

# Plantations and Reafforestation Act 1999 No 97

[1999-97]



New South Wales

## Status Information

### Currency of version

Historical version for 19 December 2014 to 6 July 2017 (accessed 25 November 2024 at 11:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

[Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)

[Statute Law \(Miscellaneous Provisions\) Act 2017 No 22](#) (not commenced — to commence on 7.7.2017)

### Authorisation

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File last modified 1 June 2017

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## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Objects of Act .....	6
4 Definitions .....	6
5 Definition of plantation .....	8
6 Exempt farm forestry .....	9
7 Land excluded from operation of Act .....	10
<b>Part 2 Authorisation of plantations</b> .....	10
8 Purposes of authorisation .....	10
9 Offence with respect to unauthorised plantations .....	11
10 Classes of authorised plantations .....	12
11 Application for authorisation of plantation or proposed plantation .....	12
12 Determination of applications for authorisation .....	13
13 Provisions relating to complying plantations .....	13
14 Provisions relating to non-complying plantations .....	14
15 Provisions relating to threatened species conservation .....	15
16 (Repealed) .....	17
17 Provisions relating to plantations already established .....	17
17A Notification of change in ownership or management of plantation .....	17
17B Changes in ownership and management not affecting authorisation of plantations .....	18

17C Changes in ownership and management affecting authorisation of plantations .....	18
18 Time within which applications for authorisation to be determined .....	19
19 Related regulatory approvals for authorised plantations .....	19
20 Conditions of authorisations .....	20
21 Duration of authorisation .....	20
22 Cancellation of authorisation .....	21
23 Public register relating to authorisations .....	22
24 Appeals to Land and Environment Court .....	22
<b>Part 3 Plantations and Reafforestation Code .....</b>	<b>22</b>
25 Preparation of Code .....	22
26 Public consultation .....	22
27 Content of Code .....	23
28 The Code not to be inconsistent with laws applying to plantations .....	24
29 Making and amendment of Code by regulations .....	24
30 Review of Code .....	25
31 Compliance with Code .....	25
<b>Part 4 Protection of unique or special wildlife values of authorised plantations</b>	
.....	25
32 Meaning of unique or special wildlife values .....	25
33 Requirement to give notice of likely impact on unique or special wildlife values .....	26
34 Evaluation of impact on unique or special wildlife values .....	26
35 Determination of Minister after receipt of report .....	26
36 Availability of compensation in respect of harvesting operations on timber plantations .....	27
37 Procedure if parties fail to agree on compensation .....	27
38 Powers to acquire land not affected .....	28
<b>Part 5 Financial contribution for transport infrastructure expenditure for timber plantations</b>	
.....	28
39 Transport infrastructure expenditure to which Part applies .....	28
40 Regional committees .....	28
41 Regional contribution plans .....	29

42	Obligation to make financial contribution .....	29
43	Liability for payment of financial contribution .....	30
44	Payment of financial contributions .....	30
45	Financial contributions to be paid into regional accounts.....	30
46	Charge on land to secure payment of financial contribution .....	31
<b>Part 6 Application of other legislation.....</b>		<b>32</b>
47	Plantation operations and exempt farm forestry not subject to EPA Act.....	32
48	Plantation operations not subject to certain provisions of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995 .....	33
49	Plantation operations not subject to certain provisions of Fisheries Management Act 1994 .....	33
50	Plantation operations not subject to certain provisions of Heritage Act 1977 .....	34
51	Plantation operations not subject to certain orders under the Local Government Act 1993.....	34
52	Plantation operations not subject to certain provisions of the Water Management Act 2000.....	34
53	Plantation operations not subject to notices under Soil Conservation Act 1938.....	35
54	Plantation operations on unformed Crown roads.....	35
55	Orders and instruments for protecting Aboriginal objects and places .....	35
56	Plantation operations subject to Code and other laws.....	35
<b>Part 7 Enforcement .....</b>		<b>35</b>
57	Civil enforcement—Land and Environment Court.....	35
58	Minister may make stop work order .....	36
59	Directions for remedial work.....	36
60	Appeals under this Part .....	37
61	Appointment of authorised officers .....	37
61A	Powers of entry and inspection .....	38
61B	Power to obtain information .....	38
61C	Offences in respect of authorised officers .....	39
61D	Protection from personal liability .....	39
62	Penalty notices .....	39
63	Evidence.....	40
64	Proceedings for offences .....	41
<b>Part 8 Miscellaneous .....</b>		<b>41</b>

65 Act binds Crown.....	41
66 Notes .....	41
67 Delegation .....	41
68 Plantation certificates.....	42
69 Service of notices .....	43
70 Regulations.....	43
71 Repeal of Timber Plantations (Harvest Guarantee) Act 1995 No 92 and regulation under that Act .....	43
72 (Repealed) .....	43
73 Savings, transitional and other provisions.....	43
74 Review of Act.....	43
<b>Schedule 1 Areas excluded from Act</b> .....	<b>44</b>
<b>Schedule 2 (Repealed)</b> .....	<b>44</b>
<b>Schedule 3 Savings, transitional and other provisions</b> .....	<b>44</b>

# Plantations and Reafforestation Act 1999 No 97



New South Wales

An Act to facilitate the reafforestation of land and the establishment of timber and other forest plantations; to repeal the *Timber Plantations (Harvest Guarantee) Act 1995*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Plantations and Reafforestation Act 1999*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are:

- (a) to facilitate the reafforestation of land, and
- (b) to promote and facilitate development for timber plantations on essentially cleared land, and
- (c) to codify best practice environmental standards, and provide a streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations, and
- (d) to make provision relating to regional transport infrastructure expenditure in connection with timber plantations,

consistently with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

### 4 Definitions

(1) In this Act:

**authorised officer** means a person appointed under section 61.

**authorised plantation** means a plantation or proposed plantation authorised for the time being under this Act.

**authorised timber plantation** means an authorised plantation that is authorised under this Act as a timber plantation.

**Code** means the Plantations and Reafforestation Code made under Part 3 and in force for the time being.

**complying plantation**—see section 13.

**Crown-timber lands** has the same meaning as in the [Forestry Act 2012](#).

**Department** means the Department of Industry and Investment.

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

**establishment operations** means (subject to subsection (2)) activities carried out for the purpose of establishing a plantation, for example, the clearing of land, the use of pesticides, herbicides and fertilisers and the provision of access roads in establishing a plantation, and the planting of trees or shrubs.

**exempt farm forestry**—see section 6.

**harvesting operations** means (subject to subsection (2)) the cutting and removal of timber from a plantation for the purpose of timber production, including the provision of access roads after establishment of a plantation to enable or assist the cutting and removal of timber or the carrying out of such other activities as are necessary for the efficient cutting and removal of timber.

**management operations** means (subject to subsection (2)) the carrying out of activities relating to the on-going management of a plantation (for example, silvicultural thinning, weed control, grazing, the maintenance of access roads and similar maintenance operations). Management operations includes any harvesting of timber that does not exceed the maximum amount of harvesting permitted by the Code for management operations.

**manager** of a plantation or proposed plantation means the person in charge of plantation operations on the plantation or proposed plantation.

**owner** of a plantation or proposed plantation includes:

- (a) an owner or lessee of the land comprising the plantation or proposed plantation, or
- (b) in the case of a plantation or proposed plantation that is a State forest or other Crown-timber lands under the management of the Forestry Corporation—the Forestry Corporation, or

(c) a person who has a forestry right (within the meaning of section 87A of the [Conveyancing Act 1919](#)) in relation to the plantation or proposed plantation.

**plantation**—see section 5.

**plantation operations** means any or all of the following:

- (a) establishment operations,
- (b) management operations,
- (c) harvesting operations.

**planted** means planted in the ground, and does not include planted in a pot or other container.

**tree** includes a sapling, but does not include a shrub.

**unique or special wildlife values**—see section 32.

(2) For the purposes of this Act:

- (a) the Code may declare that particular operations relating to plantations are or are not establishment, management or harvesting operations, and
- (b) except as provided by paragraph (a)—plantation operations do not include the demolition or erection of buildings (within the meaning of the [Environmental Planning and Assessment Act 1979](#)), or the building of dams, weirs or reservoirs.

(3) In this Act, a reference (however expressed) to the planting or harvesting of trees or shrubs for the purpose of timber production includes a reference to the planting or harvesting of trees or shrubs for use in energy production.

## 5 Definition of plantation

(1) In this Act, **plantation** means an area of land on which the predominant number of trees or shrubs forming, or expected to form, the canopy are trees or shrubs that have been planted (whether by sowing seed or otherwise):

- (a) for the purpose of timber production, or
- (b) for the protection of the environment (including for the purpose of reducing the salinity of the land or otherwise repairing or improving the land, for the purpose of biodiversity conservation or for the purpose of acquiring or trading in carbon sequestration rights), or
- (c) for any other purpose,

but not principally for the purpose of the production of food or any other farm produce other than timber.



- (2) To avoid doubt, a natural forest is not a plantation for the purposes of this Act. However, an area is not a natural forest merely because it contains some native trees or shrubs that have not been planted.
- (3) The Code may specify the distance between planted trees or shrubs that constitute a single canopy and plantation for the purposes of this Act.
- (4) A plantation can be a privately owned area of land, or it can be a State forest or other Crown-timber lands, or any other land.
- (5) A plantation can comprise more than one area of land if those areas are under the same ownership or management and the Minister determines that those areas may comprise a single plantation for the purposes of this Act.

## 6 Exempt farm forestry

- (1) For the purposes of this Act, **exempt farm forestry** is the carrying out of plantation operations on a farm that complies with each of the following:
  - (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,
  - (c) any harvesting of timber does not exceed the maximum amount of harvesting permitted by the Code for exempt farm forestry.
- (2) A **farm** is an area of land (or contiguous areas of land) owned by the same person or persons. However, the Code may make provision as to areas of land that are or are not to be regarded as contiguous or that are or are not to be regarded as owned by the same person or persons.

### Note—

Section 9 (2) provides that exempt farm forestry may be authorised, but is not required to be authorised, under this Act. Part 6 provides that exempt farm forestry is not subject to the [Environmental Planning and Assessment Act 1979](#).

## **7 Land excluded from operation of Act**

- (1) This Act does not apply to the following land:
  - (a) land that is within a local government area (or part of a local government area) specified in Part 1 of Schedule 1,
  - (b) land described in Part 2 of Schedule 1 that is subject to an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*),
  - (c) land that is dedicated or set apart as a flora reserve under the *Forestry Act 2012* or declared to be a special management zone under that Act,
  - (d) land that is declared as wilderness area under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*,
  - (e) land that is dedicated or reserved under the *National Parks and Wildlife Act 1974*,
  - (f) land that is subject to a conservation agreement entered into under Division 7 of Part 4 of the *National Parks and Wildlife Act 1974*,
  - (g) land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974*,
  - (h) land that is declared as a marine park or an aquatic reserve under the *Marine Estate Management Act 2014*,
  - (i) land that is critical habitat under Part 3 of the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*,
  - (j) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies,
  - (k) Lord Howe Island.
- (2) The regulations may amend Schedule 1.
- (3) This Act does not cease to apply to an authorised plantation merely because the land becomes land referred to in subsection (1) after the authorisation was granted.

## **Part 2 Authorisation of plantations**

### **8 Purposes of authorisation**

The purposes of the authorisation of plantations under this Act are:

- (a) to provide a streamlined and integrated process for obtaining approval to establish timber and other forest plantations, and

- (b) to guarantee harvesting operations on timber plantations, and
- (c) to apply codified environmental standards to establishment, management and harvesting operations on plantations.

**Note—**

See Part 6 which provides that authorised plantations are not subject to the *Environmental Planning and Assessment Act 1979* and certain other Acts.

**9 Offence with respect to unauthorised plantations**

- (1) A plantation or proposed plantation is required to be authorised under this Act if plantation operations are carried out on it after the commencement of this section, except if the plantation operations are:
  - (a) exempt farm forestry, or
  - (b) (Repealed)
  - (c) ancillary plantation operations.
- (2) Nothing in this Act prevents a plantation or proposed plantation that is not required to be authorised from being authorised under this Act.
- (3) A person who carries out, or causes or permits the carrying out of, plantation operations on a plantation or proposed plantation required to be authorised under this Act is guilty of an offence if:
  - (a) the plantation or proposed plantation is not authorised under this Act at the time the operations are carried out, or
  - (b) the plantation or proposed plantation is so authorised but the plantation operations carried out are not of a kind authorised under section 10 by the class of the authorisation.

Maximum penalty: 1,000 penalty units and, in addition, 100 penalty units for each day the offence continues.

- (4) In this section:

**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, or

(c) the carrying out of approved State significant infrastructure within the meaning of Part 5.1 of that Act,

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

**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.

**10 Classes of authorised plantations**

(1) The following 2 classes of plantations may be authorised under this Act:

- (a) Timber plantations,
- (b) Plantations (other than timber plantations).

(2) The Code may divide those classes of plantations into separate classes of plantations and prescribe the kind of plantation operations authorised under each such class of plantation.

(3) Harvesting operations (other than any such operations permitted by this Act as part of management operations) are not authorised under this Act on an authorised plantation unless it is an authorised timber plantation.

**11 Application for authorisation of plantation or proposed plantation**

(1) An application for the authorisation of the plantation or proposed plantation under this Act may be made to the Minister:

- (a) by an owner of the plantation or proposed plantation, or
- (b) by any other person with the consent in writing of an owner of the plantation or proposed plantation.

(2) An application for authorisation must:

- (a) be in such form as the Minister may determine, and
- (b) be accompanied by such reasonable administrative fee to cover the costs of dealing with the application as the Minister may determine, and
- (c) identify the area or areas of land comprising the plantation or proposed plantation by way of a map or other suitable means, and
- (d) state the class of plantation for which authorisation is sought, and
- (e) be accompanied by such information relating to the plantation or proposed plantation as is required by this Part or by the Minister.

- (3) The Minister may require the applicant to provide further information in order to determine the application.
- (4) Any such information or further information may relate to evidence of compliance with the requirements of any other law (including a law of the Commonwealth) or evidence that any lease or other tenure of the land concerned permits plantation operations of the kind to which the application relates.
- (5) An applicant may, with the approval of the Minister, amend the application before it is determined.
- (6) An application for authorisation may be made for the purpose of changing the class of an authorised plantation.

## 12 Determination of applications for authorisation

- (1) The Minister is (subject to this Part) to determine an application for authorisation under this Act:
  - (a) by granting the application and authorising the plantation or proposed plantation concerned, or
  - (b) by refusing the application.

### Note—

See section 20 for the imposition of conditions of authorisations.

- (2) Written notice of the Minister's decision is to be given to the applicant as soon as practicable after the decision is made.
- (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.
- (4) The regulations may make provision for or with respect to the review by the Minister of any determination of an application for authorisation under this Act.

## 13 Provisions relating to complying plantations

- (1) For the purposes of this Act, a **complying plantation** is a plantation:
  - (a) whose establishment complies with the relevant complying development standards of the Code, and

- (b) that is not a plantation in respect of which a species impact statement is required to be provided by this Part.
- (2) The applicant for authorisation of a complying plantation is required to provide the Minister with a statement that demonstrates compliance or proposed compliance with all the relevant complying development standards of the Code.
- (3) The Minister is required to grant the application if the Minister determines that it is a complying plantation. The authorisation is to be identified as an authorisation for a complying plantation.
- (4) It is a condition of any such authorisation that establishment operations comply with the relevant development standards of the Code.
- (5) However, the Minister may decide to deal with an application for authorisation of a complying plantation under section 14 because of any special circumstance that requires consideration under that section.
- (6) An authorised plantation does not require further authorisation under this Act merely because it ceases to be a complying plantation as a result of any change to the complying development standards of the Code.

#### **14 Provisions relating to non-complying plantations**

- (1) This section applies to an application for authorisation under this Act that is not dealt with under section 13.
- (2) The applicant for authorisation is required to provide the Minister with:
  - (a) a statement that demonstrates the extent of any compliance or proposed compliance with the relevant complying development standards of the Code, and
  - (b) a statement of the environmental effects of those plantation operations that do not or will not comply with those standards, being a statement that addresses the matters required to be assessed by the Code or by the Minister.
- (3) The Minister is to forward a copy of the application (and any relevant statements provided in connection with the application) to the following:
  - (a) any council for a local government area within which the plantation or proposed plantation is situated,
  - (b) the owner or occupier of any land adjoining the plantation or proposed plantation,
  - (c) any other person or body required by the Code to be provided with a copy of the application or the Minister considers appropriate.

#### **Note—**

Section 23 provides that copies of any authorisation are to be kept by the Minister on a public register.

- (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.
- (4) In determining the application, the Minister is required to take into consideration such of the following matters as are of relevance to the plantation or proposed plantation sought to be authorised under this Act:
- (a) the provisions of the Code that apply to the plantation or proposed plantation,
  - (b) the likely impacts of the plantation operations concerned, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
  - (c) in the case of a proposed plantation, the suitability of the site for the plantation,
  - (d) any submissions duly sought and made under this Act,
  - (e) the public interest.
- (5) In determining the application, the Minister may (but need not) take into consideration the provisions of any environmental planning instrument or other instrument under the *Environmental Planning and Assessment Act 1979* that would, but for this Act, apply to the carrying out of the development concerned.

## **15 Provisions relating to threatened species conservation**

- (1) This section applies if the Minister makes a determination that a species impact statement is required for the purposes of an application for authorisation under this Act. This section applies even if the plantation or proposed plantation the subject of the application is (but for that requirement) a complying plantation.
- (2) The Minister is to make such a determination if the Minister is of the opinion that a species impact statement would be required to accompany the application if it were a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the plantation or proposed plantation.
- (3) The applicant for authorisation is required to provide the Minister with a relevant species impact statement.
- (4) The Minister may not authorise the plantation or proposed plantation without the concurrence of:

- (a) the Director-General of National Parks and Wildlife, except in respect to a matter referred to in paragraph (b), or
- (b) if the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation, or their habitats—the Director of NSW Fisheries.

(5) Despite subsection (4):

- (a) the Minister administering the *National Parks and Wildlife Act 1974* may elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of that subsection, and
- (b) the Minister administering the *Fisheries Management Act 1994* may elect to act in the place of the Director of NSW Fisheries for the purposes of that subsection.

If any such Minister so elects, that Minister must supply the Minister to whom the application for authorisation was made with any recommendations made by the Director-General of National Parks and Wildlife or the Director of NSW Fisheries with respect to the matter and with his or her reasons for not accepting any of those recommendations.

- (6) In determining whether or not concurrence should be granted under subsection (4), the following matters must be taken into consideration:
  - (a) any species impact statement provided by the applicant for authorisation,
  - (b) any assessment report prepared on behalf of the Minister,
  - (c) any submissions or objections received concerning the application for authorisation,
  - (d) any relevant recovery plan or threat abatement plan,
  - (e) whether the plantation operations proposed are likely to reduce the long-term viability of the species, population or ecological community in the region,
  - (f) whether the plantation operations proposed are likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
  - (g) the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),
  - (h) the likely social and economic consequences of granting or refusing concurrence.
- (7) Concurrence under subsection (4) may be granted subject to conditions of the kind to which the authorisation of the plantation may be made subject under this Act. Any authorisation of the plantation under this Act must be made subject those conditions.



- (8) A species impact statement and any decision with respect to the application for authorisation need not take account of any relevant listing of a species, population or ecological community after the application was made (other than a provisional listing).
- (9) A species impact statement is not required to be provided (despite anything to the contrary in this section) if authorisation for a timber plantation is sought for an existing plantation (within the meaning of clause 6 of Schedule 3). However, if a species impact statement would be required (but for this subsection), the plantation cannot be a complying plantation and the Minister may:
  - (a) refuse the application if the plantation operations sought to be authorised might harm any unique or special wildlife values of the land concerned, or
  - (b) impose conditions on the grant of any authorisation for the purpose of protecting those values in connection with any harvesting or other plantation operations.
- (10) In this section, **species impact statement** and **development application** have the same meanings as they have in the [Environmental Planning and Assessment Act 1979](#).

## **16 (Repealed)**

## **17 Provisions relating to plantations already established**

- (1) This section applies to an application for authorisation under this Act in respect of which establishment operations have already been fully or partly carried out.
- (2) The Minister may (without limiting this Part) refuse the application if the Minister determines that the establishment operations were not carried out in accordance with any applicable requirements of this Act, the [Environmental Planning and Assessment Act 1979](#), any law dealing with native vegetation conservation and any other relevant law.
- (3) If any such application is granted, the Minister may grant the authorisation subject to any condition the Minister considers appropriate (including in connection with management or harvesting operations).
- (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.

## **17A Notification of change in ownership or management of plantation**

- (1) If there is a change in the ownership of the whole or part of a plantation that was authorised before that change in ownership, the former owner must give notice to the

Minister in accordance with this section within 28 days after the change in ownership.

- (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.

#### **18 Time within which applications for authorisation to be determined**

- (1) The Minister is to determine an application for authorisation within the following period after receiving the application:
  - (a) in the case of an application that relates to a complying plantation—14 days,
  - (b) in any other case—40 days,or within such longer period as is agreed to by the applicant.
- (2) If an application is not determined within that period, the Minister is taken, for the purpose only of any appeal under section 24, to have refused the application. This subsection does not prevent the Minister from subsequently granting the application.
- (3) A period referred to in this section does not include any period after the Minister requests further information from the applicant to determine the application and before the information is supplied to the Minister.

#### **19 Related regulatory approvals for authorised plantations**

- (1) This section applies to approvals and other authorities obtained under other Acts for the purposes of plantation operations on authorised plantations.

**Note—**

The authorities concerned, which have not been integrated into the authorisation granted under this Act by Part 6, may only be applicable in the case of some plantations. They include licences and approvals under

the *Water Management Act 2000*, environment protection licences under the *Protection of the Environment Operations Act 1997*, excavation permits under section 141 of the *Heritage Act 1977* and authorities in connection with Aboriginal relics or places under the *National Parks and Wildlife Act 1974*.

- (2) The Minister may act as the agent of an applicant for authorisation for the purpose of obtaining any such authority.
- (3) For that purpose, the Minister may provide to an agency from whom such an authorisation is sought any relevant information contained in the application for authorisation under this Act.
- (4) If the agency that grants such an authorisation is authorised to delegate the granting of the authorisation to an officer of the agency, the agency may delegate the granting of the authorisation to the Minister or to an officer of a Department administered by the Minister.

## **20 Conditions of authorisations**

- (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).
- (3) If establishment operations on a proposed plantation were subject (under this Act or any other law) to any area of habitat being reserved for the protection of native plants, animals or fish, the authorisation of the plantation is subject to the condition that any such habitat must not be damaged by any harvesting or other plantation operations.
- (4) An authorisation cannot be made subject to any condition other than a condition authorised or imposed by this Act.
- (5) A condition to which an authorisation is subject may, by notice served on the owner or manager of the authorised plantation, be altered or omitted by the Minister. However, a condition with respect to financial contributions to transport infrastructure expenditure or with respect to management or harvesting operations may only be altered at the request of the owner or manager.
- (6) An owner or manager of an authorised plantation who contravenes, or causes or permits the contravention of, any condition to which the authorisation is subject is guilty of an offence.

Maximum penalty (subsection (6)): 1,000 penalty units and, in addition, 100 penalty units for each day the offence continues.

## **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.

## **22 Cancellation of authorisation**

- (1) The authorisation of a plantation (or any part of the plantation) may be cancelled by the Minister at the request of the owner of the plantation or if the Minister is satisfied:
  - (a) that there has been a significant breach of the provisions of the Code applying to the plantation and that the breach cannot or has not been remedied, or
  - (b) that there has been a significant breach of the conditions to which the authorisation is subject and that the breach cannot or has not been remedied, or
  - (c) that the plantation has been abandoned, or
  - (d) that the cancellation of the authorisation is necessary to protect unique or special wildlife values of the land concerned and that any compensation required to be paid to the owner or manager of the plantation in accordance with Part 4 to protect those wildlife values has been duly paid.
  - (e) (Repealed)
- (2) In addition, the authorisation of a plantation (or any part of a plantation) that was not established at the time of its authorisation under this Act may be cancelled by the Minister if the Minister is satisfied that the plantation has not been established, or is not being established, in accordance with the Code, the conditions of the authorisation or any relevant law. Any such authorisation may only be cancelled within 3 years after the completion of those establishment operations.
- (3) In addition, the authorisation of a plantation (or any part of a plantation) that was not established at the time of its authorisation must be cancelled by the Minister on a date that is 3 years after the date of the grant of authorisation unless, before that date:
  - (a) the Minister is satisfied, either by the evidence provided by the owner or manager or by his or her own investigations, that the planting of trees or shrubs forming the plantation has been completed in accordance with the Code and any conditions of the authorisation, or
  - (b) the Minister is satisfied that the owner or manager has provided a satisfactory reason for the delay.
- (4) Cancellation of authorisation takes effect when a written notice by the Minister of the cancellation is given to the owner of the plantation or proposed plantation.
- (5) Cancellation of the authorisation of a part of a plantation has the effect of excluding that part from the area authorised as a plantation under this Act.

- (6) The Minister and the State do not incur any liability for any cancellation of an authorised plantation (or part of any such plantation), or for any direction under Part 4, except for the payment of compensation provided under Part 4.

### **23 Public register relating to authorisations**

- (1) The Minister is to maintain a register of:
  - (a) (Repealed)
  - (b) authorised plantations (including the identity of the plantation and a description of its location),
  - (c) the conditions to which an authorisation under this Act is subject,
  - (d) any other matter relating to plantations that the Minister considers appropriate.
- (2) The register is to be made available for inspection on the internet site of the Department.

### **24 Appeals to Land and Environment Court**

- (1) An applicant for authorisation under this Act may appeal to the Land and Environment Court against a decision of the Minister:
  - (a) not to grant the authorisation, or
  - (b) to impose conditions on the grant of the authorisation.

Any such appeal may be made within 28 days after written notice of the decision of the Minister is given to the applicant.

- (2) The owner or manager of a plantation may appeal to the Land and Environment Court against a decision of the Minister to cancel the authorisation of the plantation (or any part of the plantation). Any such appeal may be made within 28 days after written notice of the decision of the Minister is given to the owner or manager.

## **Part 3 Plantations and Reafforestation Code**

### **25 Preparation of Code**

The Minister is to arrange for the preparation of a draft Plantations and Reafforestation Code as soon as practicable after the commencement of this Part.

### **26 Public consultation**

- (1) The Minister is required to give the public an opportunity to make submissions on the proposed Code and to take any submission that is duly made into account.
- (2) In order to give the public an opportunity to do so, the Minister must:

- (a) exhibit the proposed Code at the head office of the Department of Land and Water Conservation and at its regional offices (including on the internet site of the Department), and
  - (b) allow a period of not less than 30 days for public comment, and
  - (c) before the proposed Code is exhibited, advertise the dates and places of exhibition and the period allowed for public comment in a newspaper circulating throughout the State and in any local newspaper that the Minister considers appropriate.
- (3) Before the proposed Code is made, the Minister is to prepare and make public a report on the public consultation under this section (including information about any submissions received by the Minister).

## **27 Content of Code**

- (1) The Code may, for the purpose of furthering the objects of this Act:
- (a) specify standards with respect to establishment operations for complying plantations, and
  - (b) specify guidelines with respect to establishment operations for the purpose of the assessment of applications for the authorisation of plantations that are not complying plantations, and
  - (c) make integrated provision with respect to plantation operations for matters that would otherwise be regulated by the separate regulatory provisions replaced by Part 6, and
  - (d) regulate the replanting of trees or shrubs on authorised timber plantations that have been harvested (including prescribing replantings that are covered by the authorisation), and
  - (e) generally regulate the carrying out of plantation operations on authorised plantations, and
  - (f) prescribe the matters otherwise authorised or permitted by this Act to be prescribed by the Code.
- (2) The Code may (without limiting this section) deal with the following matters:
- (a) The conservation and management of native vegetation in accordance with the objects of the *Native Vegetation Act 2003*.
  - (b) The prevention of soil erosion and the control of sediment in rivers and other waters.
  - (c) The protection of rivers and lakes (including preventing operations that obstruct or

detrimentally affect the flow of waters).

- (d) The conservation of native animals and plants, and their habitat.
- (e) The conservation of fish and marine vegetation, and their habitat (including the provision of fishways in connection with dams, weirs and reservoirs, and the protection of the spawning areas of salmon and trout).
- (f) The conservation of threatened species, populations and ecological communities, and their habitats, within the meaning of the *Threatened Species Conservation Act 1995* and of Part 7A of the *Fisheries Management Act 1994*, and critical habitats within the meaning of that Act or that Part.
- (g) The protection of Aboriginal relics and places.
- (h) Plantation operations on Crown roads.
- (i) Bush fire hazard reduction and the construction and maintenance of fire trails.
- (j) The control of plant diseases in plantations.
- (k) Harvesting plans for plantations.
- (l) The carrying out of works ancillary to harvesting operations on plantations.

## **28 The Code not to be inconsistent with laws applying to plantations**

- (1) Except as provided by this Act, the Code may not contain provisions that are inconsistent with any Act applying to the carrying out of plantation operations. Any such inconsistent provision in the Code is void.
- (2) In particular, the provisions of the Code may not be inconsistent with the provisions of the *Protection of the Environment Operations Act 1997* in their application to plantations.

## **29 Making and amendment of Code by regulations**

- (1) The Code is to be made by a regulation.
- (2) The Code:
  - (a) does not have any effect unless it is so made, and
  - (b) ceases to have effect if the regulation that makes it is repealed.
- (3) The Code may be replaced or amended by a regulation.
- (4) A regulation that makes a Code is not repealed by the operation of Part 3 of the *Subordinate Legislation Act 1989*.



### 30 Review of Code

- (1) The Minister is to arrange for the Code to be reviewed at least every 5 years after it is made.
- (2) Section 26 (Public consultation) applies to the making of any new Code or any amendment of the Code that the Minister determines is not a minor amendment.

### 31 Compliance with Code

- (1) The owner and manager of an authorised plantation must ensure that plantation operations on the plantation are carried out in accordance with any provisions of the Code applying to the plantation.
- (2) In the case of an authorised plantation which is a State forest or other Crown-timber lands, this requirement is a condition of any relevant licence, lease or other authority under the *Forestry Act 2012* (whether issued before or after the commencement of this section).
- (3) The regulations may create an offence punishable by a penalty not exceeding 100 penalty units for any contravention of a provision of the Code by the owner or manager of an authorised plantation.

**Note—**

See also Part 7 for enforcement provisions relating to this Act (including the Code).

## Part 4 Protection of unique or special wildlife values of authorised plantations

### 32 Meaning of unique or special wildlife values

- (1) For the purposes of this Act, land has **unique or special wildlife values** if:
  - (a) any unique or special wildlife grows on or inhabits the land, or
  - (b) any such wildlife is likely to grow on or inhabit the land.
- (2) Unique or special wildlife is:
  - (a) any endangered species, endangered ecological community or species presumed extinct (within the meaning of the *Threatened Species Conservation Act 1995*), being a species of (or ecological community that includes) a vascular plant, amphibian, bird, mammal or reptile, or
  - (b) any endangered species, endangered ecological community or species presumed extinct (within the meaning of Part 7A of the *Fisheries Management Act 1994*), being a species of (or ecological community that includes) fish.

- (3) Unique or special wildlife does not include any tree or shrub that is planted on an authorised plantation in the course of establishment or other operations on the plantation.

### **33 Requirement to give notice of likely impact on unique or special wildlife values**

It is a condition of the authorisation of a plantation that the owner or manager of the plantation notify the Minister as soon as the owner or manager becomes aware that plantation operations on the plantation have or are likely to have an impact on unique or special wildlife values of the land concerned.

### **34 Evaluation of impact on unique or special wildlife values**

- (1) As soon as the Minister is notified under this Part, or otherwise becomes aware, of the impact or likely impact of plantation operations on unique or special wildlife values of any land within an authorised plantation, the Minister is to arrange:
- (a) for an evaluation of any such impact or likely impact to be carried out, and
  - (b) for a report to be provided on the matters specified in subsection (2).

The Minister is to notify the Minister administering the [National Parks and Wildlife Act 1974](#) of those arrangements.

- (2) The report is to deal with the following matters:
- (a) the existence and extent of unique or special wildlife values,
  - (b) the extent to which plantation operations are likely to have an adverse impact on unique or special wildlife values,
  - (c) whether plantation operations in all or part of the authorised plantation must be prevented, suspended for a period or modified so as to minimise the adverse impact on unique or special wildlife values,
  - (d) in the case of an authorised timber plantation—the extent of the direct financial loss, if any, arising from harvesting operations on the plantation being so delayed, restricted or prevented altogether in order to protect unique or special wildlife values.
- (3) The Minister may, by notice in writing to the owner or manager of the authorised plantation, direct that plantation operations are to be suspended in all or part of the plantation for a specified period or periods pending the determination of the matter under this Part. Any such direction has effect as a condition of the authorisation.

### **35 Determination of Minister after receipt of report**

- (1) The Minister may, after consideration of the report, by notice in writing to the owner or manager of the authorised plantation, direct that:

- (a) plantation operations are not to be carried out in all or part of the authorised plantation, or
  - (b) plantation operations are to be suspended in all or part of the authorised plantation for a specified period or periods, or
  - (c) the carrying out of plantation operations in all or part of the authorised plantation is subject to specified restrictions.
- (2) Any such direction has effect as a condition of the authorisation of the plantation.
- (3) Any such direction may, if it results from a notification of the owner or manager under this Part, only be given within 6 months after the notification was received by the Minister.

### **36 Availability of compensation in respect of harvesting operations on timber plantations**

- (1) This section sets out the circumstances in which compensation will be available in order to protect unique or special wildlife values on an authorised timber plantation. The authorisation of the plantation, or part of the plantation, may (but need not) be cancelled following payment of such compensation.
- (2) Compensation is available if harvesting operations in relation to an authorised timber plantation are delayed, restricted or precluded altogether by a direction of the Minister under this Part in order to protect unique or special wildlife values.
- (3) Compensation is available only to an owner or manager of the authorised timber plantation who has suffered a direct financial loss as a result of the direction.
- (4) The amount of compensation payable is to be determined by agreement between the Minister and the owner or manager concerned, having regard to the report to the Minister on the matter.
- (5) Compensation is to be paid out of money available to the Minister and may be paid as a lump sum or in periodic amounts.
- (6) Compensation is not payable unless the direction giving rise to the compensation is complied with. Compensation is repayable if the direction is not complied with after compensation has been paid (and may be recovered as a debt).

### **37 Procedure if parties fail to agree on compensation**

- (1) If the Minister and the owner or manager of an authorised timber plantation fail to agree on an amount of compensation payable under this Part, the determination of the amount of compensation is to be made by:
- (a) an independent arbitrator appointed by the parties, or
  - (b) if they cannot agree, an independent arbitrator appointed in accordance with the

Code.

- (2) For the purposes of any such arbitration, the Minister may vary the direction under this Part for which compensation is to be paid.
- (3) The determination of any such arbitrator as to an amount of compensation payable under this Part is final.

### **38 Powers to acquire land not affected**

Nothing in this Part prevents land affected by a direction of the Minister under this Part, or an interest in any such land, from being acquired under any other Act or law.

## **Part 5 Financial contribution for transport infrastructure expenditure for timber plantations**

### **39 Transport infrastructure expenditure to which Part applies**

For the purposes of this Part, ***transport infrastructure expenditure*** is:

- (a) expenditure on the provision or upgrading of roads and bridges for the purpose of the efficient removal and delivery of timber harvested from authorised timber plantations, and
- (b) expenditure on the maintenance of roads and bridges that is required as a result of the use of vehicles for that purpose.

### **40 Regional committees**

- (1) The Minister is to establish regional committees under this Part for different regions of the State.
- (2) A regional committee is to comprise representatives of local councils in the region and of other relevant bodies, as determined by the Minister.
- (3) The function of a regional committee is to prepare a contribution plan under this Part in respect of authorised timber plantations in the region. The committee may exercise such other functions as are conferred under this Part with respect to the recovery and expenditure of financial contributions made by the owners of authorised plantations.
- (4) The Minister is to issue guidelines with respect to the exercise of the functions of a regional committee.
- (5) The Minister is required to consult the Local Government Association of New South Wales and the Shires Association of New South Wales about the composition of regional committees and about the nature and scope of guidelines under this section.

#### **41 Regional contribution plans**

- (1) A contribution plan prepared by a regional committee in respect of authorised timber plantations in its region is to be submitted to the Minister. The contribution plan does not have effect until it is approved by the Minister.
- (2) A contribution plan is to make provision with respect to transport infrastructure expenditure in the region, including:
  - (a) identifying the transport infrastructure expenditure likely to be required for authorised timber plantations in the region, and
  - (b) fixing a reasonable rate of financial contribution to be made by the owners of those plantations, and
  - (c) specifying the time at which the expenditure is likely to be incurred, and
  - (d) any other provision required by the guidelines issued by the Minister.
- (3) If there is no relevant contribution plan in force at the time a timber plantation is authorised under this Act, the Minister may determine the matters required to be dealt with in the contribution plan.

#### **42 Obligation to make financial contribution**

- (1) The Minister is required to impose, as a condition of the authorisation of a timber plantation granted by the Minister under this Act, a requirement that the owner of the plantation make a financial contribution to transport infrastructure expenditure in accordance with this Part.

**Note—**

Section 20 provides that such a condition cannot be varied after it is imposed except at the request of the owner of the authorised plantation concerned.

- (2) The rate or amount of the financial contribution and the time or times at which the contribution is to be made is to be determined by the Minister in accordance with the relevant contribution plan in force at the time the timber plantation is authorised under this Act.
- (3) The Minister is not to impose a requirement for a financial contribution if the Minister is satisfied that the contribution plan exempts the plantation concerned.
- (4) (Repealed)
- (5) The Minister must, at the time a financial contribution becomes payable and at the request of the owner of the authorised plantation, waive payment of so much of the financial contribution as exceeds the amount of financial contribution that would have been imposed by the Minister if the timber plantation had been authorised at that later time. This subsection does not apply if the Minister is satisfied that the owner, or

any person associated with that owner, has failed to pay any other financial contribution under this Part.

- (6) A condition of an authorisation imposed under this Part may be disallowed or amended by the Land and Environment Court on an appeal under this Act because it is unreasonable, even if it was determined in accordance with a contribution plan.

#### **43 Liability for payment of financial contribution**

- (1) A financial contribution that is required to be made by a condition imposed under this Part is payable by the owner of the authorised timber plantation at the time the contribution becomes payable or at any later time (whether or not the person was the owner of the plantation at the time the condition was imposed).
- (2) In the case of land owned by the Crown (other than the Forestry Corporation), the Crown is not liable to pay the financial contribution if a lessee or other person is also an owner of the authorised timber plantation for the purposes of this Act.
- (3) If there are 2 or more owners of an authorised timber plantation liable to pay a financial contribution, they are jointly and severally liable to pay the financial contribution.

#### **44 Payment of financial contributions**

- (1) Payments of financial contributions are to be made to a relevant local authority or other body designated by the Minister.
- (2) The amount of any financial contribution that is not paid by the due date may be recovered as a debt by the local authority or other body to which it is required to be paid from the person liable to pay it (together with interest on that amount since the due date at the rate at which interest accrues on unpaid judgements of the Supreme Court).
- (3) The Minister may, as a condition of the granting of an application for authorisation under this Act, require the applicant to secure the payment of a financial contribution (by bank guarantee or otherwise) when it becomes due.
- (4) The Minister may, in accordance with any relevant provisions of the contribution plan, waive payment of a financial contribution if the person liable to pay it provides materials or services of equal value for the purposes for which the relevant transport infrastructure expenditure is to be incurred.

#### **45 Financial contributions to be paid into regional accounts**

- (1) Money paid or recovered under this Part is not payable into the Consolidated Fund but into separate regional accounts approved by the Minister.
- (2) Money in those regional accounts must be used to meet the transport infrastructure

expenditure for which the financial contributions were required.

- (3) Those regional accounts are to be accounts established and operated by relevant local authorities liable to meet that transport infrastructure expenditure. The Minister is not to approve of any such account unless satisfied that the money in the account will be properly applied for that purpose.
- (4) The contribution plan for a region may make provision with respect to the establishment and operation of those regional accounts.

#### **46 Charge on land to secure payment of financial contribution**

- (1) The Minister may, for the purposes of this section, issue a notice as to any financial contribution payable under this Part (whether or not it has become payable).
- (2) The Minister may, at the request of the local authority to whom the financial contribution is payable, apply to the Registrar-General for registration of the notice in relation to any land owned by a person that comprises all or any of the authorised timber plantation to which the notice relates.
- (3) An application under this section must define, in the form and manner required by the Registrar-General, the land to which it relates.
- (4) The Registrar-General must, on application under this section and lodgment of the notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
- (5) If the notice relates to land under the provisions of the *Real Property Act 1900*, the notice is to be registered under that Act.
- (6) There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment of the financial contribution set out in the notice.
- (7) Such a charge ceases to have effect in relation to the land:
  - (a) on payment of the amount of the financial contribution concerned, or
  - (b) on the sale or other disposition of the land with the written consent of the Minister, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (8) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.

(9) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (7).

(10) If:

(a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (7), taken to have notice of the charge.

(11) The regulations may make provision for or with respect to the removal of a charge under this section.

## **Part 6 Application of other legislation**

### **47 Plantation operations and exempt farm forestry not subject to EPA Act**

(1) The *Environmental Planning and Assessment Act 1979* does not apply to plantation operations on an authorised plantation or to exempt farm forestry.

(2) Accordingly:

(a) development consent under Part 4 of that Act is not required for plantation operations on an authorised plantation or for exempt farm forestry, and

(b) Part 5 of that Act does not apply in respect of the carrying out of plantation operations on an authorised plantation or of exempt farm forestry (including the giving of any approval to carry out those operations), and

(c) plantation operations carried out on an authorised plantation or exempt farm forestry cannot be prohibited or restricted by an environmental planning instrument (whether made before or after the commencement of this section) under that Act.

(3) To avoid doubt:

(a) (Repealed)

(b) the authorisation of a plantation or proposed plantation is not to be regarded for the purposes of any law as an approval under Part 5 of the *Environmental Planning and Assessment Act 1979*, and the Minister is not a determining authority for the purposes of that Part when granting an authorisation, and

(c) this section does not affect the application of the *Environmental Planning and Assessment Act 1979* to ancillary plantation operations (within the meaning of



section 9).

**48 Plantation operations not subject to certain provisions of [National Parks and Wildlife Act 1974](#) and [Threatened Species Conservation Act 1995](#)**

- (1) A person carrying out plantation operations on an authorised plantation is exempt from the following provisions of the [National Parks and Wildlife Act 1974](#):
  - (a) section 98 (2) (relating to protected fauna),
  - (b) section 99 (1) (relating to threatened interstate fauna),
  - (c) section 117 (relating to native plants),
  - (d) section 118A (relating to threatened species, populations and ecological communities),
  - (e) section 118C (relating to critical habitat),
  - (f) section 118D (relating to the habitat of a threatened species, population or ecological community).
- (2) Subsection (1) exempts the person only:
  - (a) if the operations are carried out in accordance with the conditions of authorisation and the provisions of the Code applying to the plantation, and
  - (b) in relation to things that are reasonably connected with the carrying out of the operations.
- (3) An interim protection order (within the meaning of the [National Parks and Wildlife Act 1974](#) or the [Threatened Species Conservation Act 1995](#)) may not be made so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.
- (4) An order under Division 1 (Stop work orders) of Part 6A of the [National Parks and Wildlife Act 1974](#) or Division 1 (Stop work orders) of Part 7 of the [Threatened Species Conservation Act 1995](#) may not be made so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

**Note—**

See section 55 for continuation of power to make orders to protect relics or Aboriginal places within the meaning of the [National Parks and Wildlife Act 1974](#).

**49 Plantation operations not subject to certain provisions of [Fisheries Management Act 1994](#)**

- (1) A person carrying out plantation operations on an authorised plantation is exempt from the following provisions of Part 7A of the [Fisheries Management Act 1994](#):

- (a) Division 3 of Part 7 (relating to dredging and reclamation),
  - (b) Division 4 of Part 7 (relating to marine vegetation),
  - (c) Division 5 of Part 7 (relating to the spawning of salmon, trout and certain other fish),
  - (d) sections 218 and 219 (relating to fishways and the passage of fish),
  - (e) section 220ZA (relating to threatened species, populations and ecological communities),
  - (f) section 220ZC (relating to critical habitat),
  - (g) section 220ZD (relating to the habitat of a threatened species, population or ecological community).
- (2) Subsection (1) exempts the person only:
- (a) if the operations are carried out in accordance with the conditions of the authorisation and provisions of the Code applying to the plantation, and
  - (b) in relation to things that are reasonably connected with the carrying out of the operations.
- (3) An order under Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994* may not be made so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

#### **50 Plantation operations not subject to certain provisions of *Heritage Act 1977***

An interim heritage order cannot be made under the *Heritage Act 1977*, a listing on the State Heritage Register under that Act cannot be effected and an order under section 136 of that Act cannot be made, so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

#### **51 Plantation operations not subject to certain orders under the *Local Government Act 1993***

A local council may not give an order under section 124 of the *Local Government Act 1993* so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

#### **52 Plantation operations not subject to certain provisions of the *Water Management Act 2000***

- (1) A controlled activity approval is not required under the *Water Management Act 2000* for plantation operations on an authorised plantation.

- (2) A direction cannot be given under Part 1 of Chapter 7 of that Act so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

### **53 Plantation operations not subject to notices under [Soil Conservation Act 1938](#)**

A soil conservation notice under Part 2A of the [Soil Conservation Act 1938](#) cannot be served so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

### **54 Plantation operations on unformed Crown roads**

- (1) Plantation operations on an authorised plantation may be carried out on a road (within the meaning of Division 6 of Part 4 of the [Crown Lands Act 1989](#)) that is unformed, but only if the operations are carried out in accordance with the conditions of the authorisation and the provisions of the Code. For that purpose, the Minister administering that Act is taken to have authorised the enclosure and cultivation of that road.
- (2) Any such plantation operations on the road do not require consent from the appropriate roads authority under Division 3 of Part 9 of the [Roads Act 1993](#).

### **55 Orders and instruments for protecting Aboriginal objects and places**

Nothing in this Part affects the making of any order or instrument that is made for the purpose of protecting any Aboriginal object or Aboriginal place within the meaning of the [National Parks and Wildlife Act 1974](#).

### **56 Plantation operations subject to Code and other laws**

Plantation operations on an authorised plantation are subject to the provisions of the Code applying to the plantation and, except as provided by this Act, are subject to the provisions of any other law that relate to activities carried out for the purpose of establishing or managing a plantation or for the purpose of harvesting timber.

## **Part 7 Enforcement**

### **57 Civil enforcement—Land and Environment Court**

- (1) The Minister may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the Code.
- (2) Any such proceedings may be brought whether or not any right of the Minister or the State has been or may be infringed by or as a result of the breach.
- (3) If the Land and Environment Court is satisfied that a breach of this Act or the Code has been committed or that a breach of this Act or the Code will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.

(4) In this section:

**breach** includes a threatened or apprehended breach.

### **58 Minister may make stop work order**

- (1) If the Minister is of the opinion that any plantation operations on a plantation are being or are about to be carried out in contravention of this Act or the Code, the Minister may, by notice in writing given to the owner or manager of the plantation, order the owner or manager not to carry out the plantation operations concerned.
- (2) The order:
  - (a) takes effect immediately (or from a later date specified in the notice), and
  - (b) is subject to such conditions as the Minister may specify in the notice.
- (3) The Minister may vary or revoke the order or the conditions of the order by further notice in writing given to the owner or manager of the plantation.
- (4) An order under this section remains in force until whichever of the following happens first:
  - (a) the order is revoked by the Minister,
  - (b) the period (if any) for which the order is expressed in the notice to be in force ends,
  - (c) the period of 2 years from the day on which the order took effect ends.
- (5) A person who, without reasonable excuse, does not comply with an order in force under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.
- (6) The Minister is not required, before making, varying or revoking an order under this section, to notify any person who may be affected by the order.

### **59 Directions for remedial work**

- (1) If the Minister is satisfied that any plantation operations have been carried out on a plantation in contravention of this Act or the Code, the Minister may, by notice in writing, direct the owner or manager of the plantation to carry out specified work in a specified manner and within a specified time.
- (2) Any one or more of the following types of work may be directed to be carried out by a notice under this section:
  - (a) work to repair any damage caused by the plantation operations,

(b) work to rehabilitate any land affected by the plantation operations,

(c) work to ensure that specified land (including any river or other body of water) will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the plantation operations.

(3) A direction under this section may be varied or revoked by a further notice.

(4) A person who, without reasonable excuse, does not comply with a direction under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.

(5) If a person fails to comply with a direction under this section, the Minister may authorise any other person to enter the land and carry out the specified work.

(6) The Minister may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the State.

(7) The Minister is not required, before giving, varying or revoking a direction under this section, to notify any person who may be affected by the direction.

## **60 Appeals under this Part**

(1) The owner or manager of a plantation may appeal against an order or direction of the Minister under this Part to the Land and Environment Court within 30 days of the service of the notice of the order or direction.

(2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order or direction appealed against.

## **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.

(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.

#### **62 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section,

no person is liable to any further proceedings for the alleged offence.

- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) (Repealed)

### **63 Evidence**

A certificate signed by the Minister or an officer prescribed by the regulations certifying any one or more of the following:

- (a) that any land specified in the certificate was or was not, at a time or during a period specified in the certificate, an authorised plantation,
- (b) that any land specified in the certificate was or was not, at a time or during a period specified in the certificate, an authorised timber plantation,
- (c) that a written notice, order or direction purporting to be given under this Act, and a copy of which is set out or annexed to the certificate, was given on a day specified in the certificate,
- (d) that a person was, at a time or during a period specified in the certificate, the owner or manager of a plantation,
- (e) that a person was, at a time or during a period specified in the certificate, an authorised officer,
- (f) that any instrument made under this Act was, at a time or during a period specified in the certificate, in force,



is admissible in any proceedings under this Act and is prima facie evidence of the matters so specified.

#### **64 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations are to be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) If the proceedings are brought before the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings for an offence under this Act or the regulations may only be brought by or with the approval of the Minister.
- (4) Proceedings for an offence under this Act or the regulations may be brought at any time within 2 years after the act or omission alleged to constitute the offence, despite any Act to the contrary.
- (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.

### **Part 8 Miscellaneous**

#### **65 Act binds Crown**

This Act binds the Crown in right of New South Wales and also, so far as the legislative power of Parliament permits, in all its other capacities.

#### **66 Notes**

Notes included in this Act do not form part of this Act.

#### **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.

### **68 Plantation certificates**

- (1) A person may, on payment of the fee (if any) prescribed by the regulations, apply to the Minister for a certificate under this section (a **plantation certificate**) with respect to any land to which this Act applies.
- (2) The Minister must, as soon as practicable after receiving any such application, issue a plantation certificate:
  - (a) stating whether or not the land to which the certificate relates is an authorised plantation, and
  - (b) stating whether or not any such authorisation is subject to a condition under section 42 with respect to a financial contribution to transport infrastructure expenditure and, if so subject, stating the amount of any contribution that is due but unpaid, and
  - (c) specifying such other matters relating to the application of this Act to the land to which the certificate relates as may be prescribed by the regulations.
- (3) The Minister may, in a plantation certificate, include advice on such other relevant matters affecting the land of which the Minister may be aware.
- (4) Neither the Minister nor the State incur any liability in respect of any advice provided in good faith pursuant to subsection (3).
- (5) The regulations may provide that information to be furnished in a plantation certificate must be set out in a specified form and manner.
- (6) The production of a plantation certificate is taken for all purposes to be conclusive proof in favour of a bona fide purchaser for value of the matters certified under subsection (2).
- (7) For the purpose of any proceedings for an offence against this Act or the regulations which may be taken against a person who has obtained a plantation certificate or who

might reasonably be expected to rely on that certificate, that certificate is, in favour of that person, to be conclusively presumed to be true and correct.

## **69 Service of notices**

Any notice under this Act or the regulations that is required to be served or given to a person may be served or given:

- (a) by delivering it personally to the person to whom it is addressed, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there for the person with some other person, or
- (c) by posting it to the person to whom it is addressed to the person's place of residence or business last known to the person sending the notice.

## **70 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the making of applications for authorisation under this Act,
  - (b) the determination of those applications.
- (3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.
- (4) A regulation that makes a Code may include any other matter for which regulations may be made under this Act.

## **71 Repeal of [Timber Plantations \(Harvest Guarantee\) Act 1995 No 92](#) and regulation under that Act**

- (1) The [Timber Plantations \(Harvest Guarantee\) Act 1995](#) is repealed.
- (2) The [Timber Plantations \(Harvest Guarantee\) Regulation 1997](#) is repealed.

## **72 (Repealed)**

## **73 Savings, transitional and other provisions**

Schedule 3 has effect.

## **74 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those

objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Areas excluded from Act**

(Section 7)

### **Part 1 Local government areas excluded from Act**

Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Canterbury, Concord, Drummoyne, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby, Wollongong, Woollahra.

### **Part 2 Areas under EPA Act excluded from Act**

- 1 Land that is within a zone designated “residential” (but not “rural-residential”), “village”, “township”, “industrial” or “business” under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*).
- 2 Land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies.
- 3 Land to which *State Environmental Planning Policy No 26—Littoral Rainforests* applies.

## **Schedule 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 73)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

*Plantations and Reafforestation Amendment Act 2010*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Act extends to existing plantations**

This Act applies to plantations established before or after the commencement of this Act.

### **3 Existing plantations—current development consents etc under EPA Act**

On the authorisation of a plantation or proposed plantation under this Act, any development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, any approval or conditions imposed under Part 5 of that Act and any environmental planning instrument under that Act cease to have any further effect with respect to plantation operations carried out on the plantation while it is authorised under this Act.

### **4 Existing plantations—current accreditation**

- (1) A timber plantation or proposed timber plantation accredited under the *Timber Plantations (Harvest Guarantee) Act 1995* immediately before the repeal of that Act is taken to be authorised under this Act as a timber plantation. Accordingly, such a plantation is not an existing plantation within the meaning of clause 6.
- (2) A condition of any such accreditation becomes a condition of its authorisation under this Act.
- (3) If any such accreditation applies to a proposed plantation that had not been cleared for planting before the repeal of that Act, it is a condition of its authorisation under this Act that any such clearing be carried out in accordance with the requirements of the law in force before that repeal.
- (4) An application for accreditation that was made under that Act and not determined before the repeal of that Act is taken to be an application for authorisation under this Act duly made under this Act on the date of that repeal.
- (5) Section 22 (2) extends to any accreditation under that Act of a proposed timber plantation that is established before or after the repeal of that Act.

### **5 Preparation of the Code before commencement of Act**

A Code may be adopted on or after the commencement of this Act even though the Code

was prepared before that commencement, so long as it was prepared in accordance with the provisions of this Act relating to the preparation of the Code.

### **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.

### **Part 4 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2012](#)**

#### **7 Application of amendment**

Section 17A (as in force before its amendment by the [Statute Law \(Miscellaneous Provisions\) Act 2012](#)) continues to apply in relation to changes of ownership that occurred before the commencement of the amendment to that section.