

Passed by both Houses



New South Wales

Plantations and Reafforestation Amendment Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Plantations and Reafforestation Amendment Bill 2010

Act No , 2010

An Act to amend the *Plantations and Reafforestation Act 1999* to make further provision with respect to the authorisation of plantations; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Plantations and Reafforestation Amendment Act 2010*.

2 Commencement

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

Schedule 1 **Amendment of Plantations and Reafforestation Act 1999 No 97**

[1] Section 3 Objects of Act

Insert “best practice” after “codify” in section 3 (c).

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised officer means a person appointed under section 61.

Department means the Department of Industry and Investment.

Director-General means the Director-General of the Department.

[3] Section 6 Exempt farm forestry

Omit section 6 (1) (a) and (b). Insert instead:

- (a) the total area in which plantation operations of any kind are carried out on the farm does not exceed 30 hectares at any one time,
- (b) any clearing of native vegetation (within the meaning of the *Native Vegetation Act 2003*) is exempt from the requirement under section 12 of that Act that the clearing be in accordance with a development consent or a property vegetation plan,
- (b1) any clearing of State protected land which is subject to the provisions of the *Native Vegetation Conservation Act 1997 (1997 Act)* because of the operation of clause 4 of Schedule 3 to the *Native Vegetation Act 2003 (2003 Act)* and the regulations under the 2003 Act is exempt from any requirement under Part 2 of the 1997 Act for development consent,

[4] Section 9 Offence with respect to unauthorised plantations

Omit section 9 (1) (b).

[5] Section 9 (4)

Omit the definition of *ancillary plantation operations*. Insert instead:

ancillary plantation operations means plantation operations that are ancillary to:

- (a) the carrying out of development in accordance with development consent under Part 4, or in accordance with

the requirements of Part 5, of the *Environmental Planning and Assessment Act 1979*, or

- (b) the carrying out of an approved project within the meaning of Part 3A of that Act,

but only if the development or project does not comprise mainly plantation operations.

[6] Section 9 (4)

Omit the definition of *existing plantation*.

[7] Section 9 (4), Note

Insert after the subsection:

Note. Provisions relating to plantations authorised under other laws before the commencement of this section (existing plantations) are contained in clause 6 of Schedule 3.

[8] Section 12 Determination of applications for authorisation

Omit section 12 (3). Insert instead:

- (3) Written notice of the Minister's decision to grant an application is also to be given, within 40 days after the decision is made:
- (a) to the council of any local government area within which the plantation or proposed plantation is situated, and
- (b) to the Minister administering the *Crown Lands Act 1989*, in respect of plantation operations to be carried out on a road (within the meaning of Division 6 of Part 4 of that Act) that is unformed.

[9] Section 14 Provisions relating to non-complying plantations

Omit "The Minister is to invite any person or body provided with a copy of the application to make submissions on the application within the time and in the manner specified by the Minister (having regard to the period within which the Minister is required by this Part to deal with the application)." from section 14 (3).

[10] Section 14 (3), Note

Omit "any application and".

[11] Section 14 (3A)

Insert after section 14 (3):

- (3A) The Minister is to invite any person or body provided with a copy of the application in accordance with this section to make submissions on those aspects of the application that indicate

non-compliance with the relevant complying development standards of the Code:

- (a) within 3 weeks after receipt of a copy of the application, and
- (b) in the manner specified by the Minister.

[12] Section 15 Provisions relating to threatened species conservation

Omit “section 9” from section 15 (9). Insert instead “clause 6 of Schedule 3”.

[13] Section 16 Provisions relating to plantations subject to regional vegetation management plans or substitute plans

Omit the section.

[14] Section 17 Provisions relating to plantations already established

Omit section 17 (4). Insert instead:

- (4) Despite anything to the contrary in this Part:
 - (a) this section applies even though a plantation is a complying plantation, and
 - (b) this section does not apply to or in respect of a plantation that is required by section 17C to be authorised.

[15] Sections 17A–17C

Insert after section 17:

17A Notification of change in ownership or management of plantation

- (1) A person must give notice to the Minister in accordance with this section within 28 days after becoming the owner of the whole or part of a plantation that was authorised before the person became owner.
- (2) The owner of an authorised plantation must give notice to the Minister in accordance with this section within 28 days after a new manager is appointed for the whole or part of the plantation.
- (3) The notice must:
 - (a) be in the form approved by the Director-General, and
 - (b) identify the area or areas of land comprising the authorised plantation and the part or parts of land subject to a change in ownership or management, and
 - (c) identify the new owner or owners, or manager or managers, of the part or parts of the land.

Maximum penalty: 10 penalty units.

17B Changes in ownership and management not affecting authorisation of plantations

The authorisation of an authorised plantation is not affected by:

- (a) any change in ownership or management of the whole of the plantation, or
- (b) any change in the ownership of a part of the plantation so long as the whole of the plantation remains under the same management, or
- (c) any change in the management of a part of the plantation so long as the whole of the plantation remains under the same ownership.

17C Changes in ownership and management affecting authorisation of plantations

- (1) For the purposes of this section, a *significant change* to an authorised plantation is:
 - (a) a change in the ownership of part only of the land comprising the plantation that occurs at the same time as a change in the management of that part of the land, or
 - (b) a change in the ownership of part only of the land comprising the plantation that follows a change in the management of that part of the land, or
 - (c) a change in the management of part only of the land comprising the plantation that follows a change in the ownership of that part of the land.
- (2) If there is a significant change to an authorised plantation (*the original plantation*) and the owner of any part of the land comprising the original plantation intends to continue plantation operations on that part after the change, the owner must make an application under section 11 for the authorisation of that part as a plantation.
- (3) The Minister may waive or modify any of the requirements of this Act in relation to an application for authorisation as a plantation of any part of the land comprising the original plantation, but only if the application does not relate to any other land.
- (4) The Minister must grant an authorisation of a part of the land comprising the original plantation but may impose any conditions on the authorisation that the Minister considers appropriate.

- (5) An authorisation in respect of an original plantation ceases to have effect on the date on which the significant change occurs.
- (6) However, any part of the land comprising the original plantation is taken to be an authorised plantation subject to the same conditions that applied to the original plantation (to the extent that those conditions are relevant to that part of the land), but only until:
 - (a) 28 days after the significant change, or
 - (b) if an application is made within that 28-day period for the authorisation of that part of the land as a plantation, the application is determined by the Minister.
- (7) Nothing in this section requires an application to be made for authorisation of land as a plantation if authorisation would not be required because of section 9.

[16] Section 20 Conditions of authorisations

Omit section 20 (1) and (2). Insert instead:

- (1) An authorisation under this Act (other than for a complying plantation) may be granted subject to conditions.
- (2) Subsection (1) does not affect the operation of section 13 (4).

[17] Section 21

Omit the section. Insert instead:

21 Duration of authorisation

Subject to section 17C, the authorisation of a plantation remains in force unless it is cancelled by the Minister in accordance with this Act.

[18] Section 22 Cancellation of authorisation

Omit “or” where lastly occurring in section 22 (1) (d).

[19] Section 22 (1) (e)

Omit the paragraph.

[20] Section 23 Public register relating to authorisations

Omit section 23 (1) (a).

[21] Section 23 (2)

Omit the subsection. Insert instead:

- (2) The register is to be made available for inspection on the internet site of the Department.

[22] Section 42 Obligation to make financial contribution

Omit section 42 (4).

[23] Section 47 Plantation operations and exempt farm forestry not subject to EPA Act

Omit section 47 (3) (a).

[24] Section 58 Minister may make stop work order

Omit “an authorised plantation” from section 58 (1).

Insert instead “a plantation”.

[25] Section 58 (3)

Omit “the authorised plantation”. Insert instead “the plantation”.

[26] Section 59 Directions for remedial work

Omit “an authorised plantation” from section 59 (1).

Insert instead “a plantation”.

[27] Section 60 Appeals under this Part

Omit “an authorised plantation” from section 60 (1).

Insert instead “a plantation”.

[28] Sections 61–61D

Omit section 61. Insert instead:

61 Appointment of authorised officers

- (1) The Minister may appoint any appropriately qualified person as an authorised officer to investigate and report to the Minister on whether this Act and the Code are being complied with.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.

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- (3) An authorised officer cannot exercise the functions of an authorised officer under this Act unless the officer is in possession of an identification card issued on behalf of the Minister.
 - (4) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person who is subject to the exercise of the functions, produce the officer's identification card to the person.

61A Powers of entry and inspection

- (1) For the purpose of exercising his or her functions under this Act, an authorised officer may, on giving reasonable notice to the owner or manager, enter an authorised plantation or land that the authorised officer reasonably suspects is required to be authorised as a plantation under this Act.
- (2) However, an authorised officer may enter such a plantation or land without giving reasonable notice if:
 - (a) the officer considers there is a risk of significant harm to the environment occurring in respect of the plantation or land, and
 - (b) the officer has attempted to contact the owner or manager before entering the plantation or land.
- (3) An authorised officer may, for the purpose of exercising his or her functions under this Act:
 - (a) conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs) as the officer considers necessary, and
 - (b) require the owner or manager to provide such reasonable assistance and facilities as may be requested by the officer to exercise the officer's functions under this section.
- (4) A person may accompany an authorised officer and take all reasonable steps to assist an officer in the exercise of the officer's functions under this Act if the officer is of the opinion that the person is capable of providing assistance to the officer in the exercise of those functions.
- (5) An authorised officer is not entitled to enter any part of premises used only for residential purposes except with the consent of the occupier of the premises.

61B Power to obtain information

- (1) If an authorised officer enters land for the purpose of exercising functions under this Act, the authorised officer may require the owner or manager of the land to provide such relevant information as the officer requires.
- (2) The Director-General may, by notice in writing served on the owner or manager of land, require the owner or manager to give to an authorised officer, in accordance with the notice, any relevant information.
- (3) In this section, *relevant information* means information or documents relating to matters that are reasonably connected with the administration of this Act or required for the purposes of determining whether this Act or the Code is being complied with, but does not include information or documents of a commercially sensitive nature.
- (4) A person is not excused from giving relevant information under this section on the ground that the information may tend to incriminate the person.
- (5) Any relevant information obtained from a natural person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under section 61C.

61C Offences in respect of authorised officers

- (1) A person must not, without reasonable excuse:
 - (a) obstruct an authorised officer in the exercise of the officer's functions under this Act, or
 - (b) fail or refuse to comply with a requirement made by an authorised officer or the Director-General under this Act, or
 - (c) provide information to an authorised officer which the person knows is false or misleading in a material respect.Maximum penalty: 100 penalty units.
- (2) In this section, *obstruct* includes delay, threaten or hinder.

61D Protection from personal liability

- (1) Any matter or thing done or omitted to be done by an authorised officer does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, make the authorised officer personally liable to any

action, liability, claim or demand in respect of that matter or thing.

(2) However, any such liability attaches instead to the Crown.

[29] Section 62 Penalty notices

Omit section 62 (9).

[30] Section 63 Evidence

Omit “under section 61” from section 63 (e).

[31] Section 64 Proceedings for offences

Insert after section 64 (4):

(5) However, proceedings for any such offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer.

(6) If subsection (5) is relied on for the purpose of commencing proceedings for an offence, the process commencing the proceedings must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the process commencing the proceedings, unless the contrary is established.

[32] Section 67

Omit the section. Insert instead:

67 Delegation

(1) The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) or the regulations to:

- (a) any member of staff of a Division of the Government Service for which the Minister is responsible, or
- (b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.

(2) The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) or the regulations to:

- (a) any member of staff of the Department, or

- (b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.

[33] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Plantations and Reafforestation Amendment Act 2010

[34] Schedule 3, clause 4 (1)

Insert “Accordingly, such a plantation is not an existing plantation within the meaning of clause 6.” after “plantation.”.

[35] Schedule 3, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Plantations and Reafforestation
Amendment Act 2010**

6 Existing plantations

- (1) An existing plantation is not required to be authorised under this Act.
- (2) In this clause, *existing plantation* means a plantation established before the commencement of section 9 in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, any law dealing with native vegetation conservation and any other relevant law:
 - (a) including a proposed plantation that was cleared for planting before the commencement of section 9 in accordance with those requirements, but
 - (b) not including a plantation that is replanted after the commencement of this clause if the area that is replanted exceeds 30 hectares.