



New South Wales

# Timber Plantations (Harvest Guarantee) Amendment Bill 1997

## 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 *Timber Plantations (Harvest Guarantee) Act 1995* so as:

- (a) to provide for the accreditation of a timber plantation before it is established, and
  - (b) to provide for the cancellation of the accreditation of a timber plantation where compensation has been paid to protect unique or special wildlife values, and
  - (c) to make certain changes that are consequential on the enactment of the *Threatened Species Conservation Act 1995* and on the proposed insertion of Part 7A (Threatened species conservation) in the *Fisheries Management Act 1994*.
-

## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Timber Plantations (Harvest Guarantee) Act 1995* set out in Schedule 1.

## Schedule 1 Amendments

### **Harvesting operations not subject to certain provisions of environmental legislation**

The object of the *Timber Plantations (Harvest Guarantee) Act 1995* was to remove certain impediments to the harvesting of plantation timber (that is, trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations. (See section 3 (1).)

To achieve that object, harvesting operations on an accredited timber plantation are exempt from certain obligations under the *Environmental Planning and Assessment Act 1979*, the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*. The exemptions apply only if the relevant harvesting operations are carried out in accordance with the timber plantation (environment protection) harvesting code or codes applying to the timber plantation and in relation to things that are reasonably connected with the carrying out of the harvesting operations.

At present, section 9 (1) of the *Timber Plantations (Harvest Guarantee) Act 1995* exempts a person who is carrying out harvesting operations on an accredited timber plantation from certain provisions of the *National Parks and Wildlife Act 1974*.

However, the *Threatened Species Conservation Act 1995* and proposed Part 7A of the *Fisheries Management Act 1994* introduced new environmental obligations, and modified some existing obligations, in relation to the conservation of threatened species, populations and ecological communities of animals, fish and plants and their habitats. The changes made by those Acts affect the operation of the *Timber Plantations (Harvest Guarantee) Act 1995*.

**Schedule 1 [5]** repeals and re-enacts section 9 (1) of the *Timber Plantations (Harvest Guarantee) Act 1995* (which lists the offences under the *National Parks and Wildlife Act 1974* from which a person carrying out harvesting operations is exempt). The new subsection restates the description of sections 98 and 99 of that Act and adds the following offences, which relate to matters regulated under the *Threatened Species Conservation Act 1995*:

- harming or picking a threatened species, population or ecological community (section 118A),
- damaging critical habitats (section 118C),
- damaging the habitat of a threatened species, population or ecological community (section 118D).

**Schedule 1 [8]** makes similar provision in respect of offences under proposed Part 7A (Threatened species conservation) of the *Fisheries Management Act 1994* which provides for the conservation of threatened species, populations and ecological communities of fish and marine vegetation (along similar lines to the provisions applying to other animals and plants under the *Threatened Species Conservation Act 1995*). Part 7A is proposed to be inserted by Schedule 1 [9] to the *Fisheries Management Amendment Bill 1997*.

**Schedule 1 [2]** and **[3]** make consequential amendments to the objects of the Act.

### **Stop work orders and interim conservation orders not to apply to harvesting operations**

Section 9 (3) of the *Timber Plantations (Harvest Guarantee) Act 1995* provides that interim protection orders within the meaning of the *National Parks and Wildlife Act 1974* may not be made so as to prevent or interfere with the carrying out of harvesting operations on accredited timber plantations.

**Schedule 1 [6]** inserts in that subsection a reference to interim protection orders made under the *Threatened Species Conservation Act 1995*.

Section 9 (4) of the *Timber Plantations (Harvest Guarantee) Act 1995* provides that stop work orders under section 92E of the *National Parks and Wildlife Act 1974* may not be made so as to prevent or interfere with the carrying out of harvesting operations on accredited timber plantations.

**Schedule 1 [7]** omits the redundant reference to section 92E of the *National Parks and Wildlife Act 1974* (which was repealed by the *Threatened Species Conservation Act 1995*) and replaces it with a reference to the relevant provisions of the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*. Division 1 of Part 6A of the *National Parks and Wildlife Act 1974* empowers the Director-General of National Parks and Wildlife to make stop work orders to prevent any action that is likely to significantly affect protected fauna or native plants and their environment. Section 114 of the *Threatened Species Conservation Act 1995* provides for the Director-General to make stop work orders in certain circumstances for the purposes of conserving threatened species, populations or ecological communities and their habitats.

#### **Matters to be regulated by Codes**

Despite the removal of impediments to the harvesting of plantation timber by the *Timber Plantations (Harvest Guarantee) Act 1995*, the Act provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes. (See section 3 (2) (d).) Section 20 (1) of the Principal Act provides for a code to regulate the carrying out of harvesting operations on an accredited timber plantation, for the purposes of protecting the environment. Section 20 (2) lists some of the matters with which a code may deal, including native animals and plants.

**Schedule 1 [19]** and **[20]** add further matters to that list, as a consequence of the amendments made by **Schedule 1 [5]** and **[8]**.

#### **Accreditation of proposed timber plantations**

Division 2 of Part 2 of the Act provides for the accreditation of timber plantations. At present, the owner or manager of a timber plantation may, at any time after the timber plantation is established, apply for the accreditation of the timber plantation.

**Schedule 1 [9]** and **[11]** provide for the accreditation of a timber plantation that has not yet been established, which may be granted subject to conditions concerning the establishment of the proposed timber plantation.

Under section 13 (1) of the Act, the Director-General may refuse to accredit the proposed timber plantation if the Director-General makes a determination that the *Environmental Planning and Assessment Act 1979*, or any other relevant law, has not been complied with in relation to the establishment of the timber plantation. **Schedule 1 [14]** prevents the accreditation of a proposed timber plantation unless any relevant consent under that Act, any law relating to native vegetation management and control or any other law, that is required in order to establish the timber plantation has been granted. **Schedule 1 [10]** makes a consequential amendment.

**Schedule 1 [16]** provides for the cancellation of the accreditation of a proposed timber plantation if the timber plantation is not established within 3 years of accreditation or if the *Environmental Planning and Assessment Act 1979*, any law relating to native vegetation management and control or any other relevant law, has not been complied with in relation to the establishment of the timber plantation.

**Schedule 1 [1], [4], [12], [13] and [18]** make consequential amendments.

### **Cancellation of accreditation where compensation paid**

The Act makes provision for a timber plantation (environment protection) harvesting code to deal with the circumstances in which compensation will be available in order to protect unique or special wildlife values, and matters relating to the provision of, and entitlement to, such compensation. (See section 20 (2) (g).)

**Schedule 1 [15]** provides for the cancellation of the accreditation of a timber plantation if it is necessary to protect unique or special wildlife values and compensation has been paid to the owner of the timber plantation for that purpose.

**Schedule 1 [17]** makes a consequential amendment.



First print



New South Wales

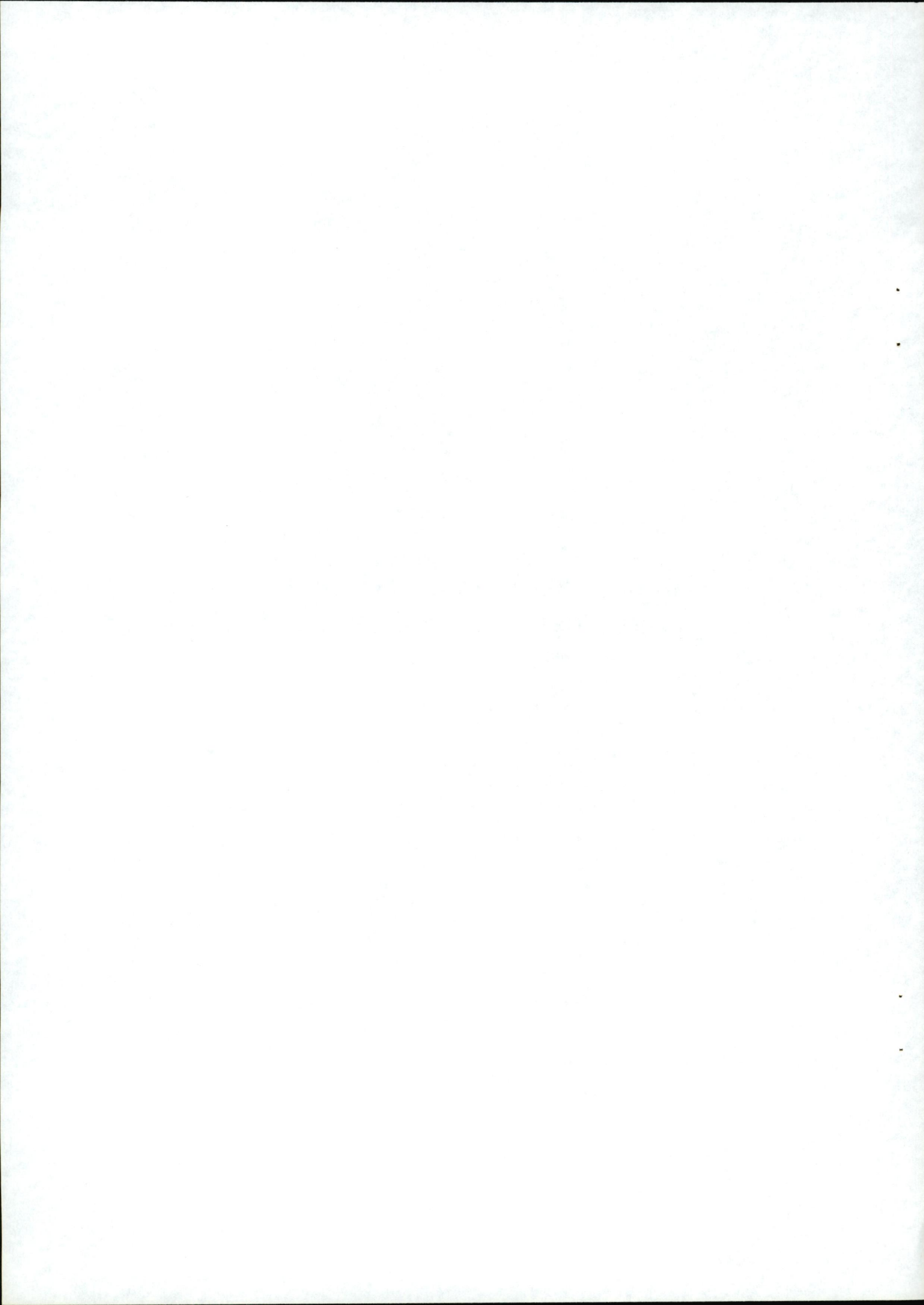
# Timber Plantations (Harvest Guarantee) Amendment Bill 1997

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Timber Plantations (Harvest Guarantee) Act 1995 No 92	2
Schedule 1 Amendments	3

---







New South Wales

## Timber Plantations (Harvest Guarantee) Amendment Bill 1997

No. , 1997

---

### **A Bill for**

An Act to amend the *Timber Plantations (Harvest Guarantee) Act 1995* as a consequence of the enactment of certain environmental legislation, to provide for the provisional accreditation of timber plantations that are proposed to be established and for the cancellation of accreditation in certain circumstances; and for other purposes.

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Timber Plantations (Harvest Guarantee) Amendment Act 1997*.

**2 Commencement**

5

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 1 [3], [8] and [20] commence on a day to be appointed by proclamation.

**3 Amendment of Timber Plantations (Harvest Guarantee) Act 1995 No 92**

10

The *Timber Plantations (Harvest Guarantee) Act 1995* is amended as set out in Schedule 1.

---

## Schedule 1 Amendments

(Section 3)

**[1] Section 3 Object of Act**

Insert “and proposed timber plantations” after “plantations” in section 3 (2) (a).

5

**[2] Section 3 (2) (b)**

Insert “or the *Threatened Species Conservation Act 1995*” after “NPW Act”.

**[3] Section 3 (2) (b)**

Insert “, and liability for offences under Part 7A (Threatened species conservation) of the *Fisheries Management Act 1994*,” before “in connection with”.

10

**[4] Section 5, definitions of “accredited timber plantation”, “manager” and “owner” and sections 12 (2) (b) and (c), 13, 14 (1), 15 (1) and (2), 16 (2), 17 and 18 (1)**

15

Insert “or proposed timber plantation” after “plantation” wherever occurring (except where firstly occurring in the definition of *accredited timber plantation* in section 5.

**[5] Section 9 Harvesting operations not subject to certain provisions of the NPW Act, Threatened Species Conservation Act 1995 and Heritage Act 1977**

20

Omit section 9 (1). Insert instead:

- (1) A person carrying out harvesting operations on an accredited timber plantation is exempt from the following provisions of the NPW Act:

25

- (a) section 98 (2) (relating to protected fauna),

Timber Plantations (Harvest Guarantee) Amendment Bill 1997

Schedule 1 Amendments

---

- (b) section 99 (1) (relating to threatened interstate fauna),
  - (c) section 117 (relating to native plants),
  - (d) section 118A (relating to threatened species, populations and ecological communities), 5
  - (e) section 118C (relating to critical habitats),
  - (f) section 118D (relating to the habitat of a threatened species, population or ecological community).
- [6] Section 9 (3)** 10
- Insert “or the *Threatened Species Conservation Act 1995*” after “NPW Act”.
- [7] Section 9 (4)**
- Omit “section 92E (stop work order) of the NPW Act”.
- Insert instead “Division 1 (stop work orders) of Part 6A of the NPW Act or Division 1 (stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995*”. 15
- [8] Section 9A**
- Insert after section 9:
- 9A Harvesting operations not subject to certain provisions of Part 7A (Threatened species conservation) of the Fisheries Management Act 1994** 20
- (1) A person carrying out harvesting operations on an accredited timber plantation is exempt from the following provisions of the *Fisheries Management Act 1994*: 25
    - (a) section 220ZA (relating to threatened species, populations or ecological communities),
    - (b) section 220ZC (relating to critical habitats),
    - (c) section 220ZD (relating to the habitat of a threatened species, population or ecological community). 30

- 
- (2) Subsection (1) exempts the person only:
- (a) if the harvesting operations are carried out in accordance with the Code (or Codes) applying to the timber plantation, and
  - (b) in relation to things that are reasonably connected with the carrying out of the harvesting operations. 5
- (3) An order under Division 7 (stop work orders) of Part 7A of the *Fisheries Management Act 1994* may not be made so as to prevent or interfere with the carrying out of harvesting operations on an accredited timber plantation. 10
- [9] Section 12 Application for accreditation of timber plantation or proposed timber plantation**
- Omit section 12 (1). Insert instead:
- (1) The owner or manager of a timber plantation, or of any area or areas of land on which it is proposed to establish a timber plantation, may apply to the Director-General for the accreditation of the timber plantation or proposed timber plantation under this Part, whether or not the timber plantation has been established at the time of application. 15  
20
- [10] Section 12 (2) (d)**
- Insert after section 12 (2) (c):
- , and
- (d) in the case of an application for the accreditation of a timber plantation that has not been established, be accompanied by proof of any consent granted under the EPA Act, any law dealing with native vegetation management and control, or any other relevant law, in relation to the establishment of the timber plantation. 25  
30

**[11] Section 13 Determination of applications for accreditation**

Insert after section 13 (1):

- (1A) The accreditation of a proposed timber plantation may be granted subject to conditions relating to the manner in which the proposed timber plantation is to be established. 5

**[12] Section 13 (3) (a)**

Insert “, or is not being established,” after “established”.

**[13] Section 13 (3) (b)**

Omit the paragraph. Insert instead: 10

- (b) it has been, or is being, established in contravention of any law dealing with native vegetation management and control that applies to the timber plantation.

**[14] Section 13 (3A)** 15

Insert after section 13 (3):

- (3A) Without limiting subsection (1), the Director-General must not accredit a timber plantation that has not been established unless the Director-General is satisfied that any consent required under the EPA Act, any law dealing with native vegetation management and control, or any other relevant law, in relation to the establishment of the proposed timber plantation has been obtained. 20

**[15] Section 16 Cancellation of accreditation**

Insert after section 16 (1) (b): 25

- (b1) that the cancellation of accreditation is necessary to protect unique or special wildlife values and that compensation has been paid to the owner of the timber plantation in accordance with the Code in order to protect those wildlife values, or 30

---

**[16] Section 16 (1A) and (1B)**

Insert after section 16 (1):

- (1A) In addition, the accreditation of a timber plantation (or any part of a timber plantation) that was not established at the time of its accreditation may be cancelled by the Director-General if the Director-General is satisfied: 5
- (a) that the timber plantation has not been established, or is not being established, in accordance with the requirements of the EPA Act or any other relevant law, or 10
  - (b) that the timber plantation has been, or is being, established in contravention of any law dealing with native vegetation management and control that applies to the timber plantation.
- (1B) In addition, the accreditation of a timber plantation (or any part of a timber plantation) that was not established at the time of its accreditation must be cancelled by the Director-General on a date that is 3 years after the date of the grant of accreditation unless, before that date: 15
- (a) the Director-General has been notified by the owner or manager of the timber plantation that the planting of trees forming the timber plantation has been completed, and 20
  - (b) the Director-General is satisfied, either by the evidence provided by the owner or manager or by his or her own investigations, that the planting of trees forming the timber plantation has been completed in accordance with any conditions of the accreditation imposed under section 13 (1A). 25

**[17] Section 16 (3)** 30

Insert "(subsection (1) (b1) excepted)" after "section".

**[18] Section 16 (3)**

Insert "or the accreditation of any proposed timber plantation to be established on the land" after "land".

**[19] Section 20 Matters to be regulated by Codes**

Insert after section 20 (2) (d):

- (d1) threatened species, populations and ecological communities, and their habitats, within the meaning of the *Threatened Species Conservation Act 1995* and critical habitats within the meaning of that Act, 5

**[20] Section 20 (2) (d2)**

Insert before section 20 (2) (e):

- (d2) threatened species, populations and ecological communities of fish and marine vegetation and their habitats, within the meaning of the *Fisheries Management Act 1994* and critical habitats within the meaning of that Act, 10