

[Act 1998 No 163]



New South Wales

# Forestry and National Park Estate Bill 1998

## Explanatory note

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

### Overview of Bill

The object of this Bill is to make provision with respect to forestry operations and additions to the national park estate following regional resource and conservation assessments.

The particular objects of this Bill are as follows:

- (a) to transfer certain State forest and other Crown lands in the Eden, Lower North East and Upper North East regions to the national park estate and to Aboriginal ownership.
- (b) to provide for Ministerial forest agreements and for community consultation and reporting on forests on a regional basis, including a system of integrated approvals for future forestry operations in relation to the regulatory regimes for environmental planning and assessment, for the protection of the environment and for threatened species conservation.

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

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- (c) to amend the *Forestry Act 1916* to provide for a new category of informal reserves,
- (d) to amend the *Timber Industry (Interim Protection) Act 1992* to extend its operation for a further year and to additional land pending Ministerial forest agreements and integrated approvals,
- (e) to amend the *Native Title (New South Wales) Act 1994* to preserve native title rights and interests in relation to additions to the national park estate and declarations of wilderness,
- (f) to amend certain other Acts and to make related and other provisions.

## Outline of provisions

### Part 1 Preliminary

**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 on a day or days to be appointed by proclamation. However, the provisions relating to the transfer of lands are to commence on 1 January 1999 and the provisions relating to the *Timber Industry (Interim Protection) Act 1992* and the extension of logging operations in the Eden Management Area are to commence on the date of assent to the proposed Act.

**Clause 3** defines expressions used in the proposed Act. In particular:

- (a) *forestry operations* is defined to mean logging operations, forest products operations, on-going forest management operations and ancillary road construction, and
- (b) *national park estate* is defined to include wilderness areas, national parks, historic sites, nature reserves, Crown land reserves and State forest flora reserves.

**Clause 4** provides that notes in the text of the proposed Act do not form part of the Act.

### Part 2 Land transfers to national park estate and Aboriginal ownership

**Clause 5** revokes the dedication, as State forest, of land that is to be transferred to the national park estate or Aboriginal ownership.

**Clause 6** reserves or dedicates certain land in revoked State forests as national park, nature reserve or historic site. The land concerned is set out in Schedule 1.

**Clause 7** reserves or dedicates certain Crown lands as national park or nature reserve. The land concerned is set out in Schedule 2.

**Clause 8** sets apart certain land in State forests as flora reserves under the *Forestry Act 1916*. The land concerned is set out in Schedule 3.

**Clause 9** dedicates certain land in revoked State forests as a single Crown reserve under the *Crown Lands Act 1989* and appoints the Director-General of National Parks and Wildlife as the manager of the reserve trust. The land concerned is set out in Schedule 4.

**Clause 10** vests certain land in revoked State forests in the Minister administering the *National Parks and Wildlife Act 1974* for the purposes of Part 11 of that Act, subject to existing leases to which the land is subject. The land concerned is set out in Schedule 5.

**Clause 11** enables the Director-General of National Parks and Wildlife to adjust the descriptions of land in Schedules 1–5 in order to provide a more detailed description of land shown on maps by black edging or to alter the boundaries of the land for the purposes of the more effective management of national park estate land and State forest land (so long as the adjustment will not result in any significant reduction in the size or value of any such land). Adjustments are also authorised in connection with easements.

**Clause 12** provides for the transfer of certain revoked State forest and Crown lands to the ownership of Local Aboriginal Land Councils. The land and Councils concerned are set out in Schedule 6.

**Clause 13** gives effect to Schedule 7, which contains ancillary and special provisions with respect to the land transfers under this Part.

### **Part 3 Forest agreements**

**Clause 14** authorises the relevant Ministers in the planning, environment, forestry and fisheries portfolios to enter into forest agreements for particular regions of the State.

**Clause 15** provides that a regional forest assessment carried out by or on behalf of the Resource and Conservation Assessment Council is a pre-requisite to the entering into of a forest agreement.

**Clause 16** provides that a forest agreement is to describe the region to which it applies and list the documents making up the relevant regional forest assessment and contain appropriate provisions for ecologically sustainable forest management, sustainable timber supply, community consultation, arrangements with respect to Aboriginals and other matters within the Ministers' respective portfolios.

**Clause 17** makes provision for public consultation on the making of a forest agreement.

**Clause 18** enables the Ministers to amend or terminate a forest agreement.

**Clause 19** requires the Ministers to carry out 5-yearly reviews of forest agreements (and integrated forestry operations approvals under Part 4), including public consultation and parliamentary reporting.

**Clause 20** provides that the Minister for Urban Affairs and Planning is required to report annually to Parliament on each forest agreement. The clause requires the tabling in Parliament of copies of forest agreements and integrated forestry operations approvals (together with any amendments, suspensions, terminations or revocations of agreements or approvals and a statement of reasons for any such action).

**Clause 21** requires public notice of the making or granting of forest agreements or integrated forestry operations approvals (or any amendments, suspensions, terminations or revocations of agreements or approvals). The clause also requires forest agreements, resource assessments, integrated forestry operations approvals and reports to be available for public inspection.

**Clause 22** enables the Minister to establish forest landscape management committees to provide advice to the Minister.

#### **Part 4 Integrated forestry Operations approvals**

**Clause 23** provides that the Part applies to forestry operations in State forests and other Crown-timber lands, except in any part of the national park estate, a timber plantation or any other land for the purposes of clearing natural forest.

**Clause 24** specifies that the purpose of an integrated forestry operations approval is to provide a framework for relevant forestry operations:

- (a) that is established in connection with a forest agreement made after forest assessments conducted by or on behalf of the Resource and Conservation Assessment Council and other environmental studies, and
- (b) that integrates the regulatory regimes for environmental planning and assessment, for the protection of the environment and for threatened species conservation.

**Clause 25** provides for the grant of integrated forestry operations approvals. The powers of the Forestry Commission to carry out forestry operations will be subject to the terms of any such approval once it is granted.

**Clause 26** authorises the same Ministers who may enter into a forest agreement to jointly grant integrated forestry operations approvals.

**Clause 27** makes a forest agreement a pre-requisite to the grant of an approval.

**Clause 28** provides that an approval is to describe the forestry operations covered by the approval and may set out conditions subject to which forestry operations may be carried out and the terms of any relevant licences for the operations as referred to in clauses 32–34.

**Clause 29** provides that an approval may be granted for a term of up to 20 years. Clause 19 provides for the review of any such approval every 5 years.

**Clause 30** enables the Ministers who granted an approval to amend, revoke or suspend the approval.

**Clause 31** enables any of the Ministers to bring proceedings in the Land and Environment Court to remedy or restrain a breach of the conditions of an approval (other than the terms of relevant licences issued with the approval, which may be enforced in accordance with clause 34).

**Clause 32** sets out the relevant licences that may be issued with an approval, namely, pollution control or environment protection licences and licences under the threatened species legislation for animals, plants or fish.

**Clause 33** authorises an approval to set out the terms of a relevant licence. The persons carrying out the forestry operations concerned are taken to hold a licence in those terms.

**Clause 34** provides for the enforcement of a relevant licence provided by an approval in the same way as any other licence (except that the revocation or amendment of the licence can only be effected by an amendment of the approval by the relevant Ministers).

**Clause 35** suspends the provisions of the *Environmental Planning and Assessment Act 1979* (including Part 5 of that Act) in respect of forestry operations carried out during any period that an integrated forestry operations approval is in force.

**Clause 36** suspends the power of local councils to issue orders under section 124 of the *Local Government Act 1993* if they operate to prevent or interfere with forestry operations authorised by an approval.

**Clause 37** prevents official proposals for wilderness areas and the declaration of wilderness areas over any land on which forestry operations are authorised by an approval.

**Clause 38** excludes certain civil and criminal enforcement proceedings by third-parties under environment protection and other legislation for breaches of the proposed Act or related to the proposed Act.

## **Part 5    Miscellaneous**

**Clause 39** provides that the proposed Act binds the Crown.

**Clause 40** empowers the making of regulations for the purposes of the proposed Act.

**Clauses 41-44** give effect to the amendment of various Acts in Schedules 8-11.

**Clause 45** gives effect to the Schedule of savings, transitional and other provisions.

**Clause 46** provides for a review of the proposed Act after 5 years.

**Schedule 1** sets out the land whose dedication as State forest is revoked and that is reserved or dedicated as national park, historic site or nature reserve.

**Schedule 2** sets out the Crown lands that are reserved or dedicated as national park or nature reserve.

**Schedule 3** sets out the land within State forests that is set apart as flora reserves under the *Forestry Act 1916*.

**Schedule 4** sets out the land whose dedication as State forest is revoked and that is dedicated as Crown reserve under the *Crown Lands Act 1989*.

**Schedule 5** sets out the land (which is the subject of existing leases) whose dedication as State forest is revoked and that is vested in the Minister administering the *National Parks and Wildlife Act 1974*.

**Schedule 6** sets out the State forest and Crown lands that are transferred to the ownership of Local Aboriginal Land Councils.

**Schedule 7** makes ancillary and special provisions with respect to land transferred under the proposed Act.

**Schedule 8** amends the *Forestry Act 1916* to provide for a new category of informal reserves, namely land in State forests set aside by the Minister subject to prohibitions on activities to protect its special conservation value.

**Schedule 9** amends the *Timber Industry (Interim Protection) Act 1992*:

- (a) to extend its operation for a further year pending Ministerial forest agreements and integrated approvals. and
- (b) to suspend any obligation for the preparation of an EIS in the areas concerned. and
- (c) to extend the definition of “logging operations” to “forestry operations” within the meaning of the proposed Act. and
- (d) to extend the areas in which Part 5 of the *Environmental Planning and Assessment Act 1979* is suspended for logging operations to an additional area within the South Monaro Management Area.

**Schedule 10** amends the *National Parks and Wildlife Act 1974* to add Biamanga National Park to Schedule 14 to that Act (Lands of cultural significance to Aboriginals). As a result the park can be vested in relevant Aboriginal ownership and leased back for national park purposes. The Schedule also makes a minor consequential amendment to section 117 of the Act (relating to the picking or possession of native plants) to recognise the lawful authority to deal with native plants that is conferred by a licence under the threatened species legislation.

**Schedule 11** amends the *Native Title (New South Wales) Act 1994* to ensure that land that is dedicated, reserved, declared or vested by the proposed Act for the national park estate (or by previous national park estate Acts or proclamations), or land declared as wilderness, does not operate to extinguish or affect native title rights and interests.

**Schedule 12** contains savings, transitional and other provisions. In particular, the Schedule provides that forest operations may be carried out in certain compartments of State forest in the Eden region that were excluded from a previous approval for logging by the Minister for Planning and Environment under Part 5 of the *Environmental Planning and Assessment Act 1979* or that were approved for logging for a limited period.