



New South Wales

Forestry Legislation Amendment Bill 2018

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Local Land Services Act 2013* and other Acts to transfer responsibility for the regulation of private native forestry to Local Land Services, with the Environment Protection Authority maintaining its enforcement role,
- (b) to amend the *Forestry Act 2012*, the *Biodiversity Conservation Act 2016* and other Acts to update the regulatory framework for public native forestry and the enforcement role of the Environment Protection Authority,
- (c) to make minor, related and consequential amendments to the *Local Land Services Act 2013*, the *Forestry Act 2012* and other Acts and instruments.

Outline of provisions

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

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

Schedule 1 Amendment of Local Land Services Act 2013 No 51

Schedule 1 [8] inserts proposed Part 5B that deals with private native forestry. Part 5C of the *Forestry Act 2012* which currently deals with private native forestry is repealed by **Schedule 2 [33]**.

Once enacted, it is intended that the administration of the proposed Part will be allocated under Part 7 of the *Constitution Act 1902* to the Minister for Lands and Forestry, with other Parts of the *Local Land Services Act 2013* remaining with the Minister for Primary Industries. Accordingly, the private native forestry codes under the proposed Part are to be made by the Minister for Lands and Forestry with the concurrence of the Minister for the Environment and the Minister for Primary Industries.

Proposed section 60ZQ defines certain words and expressions used in the proposed Part. In particular, **forestry operations** is defined in similar terms to the definition in the *Forestry Act 2012* in relation to public native forestry.

Proposed section 60ZR provides that the objects of the proposed Part are:

- (a) to authorise the carrying out of private native forestry in accordance with principles of ecologically sustainable forest management, and
- (b) to protect biodiversity, water quality and related fisheries matters in connection with private native forestry operations.

Proposed section 60ZS applies the proposed Part to areas of the State other than State forests and other Crown-timber lands, timber plantations, the national park estate and other conservation areas, certain other protected or restricted land and any area in which forestry is prohibited.

Proposed section 60ZT authorises the Minister (with the concurrence of the Minister for the Environment, the Minister for Primary Industries and the Minister administering Part 7A of the *Fisheries Management Act 1994*) to make private native forestry codes of practice to regulate the carrying out of forestry operations. Codes of practice are required to address biodiversity conservation, the prevention of water pollution, threatened species and related matters under Part 7A of the *Fisheries Management Act 1994*, the provision of information to the public about forestry operations and other matters prescribed by the regulations. The Ministers are required to have regard to the objects of the proposed Part.

Proposed section 60ZU requires public consultation on proposed private native forestry codes of practice (similar to the requirements for public consultation on land management (native vegetation) codes).

Proposed section 60ZV provides for the amendment and repeal of private native forestry codes of practice.

Proposed section 60ZW authorises forestry operations to which an approved private native forestry plan applies.

Proposed section 60ZX provides for the submission of draft private native forestry plans by a landholder or a group of landholders to Local Land Services, and sets out requirements for draft plans.

Proposed section 60ZY provides that a private native forestry plan has effect only if it is approved by Local Land Services.

Proposed section 60ZZ provides for the duration, variation and termination of private native forestry plans.

Proposed section 60ZZA makes it an offence to contravene a requirement imposed by a private native forestry plan or applicable private native forestry codes of practice. The maximum penalties are:

- (a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment—\$5 million in the case of a corporation or \$1 million in the case of an individual, or
- (b) for any other offence—\$2 million in the case of a corporation or \$500,000 in the case of an individual.

The maximum penalties are the same as the maximum penalties that apply under section 60N to an offence of unauthorised clearing of native vegetation in a regulated rural area.

Proposed section 60ZZB confers on the Environment Protection Authority the functions of monitoring the carrying out of forestry operations to which the proposed Part applies and enforcing compliance with the proposed Part. Similar investigative and enforcement powers under the *Biodiversity Conservation Act 2016* that apply to the clearing of native vegetation under Part 5A of the *Local Land Services Act 2013* are to be conferred on the Authority by the amendments made by Schedule 3.1.

Proposed section 60ZZC authorises the making of regulations for the purposes of the proposed Part on the joint recommendation of the Minister and the Minister for the Environment.

Schedule 1 [10] omits special provisions relating to native vegetation clearing in areas subject to a private native forestry plan.

Schedule 1 [11] and [12] insert savings and transitional provisions. In particular, the provisions preserve the operation of existing private native forestry codes of practice and existing approved private native forestry plans and former property vegetation plans under the repealed *Native Vegetation Act 2003* that authorised private native forestry.

Schedule 1 [1]–[7] and [9] make consequential amendments, in particular on the insertion of proposed Part 5B.

Schedule 2 Amendment of Forestry Act 2012 No 96

Schedule 2 [1] amends the definition of *forestry operations* to make it clear that burning is a kind of silvicultural activity covered by the definition and to also modify the kinds of ancillary activities covered by the definition.

Schedule 2 [2] makes it clear that a State forest includes land dedicated as State forest under both of the former Forestry Acts if the dedication is still in force.

Schedule 2 [3] and [4] provide that a licence or small quantity authorisation under the Act does not authorise the taking of timber or forest products on or from land identified as an environmentally significant area in an integrated forestry operations approval.

Schedule 2 [5] provides that a forest permit for a non-forestry use requires the Minister's approval only if the permit authorises the occupation of the forest area concerned.

Schedule 2 [6] authorises the Forestry Corporation or other land manager to recover as a debt any fee payable for a forest permit or lease or for the provision of services or facilities.

Schedule 2 [7] updates references to the relevant forestry portfolio Minister.

Schedule 2 [8]–[16] provide that public consultation in relation to the making and amendment of forest agreements relating to public forestry and the periodic review of those agreements and integrated forestry operations approvals is undertaken by means of relevant government websites rather than through publication in newspapers. The amendments also update references to relevant agencies and officers.

Schedule 2 [17] removes the inclusion of bee-keeping and grazing as part of forestry operations that may be authorised and regulated by integrated forestry operations approvals.

Schedule 2 [18] provides that the purpose of the regulatory provisions relating to public forestry is to provide a framework for the integration of approvals that authorise the carrying out of those forestry operations in accordance with principles of ecologically sustainable forest management (as defined by **Schedule 2 [20]**). **Schedule 2 [19]** ensures that the purpose of that framework also includes conservation of threatened species, populations and ecological communities under Part 7A of the *Fisheries Management Act 1994*.

Schedule 2 [21] inserts a note that draws attention to the amendment to the *Protection of the Environment Operations Act 1997* relating to the water pollution defence described in **Schedule 3.11 [1]** that is provided by an integrated forestry operations approval and to the similar defences relating to terrestrial and aquatic biodiversity offences.

Schedule 2 [22] requires the relevant Ministers to consult the Minister administering the *Fisheries Management Act 1994* before granting an integrated forestry operations approval.

Schedule 2 [23] requires public consultation on proposed integrated forestry operations approvals.

Schedule 2 [24] omits the current requirement that a forest agreement is a prerequisite for an integrated forestry operations approval. Forest agreements were made in connection with the original making of coastal integrated forestry operations approvals but a further forest agreement will not be required for the remaking of those approvals.

Schedule 2 [25], [26], [30] and [32] make the necessary amendments so that integrated forestry operations approvals will no longer contain separate deemed licences to harm animals, plants or fish or to pollute waters so that a single set of forestry rules can be made for public forestry operations that cover those matters and also administrative conditions of approvals. The relevant legislation that regulates harm to animals, plants or fish or preventing the pollution of waters will contain the relevant defence for the Forestry Corporation if forestry operations are conducted in accordance with the terms of the approvals (see section 2.8 of the *Biodiversity Conservation Act 2016* and the amendments made by **Schedule 3.4 and 3.11**). The current separate enforcement regimes in relation to those deemed licences will be replaced by a single enforcement regime under the *Biodiversity Conservation Act 2016*.

Schedule 2 [27] requires public consultation on any amendment or revocation of an integrated forestry operations approval.

Schedule 2 [28] omits provisions relating to the civil enforcement of integrated forestry operations approvals by relevant Ministers as a result of the application to the Environment Protection Authority of the civil enforcement regime under the *Biodiversity Conservation Act 2016* and as a consequence of the amendments made by **Schedule 3.1**.

Schedule 2 [29] inserts new provisions relating to the enforcement of integrated forestry operations approvals. Proposed section 69SA makes it an offence to contravene a requirement imposed by an integrated forestry operations approval. The maximum penalties are:

- (a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment—\$5 million in the case of a corporation or \$1 million in the case of an individual, or
- (b) for any other offence—\$2 million in the case of a corporation or \$500,000 in the case of an individual.

Proposed section 69SB confers on the Environment Protection Authority the functions of monitoring the carrying out of public forestry operations by or on behalf of the Forestry Corporation and enforcing compliance with integrated forestry operations approvals. In line with private native forestry, similar investigative and enforcement powers under the *Biodiversity Conservation Act 2016* that apply to the clearing of native vegetation under Part 5A of the *Local*

Land Services Act 2013 are to be conferred on the Authority by the amendments made by **Schedule 3.1**.

Proposed section 69SC provides for the payment of annual licence fees by the Forestry Corporation for the purpose of the recovery of the reasonable costs incurred by the Environment Protection Authority in exercising its enforcement functions with respect to public native forestry.

Schedule 2 [31] enables stop work orders under the *Biodiversity Conservation Act 2016* to be made in respect of the carrying out of forestry operations under an integrated forestry operations approval.

Schedule 2 [33] repeals the private native forestry provisions as a consequence of the enactment of replacement provisions by **Schedule 1 [8]**.

Schedule 2 [34] enables the regulations to authorise and regulate bee-keeping and the grazing of cattle or other livestock in forestry areas.

Schedule 2 [35] modifies a definition used in provisions relating to purchase-tenure land that were transferred from the repealed *Forestry Act 1916*.

Schedule 2 [36]–[38] revise an existing provision that enabled the Governor to transfer to the Forestry Corporation (following the dissolution of the Forestry Commission on 1 January 2013) land whose dedication as a State forest was revoked if the land comprised administrative offices, workshops or depots (or associated residences) constructed or commenced to be constructed by the Forestry Commission before 1 January 1994 (a “relevant building”). The revised provision enables the Minister to revoke the dedication as State forest and transfer the land concerned to the Forestry Corporation if the relevant building was constructed or commenced to be constructed before 1 January 2013 and the area of the land concerned does not exceed 20 hectares. Under the Act, the Minister is authorised to revoke the declaration of a State forest for a public work or public purposes if the area of the land concerned does not exceed 20 hectares.

Schedule 2 [39] and [40] enact savings and transitional provisions, including saving the operation of existing integrated forestry operations approvals.

Schedule 3 Amendment of other Acts and instruments

Schedule 3.1 amends the *Biodiversity Conservation Act 2016* generally to extend the application of the enforcement provisions of that Act to the enforcement by the Environment Protection Authority of the proposed provisions of the *Local Land Services Act 2013* relating to private native forestry and the proposed amended provisions of the *Forestry Act 2012* relating to public native forestry, and for other related purposes. Those enforcement provisions currently extend to the native vegetation (land management) provisions of the *Local Land Services Act 2013*.

Schedule 3.2 amends the *Biodiversity Conservation Regulation 2017* to make the proposed offences of contravening a private native forestry code of practice or an integrated forestry operations approval a penalty notice offence with the same penalty that applies to offences relating to the clearing of native vegetation (namely \$15,000 for a corporation and \$5,000 for an individual).

Schedule 3.3 amends the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*:

- (a) to include further savings and transitional provisions that are generally consequential on the amendments made by **Schedule 3.1**, and
- (b) to authorise the Environment Protection Authority to prosecute offences against the repealed *Native Vegetation Act 2003*, and
- (c) to update a reference.

Schedule 3.4 amends the *Fisheries Management Act 1994* to insert a defence to offences against Division 4 of Part 7A (Threatened species conservation) of that Act (as a consequence of the omission of existing provisions that deem the Forestry Corporation to hold a licence under that

Act that authorises harm to threatened species of fish and the inclusion of the protection of those species of fish among the matters to be addressed by private native forestry codes of practice).

Schedule 3.5 amends the *Impounding Act 1993* to make the Forestry Corporation the impounding authority under that Act for State forests and other Crown-timber land (rather than the Minister administering the *Forestry Act 2012*).

Schedule 3.6 amends the *Land and Environment Court Act 1979* as a consequence of the amendments made by Schedules 1 and 2.

Schedule 3.7 amends the *Local Land Services Regulation 2014* to make provision for land that is subject to a private native forestry plan under proposed Part 5B of the *Local Land Services Act 2013*.

Schedule 3.8 and 3.9 amend the *National Park Estate (Riverina Red Gum Reservations) Act 2010* and the *National Park Estate (South-Western Cypress Reservations) Act 2010* as a consequence of the amendment made by **Schedule 2 [24]**.

Schedule 3.10 amends the *Protection of the Environment Administration Act 1991* to confer similar functions on the Environmental Counsel to the Board of the Environment Protection Authority exercisable in relation to prosecutions for protection of the environment offences to the proposed offences of contravening the conditions of private native forestry codes of practice or of integrated forestry operations approvals. The amendments also provide for the payment of annual enforcement cost-recovery licence fees by the Forestry Corporation (and certain other cost recovery amounts) to the special account that funds the operations of the Environment Protection Authority.

Schedule 3.11 amends the *Protection of the Environment Operations Act 1997*:

- (a) to provide a defence for the offence of polluting waters for authorised public or private native forestry (as a consequence of the omission of existing provisions that deem the Forestry Corporation to hold a licence under that Act that authorises the public forestry activities concerned and the inclusion of the prevention of the pollution of waters among the matters to be addressed by private native forestry codes of practice), and
- (b) to omit the requirement for an environment protection licence for certain logging operations in areas that may pollute waters and to include savings and transitional provisions relating to that amendment.

Schedule 3.12 amends the *Standard Instrument (Local Environmental Plans) Order 2006* as a consequence of the proposed enactment of Part 5B of the *Local Land Services Act 2013* relating to private native forestry to continue to permit private native forestry without consent on land in Zone RU3 Forestry. The Order is also amended to update the definition of **forestry** for the purposes of planning instruments.

Schedule 3.13 amends the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* as a consequence of the proposed enactment of Part 5B of the *Local Land Services Act 2013* relating to private native forestry to ensure that an authority to clear native vegetation is not required under that Policy if it is private native forestry authorised under that proposed Part. The Schedule also amends that SEPP to provide that the Native Vegetation Panel may not grant an approval to carry out forestry operations.