber plantation.
- (4) To avoid doubt, the accreditation of a timber plantation is not to be regarded for the purposes of any law as an approval under Part 5 of the EPA Act, and the Director-General is not a determining authority for the purposes of that Part when granting an accreditation.

14 Certificate of accreditation

- (1) The Director-General is to issue a certificate to the owner or manager of each timber plantation accredited under this Part.

- (2) Such a certificate is:
 - (a) to be in a form approved by the Director-General, and
 - (b) to specify the date on which the accreditation was granted.

15 Duration of accreditation

- (1) The accreditation of a timber plantation remains in force unless it is cancelled by the Director-General.
- (2) Any change in the ownership or management of an accredited timber plantation does not affect the accreditation of the timber plantation.
- (3) The harvesting of an accredited timber plantation, or the removal or replanting of trees from or on the plantation, does not, subject to section 16, affect the accreditation of the timber plantation.

16 Cancellation of accreditation

- (1) The accreditation of a timber plantation (or any part of the timber plantation) may be cancelled by the Director-General at the request of the owner of the timber plantation or if the Director-General is satisfied:
 - (a) that there has been a significant breach of the provisions of the Code (or Codes) applying to the timber plantation and that such a breach has not been remedied, or
 - (b) that the timber plantation has been abandoned, or
 - (c) that harvesting operations have been completed and the area of land concerned is not intended to be continued as a timber plantation.
- (2) Cancellation of accreditation takes effect when a written notice by the Director-General of the cancellation is served on the owner of the timber plantation.
- (3) Nothing in this section prevents the accreditation of a timber plantation that is re-established on the land.

67 Review by Minister

- (1) The owner or manager of a timber plantation may, in writing, request the Minister to review a decision of the Director-General:
 - (a) not to accredit the timber plantation, or
 - (b) to cancel the accreditation of the timber plantation.

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- (2) Any such request can only be made within 60 days after notice of the decision was served on the owner or manager of the timber plantation.
 - (3) The Minister may, in reviewing the decision:
 - (a) confirm the Director-General's decision to refuse accreditation or to cancel accreditation, or
 - (b) direct the Director-General to accredit the timber plantation, or
 - (c) revoke the Director-General's decision to cancel accreditation and direct the Director-General to reinstate the accreditation.
 - (4) The Director-General must give effect to any such direction by the Minister.

18 Notification of accredited timber plantations

- (1) The Director-General must, when a timber plantation is accredited, cause a notice to be published in the Gazette of the accreditation. Such a notice must identify the timber plantation and include details describing its location.
- (2) The Director-General is to maintain a register of accredited timber plantations.
- (3) The register is:
 - (a) to include the details referred to in subsection (1), and
 - (b) to be made available for inspection by any person without charge at the head office of the Department of Urban Affairs and Planning during ordinary office hours.

Part 3 Timber plantation (environment protection) harvesting codes

19 Preparation of Codes

- (1) A draft timber plantation (environment protection) harvesting code is to be prepared by the Director-General as soon as practicable after the commencement of this Part.
- (2) A Code must be approved by the Minister before it is finalised by the Director-General.
- (3) More than one such Code may be prepared.

20 Matters to be regulated by Codes

- (1) A Code may, for the purposes of protecting the environment, regulate the carrying out of harvesting operations on an accredited timber plantation.
- (2) In particular, a Code may deal with the following matters:
 - (a) harvesting plans,
 - (b) works ancillary to harvesting operations,
 - (c) soil erosion and sediment control,
 - (d) native animals and plants,
 - (e) Aboriginal relics and places,
 - (f) post-harvest bush fire hazard reduction burning,
 - (g) the circumstances in which compensation will be available in order to protect unique or special wildlife values, and matters relating to the provision of, and entitlement to, such compensation.
- (3) A Code may:
 - (a) apply generally to all timber plantations or to a specified class of timber plantation, and
 - (b) apply differently according to different factors, and
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

21 Codes not to be inconsistent with laws applying to timber plantations

- (1) Except as provided by this Act, a Code may not contain provisions which are inconsistent with any Act applying to the carrying out of harvesting operations. Any such inconsistent provision in the Code is void.
- (2) In particular, the provisions of a Code may not be inconsistent with the provisions of the *Soil Conservation Act 1938*, the *Clean Waters Act 1970* or the *Pollution Control Act 1970* in their application to timber plantations.

22 Adoption and amendment of Codes by regulations

- (1) The regulations may adopt a Code in accordance with this Act.
- (2) A Code:
 - (a) does not have any effect unless it is so adopted, and
 - (b) is to be set out in the regulation that adopts it, and
 - (c) ceases to have effect if the regulation that adopts it is repealed.
- (3) A Code may be amended by the regulations.

23 Compliance with Codes

- (1) The owner and manager of an accredited timber plantation must ensure that harvesting operations on the timber plantation are carried out in accordance with any Code applying to the timber plantation.
- (2) In the case of an accredited timber plantation which is a State Forest or other Crown timber land, this requirement is a condition of any relevant licence, lease or other authority (whether issued before or after the commencement of this section).

24 Timber plantation officers

- (1) The Director-General may appoint appropriately qualified public servants (or such other qualified persons as may be prescribed by

the regulations) as timber plantation officers to investigate and report to the Director-General on whether a Code is being complied with.

- (2) For the purposes of exercising those functions, any such officer may, on giving reasonable notice to the owner or manager, enter an accredited timber plantation and require the owner or manager to provide such information as the officer requires.
- (3) The information that can be required by a timber plantation officer must relate to matters that are reasonably connected with the administration of this Act, or be information that is required for the purposes of determining whether this Act, or a Code, is being complied with. This does not extend to information of a commercially sensitive nature.
- (4) The owner or manager must not:
 - (a) fail without reasonable excuse to provide the information required by the officer, or
 - (b) provide information to the officer which the owner or manager knows is false or misleading in a material respect.

Maximum penalty: 10 penalty units.

Part 4 Miscellaneous

25 Act binds Crown

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

26 Proceedings for offences

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

27 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

28 Consequential amendment of section 27 (penalty for unlawfully taking timber, products or forest materials) of Forestry Act 1916

The Forestry Act 1916 is amended by inserting in section 27 (3) (a) (iii) after the word “tree-farming” the words “, or where the tree is or was situated on an accredited timber plantation within the meaning of the *Timber Plantations (Harvest Guarantee) Act 1995*”.

29 Consequential amendment of note to section 124 of the Local Government Act 1993 (relating to orders by local councils)

The note to section 124 of the *Local Government Act 1993* is amended by inserting at the end of the note the following words:

Section 10 of the *Timber Plantations (Harvest Guarantee) Act 1995* provides that a local council may not give an order under this section so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation (as defined in that Act).

30 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 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.

[Minister's second reading speech made in –
Legislative Assembly on 7 December 1995
Legislative Council on 15 December 1995]