

[Act 1995 No 92]



New South Wales

# Timber Plantations (Harvest Guarantee) Bill 1995

## Explanatory note

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

### Overview of Bill

The object of this Bill is to remove impediments to the harvesting of plantation timber (ie trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations. In order to achieve this object, the Bill:

- (a) provides a scheme for the accreditation of timber plantations, and
  - (b) removes the need to obtain licences under the *National Parks and Wildlife Act 1974* 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 *Environmental Planning and Assessment Act 1979*, 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.
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## Outline of provisions

### Part 1 Preliminary

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

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** sets out the object of the proposed Act.

**Clause 4** makes it clear that the proposed Act applies to existing timber plantations as well as to new timber plantations. Clause 4 also provides that the proposed Act does not apply to land on which logging operations are prohibited under the *Timber Industry (Interim Protection) Act 1992* (eg certain old growth forests specified in Schedule 1 or 2 to that Act).

**Clause 5** contains definitions used in the proposed Act. The term *Code* means a timber plantation (environment protection) harvesting code in force under the proposed Act. *Director-General* refers to the Director-General of the Department of Urban Affairs and Planning.

**Clause 6** defines a *timber plantation* as an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted for the purpose of timber production. It is not relevant when the area was planted with trees, so long as it is not a natural forest.

**Clause 7** defines *harvesting operations* as the cutting and removal of timber for the purpose of timber production. The term does not include activities carried out for the purpose of establishing a timber plantation (eg clearing of natural forests), but it does include the provision of access roads to enable or assist the cutting and removal of timber.

### Part 2 Timber harvest guarantee

#### Division 1 Harvesting operations on accredited timber plantations

**Clause 8** provides that harvesting operations on an accredited timber plantation are not subject to the environmental assessment or approval procedures of Part 5 of the *Environmental Planning and Assessment Act 1979*, and that such operations do not require development consent under Part 4 of that Act. Clause 8 also provides that harvesting operations cannot be prohibited or restricted by an environmental planning instrument.

**Clause 9** exempts a person who is carrying out harvesting operations on an accredited timber plantation from certain offence provisions under the *National Parks and Wildlife Act 1974*. This will apply only if the operations are carried out in accordance with the Code (or Codes) applying to the timber plantation and in relation to things reasonably connected with the carrying out of the operations. The offence provisions which are exempted relate to the taking or killing of protected and endangered fauna, and to the picking of native plants. If those provisions were to apply, the person carrying out the harvesting operations would need to obtain a licence under that Act authorising the person to take or kill fauna, or to pick native plants, in the course of carrying out the operations. Under that Act, *take* includes significant modification of the habitat of fauna which is likely to adversely affect its essential behavioural patterns. *Pick* includes cut, destroy, remove or injure.

Clause 9 also provides that interim protection orders and stop work orders under the *National Parks and Wildlife Act 1974*, and conservation instruments under the *Heritage Act 1977*, may not be made *so* as to prevent or interfere with the carrying out of harvesting operations on accredited timber plantations.

**Clause 10** provides that a local council may not give an order under the *Local Government Act 1993* so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation.

**Clause 11** provides that harvesting operations on an accredited timber plantation are to be subject to any Code applying to the timber plantation, and are subject to other relevant laws.

## **Division 2     Accreditation of timber plantations**

This Division (**clauses 12–18**) makes provision for the accreditation of timber plantations. Accreditation is the mechanism by which timber plantations benefit from the harvest guarantee provisions described above. The Division contains provisions relating to applications for accreditation, the determination of applications and review by the Minister of the Director-General's decisions, certificates of accreditation, the duration of accreditation, and public notification of accredited timber plantations. The accreditation of a timber plantation may be cancelled if the Director-General is satisfied that there has been a significant breach of a Code applying *to* the timber plantation, or that the timber plantation has been abandoned, or that the area of land concerned (or part of it) is no longer a timber plantation.

One particular ground on which the Director-General may refuse to accredit a timber plantation is if the Director-General is satisfied that, in the establishment of the timber plantation, the area concerned was cleared of native vegetation without the consent of the Director-General of the Department of Land and Water Conservation.

### **Part 3 Timber plantation (environment protection) harvesting codes**

**Clause 19** requires the Director-General to prepare a draft Code (which must be approved by the Minister before being finalised).

**Clause 20** authorises a Code, for the purpose of protecting the environment, to regulate the carrying out of harvesting operations on accredited timber plantations. A Code may deal with such matters as soil erosion, native animals and plants, and the circumstances in which compensation will be available because of the need to protect unique or special wildlife values.

**Clause 21** provides that a Code may not contain provisions that are inconsistent with the provisions of any Act applying to harvesting operations (eg the *Clean Waters Act 1970*).

**Clause 22** requires a Code to be adopted by regulation before it comes into force. Any such regulation will need to comply with the requirements of the *Subordinate Legislation Act 1989* (eg the proposed regulation must be advertised, consultation must take place and a regulatory impact statement must be prepared).

**Clause 23** requires the owner and manager of a timber plantation (including the licensees of the Forestry Commission) to ensure that harvesting operations on the timber plantation are carried out in accordance with the Code (or Codes) applying to the timber plantation.

**Clause 24** provides for the appointment of appropriately qualified timber plantation officers to supervise compliance with Codes.

### **Part 4 Miscellaneous**

**Clause 25** provides that the proposed Act binds the Crown.

**Clause 26** enables proceedings for offences under the proposed Act to be dealt with by Local Courts.

**Clause 27** empowers the Governor to make regulations for the purposes of the proposed Act, including savings and transitional provisions consequent on the enactment of the proposed Act.

**Clause 28** amends section 27 (3) of the *Forestry Act 1916* as a consequence of the proposed Act. That provision in effect permits a person to take timber from certain Crown timber land if the Forestry Commission certifies that the tree has been planted for the purpose of tree farming. The amendment provides that this certification will not be necessary if the tree is situated on an accredited timber plantation.

**Clause 29** amends the note to section 124 of the *Local Government Act 1993* so that it refers to the operation of clause 10.

**Clause 30** provides for the proposed Act to be reviewed by the Minister after 5 years.