

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Plantations and Reafforestation Act 1999 (the Act)* as follows:

(a) to clarify the authorisation and ownership provisions with respect to plantations,

(b) to expand the powers of entry and inspection and the power to obtain information with respect to plantations,

(c) to make a number of other minor and consequential amendments to the Act.

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

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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Schedule 1 Amendment of Plantations and Reafforestation Act 1999 No 97

Authorisation of plantations

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

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 The amendment also updates references to the repealed *Native Vegetation Conservation Act 1997*.

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

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

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

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

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

Schedule 1 [18] and [19] amend section 22 of the Act to remove an unnecessary

provision in respect of the cancellation of timber plantation authorisations.

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

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

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

Schedule 1 [35] amends Schedule 3 to the Act to insert provisions dealing with existing plantations. An existing plantation is defined as a plantation established before the commencement of section 9 of the Act (that is, before 14 December 2001) in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, any law dealing with native vegetation conservation and any other relevant law. The amendment continues the exemption for existing plantations from the requirement to be authorised, but only if there is no replanting of an area on the plantation exceeding 30 hectares.

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

Ownership and management of plantations

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

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

Proposed section 17B provides that the authorisation of an authorised plantation will not be affected by:

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

Proposed section 17C provides that, if there is a change in both the ownership and management of part of the land comprising an authorised plantation, application must be made for the authorisation as a plantation of each part of the land comprising the original plantation on which it is intended to continue plantation operations.

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

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

Enforcement

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

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

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

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

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

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

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

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

Miscellaneous amendments

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

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

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

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

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