



New South Wales

Plantations and Reafforestation Amendment Bill 2010

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 *Plantations and Reafforestation Act 1999* (***the Act***) as follows:

- (a) to clarify the authorisation and ownership provisions with respect to plantations,
- (b) to expand the powers of entry and inspection and the power to obtain information with respect to plantations,
- (c) to make a number of other minor and consequential amendments to the Act.

The amendments are generally in accordance with proposals arising out of a statutory review of the Act.

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 on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Plantations and Reafforestation Act 1999 No 97

Authorisation of plantations

A plantation or proposed plantation is required to be authorised under the Act, except if plantation operations carried out on the plantation are exempt farm forestry, are plantation operations on an existing plantation or are ancillary plantation operations.

Schedule 1 [3] amends section 6 of the Act which currently provides that plantation operations carried out on a farm will be classified as exempt farm forestry if, among other things, the total area of the farm does not exceed 30 hectares at any one time. The amendment makes it clear that the actual plantation operations on the farm must not total more than 30 hectares for the operations to be exempt farm forestry. The amendment also updates references to the repealed *Native Vegetation Conservation Act 1997*.

Schedule 1 [4], [6] and [7] amend section 9 of the Act to remove references to existing plantations. Provisions dealing with existing plantations will be included in Schedule 3 to the Act by Schedule 1 [35] as they are of a savings and transitional nature.

Schedule 1 [5] amends section 9 of the Act by way of statute law revision to ensure that ancillary plantation operations cover operations that are ancillary to the carrying out of an approved project under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 [8] amends section 12 of the Act to provide that written notice of the Minister's decision to grant an application for the authorisation of plantation operations on an unformed road is to be given to the Minister for Lands.

Schedule 1 [9]–[11] amend section 14 of the Act to recast the present requirement that the Minister is to invite submissions on an application for authorisation of a non-complying plantation, that is, a plantation that does not comply with the complying development standards of the *Plantations and Reafforestation Code (the Code)* so that such submissions can only be made on the aspects of the application that indicate non-compliance with those standards.

Schedule 1 [16] amends section 20 of the Act to provide that the authorisation of a plantation (other than for a complying plantation) may be granted subject to any conditions. Such conditions are to be no longer restricted to just conditions relating to establishment operations.

Schedule 1 [18] and [19] amend section 22 of the Act to remove an unnecessary provision in respect of the cancellation of timber plantation authorisations.

Schedule 1 [20] amends section 23 of the Act to provide that the public register relating to plantation authorisations maintained by the Minister is no longer required to include applications for authorisations.

Schedule 1 [21] amends section 23 of the Act to provide that the register is to be made available for inspection on the internet site of the Department of Industry and Investment.

Schedule 1 [34] amends Schedule 3 to the Act to make it clear that timber plantations accredited under the repealed *Timber Plantations (Harvest Guarantee) Act 1995* are taken to be authorised plantations under the Act and therefore are not existing plantations.

Schedule 1 [35] amends Schedule 3 to the Act to insert provisions dealing with existing plantations. An existing plantation is defined as a plantation established before the commencement of section 9 of the Act (that is, before 14 December 2001) 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. The amendment continues the exemption for existing plantations from the requirement to be authorised, but only if there is no replanting of an area on the plantation exceeding 30 hectares.

Schedule 1 [12] and [22] make consequential amendments.

Ownership and management of plantations

Currently, section 21 of the Act provides that any change in the ownership or management of an authorised plantation does not affect the authorisation of the plantation. **Schedule 1 [15]** inserts proposed sections 17A–17C into the Act to make it clear in which circumstances a change in ownership or management affecting a plantation will also affect the authorisation of the plantation.

Proposed section 17A requires the owner of an authorised plantation to notify the Minister of any such change in ownership or management of the plantation or part of the plantation.

Proposed section 17B provides that the authorisation of an authorised plantation will not be 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.

Proposed section 17C provides that, if there is a change in both the ownership and management of part of the land comprising an authorised plantation, application must be made for the authorisation as a plantation of each part of the land comprising the original plantation on which it is intended to continue plantation operations. However, the proposed section does not require authorisation of a plantation that would not otherwise be required to be authorised because the plantation operations are exempt farm forestry or ancillary plantation operations, that is, plantation operations that are ancillary to the carrying out of development, an activity or a Part 3A project under the *Environmental Planning and Assessment Act 1979*. The Minister may waive or modify any of the requirements of the Act in relation to such an application but only if all of the land to which the application relates comprises part of the original plantation. The Minister must grant such an authorisation, but may impose any conditions on the authorisation.

Schedule 1 [14] and [17] make consequential amendments.

Enforcement

Schedule 1 [24]–[27] amend sections 58–60 of the Act to apply certain current enforcement provisions of the Act, including stop work orders and directions for remedial work, to any plantations (rather than just authorised ones) where there have been breaches of the Act or Code. However, these enforcement provisions will still not apply to existing plantations as such plantations are not subject to the Act or Code.

Schedule 1 [28] substitutes section 61 of the Act (which deals with the appointment of authorised officers to conduct investigations on whether the Act and the Code prescribed under the Act are being complied with) and inserts proposed sections 61A, 61B, 61C and 61D in respect of the appointment of authorised officers and the investigation of compliance with the Act.

Proposed section 61 provides for the appointment of authorised officers to exercise certain functions under the Act. **Schedule 1 [29] and [30]** make consequential amendments.

Proposed section 61A permits an authorised officer to enter an authorised plantation or land that the officer reasonably suspects is required to be authorised as a plantation, for the purpose of determining whether the Act and the Code are being complied with, and enables the officer to exercise certain investigatory powers.

Proposed section 61B provides a power for the Director-General to require the owner or manager of a plantation to give relevant information or produce relevant documents.

Proposed section 61C provides for offences for obstructing authorised officers, failing to comply with requirements and providing false or misleading information.

Proposed section 61D provides for the exclusion of personal liability of authorised officers executing the Act.

Schedule 1 [31] amends section 64 of the Act to provide that proceedings for an offence under the Act or the regulations may be commenced within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer (at present, the proceedings may only be commenced within 2 years after the date on which the offence is alleged to have been committed).

Miscellaneous amendments

Schedule 1 [1] amends section 3 of the Act to expand one of the current objects of the Act (to codify environmental standards, and provide a streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations) so that it refers to “best practice” environmental standards.

Schedule 1 [2] amends section 4 of the Act to insert definitions of *authorised officer*, *Department* and *Director-General*.

Plantations and Reafforestation Amendment Bill 2010

Explanatory note

Schedule 1 [13] omits section 16 of the Act which contains outdated provisions dealing with native vegetation. **Schedule 1 [23]** contains a consequential amendment.

Schedule 1 [32] substitutes section 67 of the Act to provide for the delegation of functions by the Director-General (currently only the Minister has a power to delegate his or her functions).

Schedule 1 [33] amends Schedule 3 to the Act to enable the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

Plantations and Reafforestation Amendment Bill 2010

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Plantations and Reafforestation Act 1999 No 97	3



New South Wales

Plantations and Reafforestation Amendment Bill 2010

No. , 2010

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Plantations and Reafforestation Amendment Act 2010</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Plantations and Reafforestation Act 1999 No 97	1
		2
[1] Section 3 Objects of Act		3
	Insert “best practice” after “codify” in section 3 (c).	4
[2] Section 4 Definitions		5
	Insert in alphabetical order in section 4 (1):	6
	<i>authorised officer</i> means a person appointed under section 61.	7
	<i>Department</i> means the Department of Industry and Investment.	8
	<i>Director-General</i> means the Director-General of the Department.	9
		10
[3] Section 6 Exempt farm forestry		11
	Omit section 6 (1) (a) and (b). Insert instead:	12
	(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,	13
		14
		15
	(b) any clearing of native vegetation (within the meaning of the <i>Native Vegetation Act 2003</i>) 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,	16
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	(b1) any clearing of State protected land which is subject to the provisions of the <i>Native Vegetation Conservation Act 1997 (1997 Act)</i> because of the operation of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003 (2003 Act)</i> and the regulations under the 2003 Act is exempt from any requirement under Part 2 of the 1997 Act for development consent,	21
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		27
[4] Section 9 Offence with respect to unauthorised plantations		28
	Omit section 9 (1) (b).	29
[5] Section 9 (4)		30
	Omit the definition of <i>ancillary plantation operations</i> . Insert instead:	31
	<i>ancillary plantation operations</i> means plantation operations that are ancillary to:	32
		33
	(a) the carrying out of development in accordance with development consent under Part 4, or in accordance with	34
		35

Plantations and Reafforestation Amendment Bill 2010

Schedule 1 Amendment of Plantations and Reafforestation Act 1999 No 97

	the requirements of Part 5, of the <i>Environmental Planning and Assessment Act 1979</i> , or	1
	(b) the carrying out of an approved project within the meaning of Part 3A of that Act,	2
	but only if the development or project does not comprise mainly plantation operations.	3
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		6
[6]	Section 9 (4)	7
	Omit the definition of <i>existing plantation</i> .	8
[7]	Section 9 (4), Note	9
	Insert after the subsection:	10
	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.	11
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		13
[8]	Section 12 Determination of applications for authorisation	14
	Omit section 12 (3). Insert instead:	15
	(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:	16
	(a) to the council of any local government area within which the plantation or proposed plantation is situated, and	17
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	(b) to the Minister administering the <i>Crown Lands Act 1989</i> , 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.	20
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[9]	Section 14 Provisions relating to non-complying plantations	24
	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).	25
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		29
[10]	Section 14 (3), Note	30
	Omit “any application and”.	31
[11]	Section 14 (3A)	32
	Insert after section 14 (3):	33
	(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	34
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	non-compliance with the relevant complying development standards of the Code:	1
	(a) within 3 weeks after receipt of a copy of the application, and	2
	(b) in the manner specified by the Minister.	3
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		5
[12]	Section 15 Provisions relating to threatened species conservation	6
	Omit “section 9” from section 15 (9). Insert instead “clause 6 of Schedule 3”.	7
[13]	Section 16 Provisions relating to plantations subject to regional vegetation management plans or substitute plans	8
	Omit the section.	9
		10
[14]	Section 17 Provisions relating to plantations already established	11
	Omit section 17 (4). Insert instead:	12
	(4) Despite anything to the contrary in this Part:	13
	(a) this section applies even though a plantation is a complying plantation, and	14
	(b) this section does not apply to or in respect of a plantation that is required by section 17C to be authorised.	15
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		17
[15]	Sections 17A–17C	18
	Insert after section 17:	19
17A	Notification of change in ownership or management of plantation	20
	(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.	21
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	(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.	25
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	(3) The notice must:	28
	(a) be in the form approved by the Director-General, and	29
	(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	30
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	(c) identify the new owner or owners, or manager or managers, of the part or parts of the land.	33
		34
	Maximum penalty: 10 penalty units.	35

17B	Changes in ownership and management not affecting authorisation of plantations	1 2
	The authorisation of an authorised plantation is not affected by:	3
	(a) any change in ownership or management of the whole of the plantation, or	4 5
	(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	6 7 8
	(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.	9 10 11
17C	Changes in ownership and management affecting authorisation of plantations	12 13
	(1) For the purposes of this section, a <i>significant change</i> to an authorised plantation is:	14 15
	(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	16 17 18
	(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	19 20 21
	(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.	22 23 24
	(2) If there is a significant change to an authorised plantation (<i>the original plantation</i>) 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.	25 26 27 28 29 30
	(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.	31 32 33 34 35
	(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.	36 37 38 39

(5)	An authorisation in respect of an original plantation ceases to have effect on the date on which the significant change occurs.	1 2
(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:	3 4 5 6 7
(a)	28 days after the significant change, or	8
(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.	9 10 11
(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.	12 13 14
[16]	Section 20 Conditions of authorisations	15
	Omit section 20 (1) and (2). Insert instead:	16
(1)	An authorisation under this Act (other than for a complying plantation) may be granted subject to conditions.	17 18
(2)	Subsection (1) does not affect the operation of section 13 (4).	19
[17]	Section 21	20
	Omit the section. Insert instead:	21
21	Duration of authorisation	22
	Subject to section 17C, the authorisation of a plantation remains in force unless it is cancelled by the Minister in accordance with this Act.	23 24 25
[18]	Section 22 Cancellation of authorisation	26
	Omit “or” where lastly occurring in section 22 (1) (d).	27
[19]	Section 22 (1) (e)	28
	Omit the paragraph.	29
[20]	Section 23 Public register relating to authorisations	30
	Omit section 23 (1) (a).	31

[21] Section 23 (2)	1
Omit the subsection. Insert instead:	2
(2) The register is to be made available for inspection on the internet site of the Department.	3 4
[22] Section 42 Obligation to make financial contribution	5
Omit section 42 (4).	6
[23] Section 47 Plantation operations and exempt farm forestry not subject to EPA Act	7 8
Omit section 47 (3) (a).	9
[24] Section 58 Minister may make stop work order	10
Omit “an authorised plantation” from section 58 (1).	11
Insert instead “a plantation”.	12
[25] Section 58 (3)	13
Omit “the authorised plantation”. Insert instead “the plantation”.	14
[26] Section 59 Directions for remedial work	15
Omit “an authorised plantation” from section 59 (1).	16
Insert instead “a plantation”.	17
[27] Section 60 Appeals under this Part	18
Omit “an authorised plantation” from section 60 (1).	19
Insert instead “a plantation”.	20
[28] Sections 61–61D	21
Omit section 61. Insert instead:	22
61 Appointment of authorised officers	23
(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.	24 25 26
(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.	27 28 29

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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. 1
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- (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. 5
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- 61A Powers of entry and inspection** 9
- (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. 10
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- (2) However, an authorised officer may enter such a plantation or land without giving reasonable notice if: 15
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- (a) the officer considers there is a risk of significant harm to the environment occurring in respect of the plantation or land, and 17
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- (b) the officer has attempted to contact the owner or manager before entering the plantation or land. 20
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- (3) An authorised officer may, for the purpose of exercising his or her functions under this Act: 22
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- (a) conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs) as the officer considers necessary, and 24
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- (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. 28
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- (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. 31
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- (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. 36
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61B	Power to obtain information	1
(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 3 4 5
(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.	6 7 8 9
(3)	In this section, <i>relevant information</i> 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.	10 11 12 13 14 15
(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.	16 17 18
(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.	19 20 21 22
61C	Offences in respect of authorised officers	23
(1)	A person must not, without reasonable excuse:	24
(a)	obstruct an authorised officer in the exercise of the officer's functions under this Act, or	25 26
(b)	fail or refuse to comply with a requirement made by an authorised officer or the Director-General under this Act, or	27 28 29
(c)	provide information to an authorised officer which the person knows is false or misleading in a material respect.	30 31
	Maximum penalty: 100 penalty units.	32
(2)	In this section, <i>obstruct</i> includes delay, threaten or hinder.	33
61D	Protection from personal liability	34
(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	35 36 37 38

	action, liability, claim or demand in respect of that matter or thing.	1 2
	(2) However, any such liability attaches instead to the Crown.	3
[29]	Section 62 Penalty notices	4
	Omit section 62 (9).	5
[30]	Section 63 Evidence	6
	Omit “under section 61” from section 63 (e).	7
[31]	Section 64 Proceedings for offences	8
	Insert after section 64 (4):	9
	(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.	10 11 12 13
	(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.	14 15 16 17 18 19 20 21 22
[32]	Section 67	23
	Omit the section. Insert instead:	24
	67 Delegation	25
	(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:	26 27 28
	(a) any member of staff of a Division of the Government Service for which the Minister is responsible, or	29 30
	(b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.	31 32
	(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:	33 34 35
	(a) any member of staff of the Department, or	36

	(b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.	1 2
[33]	Schedule 3 Savings, transitional and other provisions	3
	Insert at the end of clause 1 (1):	4
	<i>Plantations and Reafforestation Amendment Act 2010</i>	5
[34]	Schedule 3, clause 4 (1)	6
	Insert “Accordingly, such a plantation is not an existing plantation within the meaning of clause 6.” after “plantation.”.	7 8
[35]	Schedule 3, Part 3	9
	Insert after Part 2:	10
	Part 3 Provisions consequent on enactment of Plantations and Reafforestation Amendment Act 2010	11 12 13
	6 Existing plantations	14
	(1) An existing plantation is not required to be authorised under this Act.	15 16
	(2) In this clause, <i>existing plantation</i> means a plantation established before the commencement of section 9 in accordance with the requirements of the <i>Environmental Planning and Assessment Act 1979</i> , any law dealing with native vegetation conservation and any other relevant law:	17 18 19 20 21
	(a) including a proposed plantation that was cleared for planting before the commencement of section 9 in accordance with those requirements, but	22 23 24
	(b) not including a plantation that is replanted after the commencement of this clause if the area that is replanted exceeds 30 hectares.	25 26 27