

Act No. 242

CONVEYANCING (FORESTRY RIGHTS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Real Property (Forestry Rights) Amendment Bill 1987;

Forestry (Forestry Rights) Amendment Bill 1987.

The object of this Bill is to amend the Conveyancing Act 1919 so as—

- (a) to make provision with respect to the creation, variation, conveyance and termination of those interests in land that are known as “profits à prendre”;
- (b) to make provision with respect to forestry rights and the imposition of positive covenants on land subject to forestry rights;
- (c) to make other provisions of a minor, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1)–(3), (6), (14)–(16) amend sections 45, 45A, 67, 88B, 109, 110 and 195D so as to remove any doubt as to the application of those sections to profits à prendre.

Schedule 1 (4) (a) amends the definition of “positive covenant” in section 87A of the Principal Act so as to reflect the nature of the covenant that the definition describes.

Conveyancing (Forestry Rights) Amendment 1987

Schedule 1 (4) (b) inserts new definitions of “forestry covenant”, “forestry right” and “positive covenant” into section 87A of the Principal Act. A “forestry covenant” is to mean a positive covenant that can be imposed in relation to land the subject of a “forestry right”. A “forestry right” is to mean an interest (in the nature of a profit à prendre) under which a person having the benefit of the interest will be entitled to enter land, to establish, maintain and harvest a crop of trees and to construct and use ancillary buildings, works and facilities. A “positive covenant” is to mean a forestry covenant or a public positive covenant.

Schedule 1 (5) inserts new sections 88AA and 88AB into the Principal Act.

Proposed section 88AA provides that a profit à prendre is to be enforceable only if it is created by an instrument that indicates the land to be burdened, and (in the case of a profit à prendre that is expressed to benefit land) the land to be benefited, by the profit à prendre.

Proposed section 88AB provides that a forestry right shall, for all purposes, be deemed to be a profit à prendre.

Schedule 1 (7), (8), (10) (b) and (11)–(13) amend sections 88D, 88E, 88F, 88G, 88I and 88J of the Principal Act as a consequence of the amendment effected by Schedule 1 (4) (a).

Schedule 1 (9) inserts a new section 88EA into the Principal Act. The proposed section enables the use of land that is subject to a forestry right to be regulated by a forestry covenant.

Schedule 1 (10) (a) amends section 88F (1) of the Principal Act as a consequence of the amendment effected by Schedule 1 (9).
