

[Act 1997 No 150]



New South Wales

Timber Plantations (Harvest Guarantee) Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Timber Plantations (Harvest Guarantee) Act 1995* so as:

- (a) to provide for the accreditation of a timber plantation before it is established, and
- (b) to provide for the cancellation of the accreditation of a timber plantation where compensation has been paid to protect unique or special wildlife values, and
- (c) to make certain changes that are consequential on the enactment of the *Threatened Species Conservation Act 1995* and on the proposed insertion of Part 7A (Threatened species conservation) in the *Fisheries Management Act 1994*.

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Timber Plantations (Harvest Guarantee) Act 1995* set out in Schedule 1.

Schedule 1 Amendments

Harvesting operations not subject to certain provisions of environmental legislation

The object of the *Timber Plantations (Harvest Guarantee) Act 1995* was to remove certain 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. (See section 3 (1).)

To achieve that object, harvesting operations on an accredited timber plantation are exempt from certain obligations under the *Environmental Planning and Assessment Act 1979*, the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*. The exemptions apply only if the relevant harvesting operations are carried out in accordance with the timber plantation (environment protection) harvesting code or codes applying to the timber plantation and in relation to things that are reasonably connected with the carrying out of the harvesting operations.

At present, section 9 (1) of the *Timber Plantations (Harvest Guarantee) Act 1995* exempts a person who is carrying out harvesting operations on an accredited timber plantation from certain provisions of the *National Parks and Wildlife Act 1974*.

However, the *Threatened Species Conservation Act 1995* and proposed Part 7A of the *Fisheries Management Act 1994* introduced new environmental obligations, and modified some existing obligations, in relation to the conservation of threatened species, populations and ecological communities of animals, fish and plants and their habitats. The changes made by those Acts affect the operation of the *Timber Plantations (Harvest Guarantee) Act 1995*.

Schedule 1 [5] repeals and re-enacts section 9 (1) of the *Timber Plantations (Harvest Guarantee) Act 1995* (which lists the offences under the *National Parks and Wildlife Act 1974* from which a person carrying out harvesting operations is exempt). The new subsection restates the description of sections 98 and 99 of that Act and adds the following offences, which relate to matters regulated under the *Threatened Species Conservation Act 1995*:

- harming or picking a threatened species, population or ecological community (section 118A),
- damaging critical habitats (section 118BC),
- damaging the habitat of a threatened species, population or ecological community (section 118D).

Schedule 1 [8] makes similar provision in respect of offences under proposed Part 7A (Threatened species conservation) of the *Fisheries Management Act 1994* which provides for the conservation of threatened species, populations and ecological communities of fish and marine vegetation (along similar lines to the provisions applying to other animals and plants under the *Threatened Species Conservation Act 1995*. Part 7A is proposed to be inserted by Schedule 1 [9] to the *Fisheries Management Amendment Bill 1997*.

Schedule 1 [2] and **[3]** make consequential amendments to the objects of the Act.

Stop work orders and interim conservation orders not to apply to harvesting operations

Section 9 (3) of the *Timber Plantations (Harvest Guarantee) Act 1995* provides that interim protection orders within the meaning of the *National Parks and Wildlife Act 1974* may not be made *so* as to prevent or interfere with the carrying out of harvesting operations on accredited timber plantations.

Schedule 1 [6] inserts in that subsection a reference to interim protection orders made under the *Threatened Species Conservation Act 1995*.

Section 9 (4) of the *Timber Plantations (Harvest Guarantee) Act 1995* provides that stop work orders under section 92E of the *National Parks and Wildlife Act 1974* may not be made so as to prevent or interfere with the carrying out of harvesting operations on accredited timber plantations.

Schedule 1 [7] omits the redundant reference to section 92E of the *National Parks and Wildlife Act 1974* (which was repealed by the *Threatened Species*

Conservation Act 1995) and replaces it with a reference to the relevant provisions of the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*. Division 1 of Part 6A of the *National Parks and Wildlife Act 1974* empowers the Director-General of National Parks and Wildlife to make stop work orders to prevent any action that is likely to significantly affect protected fauna or native plants and their environment. Section 114 of the *Threatened Species Conservation Act 1995* provides for the Director-General to make stop work orders in certain circumstances for the purposes of conserving threatened species, populations or ecological communities and their habitats.

Matters to be regulated by Cedes

Despite the removal of impediments to the harvesting of plantation timber by the *Timber Plantations (Harvest Guarantee) Act 1995*, the Act 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. (See section 3 (2) (d).) Section 20 (1) of the Principal Act provides for a code to regulate the carrying out of harvesting operations on an accredited timber plantation, for the purposes of protecting the environment. Section 20 (2) lists some of the matters with which a code may deal, including native animals and plants.

Schedule 1 [19] and [20] add further matters to that list, as a consequence of the amendments made by Schedule 1 [5] and [8].

Accreditation of proposed timber plantations

Division 2 of Part 2 of the Act provides for the accreditation of timber plantations. At present, the owner or manager of a timber plantation may, at any time after the timber plantation is established, apply for the accreditation of the timber plantation.

Schedule 1 [9] and [11] provide for the accreditation of a timber plantation that has not yet been established, which may be granted subject to conditions concerning the establishment of the proposed timber plantation.

Under section 13 (1) of the Act, the Director-General may refuse to accredit the proposed timber plantation if the Director-General makes a determination that the *Environmental Planning and Assessment Act 1979*, or any other relevant law, has not been complied with in relation to the establishment of the timber plantation. **Schedule 1 [14]** prevents the accreditation of a proposed timber plantation unless any relevant consent under that Act, any

law relating to native vegetation management and control or any other law, that is required in order to establish the timber plantation has been granted.

Schedule 1 [10] makes a consequential amendment.

Schedule 1 [16] provides for the cancellation of the accreditation of a proposed timber plantation if the timber plantation is not established within 3 years of accreditation or if the *Environmental Planning and Assessment Act 1979*, any law relating to native vegetation management and control or any other relevant law, has not been complied with in relation to the establishment of the timber plantation.

Schedule 1 [1], [4], [12], [13] and [18] make consequential amendments.

Cancellation of accreditation where compensation paid

The Act makes provision for a timber plantation (environment protection) harvesting code to deal with 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. (See section 20 (2) (g).)

Schedule 1 [15] provides for the cancellation of the accreditation of a timber plantation if it is necessary to protect unique or special wildlife values and compensation has been paid to the owner of the timber plantation for that purpose.

Schedule 1 [17] makes a consequential amendment.