

# Forestry Act 2012 No 96

[2012-96]



New South Wales

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### Notes—

- **Does not include amendments by**  
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# Forestry Act 2012 No 96



New South Wales

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# Forestry Act 2012 No 96



New South Wales

An Act to provide for the dedication, management and use of State forests and other Crown-timber land for forestry and other purposes; to constitute the Forestry Corporation of New South Wales as a statutory State owned corporation and to specify its objectives and functions; to repeal the *Forestry Act 1916* and the *Timber Marketing Act 1977* and to amend certain other legislation; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Forestry Act 2012*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**authorised officer** means a person appointed as an authorised officer under section 70.

**board** means the board of directors of the Corporation.

**carbon sequestration right** has the same meaning as in section 87A of the *Conveyancing Act 1919*.

**chief executive officer** means the chief executive officer of the Corporation.

**clearing licence** means a clearing licence issued under Division 2 of Part 4.

**Corporation** means the Forestry Corporation of New South Wales constituted under Part 2.

**Crown land** and **Crown Land Acts** have the same meanings as in the *Crown Land Management Act 2016*.

**Crown-timber land** means any of the following:



- (a) land within a State forest or flora reserve,
- (b) Crown land (whether or not held under a lease or licence from the Crown and whether or not included in a timber reserve),
- (c) land affected by a profit à prendre,

but does not include:

- (d) any Crown land the subject of a prescribed Crown tenure if the subject land has an area of 2 hectares or less, or
- (e) any Crown land the subject of a tenure from the Crown that is not a prescribed Crown tenure.

**flora reserve** means land dedicated or set apart under this Act or the former Act as a flora reserve.

**forest agreement** means a forest agreement referred to in Part 5A that is in force.

**Note—**

Part 5A is transferred to this Act on the commencement of Schedule 4.11 [16].

**forest lease** means a lease granted under section 62.

**forest materials** means rock, stone, clay, shells, earth, sand, gravel or any like material.

**forest materials licence** means a forest materials licence issued under Division 2 of Part 4.

**forest permit** means a permit issued under section 60.

**forest products** means the products of trees and other vegetation (other than timber) that are of economic value.

**forest products licence** means a forest products licence issued under Division 2 of Part 4.

**forestry area** means a State forest, timber reserve or flora reserve and includes any part of a State forest, timber reserve or flora reserve.

**Forestry Commission** means the corporation constituted under the former Act.

**forestry operations** means:

- (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- (b) the harvesting of forest products, or

- (c) ongoing forest management operations, namely, activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities and bush fire hazard reduction, or
- (d) ancillary activities to enable or assist in the above operations such as the provision of roads, snig tracks, waterway crossings and temporary timber storage facilities.

**forestry right** means a forestry right within the meaning of Division 4 of Part 6 of the [Conveyancing Act 1919](#).

**former Act** means the [Forestry Act 1916](#) as in force immediately before its repeal by this Act.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**government agency** means any of the following:

- (a) a government sector agency within the meaning of the [Government Sector Employment Act 2013](#) or the head (within the meaning of that Act) of any such agency,
- (b) a NSW Government agency,
- (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation).

**integrated forestry operations approval** means an approval referred to in Part 5B that is in force.

**Note—**

Part 5B is transferred to this Act on the commencement of Schedule 4.11 [16].

**land exchange agreement** means an agreement under section 31.

**land manager** of a forestry area means the land manager for the area as provided by section 57.

**lease** under the Crown Lands Acts includes a promise of lease under those Acts and **lessee** means the holder of such lease, and includes the holder of any such promise.

**licence** means a licence issued by the Corporation under this Act.

**management plan** means a management plan under section 21.

**plantation**—see section 4.

**prescribed Crown tenure** means a tenure from the Crown specified in the First

Schedule to the former Act.

**profit à prendre** means a profit à prendre reserved to the Crown under clause 5 (1) of Schedule 1.

**resource acquisition fee** means a fee payable under Division 3 of Part 4.

**small quantity authorisation** means an authorisation under section 45.

**SOC Act** means the [State Owned Corporations Act 1989](#).

**special management zone** means any area of State forest declared to be a special management zone under section 18.

**State forest** means land dedicated under this Act, the former Act or the former [Forestry Act 1909](#) as State forest, being a dedication that is in force.

**timber** includes trees of any age or description, whether growing or dead.

**timber licence** means a timber licence issued under Division 2 of Part 4.

**timber reserve** means land temporarily reserved under the former Act for forestry purposes, being a reservation in force immediately before the repeal of the former Act.

**tree** means a tree of any description and includes a shrub and a sapling or seedling of a tree.

**use**, in relation to a forestry area, includes occupy the area or engage in or conduct an activity in the area.

**voting shareholders** of the Corporation means the voting shareholders within the meaning of the SOC Act.

**working plan** means a working plan under section 25.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

#### **4 Meaning of “plantation”**

(1) For the purposes of this Act, a **plantation** is, subject to this section, an area of Crown-timber land (other than a flora reserve), or an area of land owned by the Corporation, on which the predominant number of trees forming, or expected to form, the canopy are trees 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 produce other than timber.

- (2) To avoid doubt, a natural forest is not a plantation for the purposes of this Act. However, an area of land is not a natural forest merely because it contains some native trees that have not been planted.
- (3) The Minister may, after carrying out an assessment of an area of land, by order published in the Gazette make a determination as to whether or not the area comprises or is part of a plantation for the purposes of this Act. Any such determination has effect according to its tenor.

## **Part 2 Forestry Corporation**

### **Division 1 Constitution and management of Forestry Corporation**

#### **5 Establishment of Forestry Corporation**

There is constituted by this Act a corporation with the corporate name of the Forestry Corporation of New South Wales.

**Note—**

Schedule 4 to this Act amends the SOC Act to make the Forestry Corporation a statutory State owned corporation.

The SOC Act contains a number of provisions that will apply to the Corporation as a statutory SOC. In particular:

- (a) Part 3 contains provisions relating to the status of the Corporation, the application of the [Corporations Act 2001](#) of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions for the performance of non-commercial activities or the carrying out of public sector policies), the constitution of the Corporation, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and the legal capacity and general powers of the Corporation, and
- (b) Part 4 deals with the accountability of the Corporation (including statements of corporate intent, annual reports and accounts), and
- (c) Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of

public sector legislation).

## **6 Board of directors**

- (1) The Corporation is to have a board of directors.
- (2) The board is to consist of no fewer than 3 and not more than 7 directors appointed by the voting shareholders.
- (3) One of the directors is, in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders, to be appointed as chairperson of the board.
- (4) The chief executive officer may be appointed as a director.
- (5) The board is accountable to the voting shareholders in the manner set out in Part 4 of the SOC Act and in the constitution of the Corporation.
- (6) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the SOC Act.
- (7) Subject to subsections (8) and (9), Schedule 8 to the SOC Act has effect with respect to the constitution and procedure of the board.
- (8) The provisions of section 20J of the SOC Act, and of clauses 2 (1) and (2) and 7 (1) (d) and (2) of Schedule 8 to the SOC Act, do not apply to the Corporation or to the chairperson.
- (9) The provisions of clause 6 of Schedule 8 to the SOC Act do not apply to the chief executive officer if appointed as a director, and the chief executive officer is not entitled to remuneration under that clause in his or her capacity as a director.

## **7 Chief executive officer**

- (1) The chief executive officer of the Corporation is to be appointed by the board but only with the approval of the voting shareholders.
- (2) Subject to this section, the chief executive officer holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (3) The voting shareholders may remove a person from office as chief executive officer, at any time, for any or no reason and without notice.
- (4) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine with the approval of the voting shareholders.

- (5) The board may, with the approval of the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (6) The board may require the chief executive officer to enter into performance agreements.
- (7) The chief executive officer may delegate any functions of the chief executive officer to an employee of the Corporation, but this power is subject to any directions of the board.
- (8) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (9) The provisions of section 20K of the SOC Act, and of Schedule 9 to that Act, do not apply to the chief executive officer.

#### **8 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
  - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine with the approval of the voting shareholders.
- (4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office.
- (5) Clause 5 of Schedule 9 to the SOC Act does not apply to an acting chief executive officer of the Corporation.

#### **9 Application of SOC Act**

The provisions of this Part are in addition to and do not (except to the extent to which this Part provides) derogate from the provisions of the SOC Act.

## **Division 2 Objectives and functions of Forestry Corporation**

### **10 Objectives of Forestry Corporation**

- (1) The principal objectives of the Corporation are as follows:
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses, and
    - (ii) to maximise the net worth of the State's investment in the Corporation,
  - (b) to have regard to the interests of the community in which it operates,
  - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (d) to contribute towards regional development and decentralisation,
  - (e) to be an efficient and environmentally sustainable supplier of timber from Crown-timber land and land owned by it or otherwise under its control or management.
- (2) Each of the principal objectives of the Corporation is of equal importance.
- (3) The Corporation also has, in exercising its functions as the land manager of a forestry area, the objectives of a land manager under Part 5.
- (4) The provisions of section 20E of the SOC Act do not apply to the Corporation.

### **11 Functions of Forestry Corporation** (1916 Act, ss 11 and 11AA)

- (1) The principal functions of the Corporation are as follows:
  - (a) to carry out or authorise the carrying out of forestry operations in accordance with good forestry practice on Crown-timber land or land owned by the Corporation,
  - (b) to take or authorise the taking of forest materials from State forests or land owned by the Corporation,
  - (c) to sell, supply or process timber, forest products or forest materials taken or harvested under paragraph (a) or (b),
  - (d) to establish and maintain plantations,
  - (e) to control and manage, subject to Part 5, forestry areas,
  - (f) subject to the *Rural Fires Act 1997*, to carry out measures on Crown-timber land for the protection from fire of timber and forest products on that land,
  - (g) to grant forestry rights in respect of State forests, timber reserves or land owned

by it, including any such right that is for the benefit of the Corporation,

(h) to acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights (including for the benefit of other persons).

(2) The Corporation may:

(a) provide facilities or services, or undertake activities, that are ancillary or incidental to its principal functions, and

(b) conduct any business or provide any service (whether or not related to its principal functions) that it considers will further its objectives.

(3) The Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.

(4) Despite any other provision of this Act, the Corporation is not authorised to take or authorise any other person to take any timber, forest products or forest materials from any Crown-timber land that is the subject of a forestry right unless the forestry right is held or granted by the Corporation.

## **12 Ownership of trees in State forest plantations**

(1) The Corporation is the owner of the trees in any plantation that is or is part of a State forest.

(2) Subsection (1):

(a) has effect even though State forests are vested in the Crown, and

(b) operates to extinguish any existing rights in any such trees before the commencement of this section.

(3) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

(4) Compensation (including damages or any other form of monetary compensation) is not payable to any person or body because of the enactment or operation of this section or for the consequences of that enactment or operation.

## **Part 3 State forests and flora reserves**

### **Division 1 Dedication of Crown land**

#### **13 Classification of Crown land for State forest purposes** (1916 Act, s 17)

(1) The Minister may classify Crown land for the purpose of selecting land that is suitable and desirable in the public interest to be dedicated as State forest.



- (2) In classifying Crown land for any such purpose, the Minister is to ensure, to such extent as the Minister considers appropriate, that the selection of land to be dedicated as State forest will result in:
  - (a) the promotion of effective and economic control, utilisation and management of the land for timber production and the facilitation of the economic marketing of timber and forest products, and
  - (b) the establishment, maintenance or expansion of industry for the processing and treatment of timber and forest products, and
  - (c) the growth and harvesting of trees for timber and forest products, and
  - (d) the continuing protection of necessary tree cover in the public interest.
- (3) The Minister is to also take into account:
  - (a) the potential for economic timber production of any land that is of an inferior character for the purposes of agriculture or grazing but which, by appropriate treatment of the soil, would be capable of sustaining the growth of suitable commercial species of trees in plantations, and
  - (b) such other factors as the Minister considers relevant to the establishment and proper management of State forests.
- (4) Crown land need not be classified under this section in order for it to be dedicated as State forest.

**14 Dedication of land as State forest** (1916 Act, s 18)

- (1) The Governor may, by notice published in the Gazette, dedicate as State forest any Crown land that is not the subject of a tenure from the Crown.
- (2) Any such dedication of land may be limited so as to exclude any land lying below the surface of the land at a depth greater than a depth specified in the notice dedicating the land.
- (3) Land dedicated under this section may not be dealt with otherwise than as provided by this Act and any such dedication may not be revoked or altered except under this Act.
- (4) The Governor may, by order published in the Gazette, constitute 2 or more State forests, or any parts of 2 or more State forests, as one State forest for the purposes of this Act.
- (5) Subsection (4) does not affect:
  - (a) the declaration of any land as a special management zone, or

- (b) the setting apart of any land as a flora reserve, or
  - (c) any rights or obligations conferred or imposed by or under this or any other Act.
- (6) Despite subsection (1), Crown land that is the subject of a prescribed Crown tenure and that has an area of more than 2 hectares may be dedicated as State forest in accordance with this section.

**15 Revocation of dedication of land as State forest** (1916 Act, s 19)

- (1) Subject to this Act, the dedication of land as State forest may only be revoked or altered in whole or in part in the following manner:
- (a) a proposal for the revocation or alteration is to be tabled in each House of Parliament,
  - (b) after the proposal has been tabled, the Governor may, on a resolution being passed by both Houses that the proposal be carried out, by notice published in the Gazette, revoke or alter the dedication.
- (2) On any such revocation, the land becomes Crown land to be dealt with under the [Crown Land Management Act 2016](#) and until so dealt with is to be reserved from sale or lease under any Act.

**16 Flora reserves** (1916 Act, s 25A (1)-(4))

- (1) The Governor may, by notice published in the Gazette:
- (a) dedicate, with the concurrence of the Minister administering the [Crown Land Management Act 2016](#), any Crown land that is not the subject of a tenure from the Crown, or
  - (b) set apart the whole or part of a State forest,
- as a flora reserve for the preservation of native flora.
- (2) Any such dedication of land may be limited so as to exclude any land lying below the surface of the land at a depth greater than a depth specified in the notice dedicating the land.
- (3) The setting apart of the whole or a part of a State forest as a flora reserve under this section does not affect the dedication as a State forest of the area so set apart.
- (4) Subject to this Act, a notice under this section is not to be revoked wholly or in part otherwise than by Act of Parliament.
- (5) Despite subsection (1) (a), Crown land that is the subject of a prescribed Crown tenure and that has an area of more than 2 hectares may be dedicated as a flora reserve in accordance with this section.

**17 Review of dedicated State forests** (1916 Act, s 17A)

The Minister is, on a continuing basis, to review dedicated State forests for the purposes of determining whether or not any State forest, or part of any State forest, should continue to be dedicated as such.

**Division 2 Special management zones**

**18 Declaration of special management zones** (1916 Act, s 21A (1), (1A), (3) and (7))

- (1) The Minister may, by notice published in the Gazette, declare any area of State forest (other than a flora reserve) to be a special management zone if the Minister is satisfied that the area has special conservation value.
- (2) The object of the declaration of a special management zone and the prohibition of forestry operations in the zone is to protect its special conservation value.
- (3) The Minister is to ensure that the public is given an opportunity to make representations about any proposed notice of the Minister under this section to declare a special management zone. The Minister must:
  - (a) fix a time within which the public may make representations about the proposal, and
  - (b) make copies of the proposed notice available for public inspection before that time on such website as the Minister thinks appropriate, and
  - (c) make available for public inspection before that time on that website a statement outlining the activities that the Minister proposes to prohibit in the zone, and
  - (d) take any representation on the proposal received by the Minister within that time into account before making a decision on the matter.
- (4) Except as provided by this Act, a notice under this section is not to be revoked wholly or in part otherwise than by Act of Parliament.

**19 Prohibition of forestry operations in special management zones** (1916 Act, s 21A (2), (2A), (4)–(6) and (8))

- (1) The Minister may, by notice in writing to the Corporation:
  - (a) prohibit particular kinds of forestry operations in a special management zone, or
  - (b) prohibit forestry operations in the zone unless particular conditions are complied with.
- (2) The carrying out of general purpose logging is prohibited in a special management zone.

- (3) The Corporation must ensure that any forestry operations carried out in a special management zone comply with any prohibition imposed by or under this section.
- (4) An integrated forestry operations approval does not authorise the carrying out of any forestry operations in a special management zone that are prohibited by or under this section.
- (5) The Minister may vary or revoke a notice under this section by a further notice.
- (6) The Minister is to ensure that any notice under this section is made available for public inspection on such website as the Minister thinks appropriate.

**20 Revocation of special management zones** (1916 Act, s 21A (1B) and (1C))

- (1) The Governor may, by notice published in the Gazette, revoke the declaration of any land as or as part of a special management zone and by that notice set apart the land as or as part of a flora reserve.
- (2) The Governor may, by a notice under Division 1 of Part 4 of the *National Parks and Wildlife Act 1974* that reserves land under that Act:
  - (a) revoke the declaration of the land, or any part of the land, as a special management zone, and
  - (b) revoke the dedication of the land, or any part of the land, to which the declaration as a special management zone applies, as State forest.

## **Division 3 Management plans and working plans**

**21 Management plans for State forests**

- (1) The Corporation is to prepare and adopt plans for its management of State forests.
- (2) A management plan may relate to one or more State forests.
- (3) A management plan must contain such information or other matter as may be prescribed by the regulations.
- (4) A management plan may be amended in accordance with the procedures and requirements of this Division relating to the preparation and adoption of a management plan.

**22 Management plans to be consistent with integrated forestry operations approvals** (2009 Reg, cl 6)

- (1) The Corporation is not to adopt a management plan for a State forest that is wholly or partly located in the area to which an integrated forestry operations approval applies unless it is in accordance with the terms of the integrated forestry operations approval for the area.

- (2) To the extent that a management plan for a State forest that is wholly or partly located in the area to which an integrated forestry operations approval applies is not consistent with the terms of the integrated forestry operations approval for the area, the terms of the approval prevail.
- (3) The requirements of this section are in addition to the other requirements of this Division in relation to management plans.

**23 Procedures for preparing and adopting management plans** (2009 Reg, cl 5)

- (1) Before adopting a draft management plan, the Corporation is to ensure that the draft plan is publicly advertised in a notice that:
  - (a) is published on the website of the Corporation, and
  - (b) includes a brief description of the draft plan, and
  - (c) includes a statement indicating a location at which members of the public may examine a copy of the draft plan, and
  - (d) indicates a closing date on or before which written submissions may be made to the Corporation concerning the draft plan, being a date that is not less than 30 days after the date on which the notice is first published.
- (2) The Corporation is, before adopting the draft plan, to consider any submissions made to it on or before the closing date for submissions specified in the notice.

**24 Review of management plans**

A management plan for a State forest is to be reviewed:

- (a) after any review and amendment of any integrated forestry operations approval that applies to the area of the plan to ensure the plan is consistent with that amended approval, and
- (b) at such other times as the Corporation considers appropriate.

**25 Working plans for flora reserves** (1916 Act, s 25A (5))

- (1) The Corporation is, in respect of each flora reserve, to prepare a detailed written scheme of the operations to be carried out on or in relation to the flora reserve.
- (2) The object of any such scheme is to be the preservation of native flora on the flora reserve.
- (3) The Corporation is to submit the scheme for a flora reserve to the Minister for approval and, if approved by the Minister, the scheme becomes the working plan for the flora reserve.

- (4) Operations may not be carried out on or in relation to a flora reserve unless such operations are in accordance with the working plan for the reserve.
- (5) The working plan for a flora reserve may, with the approval of the Minister, be amended or altered from time to time.
- (6) A working plan may contain provisions authorising a local council in whose area a flora reserve is situated to participate to the extent specified in the working plan in the management of the reserve or in carrying out any of the operations authorised by the working plan on or in relation to the reserve. In any such case, the council concerned may expend out of its consolidated fund any money necessary to meet the costs and expenses of exercising the authority conferred on it by the working plan.
- (7) A working plan may also contain provisions authorising the representative or representatives of any local committee or public body or organisation to participate, to the extent specified in the working plan, in the management of the flora reserve or in carrying out any of the operations authorised by the working plan.

## **Division 4 Acquisition and sale of land**

### **26 Acquisition of land for State forest purposes** (1916 Act, s 15 (1) and (2))

- (1) The Minister may, for the purpose of a State forest, for the purpose of providing access to a State forest or for any purpose necessary for or incidental to the management or control of a State forest, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) On acquisition, the land is vested in the Crown.

### **27 Acquisition of land dedicated as State forest** (1916 Act, s 15 (3) and (4))

- (1) The Minister may, for the purpose of giving effect to a land exchange agreement, acquire land dedicated as State forest by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) Despite any other provision of this Act, the publication in the Gazette of an acquisition notice under section 19 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) for the purposes of this section operates to revoke any dedication as State forest, declaration as special management zone or any dedication or setting apart as flora reserve of the land referred to in the acquisition notice.

### **28 Acquisition of land for future lease grant or dealing** (1916 Act, s 15 (4A)-(4E))

- (1) The Minister may, on behalf of the Crown, acquire land (including an interest in land) for the purposes of a future lease grant or dealing by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

- (2) An acquisition for a future lease grant or dealing is an acquisition:
- (a) to enable the reservation, dedication or setting apart of land under this Act and the exercise of functions conferred or imposed by or under this Act in relation to land, or
  - (b) to enable the exercise of functions conferred or imposed by or under this Act in relation to land already reserved, dedicated or set apart under this Act.
- (3) The publication in the Gazette of an acquisition notice under section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991* for a purpose that is described as a future lease grant or dealing does not:
- (a) to the extent to which the land referred to in the acquisition notice was Crown land immediately before the publication of the acquisition notice, affect the status of the land as Crown land, or
  - (b) operate to revoke a dedication as State forest, declaration as special management zone or dedication or setting apart as a flora reserve or reservation as a timber reserve of the land referred to in the acquisition notice.
- (4) This section does not limit the purposes for which land may be acquired under any other provision of this Act.

**29 Sale of certain land** (1916 Act, s 15 (6))

The Minister may sell any land acquired to provide access to a State forest or for any purpose necessary for or incidental to the control or management of a State forest if that land:

- (a) has not been dedicated as a State forest, or
- (b) is not required for the purposes of a State forest or to provide access to a State forest or for any purpose necessary for or incidental to the control or management of a State forest.

**30 Application of Public Works Act 1912** (1916 Act, s 15 (5))

For the purposes of the *Public Works Act 1912*, any acquisition of land under this Division is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

## **Division 5 Miscellaneous**

**31 Exchange of land dedicated as State forest** (1916 Act, s 16A)

- (1) The Minister may enter into an agreement for the sale or other disposal of land dedicated as State forest subject to the sale of other land, or of an interest in other land, to the Crown for the purpose of a State forest or for access to a State forest (a

**land exchange agreement).**

- (2) A land exchange agreement may contain such terms and conditions as the Minister thinks fit.
- (3) The Minister may not enter into a land exchange agreement unless:
  - (a) the Minister has consulted the Corporation about the proposed agreement, and
  - (b) the Minister administering the provisions of an Act (other than this Act) relating to dealings with land vested in the Crown has approved the proposed agreement in so far as it relates to the grant of or other dealing with land that, under the agreement, is to be held subject to those provisions and in so far as it relates to the terms and conditions on which it is to be so held, and
  - (c) a copy of the proposed agreement has, where it provides for the sale or other disposal of dedicated land that exceeds 20 hectares in area, been laid before both Houses of Parliament, and
  - (d) if compliance with paragraph (c) is required:
    - (i) notice has not been given, in either House of Parliament within 15 sitting days after a copy of the proposed agreement has been laid before it, of a motion that the agreement not be entered into, or
    - (ii) if any such notice is given, that the motion pursuant to the notice has been withdrawn or defeated.
- (4) Subsection (3) does not operate to prevent the Minister from entering into an agreement by reason only that the parties to the agreement differ from those specified in a proposed agreement, relating to the same land, that the Minister is authorised to enter into.
- (5) An interested party is not required to inquire:
  - (a) whether subsection (3) has been complied with in relation to an agreement purporting to have been made under this section, or
  - (b) whether the Minister is authorised to give effect to the agreement by an assurance of land vested in the Minister as the Constructing Authority under the [Public Works Act 1912](#).
- (6) For the purposes of subsection (5), an **interested party** is any of the following:
  - (a) a party to a land exchange agreement,
  - (b) a person claiming an estate or interest in any land the subject of a land exchange agreement,



(c) the Registrar-General or other person registering or certifying title to land the subject of a land exchange agreement.

(7) If a land exchange agreement provides for the doing or execution of any act, matter or thing under an Act other than this Act and the doing or execution of the act, matter or thing would not, but for this subsection, be authorised by that other Act, the doing or execution of that act, matter or thing is taken to be so authorised, and any other act, matter or thing for which the agreement provides may be done or executed without any further authority than this Act.

(8) A failure to comply with subsection (3) in respect of a land exchange agreement does not invalidate the agreement or anything done under it.

**32 Revocation of dedication of land as State forest in certain circumstances** (1916 Act, s 19B)

(1) The Minister may, by notice published in the Gazette, revoke the dedication as State forest of an area of land not exceeding 20 hectares if the Minister is of the opinion that the land should be made available for a public work, or an authorised work, within the meaning of the *Public Works Act 1912*, or for a public purpose within the meaning of any other Act, that is specified in the notice.

(2) Any such notice also operates to revoke any declaration of the affected land as a special management zone.

(3) This section has effect despite any other provision of this Act.

**33 Leases within State forests and flora reserves** (1916 Act, s 20)

A lease to occupy land within a State forest or flora reserve may not be granted except under this Act.

**34 Easements and rights of way** (1916 Act, s 20A)

(1) The Minister may, on such terms and conditions as the Minister thinks fit, grant an easement or right of way through or over land within a State forest or flora reserve.

(2) The Minister may accept a surrender of any easement or right of way through or over land within a State forest or flora reserve.

**35 Land subject to mining law** (1916 Act, s 21)

(1) Land within a State forest or flora reserve is, for the purposes of the definition of **exempted area** in the *Mining Act 1992* or in section 70 of the *Petroleum (Onshore) Act 1991*, land dedicated for public purposes.

(2) The exercise of any right under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* on land within a State forest or flora reserve is subject to such conditions and

restrictions relating to forestry or the purposes of the flora reserve as may be prescribed by the regulations.

- (3) The Minister may, with the concurrence of the Minister administering the *Mining Act 1992*, by order published in the Gazette exempt any part of a State forest or flora reserve from the operation of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

### **36 Effect of dedication etc on existing leases and licences** (1916 Act, s 25)

- (1) The dedication of land as State forest, the declaration of land as a special management zone or the dedication or setting apart of land as a flora reserve does not, except as provided by this Act, affect any lease or licence from the Crown that is in force immediately before the dedication, declaration or reservation (an **existing lease or licence**).
- (2) An existing lease or licence may not be renewed or extended. However, an existing lease or licence over land in the Western Division (within the meaning of Schedule 3 to the *Crown Land Management Act 2016*) may be renewed or extended with the approval of the Minister and subject to such conditions as the Minister thinks fit to impose.
- (3) The administration of matters relating to existing leases or licences is the responsibility of the Minister or, with the approval of the Minister, the Corporation. For that purpose, the Minister and the Corporation (as the case requires) have the powers of the Minister administering the *Crown Land Management Act 2016*.
- (4) However, subsection (3) does not apply in relation to land in the Western Division unless the Minister otherwise declares by notice published in the Gazette.
- (5) An existing lease or licence in respect of land within a State forest may be surrendered in whole or in part to the Crown and a forest lease under this Act may be granted instead.
- (6) Money payable as rent under an existing lease or licence is to be received by the Corporation.

### **37 Declaration of access roads** (1916 Act, s 33A)

- (1) The Minister may, by order published in the Gazette, declare any road:
  - (a) constructed on land:
    - (i) dedicated as State forest (whether or not the land is declared to be a special management zone or set apart as a flora reserve), or
    - (ii) dedicated as a flora reserve, and

(b) described in the order in such manner as the Minister thinks fit,

to be a road of access to land purchased or held under a lease or licence under the [Crown Land Management Act 2016](#) or other Crown Land Acts.

(2) Any such order has effect according to its tenor.

(3) The declaration and use of any such access road does not affect the status, as State forest, special management zone or flora reserve, of the land on which it is constructed.

## **Part 4 Taking of timber, forest products and forest materials**

### **Division 1 General offence**

#### **38 Unlawful taking of timber etc (1916 Act, s 27)**

(1) A person must not:

(a) on any Crown-timber land:

(i) cut, strip, obtain, remove, destroy or damage any timber, or

(ii) dig for, extract, obtain, remove, destroy or damage any forest products, or

(iii) cause or allow any of those things to be done, or

(b) on any State forest or flora reserve—quarry, dig for, extract, obtain, remove, destroy or damage any forest materials or cause or allow any of those things to be done.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both, and \$10 for each tree destroyed or damaged in the commission of the offence.

(2) Subsection (1) applies in relation to Crown-timber land despite the provisions of this or any other Act or any terms or conditions subject to which any tenure of the Crown-timber land is held. If any such terms or conditions require the taking or destruction of any timber or forest products, those terms and conditions are to be construed as imposing that requirement subject to the holder of the tenure obtaining a timber licence, forest products licence or clearing licence.

(3) A person does not commit an offence under subsection (1):

(a) if the act in question is authorised by or under any of the following:

(i) a licence or small quantity authorisation,

(ii) Part 5A of (or Schedule 5A to) the [Local Land Services Act 2013](#) (including any instrument under that Part or Schedule),

- (iii) the *Mining Act 1992* or any mineral claim or mining lease under that Act,
  - (iv) the *Petroleum (Onshore) Act 1991* or any petroleum title under that Act,
  - (v) a forestry right or any restriction on use or covenant imposed under Division 4 of Part 6 of the *Conveyancing Act 1919* in connection with the forestry right,
  - (vi) Division 3 of Part 2 of Schedule 1 to the *Crown Land Management Act 2016*,
  - (vii) a condition of a Western lands lease (within the meaning of Schedule 3 to the *Crown Land Management Act 2016*) to the effect that a lessee may take from land under the lease such timber and other material for building and other purposes on the land or on any contiguous land held in the same interest as may reasonably be required by the lessee, or
- (b) if the act in question is done or authorised by the land manager of the forestry area in accordance with this Act, or
  - (c) in the course of carrying out duties as an authorised officer, or
  - (d) in the circumstances referred to in clause 5 (7) of Schedule 1.
- (4) Subsection (1) does not apply in relation to:
- (a) forestry operations carried out by or on behalf of the Corporation, or
  - (b) forest products or forest materials taken by the Corporation, or
  - (c) any tree on Crown-timber land (not being land referred to in paragraph (a) or (c) of the definition of **Crown-timber land**) or on land the subject of a forest lease if:
    - (i) the Corporation has certified in writing that the tree has been planted or established and has been maintained by careful tending and improvement as part of a woodlot or forest or for the purpose of tree-farming, or
    - (ii) the tree is or was situated on an authorised plantation within the meaning of the *Plantations and Reafforestation Act 1999*, or
  - (d) any tree on land affected by a profit à prendre if the Corporation has certified in writing that the tree is not subject to the profit à prendre, or
  - (e) any timber removed, felled or destroyed in accordance with section 66 of the *Local Land Services Act 2013*.

## Division 2 Licensing scheme

### 39 General provisions relating to licences

- (1) The following types of licences may be issued by the Corporation:

- (a) timber licences,
  - (b) forest products licences,
  - (c) forest materials licences,
  - (d) clearing licences.
- (2) A licence is subject to such conditions as may be imposed by the Corporation or as are prescribed by the regulations.
- (3) The authority conferred by a licence is subject to the regulations.
- (4) A licence may not be transferred except with the consent of the Corporation.
- (5) Subject to the regulations, a licence does not authorise the taking of timber or forest products on or from land that is identified in an integrated forestry operations approval as an environmentally significant area.

**40 Timber licences** (1916 Act, s 27A)

- (1) A timber licence authorises the holder to take timber, or such class or description of timber as is specified in the licence, on Crown-timber land.
- (2) The term of a timber licence is the term specified in the licence, but the term:
- (a) must not exceed 5 years without the prior written approval of the Minister, and
  - (b) must not, in any event, exceed 20 years.

**41 Forest products licences** (1916 Act, s 27B)

- (1) A forest products licence authorises the holder to take forest products, or such class or description of forest products as is specified in the licence, on Crown-timber land.
- (2) The term of a forest products licence is such term, not exceeding 5 years, as is specified in the licence.

**42 Forest materials licences** (1916 Act, s 27C)

- (1) A forest materials licence authorises the holder to take forest materials, or such class or description of forest materials as is specified in the licence, from a State forest.
- (2) The term of a forest materials licence is the term specified in the licence, but the term:
- (a) must not exceed 5 years without the prior written approval of the Minister, and
  - (b) must not, in any event, exceed 20 years.

**43 Clearing licences** (1916 Act, s 27G)

- (1) A clearing licence authorises:
  - (a) the holder, and
  - (b) a successor in title to the land in respect of which the clearing licence is issued, to ringbark or otherwise kill or destroy trees, or such class or description of trees as is specified in the licence, on such Crown-timber land as is specified in the licence.
- (2) Subsection (1) has effect despite any other Act or any terms or conditions subject to which any tenure of the Crown-timber land is held.
- (3) The term of a clearing licence is the term specified in the licence.

**44 Restrictions on issuing licences** (1916 Act, ss 27D–27F and 27H)

- (1) **Licences in respect of flora reserves** A timber licence, forest products licence or forest materials licence in respect of a flora reserve may not be issued unless:
  - (a) the conditions of the licence are in accordance with the working plan for the flora reserve, and
  - (b) the issue of the licence is approved by the Minister.
- (2) **Clearing licences** A clearing licence may not be issued:
  - (a) in respect of land within a State forest that is not the subject of a forest lease or any other lease from the Crown, or
  - (b) in respect of land within a flora reserve, or
  - (c) in respect of Crown-timber land that is the subject of a Western lands lease within the meaning of Schedule 3 to the *Crown Land Management Act 2016* and is not within a State forest or timber reserve, or
  - (d) if the Crown-timber land is:
    - (i) held subject to a prescribed Crown tenure—except to the holder of that tenure, or
    - (ii) purchase-tenure land within the meaning of Schedule 1—except to the owner (within the meaning of that Schedule) of that land, or
    - (iii) held under a forest lease—except to the lessee, or
  - (e) in respect of land in which the Biodiversity Conservation Trust holds an interest, or
  - (f) in respect of land that is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or

- (g) in respect of land that is category 2-vulnerable regulated land under Part 5A of the *Local Land Services Act 2013*, or
  - (h) to clear native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*, or
  - (i) to ringbark or otherwise kill or destroy trees having economic value.
- (3) **Consent of lessees or trustees** A timber licence or forest products licence may not be issued:
- (a) in the case of land held under a conditional purchase lease under the Crown Land Acts—unless the lessee of that land consents to the issue of the licence, or
  - (b) in the case of land in respect of which trustees have been appointed for a public purpose—unless those trustees consent to the issue of the licence.
- (4) **Trees planted etc for certain purposes** A timber licence or forest products licence may not be issued in respect of Crown-timber land (not being a State forest or flora reserve) if, in the opinion of the Corporation:
- (a) trees have been planted or established on the land and have been maintained by careful tending and improvement as a woodlot or forest or for the purpose of tree-farming, or have been planted or established as a windbreak or for the beautification of the land, or
  - (b) the land is the subject of a forestry right, or
  - (c) the land has been substantially improved for farming purposes and the trees on the land are necessary for shade or shelter or for the purpose of the farming, improvement or protection of the land,
- unless the licence is subject to a condition preventing the holder of the licence from taking from the land to which the licence relates any such trees as are designated or described in the condition.
- (5) The requirement to impose a condition in respect of land referred to in subsection (4) (c) extends only to trees designated or described in the condition and having a total timber content not exceeding 150 cubic metres as determined by the Corporation.
- (6) Subsection (4) does not, in the case of Crown-timber land that is subject to a prescribed Crown tenure, apply to the issue of a timber licence or forest products licence to the holder of that tenure or, with the consent of that holder, to any other person.
- (7) **Protected plants and threatened species of plants** A licence may not be issued under this Act for the removal from any State forest, flora reserve or other Crown-timber land of any protected plant (or any plant of, or part of, a threatened species or threatened

ecological community) within the meaning of the *Biodiversity Conservation Act 2016*. A licence is not operative to the extent that it relates to any such plant.

- (8) However, the Corporation may, in accordance with this Act, issue a licence that authorises the removal from any State forest, flora reserve or other Crown-timber land of any such plant if:
- (a) the authorisation is subject to a condition that the removal is to be undertaken in accordance with any relevant plant plan of management in force under the regulations made under the *Biodiversity Conservation Act 2016*, or
  - (b) the Corporation is of the opinion that the plant would be damaged or destroyed in the taking of timber, forest products or forest materials under, or in the carrying out of any activity authorised by, this Act.

**45 Small quantity authorisations** (1916 Act, s 30I)

- (1) The Corporation may, otherwise than by the issue of a timber licence, forest products licence or forest materials licence, authorise a person:
- (a) to take timber, forest products or forest materials having a value of not more than \$1,000 (or such other amount as may be prescribed by the regulations) on or from land within a State forest, other than land set apart as a flora reserve, or
  - (b) to take timber or forest products having a value of not more than \$1,000 (or such other amount as may be prescribed by the regulations) on or from Crown land.
- (2) A small quantity authorisation is subject to such conditions as may be imposed by the Corporation or by the regulations.
- (3) The authority conferred by a small quantity authorisation is subject to the regulations.
- (4) A small quantity authorisation may not be issued in respect of:
- (a) land held under a conditional purchase lease, closer settlement lease, group purchase lease, settlement purchase lease or returned soldiers' special holding unless the lessee of that land consents to the issue of the authorisation, or
  - (b) land in respect of which trustees have been appointed for a public purpose unless those trustees consent to the issue of the authorisation.
- (5) Subject to the regulations, a small quantity authorisation does not authorise the taking of timber or forest products on or from land that is identified in an integrated forestry operations approval as an environmentally significant area.

**46 Suspension and revocation of licences and small quantity authorisations** (1916 Act, s 35)

The Corporation:



- (a) may suspend a licence or small quantity authorisation if it is of the opinion that the holder of the licence or authorisation has failed to comply with any of the terms or conditions of the licence or authorisation, and
- (b) may, after giving the holder of the licence or authorisation an opportunity to make representations in relation to the matter, revoke the licence or authorisation.

**47 Delegation of certain functions** (1916 Act, s 10A and 2009 Reg, cl 68)

The Corporation may delegate to a person or body, or a person or body of a class, prescribed by the regulations any of its functions under this Division that relate to clearing licences (except in respect of State forests and timber reserves) or small quantity authorisations.

### **Division 3 Payment of resource acquisition fee**

**48 Definitions** (1916 Act, s 30)

In this Division:

**landholder**, in relation to prescribed land, means:

- (a) in the case of land held under a prescribed lease (not being a special purpose lease within the meaning of the [Crown Land Management Act 2016](#))—the lessee of the land, or
- (b) in the case of purchase-tenure land—the owner of the land, or
- (c) in the case of land under the care, control and management of Local Land Services—Local Land Services.

**lessee** means the holder or owner of a lease, but does not include a mortgagee of land the subject of a lease.

**owner**, in relation to purchase-tenure land, has the same meaning as in Schedule 1.

**prescribed land** means:

- (a) land held by a lessee under a prescribed lease, or
- (b) purchase-tenure land, or
- (c) a controlled travelling stock reserve within the meaning of the [Local Land Services Act 2013](#).

**prescribed lease** means a lease specified in the Second Schedule to the former Act.

**purchase-tenure land** has the same meaning as in Schedule 1.

**49 Resource acquisition fee for taking timber, forest products or forest materials** (1916

Act, s 30A)

- (1) The holder of a timber licence, forest products licence or forest materials licence must, in accordance with this Division, pay a resource acquisition fee in respect of the timber, forest products or forest materials taken under the authority of the licence.
- (2) Any such resource acquisition fee is payable to and recoverable by the Corporation.
- (3) Subsection (1) does not require the payment of a resource acquisition fee in respect of timber taken under the authority of a timber licence from land the subject of a Crown tenure if the timber is derived from trees which, in the opinion of the Corporation:
  - (a) have been planted or established and have been maintained by careful tending and improvement as a woodlot or forest or for the purpose of tree-farming, or
  - (b) have been planted or established as a windbreak or for the beautification of the land.

**50 Limitation on resource acquisition fee** (1916 Act, s 30AA)

The Corporation is not entitled to a resource acquisition fee in respect of any timber or forest products:

- (a) derived from trees that have been established on land that is the subject of a forestry right, and
- (b) taken in accordance with the forestry right and any restriction on use or covenant imposed in connection with the forestry right,

unless the forestry right is granted by the Corporation.

**51 Amount of resource acquisition fee** (1916 Act, s 30B)

- (1) The Corporation may determine the amount of a resource acquisition fee either generally or in a particular case or class of cases.
- (2) The amount of any such resource acquisition fee is subject to any maximum amount prescribed by the regulations. Any such regulation may only be made with the concurrence of the Treasurer.

**52 Payments to certain timber organisations** (1916 Act, s 30D)

The Corporation may determine, either generally or in a particular case or class of cases, to pay such part of a resource acquisition fee as is specified in its determination to such organisation established for the promotion or improvement of the use or marketing of timber or forest products produced in New South Wales as is so specified.

**53 Apportionment of resource acquisition fee—prescribed land** (1916 Act, s 30E)

- (1) This section applies to a resource acquisition fee payable in respect of timber, forest products or forest materials taken on or from prescribed land.
- (2) If a resource acquisition fee to which this section applies is paid to the Corporation, the Corporation is required to pay to the landholder concerned (other than Local Land Services) one-third of the balance of the resource acquisition fee remaining after deduction of the following amounts:
  - (a) any part of the resource acquisition fee that is payable under section 52,
  - (b) any costs incurred by the Corporation in connection with the establishment, planting, maintenance, improvement and protection of the timber, forest products or forest materials,
  - (c) any costs incurred by the Corporation in connection with the facilitation of the taking of the timber, forest products or forest materials, including the costs of construction and maintenance of roads, bridges, gates, ramps and incidental works.
- (3) The costs that are deductible under subsection (2) (b) and (c) are to be as determined by the Corporation.
- (4) A share of the resource acquisition fee payable by the Corporation to a landholder under this section must be paid before the expiration of one month after the end of the financial year of the Corporation that is current when the resource acquisition fee concerned is paid to the Corporation.
- (5) This Division does not entitle a landholder to be paid an amount of a resource acquisition fee in respect of the taking of timber, forest products or forest materials under a licence held by the landholder.

**54 Resource acquisition fee payments by Forestry Corporation** (1916 Act, s 30F)

If the Corporation takes timber or forest products from prescribed land, the Corporation is required:

- (a) to pay to an organisation specified in a determination under section 52 the amount that would have been payable under the determination, and
- (b) to pay to the landholder concerned (other than Local Land Services) the amount that would have been payable to the landholder under section 53,

if the timber or forest products had been taken under a timber licence or forest products licence and a resource acquisition fee had been paid to the Corporation in respect of the timber or forest products in accordance with this Division.

**55 Liability for resource acquisition fee if timber etc taken without licence** (1916 Act, s 30H)

(1) If:

- (a) a person takes, destroys or damages, or causes or allows the taking, destroying or damaging of, any timber, forest products or forest materials without lawful authority (whether or not by doing so the person is guilty of an offence under this Act), and
- (b) the Corporation would, if the timber, forest products or forest materials had been taken under the authority conferred by a licence, have been entitled to determine a resource acquisition fee in respect of the timber, forest products or forest materials so taken,

the Corporation may certify in writing the amount that it determines would have been payable by way of a resource acquisition fee if the timber, forest products or forest materials had been taken under a licence.

- (2) The Corporation may recover any such amount from the person as a debt in any court of competent jurisdiction.
- (3) Section 53 applies in respect of an amount recovered by the Corporation under this section as if the amount were a resource acquisition fee paid to the Corporation under section 49.
- (4) Subsection (3) does not require the Corporation, in respect of an amount recovered by it under this section, to make a payment out of the amount to the person from whom the amount is recovered.

**56 Deductions for construction of works** (1916 Act, s 11 (4))

- (1) The Corporation may enter into an agreement with the holder of a timber licence, forest products licence or forest materials licence:
  - (a) for the construction by the licence holder of any works that, in the opinion of the Corporation, are necessary to enable timber, forest products or forest materials to be taken from the land in respect of which the licence is issued, and
  - (b) for the cost of the works, as specified in the agreement, to be deducted, in such manner as may be specified in the agreement, by the licence holder from any resource acquisition fee which, but for the deductions, the holder would be liable to pay.
- (2) In this section, **works** include any road, bridge, gate or ramp.

## **Part 5 Use of forestry areas for non-forestry purposes**

### **Division 1 Land managers**

#### **57 Land manager of forestry areas**

- (1) The Corporation is the land manager of forestry areas except as provided by this section.
- (2) The land manager of a forestry area has, subject to any order under this section, the functions conferred or imposed on the land manager by or under this or any other Act in relation to the forestry area.
- (3) The Minister may, with the concurrence of the voting shareholders of the Corporation, by order published in the Gazette appoint a government agency, or a person or body (or a person or body of a class) prescribed by the regulations:
  - (a) as the land manager of a specified forestry area or specified class of forestry area, or
  - (b) as the land manager of a specified forestry area or specified class of forestry area, but only for the purposes of exercising specified land management functions in relation to that area.
- (4) The government agency or the person or body so appointed is the land manager of any such specified forestry area or class of forestry area to the extent specified in the order.
- (5) If a government agency or a person or body is appointed as the land manager of a forestry area for the purposes of exercising specified land management functions in relation to that area, the government agency or person or body is taken to have the control and management of the forestry area for the purposes of exercising those functions.
- (6) The land manager of a forestry area may delegate functions as manager of the area to a person or body, or a person or body of a class, prescribed by the regulations.
- (7) The appointment of a person or body (other than a government agency) under this section may only be made with the consent of that person or body.
- (8) An order under this section may provide that the exercise of particular functions of the land manager specified in the order require the approval of the Corporation.

#### **58 Functions of land manager confined to non-forestry uses**

The functions that may be exercised by the land manager of a forestry area do not include functions relating to the carrying out of forestry operations in the area or functions of the kind conferred or imposed on the Corporation under Part 2.

## **59 Objectives of land manager of forestry area**

- (1) The land manager of a forestry area has the following objectives in the exercise of functions as land manager of the area:
  - (a) to facilitate public access to the forestry area,
  - (b) to promote the recreational use of the forestry area,
  - (c) to conserve fauna (other than feral animals) living in the forestry area.
- (2) However, the functions of the land manager of a forestry area are to be exercised:
  - (a) in the case of an area that is or is part of a State forest:
    - (i) in a manner that is not inconsistent with the use of State forests for the purposes of carrying out forestry operations, and
    - (ii) in accordance with the management plan for the State forest and in accordance with good forestry practice, and
  - (b) in the case of an area that is or is part of a flora reserve:
    - (i) in a manner that is not inconsistent with the use of flora reserves for the preservation of native flora, and
    - (ii) in accordance with the working plan for the flora reserve.
- (3) The principal objectives of the Corporation specified in section 10 (1) (a) and (e) do not apply in relation to the Corporation in the exercise of its functions as the land manager of a forestry area.

## **Division 2 Forest permits and leases**

### **60 Forest permits for non-forestry uses** (1916 Act, ss 31 (1)-(2) and 32F)

- (1) The land manager of a forestry area may, on payment of such fee as may be determined by the land manager, issue a forest permit authorising the holder of the permit to use the forestry area for such purposes (including recreational, sporting or commercial activities) as are specified in the permit.
- (2) The amount of any such fee is subject to any maximum amount prescribed by the regulations. Any such regulation may only be made with the concurrence of the Treasurer.
- (3) The purposes for which a forestry area may be used under the authority conferred by a forest permit are not to include forestry operations or any purpose in respect of which a licence may be issued.
- (4) A forest permit is subject to such conditions as may be imposed by the land manager

or by the regulations.

- (5) A forest permit may be issued for such period as the land manager thinks appropriate and may be renewed by the land manager.
- (6) The authority conferred by a forest permit is subject to the regulations.
- (7) In the event of any inconsistency between the activities carried out under the authority conferred by a licence and any use authorised by a permit issued by a land manager other than the Corporation, the licence prevails to the extent of the inconsistency.

**61 Ancillary provisions relating to forest permits** (1916 Act, s 31 (3)-(7))

- (1) A forest permit may not be issued in respect of land within a flora reserve except:
  - (a) in accordance with the working plan for the reserve, and
  - (b) in the case of a permit authorising the occupation of the land—with the approval of the Minister.
- (2) A forest permit may not be issued in respect of land that is subject to a forestry right if the permit is for a purpose that is, in the opinion of the land manager, inconsistent with:
  - (a) the forestry right, or
  - (b) a restriction on the use of land, or forestry covenant, imposed in connection with the forestry right under Division 4 of Part 6 of the [Conveyancing Act 1919](#).
- (3) A forest permit may also be issued by the Corporation in respect of any Crown land that is not a forestry area (and not being Crown land that is held under a conditional lease and not reserved from sale or under a conditional purchase lease, closer settlement lease, group purchase lease, settlement purchase lease or returned soldiers' special holding). Any such Crown land is taken to be a forestry area for the purposes of this Part (other than Division 3).
- (4) A forest permit may not be issued in respect of Crown land as referred to in subsection (3) except with the approval of the Minister administering the [Crown Land Management Act 2016](#).
- (5) Any such Crown land in respect of which a forest permit is issued must not be available for sale during the currency of the permit.
- (6) A forest permit does not operate to withdraw the land to which it applies from any lease or licence under the [Crown Land Management Act 2016](#) or other Crown Land Acts or from any forest lease granted under this Act.
- (7) However, it is a condition of a forest permit that the holder of the permit must, in

addition to any fee payable to the land manager in respect of the permit, pay any such licensee or lessee:

- (a) in the case of a permit that authorises the grazing or watering of horses or cattle—such agistment fees as the land manager may determine, or
- (b) in any other case—such compensation as may be determined by the Minister.

(8) A forest permit may not be transferred except with the consent of the land manager.

**62 Forest leases** (1916 Act, s 33)

- (1) The land manager of a forestry area that is or is part of a State forest may lease, on such conditions as the land manager thinks appropriate, land within the area for any purpose specified in the lease.
- (2) Any such purpose may not be inconsistent with the carrying out of forestry operations in the forestry area concerned.
- (3) A forest lease may not be granted:
  - (a) for a term of more than 6 years, or for an area of more than 40 hectares, except with the approval of the Minister, or
  - (b) for a term of more than 20 years unless it contains conditions referred to in subsection (4), or
  - (c) for a term exceeding 50 years if it contains any such conditions.
- (4) A forest lease may:
  - (a) contain conditions requiring the lessee to carry out work in connection with the silvicultural management of the trees and forest products on the land the subject of the lease in accordance with a working plan for that land referred to in the lease, and
  - (b) if it contains any such conditions, provide that the lessee is entitled:
    - (i) to a part of the resource acquisition fee paid for timber or forest products taken from the land the subject of the lease under a licence, or
    - (ii) in the case where timber or forest products are taken by the Corporation from the land the subject of the lease—to a part of the resource acquisition fee that would have been payable under this Act if the timber or forest products had been taken under a licence.
- (5) Any such part of the resource acquisition fee to which the lessee may be entitled under subsection (4) (b) is to be specified in the lease.



(6) A forest lease may not be transferred except with the consent of the land manager.

**63 Suspension and revocation of forest permits and leases** (1916 Act, s 35)

(1) A land manager:

(a) may suspend a forest permit or forest lease issued or granted by the land manager if the land manager is satisfied that:

(i) the holder of the permit or lease has failed to comply with any of the terms or conditions of the permit or lease, or

(ii) the permit or lease is not being used for the purpose for which it was issued or granted, and

(b) may, after giving the holder of the permit or lease an opportunity to make representations in relation to the matter, revoke the permit or lease (as the case requires).

(2) A forest permit may be revoked on such other grounds as may be prescribed by the regulations.

(3) If a forest permit is revoked, the land manager may refund all or part of the fee paid for the permit.

**Division 3 Provision of services and facilities for non-forestry purposes**

**64 Agreement to provide services and facilities**

(1) The land manager of a forestry area may enter into an agreement with the Minister under which the land manager agrees to provide, or facilitate the provision of, services and facilities in the area for the benefit of persons who use the area otherwise than to carry out forestry operations.

(2) Such services and facilities may include, but are not limited to, fire protection measures, the establishment and maintenance of roads and the management of recreational areas.

(3) An agreement under this section is to provide for the land manager to be reimbursed for the costs of providing or facilitating the provision of services and facilities under the agreement.

**65 Direction to provide services and facilities**

(1) The Minister may direct the land manager of a forestry area to provide or facilitate the provision of services and facilities in the area that the Minister is satisfied are for the benefit of persons who use the area otherwise than to carry out forestry operations.

(2) Any such direction:

- (a) must specify the services or facilities to which the direction relates, and
- (b) must specify the amount or a methodology by which that amount may be assessed by the Minister as the estimated cost to the land manager of complying with the direction, and
- (c) must specify arrangements for the payment to the land manager of an amount equivalent to the costs assessed by the Minister, as referred to in paragraph (b), or, if the land manager disputes that assessment, the costs assessed under section 66, and
- (d) may require the land manager to publish the direction in the manner specified in the direction.

(3) Before making a direction under this section, the Minister must:

- (a) consult with the land manager concerned, and
- (b) give the land manager written notice of the criteria on which the estimated efficient costs of complying with the direction are to be assessed.

(4) A land manager must comply with a direction given to the land manager under this section.

**66 Re-assessment of costs of compliance with direction**

- (1) Any dispute between the Minister and a land manager to whom a direction has been given under section 65 (being a dispute as to the cost to the land manager of complying with the direction) is to be referred to a committee constituted by one or more assessors.
- (2) The assessor or assessors to constitute such a committee are to be suitably qualified persons appointed by agreement between the land manager and the Minister or, if no such agreement can be reached, by the Treasurer.
- (3) In determining a dispute that has been referred to it under this section, a committee:
  - (a) must consider any representations made by the parties to the dispute, and
  - (b) must determine, on the basis of those representations and any other information available to it, the amount or a methodology by which the amount may be assessed as the efficient cost to the land manager of complying with the direction to which the dispute relates.
- (4) The committee's decision on a dispute binds the parties to the dispute, but does not prevent the direction to which it relates from being withdrawn.

- (5) The committee's decision as to the efficient costs is taken to be the amount of or the methodology for assessing costs for the purposes of the Minister's direction and the direction is accordingly varied from the date specified in the decision.

## **Division 4 Miscellaneous**

### **67 Unauthorised use of forestry areas** (1916 Act, ss 32 and 32G)

- (1) A person must not, without lawful authority, use any land within a forestry area.

Maximum penalty: 20 penalty units.

- (2) In proceedings for an offence under this section, the defendant has the onus of proving lawful authority in relation to the act giving rise to the alleged offence.

### **68 Offences relating to hunting and using firearms or other weapons** (1916 Act, s 32C)

- (1) A person must not:

- (a) possess or discharge a firearm in a forestry area, or
- (b) possess, place or use a net, trap, snare, hunting device, poison or explosive in a forestry area, or
- (c) discharge a firearm into a forestry area, or
- (d) take, kill, hunt, shoot, poison, net, snare, spear, capture, lure or injure an animal in a forestry area, or
- (e) cause or permit any of the things referred to in paragraphs (a)-(d) to be done.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) A person does not commit an offence under this section by reason of the person's doing any of the things referred to in subsection (1):

- (a) under and in accordance with a forest permit or forest lease, or
- (b) under and in accordance with a prescribed Crown tenure, or
- (c) under the authority conferred by a restricted game hunting licence under the [Game and Feral Animal Control Act 2002](#), or
- (d) in carrying out the person's duties as an employee of the land manager of the forestry area, or
- (e) with the consent of the land manager of the forestry area, or
- (f) in the case where the offence involves a snake—unless it is proved that there were no grounds on which the person could reasonably have believed at any time that

the snake was endangering, or was likely to endanger, any person or property.

(3) In this section:

**animal** includes a bird or reptile but does not include a fish.

**firearm** includes any weapon that is capable of propelling a projectile, whether by use of an explosive or by other means.

#### **68A Recovery by land manager of fees or other amounts**

Any fee or other amount due or payable to a land manager in respect of a forest permit or forest lease, or in respect of the provision of services or facilities under this Act, may be recovered by the land manager as a debt in a court of competent jurisdiction.

#### **69 Removal of unauthorised structures (1916 Act, s 35A)**

(1) The land manager of a forestry area may cause any structure that is in the area without lawful authority to be removed, together with the contents of the structure.

(2) The land manager of a forestry area may cause to be displayed or published a notice requiring any person:

(a) who claims to have authority to erect, maintain or use a structure erected in the forestry area, or

(b) who claims any interest in the structure,

to deliver to the land manager a statement in writing signed by the person stating by what authority the person erected or is entitled to maintain or use the structure or part or by what authority the person claims any interest in the structure.

(3) Any such notice is:

(a) to be displayed on or adjacent to the structure for a period of at least 1 month, or

(b) to be published in a local newspaper or such other newspaper (if any) as the land manager determines.

(4) A person who, within 1 month after the end of the period of display or publication of the notice, fails to deliver the statement to the land manager has no claim against the land manager or any other person removing the structure or contents.

(5) A land manager may cause anything removed under this section:

(a) to be destroyed, sold or stored, or

(b) to be returned to a person considered by the manager to be its owner, or

(c) if it is stored under paragraph (a) and not returned under paragraph (b)—to be

destroyed or sold.

- (6) A land manager may, on condition that it be removed, sell anything that the land manager may cause to be removed under this section.
- (7) A land manager may recover as a debt in a court of competent jurisdiction the expenses incurred in the removal, destruction, sale or storage of the structure or contents:
  - (a) from the person who erected the structure or caused it to be erected, or
  - (b) if a notice was displayed or published under this section in respect of the structure and it is proved that the person knew, or ought reasonably to have known, of the notice—from the person who has made use of the structure after the end of the period of 1 month after which the notice was displayed or published.

## **Part 5A Forest agreements**

### **69A Making of agreements**

- (1) Forest agreements may be made under this Part with respect to particular regions of the State.
- (2) The parties to a forest agreement are to be the Minister for the Environment and the Minister for Lands and Forestry.
- (3), (4) (Repealed)

### **69B Requirement for NRC forest assessment before agreement made**

- (1) A forest agreement may only be made in respect of a region that has been the subject of a regional forest assessment carried out by or on behalf of the Natural Resources Commission.
- (2) Any such assessment is to include an assessment of the following (in the particular areas of the region that the Commission considers appropriate):
  - (a) environment and heritage values (including indigenous heritage),
  - (b) economic and social values,
  - (c) ecologically sustainable forest management,
  - (d) timber resources.
- (3) For the purposes of this Act, the **relevant regional forest assessment** comprises any such assessment for the agreement concerned, together with any environmental impact statements obtained by the Forestry Corporation or other determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979*, or

related environmental studies, that the parties to the agreement consider relevant.

(4) For the purpose of making forest agreements with respect to the Eden region, the Lower North East region and the Upper North East region, assessments:

(a) that are in existence on the commencement of this section, and

(b) that the parties to any such forest agreement consider relevant,

are taken to satisfy the requirements of this section with respect to the relevant forestry assessment for that region and no further assessments are required under this section in connection with that forest agreement.

### **69C Contents of agreement**

(1) A forest agreement must:

(a) describe the region of the State to which it applies, and

(b) list the documents containing information about the relevant regional forest assessment.

(2) A forest agreement must contain (but is not limited to) the following provisions with respect to land in the region:

(a) provisions that promote ecologically sustainable forest management,

(b) provisions with respect to sustainable timber supply from forestry operations covered by the agreement,

(c) provisions with respect to community consultation on forestry operations and other matters covered by the agreement,

(d) provisions with respect to arrangements made or to be made relating to native title rights and interests or Aboriginal land claims,

(e) other provisions that the relevant Ministers consider appropriate and that are not inconsistent with this Act or any other Act or law relating to matters within their respective Ministerial portfolios.

(3) A forest agreement is to refer to any integrated forestry operations approval for the region that has been granted or proposed to be granted at the time the agreement is made.

### **69D Public consultation on making agreement**

(1) The Ministers who are to be parties to a proposed forest agreement are required to ensure that the public is given an opportunity to participate in connection with the making of the forest agreement.

- (2) The public participation is to include:
  - (a) giving at least 28 days public notice of the making of the proposed agreement, and
  - (b) making the proposed agreement publicly accessible during that period of public notice, and
  - (c) inviting representations in connection with the proposed agreement within the time specified in the notice, and
  - (d) consideration of any such representation before the agreement is made.
- (3) This section does not apply to the making of forest agreements with respect to the Eden region, the Lower North East region and the Upper North East region (other than the making of a forest agreement for any such region to replace any earlier such agreement).

#### **69E Amendment or termination of agreement**

A forest agreement may be amended or terminated at any time jointly by the parties to the agreement.

#### **69F Public consultation on amendment or revocation of agreement**

- (1) The Ministers who are parties to a forest agreement are required to ensure that the public is given an opportunity to participate in connection with any amendment or revocation of the forest agreement.
- (2) The public participation under this section is to include:
  - (a) giving at least 28 days public notice of the proposed amendment or revocation, and
  - (b) making the proposed amendment or revocation publicly accessible during that period of public notice, and
  - (c) inviting representations in connection with the proposed amendment or revocation within the time specified in the notice, and
  - (d) consideration of any such representation before the agreement is amended or revoked.

#### **69G Review of agreements and related integrated forestry operations approvals**

- (1) The Ministers who are parties to a forest agreement are required to jointly review the agreement and any integrated forestry operations approval for the region.
- (2) A review is to be undertaken for the purposes only of assessing:

- (a) the implementation of the provisions of the agreement, and
  - (b) whether integrated forestry operations approvals are effective in achieving the purpose of those approvals.
- (3) A review is to be undertaken by those Ministers every 5 years after the agreement is made.
- (4) Those Ministers are to ensure that the public is given an opportunity to participate in the review. The public participation is to include the following:
- (a) giving at least 28 days public notice of the review (including notice of the proposed terms of reference of the review),
  - (b) inviting representations in connection with the proposed terms of reference within the time specified in the notice, and the consideration of any such representations before the terms of reference are settled,
  - (c) giving public notice of whether any changes are proposed to the forest agreement or to the integrated forestry operations approval,
  - (d) making the proposed changes publicly accessible for at least 28 days after the notice is given,
  - (e) inviting representations in connection with any proposed changes within the time specified in the notice,
  - (f) consideration of any such representation before a decision is made on the outcome of the review and any changes are made.
- (5) The Ministers are to cause a report on the outcome of each review to be tabled in each House of Parliament within 12 months after the end of the relevant 5-year period.
- (6) Despite section 69E, a forest agreement may not be amended as a result of a review under this section until the report on the outcome of the review has been tabled under subsection (5).
- (7) (Repealed)
- (8) This section does not apply in respect of any integrated forestry operations approval prepared for the Community Conservation Area as defined by the *Brigalow and Nandewar Community Conservation Area Act 2005*.

#### **69H Annual Parliamentary reports and tabling of documents by Minister**

- (1) The Minister is to prepare an annual report on each forest agreement, including with respect to:



- (a) ecologically sustainable forest management in the region, and
  - (b) compliance with any integrated forestry operations approval for the region.
- (2) Each such report is to be tabled in each House of Parliament as soon as practicable after it is prepared. The report may be combined with any other report required to be tabled under this Part or any other annual report of a Public Service agency responsible to the Minister.
- (3) The Minister must cause a copy of the following to be furnished to the Presiding Officer of each House of Parliament within 7 days after the relevant matter arises:
- (a) each forest agreement made under this Act, and any amendment or termination of a forest agreement (together with a statement of the reasons for the amendment or termination),
  - (b) each integrated forestry operations approval granted under this Act, and any amendment, suspension or revocation of an integrated forestry operations approval (together with a statement of the reasons for the amendment, suspension or revocation).
- (4) A copy of any document furnished to the Presiding Officer under subsection (3) is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (5) The Presiding Officer of a House of Parliament is to make a document furnished to the Presiding Officer under subsection (3) public as soon as practicable after receiving the document if it has not been sooner laid before that House, whether or not the House is in session.
- (6) If such a document is made public by the Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (7) In this section, **Presiding Officer** means the President of the Legislative Council or the Speaker of the Legislative Assembly. However:
- (a) if there is a vacancy in the office of President, the reference to the President is a reference to the Clerk of the Legislative Council, or
  - (b) if there is a vacancy in the officer of Speaker, the reference to the Speaker is a reference to the Clerk of the Legislative Assembly.

**69I Public notice and public availability of agreements, assessments, assessment documents, approvals and reports**

- (1) The Minister must cause public notice to be given of the following:

- (a) the making of a forest agreement made under this Act, and any amendment or termination of a forest agreement,
- (b) the granting of an integrated forestry operations approval under this Act, and any amendment, suspension or revocation of an integrated forestry operations approval.

Any such notice is to state the place at which copies of the relevant documents will be available for public inspection.

- (2) Copies of the following documents are to be available for public inspection at the head office and the appropriate regional office of the Office of Environment and Heritage (as determined by the Chief Executive of the Office), and at such other offices or places as the Chief Executive of the Office directs:
  - (a) each forest agreement made under this Act, and any amendment or termination of a forest agreement (together with a statement of the reasons for the amendment or termination),
  - (b) each integrated forestry operations approval granted under this Act, and any amendment, suspension or revocation of an integrated forestry operations approval (together with a statement of the reasons for the amendment, suspension or revocation),
  - (c) the terms of reference of each 5-yearly review of a forest agreement,
  - (d) the last annual report on, and the report on the last 5-yearly review of, each forest agreement that are tabled in Parliament.
- (3) A person may take copies of any such documents on payment of a charge determined by the Chief Executive of the Office of Environment and Heritage to cover the actual cost of the copying.
- (4) Any such document need only be available for public inspection during ordinary office hours.
- (5) An obligation under subsection (1) or (2) is to be complied with within 7 days after the relevant matter arises.
- (6) Copies of documents required to be made available under subsection (2) must also be made available, as soon as practicable, on the Internet by means of the website of the Office of Environment and Heritage.
- (7) After the commencement of Schedule 2 to the *Forestry Legislation Amendment Act 2018*, a reference in this section to the Office of Environment and Heritage is taken to be a reference to the Environment Protection Authority Staff Agency.

### **69J Committees of advice—forest landscape management**

- (1) The Minister may establish committees to provide advice to the Minister on the management of land in any region covered by a forest agreement.
- (2) In particular, the Minister may establish any such committee with representatives of other specialist committees or bodies to co-ordinate advice over the range of land management issues in the region.
- (3) The constitution and procedure of any such committee is to be determined by the Minister.

## **Part 5B Integrated forestry operations approvals**

### **Division 1 Preliminary**

#### **69K Forestry operations to which Part applies**

- (1) This Part applies to forestry operations in State forests or other Crown-timber lands.
- (2) This Part does not apply to forestry operations:
  - (a) on any part of the national park estate, or
  - (b) on plantations within the meaning of the *Plantations and Reafforestation Act 1999*, or
  - (c) on any land for the purposes of clearing natural forest to establish such a plantation or for agricultural or other non-forestry uses.
- (3) (Repealed)
- (4) In this section:

**national park estate** means any of the following:

- (a) land declared as a wilderness area under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*,
- (b) land reserved under the *National Parks and Wildlife Act 1974*,
- (c) a flora reserve,
- (d) land dedicated or reserved for a similar public purpose under the *Crown Land Management Act 2016*.

#### **69L Purpose of integrated forestry operations approvals**

- (1) The purpose of this Part is to provide a framework for forestry operations to which this Part applies:

- (a) that authorises the carrying out of those forestry operations in accordance with principles of ecologically sustainable forest management, and
- (b) that integrates the regulatory regimes for environmental planning and assessment, for the protection of the environment and for threatened species conservation, including threatened species, populations and ecological communities under Part 7A of the *Fisheries Management Act 1994*.

(2) In this section:

***principles of ecologically sustainable forest management*** means the following:

- (a) maintaining forest values for future and present generations, including:
  - (i) forest biological diversity, and
  - (ii) the productive capacity and sustainability of forest ecosystems, and
  - (iii) the health and vitality of native forest ecosystems, and
  - (iv) soil and water quality, and
  - (v) the contribution of native forests to global geochemical cycles, and
  - (vi) the long term social and economic benefits of native forests, and
  - (vii) natural heritage values,
- (b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations,
- (c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards,
- (d) applying best-available knowledge and adaptive management processes to deliver best-practice forest management,
- (e) applying the precautionary principle (as referred to in section 6 (2) (a) of the *Protection of the Environment Administration Act 1991*) in preventing environmental harm.

## **Division 2 Approvals generally**

### **69M Granting of approvals**

- (1) Approval for the carrying out of forestry operations to which this Part applies may be granted under this Part. Such an approval is called an ***integrated forestry operations approval***.
- (2) This Part does not prevent or affect the carrying out of forestry operations authorised

by or under any other provision of this Act or any other Act or law. However, the carrying out of forestry operations to which an integrated forestry operations approval applies is subject to the terms of the approval.

**Note—**

Forestry operations the subject of an approval are excluded from environmental assessment and approval under Part 4 or 5 of the *Environmental Planning and Assessment Act 1979*—see section 69W.

**Note 2—**

Section 122 (2) of the *Protection of the Environment Operations Act 1997* provides a defence to the offence of polluting waters under that Act if the act was the carrying out of a forestry operation authorised by an integrated forestry operations approval and was carried out in accordance with the approval. A similar defence applies to an offence relating to the protection of animals and plants under Part 2 of the *Biodiversity Conservation Act 2016* (section 2.8 (1) (h)) and of fish under Part 7A of the *Fisheries Management Act 1994* (section 220ZF (1) (b3) and (b4)).

**69N Approvals to be granted jointly by relevant Ministers**

- (1) An integrated forestry operations approval may only be granted jointly by the Minister for the Environment and the Minister for Lands and Forestry.
- (2) An integrated forestry operations approval is to be in writing signed by those Ministers.
- (3) Before granting an integrated forestry operations approval, the Minister for the Environment and the Minister for Lands and Forestry are required to consult the Minister administering Part 7A of the *Fisheries Management Act 1994*.

**69NA Public consultation on proposed approvals**

- (1) Before an integrated forestry operations approval is granted, public consultation on the proposed approval is to be undertaken.
- (2) The public consultation is to include the following:
  - (a) giving at least 28 days notice of the proposed approval,
  - (b) making the proposed approval publicly accessible during that period of public notice,
  - (c) inviting representations in connection with the proposed approval within the time specified in the notice,
  - (d) consideration of any such representation before the approval is granted.
- (3) Public consultation under this section on a proposed integrated forestry operations approval is not required if the proposed approval has been part of a review under section 69G.

- (4) Any public consultation undertaken in relation to a proposed integrated forestry operations approval before the commencement of this section is taken to have been undertaken for the purposes of this section.

**69O (Repealed)**

**69P Terms of approval**

- (1) An integrated forestry operations approval is to describe the forestry operations covered by the approval, including a description of the area of the State to which it applies.
- (2) An integrated forestry operations approval is:
  - (a) to make provision for or with respect to the carrying out of forestry operations covered by the approval, and
  - (b) to set out conditions subject to which those forestry operations are to be carried out, including conditions that may be imposed under any of the following:
    - (i) a biodiversity conservation licence under the *Biodiversity Conservation Act 2016*,
    - (ii) a licence under Part 7A of the *Fisheries Management Act 1994*,
    - (iii) an environment protection licence under the *Protection of the Environment Operations Act 1997*.
- (3) An integrated forestry operations approval may apply or adopt protocols, codes, standards or other instruments that are publicly available and in force from time to time.
- (4) Without limiting subsection (3), any such protocols may include those prepared by the Environment Protection Authority.

**69Q Duration of approval**

- (1) An integrated forestry operations approval has effect for the period (not exceeding 20 years) specified in it, unless sooner revoked.
- (2) A further approval or approvals may be granted after the expiry of an earlier approval, subject to subsection (1).

**69R Revocation, suspension or amendment of approval**

- (1) An integrated forestry operations approval may be amended, suspended or revoked at any time jointly by the Ministers authorised to grant the approval.
- (2) (Repealed)

- (3) A suspension of the approval may extend to all or any of the forestry operations covered by the approval.

**Note—**

See section 69G for review of approvals every 5 years and for reports on approvals.

**69RA Public consultation on proposed amendment or revocation of approval**

- (1) Before an integrated forestry operations approval is amended or revoked, public consultation on the proposed amendment or revocation is to be undertaken.
- (2) The public consultation is to include the following:
- (a) giving at least 28 days notice of the proposed amendment or revocation,
  - (b) making the proposed amendment publicly accessible during that period of public notice,
  - (c) inviting representations in connection with the proposed amendment or revocation within the time specified in the notice,
  - (d) consideration of any such representation before the approval is amended or revoked.
- (3) Public consultation under this section on a proposed amendment or revocation of an integrated forestry operations approval is not required if the approval has been reviewed under section 69G.
- (4) Public consultation under this section on a proposed amendment of an integrated forestry operations approval is not required if the Minister considers the proposed amendment to be of a minor nature.

**69S (Repealed)**

**Division 2A Enforcement and other provisions**

**69SA Offence of contravening requirements of approval**

- (1) A person who contravenes a requirement imposed by an integrated forestry operations approval is guilty of an offence.

Maximum penalty:

- (a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment:
  - (i) in the case of a corporation—\$5 million, or
  - (ii) in the case of an individual—\$1 million, or

(b) for any other offence:

- (i) in the case of a corporation—\$2 million, or
- (ii) in the case of an individual—\$500,000.

(2) This section applies to requirements (however described) imposed on the Forestry Corporation or on persons carrying out forestry operations and whether arising before, during or after the carrying out of forestry operations.

(3) The higher maximum penalty under this section does not apply unless:

- (a) the prosecution establishes (to the criminal standard of proof) that the offence was committed intentionally and caused or was likely to cause significant harm to the environment, and
- (b) the court attendance notice or application commencing the proceedings alleged that those factors applied to the commission of the offence.

If any such allegation in the notice or application is not established by the prosecution, the lower maximum penalty under this section applies (whether or not the notice or application is amended).

(4) This section does not operate to preclude the commission of an offence under Part 5A of the *Local Land Services Act 2013*, the *Environmental Planning and Assessment Act 1979*, the *Protection of the Environment Operations Act 1997*, the *Biodiversity Conservation Act 2016* or Part 7A of the *Fisheries Management Act 1994* in relation to the carrying out of forestry operations.

#### **69SB Enforcement functions of EPA**

- (1) The Environment Protection Authority has the function of monitoring the carrying out of forestry operations to which this Part applies and the function of enforcing compliance with the requirements of integrated forestry operations approvals.
- (2) The *Biodiversity Conservation Act 2016* contains provisions relating to the enforcement of this Part, and accordingly:
  - (a) functions under Part 6 of this Act (Investigations and enforcement powers) are not exercisable in relation to any matter arising under this Part, and
  - (b) proceedings for an offence against this Part or the regulations under this Part cannot be instituted under Part 7 of this Act (Criminal proceedings and related matters) and that Part does not apply to any such alleged offence.

#### **Note—**

This Part (in addition to Parts 5A and 5B of the *Local Land Services Act 2013*) is native vegetation legislation (and offences under this Part are native vegetation offences) for the purposes of the *Biodiversity*



*Conservation Act 2016*. Accordingly, the following provisions of that Act apply (to the extent specified in those provisions) to the enforcement of this Part:

- (a) Part 11 (Regulatory compliance mechanisms), except Divisions 2 and 3,
- (b) Part 12 (Investigation powers),
- (c) Part 13 (Criminal and civil proceedings),
- (d) Section 14.7A (Provisions relating to regulation or enforcement of native vegetation legislation).

See also section 13.14A of the *Biodiversity Conservation Act 2016*.

(3) In this section:

**enforcing compliance** includes instituting criminal or civil proceedings.

**monitoring** includes investigating and reporting.

### **69SC Enforcement cost recovery**

- (1) The Corporation is required to pay to the Environment Protection Authority such annual licence fees in relation to integrated forestry operations approvals as are determined by the Ministers granting those approvals.
- (2) Any such annual licence fees are payable for the purpose of the recovery of the reasonable costs incurred by the Environment Protection Authority in exercising its function of monitoring the carrying out of forestry operations to which this Part applies and the function of enforcing compliance with the requirements of integrated forestry operations approvals.
- (3) Until any such annual licence fees are determined, the Corporation is required to pay to the Environment Protection Authority the annual licence fees payable in respect of the environment protection licences deemed to have been granted under Division 3 before its repeal by the *Forestry Legislation Amendment Act 2018*.

## **Division 3**

### **69T-69V (Repealed)**

## **Division 4 Application of other legislation**

### **69W Application of *Environmental Planning and Assessment Act 1979***

- (1) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply in respect of the carrying out of, or the granting of approval in relation to, forestry operations during any period that an integrated forestry operations approval applies to those operations. That Part does not apply to the granting or amendment of any such approval or to the making or amendment of a forest agreement.
- (2) An environmental planning instrument under the *Environmental Planning and*

*Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict forestry operations during any period that an integrated forestry operations approval applies to those operations.

- (2A) Forestry operations cannot be declared to be a project under Part 3A, or State significant infrastructure under Part 5.1, of the *Environmental Planning and Assessment Act 1979* during any period that an integrated forestry operations approval applies to those operations.

Any such declaration that is in force under that Part when the integrated forestry operations approval is granted (and any approval under that Part in relation to the declaration) has no effect during that period.

- (3) An order under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* does not have effect to the extent that it prevents or interferes with the carrying out of forestry operations authorised by an integrated forestry operations approval.
- (4) Any approval of forestry operations that is in force under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* has no effect during any period that Part 5 of that Act does not apply to the forestry operations. Any development consent for forestry operations that is in force under Part 4 of the *Environmental Planning and Assessment Act 1979* has no effect during any period that development consent under Part 4 of that Act is not required for the forestry operations.
- (5) Subsection (2) applies to an environmental planning instrument made before or after the commencement of this section.

#### **69X Application of *Biodiversity Conservation Act 2016*—interim protection orders**

Division 3 (Interim protection orders) of Part 11 of the *Biodiversity Conservation Act 2016* does not apply to the carrying out of forestry operations during any period that an integrated forestry operations approval applies to those operations.

#### **69Y Application of *Local Government Act* orders**

An order under section 124 of the *Local Government Act 1993* does not have effect to the extent that it prevents or interferes with the carrying out of forestry operations authorised by an integrated forestry operations approval.

#### **69Z Application of wilderness legislation**

An area in which forestry operations authorised by an integrated forestry operations approval may be carried out cannot be proposed or identified as, or declared to be, a wilderness area under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*.

### **69ZA Application of statutory provisions relating to proceedings by third parties**

- (1) This section applies to the following statutory provisions:
  - (a) section 252 or 253 of the *Protection of the Environment Operations Act 1997*,
  - (b) a provision of an Act that gives any person a right to institute proceedings in a court to remedy or restrain a breach (or a threatened or apprehended breach) of the Act or an instrument made under the Act, whether or not any right of the person has been or may be infringed by or as a consequence of that breach,
  - (c) section 219 of the *Protection of the Environment Operations Act 1997*.
- (2) Proceedings may not be brought under a statutory provision to which this section applies if the breach (or threatened or apprehended breach) to which the proceedings relate is as follows:
  - (a) a breach of this Part (including a breach of any forest agreement),
  - (b) a breach of an integrated forestry operations approval,
  - (c) a breach of an Act or law that arises because any defence provided by an integrated forestry operations approval is not available as a result of a breach of the approval,
  - (d) a breach of the Act that includes the statutory provision (including a breach of an instrument made under that Act) if the breach relates to forestry operations to which an integrated forestry operations approval applies.
- (3) This section does not apply to any proceedings brought by:
  - (a) a Minister, or
  - (b) the Environment Protection Authority or a member of the staff of the Authority, or
  - (c) in the case of the provision of an Act referred to in subsection (1) (b)—a government agency or any government official engaged in the execution or administration of the Act.

## **Part 5C**

### **69ZB-69ZI (Repealed)**

## **Part 6 Investigations and enforcement powers**

### **Division 1 Appointment of authorised officers**

#### **70 Appointment of authorised officers**

- (1) The Minister may appoint any of the following persons as an authorised officer for the

purposes of this Act:

- (a) an employee of the Corporation,
  - (b) a person employed in the Public Service,
  - (c) a member of staff of a land manager other than the Corporation,
  - (d) a person of a class prescribed by the regulations.
- (2) The Minister may, in and by the instrument of the authorised officer's appointment, limit the functions that an authorised officer may exercise under this Act (including limiting the purposes for or area in which the functions may be exercised).
- (3) A person referred to in subsection (1) (c) or (d) who is not a member of staff of a government sector agency may only exercise the functions of an authorised officer if the exercise of those functions is subject to the control and direction of the Corporation or a public sector agency or of an employee of the Corporation or a government sector agency.

#### **71 Police officers to be authorised officers**

A police officer may exercise the functions of an authorised officer under this Act and for that purpose is taken to be an authorised officer.

#### **72 Identification card**

- (1) Every authorised officer (other than a police officer) is to be issued with an identification card as an authorised officer by the Minister.
- (2) The identification card must:
- (a) state that it is issued under this Act, and
  - (b) give the name of the person to whom it is issued and bear a photograph of that person, and
  - (c) state any limitations on the authorised officer's functions (including the particular forestry area in respect of which the functions may be exercised), and
  - (d) state the date (if any) on which it expires, and
  - (e) bear the signature of the Minister.
- (3) A power conferred on an authorised officer by this Part to enter premises, or to search or take other action on premises, may not be exercised unless the authorised officer proposing to exercise the power is in possession of the identification card issued to the authorised officer and produces the identification card if required to do so by the occupier of the premises.

- (4) Subsection (3) does not apply to a police officer or to a power conferred by a search warrant.

## **Division 2 Powers of authorised officers**

### **73 Definitions**

- (1) In this Division:

**premises** includes:

- (a) a building or structure, or
- (b) land or a place (whether built on or not).

**search** includes examine or inspect.

- (2) For the purposes of this Division, a thing is **connected** with an offence under this Act or the regulations if it is:
- (a) a thing with respect to which the offence has been committed, or
  - (b) a thing that will afford evidence of the commission of the offence, or
  - (c) a thing that was used, or is intended to be used, for the purpose of committing the offence,

and a reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### **74 Purposes for which powers under Division may be exercised**

- (1) Powers may be exercised under this Division for the following purposes (referred to as **authorised purposes**):
- (a) for determining whether there has been a contravention of this Act or the regulations,
  - (b) for obtaining information or records for purposes connected with the administration of this Act,
  - (c) in connection with exercising the functions of an authorised officer under this Act.
- (2) A reference in this section to this Act does not include a reference to Part 5A or 5B.

### **75 Power to enter premises** (1916 Act, s 38)

- (1) An authorised officer may enter any premises for authorised purposes.
- (2) The authorised officer must give the occupier of the premises notice of intention to enter the premises unless:

- (a) the entry is made with the permission of the occupier, or
  - (b) the entry is made to a part of the premises open to the public, or
  - (c) the giving of notice would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency.
- (3) Entry under the power conferred by this section may only be made at a reasonable time. This subsection does not apply to a power conferred by a search warrant.
- (4) The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except:
- (a) with the permission of the occupier of the premises, or
  - (b) under the authority conferred by a search warrant.

## **76 Search warrants**

- (1) An authorised officer under this Act may apply to an issuing officer for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in or about any premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, and any other person named in the warrant:
- (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) In this section:

**issuing officer** means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**premises** includes a vehicle or vessel.

## **77 Powers to search premises and seize things**

An authorised officer may, on any premises lawfully entered, do anything that in the opinion of the officer is necessary to be done for the purposes of this Division, including (but not limited to) the following:

- (a) examine and inspect any part of the premises or any article or thing on the premises,
- (b) make such examinations and inquiries as the officer considers necessary,
- (c) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
- (d) require records to be produced for inspection,
- (e) examine and inspect any records,
- (f) copy any records,
- (g) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations,
- (h) do any other thing the officer is empowered to do under this Division.

#### **78 Power to detain and search vehicles or vessels**

- (1) An authorised officer who has reason to believe that there is in or on a vehicle or vessel anything connected with an offence under this Act or the regulations may:
  - (a) stop and detain the vehicle or vessel, and
  - (b) enter and search the vehicle or vessel, and
  - (c) break open and search any container in or on the vehicle or vessel that the officer has reason to believe contains any such thing, and
  - (d) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations.
- (2) An authorised officer may require the person in charge of the vehicle or vessel to take the vehicle or vessel to a specified place for the purposes of searching the vehicle or vessel if it is not reasonably practicable to carry out the search where the vehicle or vessel is stopped.
- (3) An authorised officer may only exercise the power under this section of requiring a vehicle to stop if accompanied by a police officer.

#### **79 Dealing with seized things**

- (1) A court may order the forfeiture of a thing seized under this Division in connection with an offence if the court finds a person guilty of the offence.
- (2) The owner of anything seized under this Division may dispute the seizure by giving notice to that effect in writing to the Minister within 28 days after becoming aware of the seizure.

- (3) If the seizure of a thing is so disputed by the owner, the thing is to be returned to the owner (or the person from whom it was seized) unless:
  - (a) proceedings have been instituted for an offence in connection with which the court may order the thing to be forfeited, or
  - (b) proceedings have been instituted under this section for the forfeiture of the thing.
- (4) An authorised officer may institute proceedings in the Local Court for the forfeiture of a thing seized under this Division and the Local Court may order the forfeiture of the thing if satisfied it was duly seized under this Division.
- (5) Anything that is forfeited under this section (or the proceeds of its sale) becomes:
  - (a) in the case of proceedings instituted by an authorised officer who is an employee of the Corporation—the property of the Corporation, or
  - (b) in any other case—the property of the State.

#### **80 Requirement to provide information and records**

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter arising under or in connection with this Act.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) A notice under this section may only require a person to furnish records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The authorised officer to whom any record is furnished under this section may take copies of it.
- (5) If any record required to be furnished under this section is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (6) This section applies whether or not a power of entry under this Division is being or has been exercised.

#### **81 Requirement to state name and address** (1916 Act, s 38A)

- (1) An authorised officer may:
  - (a) require a person whom the officer reasonably suspects has committed an offence under this Act or the regulations to state the person's full name and place of residence, and



(b) require the driver of a motor vehicle in a forestry area to produce his or her driver licence and to state the person's full name and place of residence.

(2) A person does not commit an offence under section 83 in respect of a requirement made under this section if:

(a) the authorised officer does not, at the time when the officer makes the requirement, show the person the officer's identification card, or

(b) the authorised officer does not, at the time when the officer makes the requirement, warn the person that it would be an offence not to comply with the requirement.

**82 Requirement for owner of motor vehicle and others to give information** (1916 Act, s 38B)

(1) If an authorised officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence under this Act or the regulations, the authorised officer may:

(a) require the owner of the vehicle, or the person in whose name it is registered, or the person having the custody of the vehicle, to give information (which must, if so required, be given in the form of a statement in writing, signed by that owner or person) as to the name and place of residence of the driver, or

(b) require any other person to give any information that is in that person's power to give and that may lead to the identification of the driver.

(2) In a prosecution for an offence in respect of a failure or refusal to comply with a requirement under subsection (1) (a), it is a defence if the defendant satisfies the court that the defendant did not know and could not with reasonable diligence have ascertained the name or place of residence of the driver concerned, or both, as the case requires.

(3) If a statement in writing purporting to be furnished under subsection (1) (a) and to contain particulars of the name and place of residence of the driver of a motor vehicle at the time of commission of an alleged offence is produced in any court in proceedings for the offence against the person named in the statement as the driver, the statement is, if that person does not appear before the court, evidence without proof of signature that the person was the driver of the vehicle at that time.

**83 Offences** (1916 Act, ss 38 (2) and 44)

(1) A person must not:

(a) without lawful excuse, refuse or fail to comply with a requirement made of the person under this Division or to answer a question of an authorised officer asked in accordance with this Division, or

- (b) in purported compliance with a requirement under this Division, or in answer to a question of an authorised officer asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular, or
- (c) obstruct, delay or hinder an authorised officer in the exercise of the officers's functions under this Act, or
- (d) impersonate an authorised officer.

Maximum penalty: 20 penalty units.

(2) A person must not:

- (a) assault, threaten or intimidate an authorised officer in the exercise of the officer's functions under this Act, or
- (b) without lawful excuse, give or offer to give an authorised officer any payment, gratuity or gift in consideration that the officer will do or omit to do an act or thing in relation to the exercise of the officer's functions under this Act.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

## **Part 7 Criminal proceedings and related matters**

### **84 Proceedings for offences** (1916 Act, s 46)

- (1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under this Act or the regulations may be commenced within, but not later than, 2 years after the date on which the offence is alleged to have been committed.
- (3) 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.
- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the information or application 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 information or application, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

**85 Penalty notices for certain offences** (1916 Act, s 46A)

- (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) An authorised officer may also serve a penalty notice on a person if it appears to the officer that the person is, by virtue of section 87, guilty of a parking offence within the meaning of that section.
- (3) 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 may, within the time and to the person specified in the notice, pay:
  - (a) the amount of the penalty prescribed by the regulations for the offence if dealt with under this section, and
  - (b) if the Corporation has certified an amount under subsection (4)—the amount so certified.
- (4) If it appears to an authorised officer that a person has committed an offence referred to in subsection (1) involving the taking or destruction of any timber, forest products or forest materials, the Corporation may certify to the authorised officer the amount that it determines would have been payable by way of a resource acquisition fee if the timber, forest products or forest materials had been taken under the authority of a timber licence, forest products licence or forest materials licence.
- (5) A penalty notice:
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence of which the owner of a motor vehicle is guilty by virtue of section 87—may be addressed to the owner without naming the owner or stating the owner's address and may be served by leaving it on or attaching it to the vehicle.
- (6) If the penalty for an offence dealt with under this section and any resource acquisition fee is or are paid under this section in respect of an alleged offence:
  - (a) a person is not liable to any further proceedings for the alleged offence, and
  - (b) a person may not be proceeded against for recovery of the resource acquisition fee, and
  - (c) the payment is not to be regarded as an admission of liability for the purpose of, and does not (except as provided by paragraph (b)) in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (7) The regulations may:
- (a) prescribe the offences that are penalty notice offences 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.
- (8) The penalty prescribed for an offence dealt with under this section is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) Section 53 applies in respect of any resource acquisition fee paid to the Corporation under this section as if it were a resource acquisition fee paid to the Corporation under section 49. However, this subsection does not require the Corporation, in respect of any resource acquisition fee paid to it under this section, to make a payment out of the resource acquisition fee to the person by whom the fee was paid.
- (10) 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.
- (11) In this section:
- owner**, in relation to a motor vehicle, has the meaning as in section 87.
- resource acquisition fee**, in relation to a notice under subsection (1), means the amount (if any) referred to in subsection (3) (b) and specified in the notice.

**86 Orders for compensation at time offence proved** (1916 Act, s 48)

- (1) This section applies where a court convicts a person of an offence under this Act or the regulations.
- (2) The court may, if it appears to the court that the Corporation or the land manager of a forestry area has, by reason of the commission of the offence:
- (a) suffered loss or damage to any land or property owned by or under the control or management of the Corporation or the land manager, or
  - (b) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the Corporation or the land manager (as the case requires) the costs and expenses so incurred, or compensation for the loss or damage so suffered, in such amount as is fixed by the order.

(3) Without limiting subsection (2), if:

- (a) the offence involved the taking or destruction of any timber, forest products or forest materials, and
- (b) the Corporation has certified the amount that it determines would have been payable by way of a resource acquisition fee if the timber, forest products or forest materials had been taken under the authority of a timber licence, forest products licence or forest materials licence,

the court may order payment by the offender to the Corporation of that amount.

- (4) A court may not make an order under this section for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.
- (5) Orders may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.
- (6) Orders may be made under this section regardless of whether any penalty is imposed, or other action taken, in relation to the offence concerned.
- (7) If an amount is ordered to be paid to the Corporation under subsection (3), section 53 applies in respect of an amount paid under the order as if it were a resource acquisition fee paid to the Corporation under section 49. However, this subsection does not require the Corporation, in respect of an amount paid under any such order, to make a payment out of the amount to the person by whom the amount was paid.
- (8) In this section, a reference to the conviction of a person includes a reference to the making of an order in respect of a person under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
- (9) In this section:

**court** means the court that convicts a person of the offence concerned.

**offender** means the person who is convicted of the offence.

### **87 Liability of vehicle owner for parking offences** (1916 Act, s 38C)

- (1) If a parking offence occurs in relation to any vehicle, the person who at the time of the occurrence of the offence is the owner of the vehicle is, by virtue of this section, guilty of an offence under the regulation concerned as if the person were the actual offender guilty of the parking offence unless:
  - (a) in any case where the parking offence is dealt with under section 85—the person

satisfies the authorised officer referred to in the notice served under that section that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or

(b) in any other case—the court is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.

(2) This section does not affect the liability of an actual offender in respect of a parking offence but if a penalty has been imposed on or recovered from any person in relation to the offence no further penalty may be imposed on or recovered from any other person for the offence.

(3) Despite subsection (1), an owner of a vehicle is not, by virtue of that subsection, guilty of an offence if:

(a) in any case where the offence is dealt with under section 85—the person:

(i) within 21 days after service on the person of a notice under that section in respect of the offence, gives an authorised person referred to in the notice an approved nomination notice containing the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or

(ii) satisfies the authorised person that the person did not know and could not with reasonable diligence have ascertained that name and address, or

(b) in any other case—the person:

(i) within 21 days after service on the person of a court attendance notice in respect of the offence, gives the informant an approved nomination notice containing the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or

(ii) satisfies the court that the person did not know and could not with reasonable diligence have ascertained that name and address.

(3A) Despite any other provision of this Act, an approved nomination notice may be provided by a person served with a notice under section 85 within 90 days of the notice being served on the person if the approved nomination notice is provided in the circumstances specified in section 23AA or 23AB of the *Fines Act 1996*.

(3B) If the owner of a vehicle supplies an approved nomination notice to an authorised person or an informant for the purposes of this section, an authorised person or informant may, by written notice served on the owner, require the owner to supply a statutory declaration for use in court proceedings that verifies the nomination contained in the approved nomination notice.

(4) If a statutory declaration under subsection (3B) is produced in any proceedings

against the person named in the declaration that relate to the offence in respect of which it was supplied, the declaration is evidence that the person so named was in charge of the vehicle at all relevant times relating to that offence.

(5) An approved nomination notice or a statutory declaration that relates to more than one parking offence is not an approved nomination notice or a statutory declaration for the purposes of subsection (3) or (3B).

(6) In this section:

**approved nomination notice** has the same meaning as in section 38 of the *Fines Act 1996*.

**owner** of a motor vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport Act 2013*.

**parking offence** means the offence committed by a person who, in contravention of the regulations:

(a) parks a motor vehicle, or

(b) causes or permits a motor vehicle to be parked or to stand or wait.

## **88 Evidentiary provisions** (1916 Act, ss 45A and 45B)

In any proceedings for an offence under this Act or the regulations, any one of the following allegations (however expressed) is evidence of the truth of the allegation unless the contrary is proved:

(a) that specified land comprises a forestry area or other Crown-timber land,

(b) that a notice was erected on or at the boundary of a forestry area with the authority of the Corporation or the land manager of the area,

(c) that a notice on or at the boundary of a forestry area was erected, interfered with or removed without the authority of the Corporation or the land manager of the area.

## **Part 8 Miscellaneous**

### **89 Administrative review of certain decisions by Civil and Administrative Tribunal** (1916 Act, s 40)

(1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions:

(a) a decision by the land manager of a forestry area refusing to grant a forest permit to the person or to renew a forest permit held by the person,

- (b) a decision to suspend or cancel a forest permit held by the person,
  - (c) a decision made under the regulations that belongs to a class of decisions prescribed by the regulations for the purposes of this paragraph.
- (2) Despite subsection (1), a regulation referred to in subsection (1) (c) may limit the class of persons who may make an application for a review of a decision referred to in that paragraph.
- (3) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1) (c) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

#### **90 Delegation of Minister's functions**

The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to any person, or any class of persons, authorised for the purposes of this section by the regulations.

#### **91 Harvesting and haulage costs review**

- (1) As soon as practicable after the first 3 full financial years after the commencement of this section and every 3 financial years thereafter, the Corporation is to:
- (a) review its native timber harvesting and haulage costs, and
  - (b) prepare a report on the results of the review that benchmarks those costs against the costs of similar organisations undertaking similar native timber harvesting and haulage operations.
- (2) The Corporation may, subject to such requirements as may be prescribed by the regulations, engage an expert body or person for the purposes of the review and report.
- (3) The Corporation is to provide its report to the Independent Pricing and Regulatory Tribunal.
- (4) The Tribunal is to review the report of the Corporation and make any recommendations it thinks appropriate to the Corporation about improvements that the Corporation might make to its management of native timber harvesting and haulage to reduce its costs. In making any such recommendation, the Tribunal is not limited to matters included in the report and may take into consideration any information the Tribunal considers relevant.
- (5) The reports and recommendations of the Corporation and the Tribunal are to be provided to the voting shareholders of the Corporation, who are required to make them publicly available.



- (6) The Tribunal is (subject to the regulations) entitled to charge the Corporation for the costs reasonably incurred by the Tribunal in exercising its functions under this section.
- (7) The regulations may make provision with respect to reviews and other matters under this section.
- (8) Sections 24AB–24AD of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to the function of the Tribunal under this section in the same way they apply to the function of the Tribunal under section 24AA of that Act.
- (9) In this section:

**financial year** means a period of 12 months commencing on 1 July.

**native timber harvesting and haulage** does not include timber harvesting and haulage from plantations.

## **92 Regulations** (1916 Act, s 41)

- (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) regulating the use and enjoyment of forestry areas,
  - (b) prohibiting or regulating any conduct or activity (including the carrying out of any development or works) in forestry areas,
  - (c) prohibiting or regulating the entry of persons or vehicles into forestry areas and the use or parking of vehicles in forestry areas,
  - (d) prohibiting or regulating the taking of animals into forestry areas and any other matter relating to the control and management of animals in forestry areas,
  - (e) prohibiting or regulating the use of roads, tracks, trails and other ways in forestry areas,
  - (f) authorising any of the matters referred to in paragraphs (a)–(e) to be done by means of notices displayed in or at the boundary of a forestry area or by the giving of directions by authorised officers,
  - (g) the removal of persons from forestry areas,
  - (h) any matter relating to the control and management of forestry areas (including the reservation of such areas for separate or exclusive use),
  - (i) regulating the manner of applying for, and issuing, granting, suspending or

revoking, licences, forest permits and forest leases,

(j) the form of licences, forest permits and forest leases,

(k) requiring the payment of fees in connection with licences, forest permits or forest leases,

(l) requiring the payment of charges in connection with the use of, or entry into, forestry areas,

(m) requiring the provision of information relating to the carrying out of forestry operations or dealings in or with timber, forest products or forest materials,

(n) any matter relating to the payment of resource acquisition fees (including exempting specified persons or classes of persons from the requirement to pay any such fee),

(o) any matter relating to the control and management of timber, forest products or forest materials (including the branding or other identification of timber),

(p) authorising and regulating bee-keeping and the grazing of cattle and other livestock in forestry areas.

(3) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

### **93 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 Special provisions relating to purchase-tenure land**

### **1 Transferred provisions**

Clauses 2–8 of this Schedule re-enact (with minor modifications) Part 2A of the former Act and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

### **2 Definitions** (1916 Act, s 25C)

In this Schedule:

**owner**, in relation to purchase-tenure land, means:

- (a) where the land has not been brought under the provisions of the *Real Property Act 1900*—the holder or the owner, subject to mortgage, of the prescribed lease from the Crown immediately before the application for the purchase of the land was granted under the *Crown Lands (Continued Tenures) Act 1989*, the *Western Lands Act 1901* or the *Crown Land Management Act 2016*, as the case may be, or, where the title of that holder or owner has devolved or been transferred, any successor of that holder or owner, but not including a mortgagee of the land, or
- (b) where the land has been brought under the provisions of the *Real Property Act 1900*—the registered proprietor of the land or, where the registered proprietor holds the land as mortgagee, the mortgagor, or any successor of the mortgagor, for the time being entitled to the equity of redemption.

**prescribed lease from the Crown** has the same meaning as it had in Part 2A of the former Act immediately before its repeal, and includes a Western lands lease (within the meaning of Schedule 3 to the *Crown Land Management Act 2016*) that has an area of land of more than 2 hectares.

**prescribed officer**, in respect of any provision of this Schedule relating to prescribed leases from the Crown granted or confirmed under the Crown Land Acts, means the Secretary of the Department of Industry or any employee of that Department authorised by the Secretary to act for the purposes of that provision.

**purchase-tenure land** means land held under a prescribed lease from the Crown that has been contracted to be sold under the *Crown Land Management Act 2016*.

### **3 Application of provisions of this Schedule** (1916 Act, s 25D)

The Minister may, on the recommendation of the Corporation, by order published in the Gazette, declare that any Crown land described in the order is not to be subject to the provisions of clause 4 or 5 or of both clauses 4 and 5, as may be specified in the order. Any such order takes effect on and from the date on which it is published.

### **4 Restriction on granting applications to purchase land subject to prescribed leases from the Crown** (1916 Act, s 25E)

- (1) An application for the purchase of land held under a prescribed lease from the Crown must not be granted if:
  - (a) notice in writing of the application has not been given to the Corporation by a prescribed officer, or
  - (b) where such a notice has been so given, the Corporation has, within a period of 3 months after the receipt of the notice or within such further period not exceeding 3 months as may, within the first-mentioned period of 3 months, have been

notified by the Corporation to that prescribed officer, certified in writing to that prescribed officer that it objects to the granting of the application.

- (2) If the Corporation has certified in writing to a prescribed officer that it objects to the granting of an application, the application is taken to have been refused.
- (3) If, within the period prescribed by the regulations after the Corporation has so certified, any land to which the certificate relates has not been dedicated as a State forest or flora reserve, the provisions of subclause (1) do not apply to any application for the purchase of the land, being an application made in respect of the land or any part of it within 12 months after the end of that prescribed period.
- (4) Any land to which a certificate given by the Corporation under subclause (1) relates must not, during the prescribed period referred to in subclause (3), be disposed of except with the consent in writing of the Corporation, and a lease of any such land must not, during that prescribed period, be granted or extended, except with such a consent.
- (5) A failure to comply with the provisions of subclause (1) does not affect the validity of any title granted pursuant to an application referred to in that subclause.
- (6) Subclause (1) does not apply to an application for the purchase of land leased solely for the purpose of tree-farming.
- (7) If the Corporation decides not to object to the application, the Corporation may certify to the prescribed officer to that effect and may, if it thinks fit, certify that clause 5 is not to apply to the land concerned.

#### **5 Crown's rights to timber and forest products on purchase-tenure land** (1916 Act, s 25F)

- (1) On land becoming purchase-tenure land, there is (unless the Corporation has certified under clause 4 (7) that this clause is not to apply to the land) reserved to the Crown for the enjoyment of the Corporation or, if a timber licence or forest products licence is issued in respect of that land, for the enjoyment of the holder of the licence, a profit à prendre conferring on the Corporation or that holder, as the case may be, the right, whether or not the balance of purchase money is paid or the land is under the provisions of the [Real Property Act 1900](#), to take timber or forest products from that land to the exclusion of any person who, but for this subclause, would be entitled to take the timber or forest products.
- (2) Subject to clause 8, a profit à prendre reserved in respect of any land expires at the end of a period of 10 years from the date on which the land became purchase-tenure land.
- (3) Except as otherwise provided by this Act, the Corporation or the holder of a timber licence or forest products licence entitled to the enjoyment of a profit à prendre is not liable to make any payment in respect of the rights conferred by the profit à prendre.

- (4) Without derogating from the rights conferred by law on persons entitled to the enjoyment of profits à prendre, the Corporation, or holder of a timber licence or forest products licence, entitled to the enjoyment of a profit à prendre reserved in respect of any land may, during the currency of the profit à prendre, and with or without vehicles, machinery and equipment, enter and occupy the land affected by the profit à prendre for the purpose of removing, treating, processing or protecting the timber or forest products the subject of the profit à prendre for the purpose of constructing roads, bridges, gates and ramps and incidental works that, in the opinion of the Corporation, are necessary to enable the timber or forest products to be removed from the land. However, nothing in this subclause authorises the holder of a licence to contravene any conditions or limitations of that licence.
- (5) A profit à prendre reserved in respect of any land does not confer the right to take from the land any trees which, in the opinion of the Corporation:
  - (a) have been planted or established and have been maintained by careful tending and improvement as a woodlot or forest or for the purpose of tree-farming or have been planted or established as a windbreak or for the beautification of the land, or
  - (b) have been established on land that is the subject of a forestry right, or
  - (c) are growing on land that has been substantially improved for farming purposes and which, subject to subclause (6), are necessary for shade or shelter or for the purpose of the farming, improvement or protection of the land.
- (6) The restriction of a profit à prendre imposed by subclause (5) (c) extends only to trees selected by the Corporation and having a total timber content not exceeding 150 cubic metres, as determined by the Corporation.
- (7) The reservation in respect of any land of a profit à prendre does not prevent the owner of that land from taking timber or forest products for the purpose of erecting fences on the land or, with the consent in writing of the Corporation, for building or other purposes on the land.
- (8) Every estate or interest acquired by an agreement for the disposition of purchase-tenure land which has not been brought under the provisions of the *Real Property Act 1900* or by a transfer or conveyance of any such land is, despite any other law, subject to any rights under a profit à prendre affecting the land.

**6 Forestry Corporation may sell its rights in timber and forest products on purchase-tenure land** (1916 Act, s 25G)

- (1) The Corporation may enter into an agreement, containing such terms and conditions as may be agreed, to sell to the owner of any purchase-tenure land the subsisting rights of the Corporation under a profit à prendre reserved in respect of that land.
- (2) The price at which the subsisting rights of the Corporation under a profit à prendre

may be agreed to be sold under subclause (1) is to be such amount as the Corporation determines would have been received by it by way of a resource acquisition fee if the timber and forest products the subject of those rights had been taken pursuant to a timber licence or forest products licence.

**7 Timber or forest products to be removed in one continuous operation** (1916 Act, s 25H)

If the Corporation removes any timber or forest products pursuant to clause 5 (1) or issues a timber licence or forest products licence for the removal of any timber or forest products pursuant to that subclause, it must as far as is practicable remove, or it must impose conditions requiring the holder of the licence as far as practicable to remove, the timber or forest products in one continuous operation or in one continuous program of operations.

**8 Forestry Corporation to execute certificate releasing land from profit à prendre** (1916 Act, s 25I)

(1) If:

- (a) the Corporation is of the opinion that the timber and forest products the subject of a profit à prendre reserved in respect of any land have been substantially taken from that land before the expiration of the profit à prendre as referred to in clause 5 (2), or
- (b) the Corporation is of the opinion that by reason of the small quantity or inferior quality of the timber or forest products the subject of any such profit à prendre it is unlikely that the timber or forest products would be taken by the Crown or the holder of a timber licence or forest products licence before that expiration, or
- (c) an agreement to sell the subsisting rights of the Corporation under any such profit à prendre has been entered into under clause 6, and no timber licence or forest products licence remains in force in respect of the land,

the Corporation is to execute a certificate, in the form prescribed by the regulations, certifying that the land is freed from the profit à prendre. On the execution of such a certificate, the Crown is taken to have released the land from the burden of the profit à prendre.

(2) The Corporation must, after the execution of any such certificate in respect of any land:

- (a) if the land is not under the provisions of the *Real Property Act 1900*—lodge a copy of the certificate with the Registrar-General who is to record in the record of Crown holdings which are not under that Act, in such manner as the Registrar-General considers proper, the release of the profit à prendre, and
- (b) if the land is under the provisions of the *Real Property Act 1900*—lodge with the

Registrar-General in a form approved by the Registrar-General a copy of the certificate and on receipt of it the Registrar-General is, under section 32 of that Act, to record in the Register kept under that Act, in such manner as the Registrar-General considers proper, the release of the profit à prendre and is to make a corresponding recording on the grant or certificate of title upon its being produced, and

- (c) if the certificate was executed on application made by the owner of the land—furnish to the owner a copy of the certificate.

## **Schedule 2 Dissolution of Forestry Commission**

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule:

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted under section 37B of the SOC Act.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

### **Part 2 Dissolution of Forestry Commission and vesting or transfer of assets etc**

#### **2 Dissolution of Forestry Commission**

The Forestry Commission is dissolved.

#### **3 Forestry Corporation is same legal entity as Forestry Commission**

The Corporation is taken for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the Forestry Commission.

#### **4 Vesting of assets, rights and liabilities in Forestry Corporation**

- (1) On the dissolution of the Forestry Commission, the assets, rights and liabilities of the Forestry Commission immediately before its dissolution become the assets, rights and

liabilities of the Corporation.

- (2) Any such assets are vested in the Corporation without the need for any further conveyance, transfer, assignment or assurance.
- (3) Part 3 of this Schedule applies in relation to the vesting of any such assets, rights and liabilities to the extent specified in that Part.

**5 Transfer of specified assets, rights and liabilities of Forestry Commission before its dissolution**

- (1) The Treasurer may, at any time before the dissolution of the Forestry Commission, by order in writing, transfer such assets, rights and liabilities of the Forestry Commission as are specified or referred to in the order to the Ministerial Holding Corporation or other person or body representing or acting on behalf of the State.
- (2) Part 3 of this Schedule applies to a transfer under this clause.

**6 Transfer of specified assets, rights and liabilities of Forestry Corporation**

- (1) The Treasurer may, by order in writing, transfer such assets, rights and liabilities of the Corporation as:
  - (a) are vested in the Corporation by operation of clause 4, and
  - (b) are specified or referred to in the order,to the Ministerial Holding Corporation or other person or body acting on behalf of the State, but only during the period of 12 months after the dissolution of the Forestry Commission.
- (2) Part 3 of this Schedule applies to a transfer under this clause.

**7 Transfer of existing offices, workshops and depots to Forestry Corporation**

- (1) This clause applies to any part of a State forest on which a relevant building is situated.
- (2) The Minister may, by notice published in the Gazette:
  - (a) revoke the dedication as State forest of any area of land that is a part of the State forest to which this clause applies, being an area of land not exceeding 20 hectares specified in the notice, and
  - (b) transfer the land concerned to the Corporation.Any such notice also operates to revoke any declaration of the affected land as a special management zone.
- (3) On publication in the Gazette of that notice:



- (a) the land concerned does not become Crown land under section 15, and
  - (b) Part 3 of this Schedule applies to the transfer of the land as a transfer of the assets, rights and liabilities of the Crown to the Corporation.
- (4) For the purposes of this clause, a **relevant building** is a building that:
- (a) was constructed (or commenced to be constructed) by or on behalf of the Forestry Commission before its dissolution, and
  - (b) was used (or constructed to be used) by the Forestry Commission for the purposes of an administrative office, workshop or depot or as a residence ancillary to any such office, workshop or depot.
- (5) A reference in this clause to land on which a relevant building is situated includes a reference to any adjacent land the use of which is or was necessary for, or incidental to, the construction or operation of the building.
- (6) This clause has effect despite any other provision of this Act.

#### **8 Continuation of criminal proceedings against Forestry Commission**

- (1) Proceedings for an offence that were instituted against the Forestry Commission before its dissolution, or that could have been instituted against the Forestry Commission but for its dissolution, may be continued or instituted against the Corporation.
- (2) A penalty notice served on the Forestry Commission for an offence or any amount paid by the Forestry Commission in respect of such a penalty notice:
  - (a) is taken to be a penalty notice served on the Corporation, or
  - (b) is taken to be an amount paid by the Corporation,as the case requires.

### **Part 3 Provisions relating to vesting or transfers under Part 2**

#### **9 Application and interpretation**

- (1) This Part applies to any transfer of assets, rights or liabilities under clause 5, 6 or 7.
- (2) This Part also applies to the vesting of assets, rights and liabilities in the Corporation under clause 4. Such a vesting is taken to be a transfer to which this Part applies.
- (3) In this Part, the person or body from which any assets, rights or liabilities are transferred is called the **transferor** and the person or body to which they are transferred is called the **transferee**. In the case of the vesting of assets, rights and liabilities under clause 4, the Forestry Commission is taken to be the transferor and

the Corporation is taken to be the transferee for the purposes of this Part.

(4) In this Part:

***instrument*** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

## **10 Operation of transfer**

(1) When any assets, rights or liabilities are transferred by a transfer to which this Part applies, the following provisions have effect:

- (a) in the case of a transfer under clause 5, 6 or 7—the assets of the transferor vest in the transferee by operation of this clause without the need for any further conveyance, transfer, assignment or assurance,
- (b) in the case of a transfer under clause 5, 6 or 7—the rights or liabilities of the transferor become by operation of this clause the rights or liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the relevant vesting or transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.

(2) The operation of clause 4 and this clause is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

- (3) The operation of clause 4 and this clause is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) A transfer is subject to the terms and conditions of the order (if any) by which it is effected.
- (6) No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the order giving rise to the transfer so provides.

#### **11 Date of vesting by order**

- (1) An order under clause 5 takes effect on the date specified in the order, being a date that is on or before the dissolution of the Forestry Commission.
- (2) An order under clause 6 takes effect on the date specified in the order, being a date that is after the dissolution of the Forestry Commission but earlier than 12 months after that dissolution.

#### **12 Consideration for vesting**

The Treasurer may, by order in writing, specify the consideration on which a transfer by an order under clause 5 or 6 is made and the value or values at which the assets, rights or liabilities are transferred.

#### **13 State taxes not chargeable**

State tax is not chargeable in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Treasurer as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

#### **14 Confirmation of vesting**

- (1) The Treasurer may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Part.
- (2) Such a notice is conclusive evidence of that transfer.

### **Part 4 Transfer of staff**

#### **15 Definitions**

In this Part:

**enterprise agreement** means an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth.

**existing member of staff** means a person who, immediately before the commencement of Part 2 of this Schedule, was:

- (a) employed in the Forestry Commission Division of the Government Service, or
- (b) otherwise employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Forestry Commission to exercise its functions.

**transfer date**, in relation to a transferred staff member, means the date on which the transfer of the staff member by order under clause 16 takes effect.

**transferred staff member** means an existing member of staff who is transferred to the employment of the Corporation by order under clause 16.

**transition period**, in relation to a transferred staff member, means whichever is the shorter of the following periods:

- (a) the period of 6 months beginning on the transfer date,
- (b) the period beginning on the transfer date and ending immediately before the date on which an enterprise agreement first takes effect in relation to the staff member.

## **16 Transfer of existing staff to Forestry Corporation**

- (1) The Treasurer may, by order in writing, transfer such existing members of staff as are specified or referred to in the order to the employment of the Corporation.
- (2) Any such staff who are transferred to the Corporation by order under this clause are to be regarded for all purposes as having become employees of the Corporation, in accordance with the terms of the order and this Part, on the day specified in the order as being the day on which the transfer takes effect.

## **17 Transitional employment arrangements for transferred staff members**

- (1) This clause does not apply in relation to a transferred staff member if an enterprise agreement relating to that staff member is entered into before the transfer date.
- (2) During the transition period, the employment of a transferred staff member with the Corporation is to be on the same terms and conditions relating to the following matters as applied to the person's employment as an existing member of staff immediately before the transfer date:
  - (a) hours of work,
  - (b) salary,
  - (c) shift, overtime and penalty rates,

- (d) allowances,
- (e) leave.

### **18 Other provisions relating to transferred staff members**

- (1) A transferred staff member:
  - (a) retains any rights to annual leave, extended or long service leave, sick leave, or other forms of leave, accrued or accruing in his or her employment as an existing member of staff, and
  - (b) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the member ceases to be in the employment from which the member was transferred, and
  - (c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.
- (2) Without limiting subclause (1), a transferred staff member is not, despite any other provision of this or any other Act, entitled to elect, because of that transfer, to be paid the money value of any extended or annual leave that the member accrued in the employment from which the member was transferred.
- (3) The Forestry Commission is taken to be an authority to which Schedule 4 to the SOC Act applies.

### **19 Jurisdiction of Industrial Relations Commission**

- (1) If an existing staff member is transferred by order under clause 16, the Industrial Relations Commission has no jurisdiction to determine an industrial matter (within the meaning of the *Industrial Relations Act 1996*) relating to the staff member if:
  - (a) the *Fair Work Act 2009* of the Commonwealth has excluded the application of State industrial laws (within the meaning of section 26 of that Act) in relation to the matter, or
  - (b) the matter is an appeal to which Part 7 of Chapter 2 of the *Industrial Relations Act 1996* applies.
- (2) This clause does not affect the jurisdiction of the Industrial Relations Commission in relation to a matter that is the subject of an application under section 146B of the *Industrial Relations Act 1996*.

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

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (1A) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (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 on the NSW legislation website, 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**

#### **Division 1 Provisions relating to Forestry Commission**

##### **2 References to Forestry Commission in other Acts or instruments**

In any Act (other than this Act), in any instrument made under any Act or in any document, a reference to the Forestry Commission of New South Wales is taken to be a reference to the Forestry Corporation of New South Wales.

##### **3 Special provisions relating to Visy agreement**

- (1) In this clause:

**Visy agreement** means the agreement within the meaning of the *Visy Mill Facilitation Act 1997*.

- (2) Without limiting clause 2, a reference to the Forestry Commission of New South Wales in the Visy agreement is taken to be a reference to the Forestry Corporation of New South Wales.

- (3) The operation of this Act is not to be regarded:
  - (a) as varying any obligation, right, power or remedy of a person in connection with the Visy agreement, or
  - (b) as a price revision event within the meaning of clause 47 of that agreement.
- (4) Subclause (3) does not limit the operation of clause 10 (2) or (3) of Schedule 2.
- (5) This clause has effect despite any provision to the contrary in the Visy agreement.

#### **4 Forestry Commissioner and Assistant Commissioners cease to hold office**

A person who, immediately before the dissolution of the Forestry Commission, held office as the Commissioner constituting the Forestry Commission or as an Assistant Commissioner under the former Act:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

#### **5 First annual report of Forestry Corporation to include financial affairs of Forestry Commission**

- (1) This clause applies with respect to any period before the dissolution of the Forestry Commission for which the financial affairs of the Forestry Commission have not been the subject of an annual report of the Forestry Commission under the *Annual Reports (Statutory Bodies) Act 1984*.
- (2) The first annual report of the Corporation is to include the financial affairs of the Forestry Commission with respect to any such period.
- (3) Section 43A of the *Public Finance and Audit Act 1983* does not apply to or in respect of the Forestry Commission.

### **Division 2 Provisions relating to other matters under former Act**

#### **6 Existing State forests and flora reserves**

Any land dedicated as a State forest or flora reserve, or set apart as a flora reserve, under the former Act, being a dedication or setting apart of the land that was in force immediately before the repeal of the former Act, is taken to be a State forest or flora reserve (as the case requires) under this Act.

#### **7 Existing special management zones**

Any special management zone declared under the former Act, being a declaration that was in force immediately before the repeal of the former Act, is taken to be a special management zone under this Act.

## **8 Existing timber or forest reserves**

- (1) The repeal of section 22 of the former Act does not affect the reservation from sale of land as a timber or forest reserve that was in force under that section immediately before its repeal and any such reservation may be revoked under and in accordance with that section as if it had not been repealed.
- (2) A lease or licence of land within a timber reserve may be granted under the *Crown Land Management Act 2016* with the approval of the Minister for such purpose, for such term, and subject to such conditions, as the Minister thinks fit to impose.
- (3) A lease or licence referred to in section 24 of the former Act, and in force immediately before the repeal of that section, is not affected by the repeal of that section and may continue to be dealt with as if that section had not been repealed.

## **9 Existing authorisations**

Any licence, permit or lease granted under the former Act and in force immediately before the repeal of the former Act is taken to be a licence, permit or lease of the corresponding kind (as determined by the Corporation) in force under this Act.

## **10 Existing forest agreements and integrated forestry operations approvals**

- (1) A forest agreement in force under the *Forestry and National Park Estate Act 1998* immediately before the commencement of this clause is taken to be a forest agreement in force under this Act.
- (2) An integrated forestry operations approval in force under the *Forestry and National Park Estate Act 1998* immediately before the commencement of this clause is taken to be an integrated forestry operations approval in force under this Act.
- (3) A reference in any other Act, or in any instrument made under any other Act or in any other document:
  - (a) to a forest agreement under the *Forestry and National Park Estate Act 1998* is to be construed as a reference to a forest agreement under this Act, or
  - (b) to an integrated forestry operations approval under the *Forestry and National Park Estate Act 1998* is to be construed as a reference to an integrated forestry operations approval under this Act.

## **11 Existing sale agreements**

The repeal of the former Act does not affect the operation of an agreement entered into under section 11 (1) (m) (i) of the former Act and in force immediately before that repeal and any such agreement continues to have effect despite that repeal.



## 12 Existing management and working plans

A management plan or working plan in force under the *Forestry Regulation 2009* immediately before the repeal of that Regulation by this Act is taken to be a management plan or working plan (as the case requires) in force under this Act.

## 13 General savings provision

Subject to this Act and the regulations, anything done under or for the purposes of a provision of the former Act is, to the extent that the thing has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision of this Act.

## Division 3 Other provisions

### 14 No compensation because of repeal of *Timber Marketing Act 1977*

- (1) Compensation is not payable because of the repeal by this Act of the *Timber Marketing Act 1977* or for the consequences of that repeal.
- (2) In this clause, **compensation** includes damages or any other form of monetary compensation or the refund of any fees paid under the *Timber Marketing Act 1977*.

### 15 Making of first principal Regulation

Part 2 of the *Subordinate Legislation Act 1989* is taken to apply to the first regulation made under this Act as if the Minister administering that Act had given a certificate under section 6 (1) (b) of that Act with respect to the regulation.

## Part 3 Provisions consequent on enactment of *Forestry Legislation Amendment Act 2018*

### 16 Definition

In this Part:

**amending Act** means the *Forestry Legislation Amendment Act 2018*.

### 17 Existing IFOAs

- (1) In this clause:

**existing IFOA** means an integrated forestry operations approval that was in force immediately before the relevant date.

**relevant date** means the date on which Schedule 2 to the amending Act commences.

- (2) An existing IFOA continues to be an integrated forestry operations approval under this

Act as amended by the amending Act.

- (3) However, any declaration in an existing IFOA of the terms of a relevant licence ceases to have effect. Those terms continue as the terms of the integrated forestry operations approval continued by this clause.
- (4) The enforcement functions of the Environment Protection Authority under section 69SB of this Act and under the *Biodiversity Conservation Act 2016* in relation to Part 5B of this Act are exercisable in relation to breaches of an existing IFOA (including the terms of any relevant licence set out in the IFOA) that occurred before the relevant date.
- (5) Subclause (4) does not apply to proceedings brought under section 69S of this Act before the relevant date in relation to an existing IFOA. That section continues to apply, despite its repeal by the amending Act, to any such proceedings that have not been finally determined.

#### **17A Bee-keeping and grazing activities**

- (1) The on-going forest management operations referred to in paragraph (c) of the definition of **forestry operations** in section 3 (1) of this Act are, for the purposes of Parts 5A and 5B of this Act, taken to include bee-keeping and grazing carried out in accordance with the provisions of an integrated forestry operations approval as in force immediately before 9 November 2018.
- (2) This clause ceases to have effect on 9 November 2019.

#### **18 Application of amendments to existing licences and small quantity authorisations**

Sections 39 (5) and 45 (5) (as inserted by the amending Act) extend to licences and small quantity authorisations in force immediately before the commencement of those subsections.

#### **Schedules 4, 5 (Repealed)**