

FIRST PRINT

FORESTRY (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Forestry Act 1916 currently requires the holder of a timber licence, products licence or forest materials licence to pay to the Forestry Commission a royalty in respect of the timber, products or forest materials taken under the licence.

The object of this Bill is to amend that Act:

- (a) to institute a royalty apportionment scheme under which the landholder of certain Crown-timber land is entitled to a one-third share of the net royalties paid in respect of the taking of timber and other materials from the land; and
- (b) to repeal provisions under which such a landholder is currently compensated for disturbance to the land occasioned by the taking of timber and other materials; and
- (c) to provide for the phasing-in of the royalty apportionment scheme and the phasing-out of the current compensation scheme; and
- (d) to make minor and consequential amendments.

The Bill also repeals the Forestry (Amendment) Act 1984.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Forestry Act 1916.

Forestry (Amendment) 1989

Clause 4 repeals the Forestry (Amendment) Act 1984 because the provisions of that Act (concerning a former royalty apportionment scheme) will now be obsolete.

SCHEDULE 1 - AMENDMENTS

Royalty apportionment scheme

Schedule 1 (1) and (3) make amendments concerning the proposed royalty apportionment scheme.

The scheme will apply to royalties payable in respect of timber and other materials taken from land under certain Crown leases, purchase-tenure land and certain reserves controlled by Pastures Protection Boards. When a royalty is paid, the landholder of the land concerned will be entitled to one-third of the balance of the royalty remaining after the Commission has deducted certain amounts (substituted section 30E).

The deductible amounts are as follows:

- . payments by the Commission to certain timber marketing and promotional organisations;
- . costs incurred by the Commission in connection with the establishment, planting, improvement etc. of the timber and other materials;
- . costs incurred by the Commission in connection with the facilitation of the taking of the timber and other materials (including costs of constructing and maintaining roads and other works).

The landholder's share is payable within 1 month after the end of the Commission's financial year that is current when the royalty is paid.

If the Commission takes timber or products, proposed section 30F requires the same apportionment of royalty as would have been required under proposed section 30E had the Commission been liable to pay royalty for the timber and products taken.

Consequential amendments are made by Schedule 1 (4), (8) and (9) so that the new royalty apportionment scheme will apply to amounts recovered by the Commission which are in the nature of or instead of royalties.

Repeal of compensation provisions

Schedule 1 (6) repeals provisions of the Forestry Act 1916 which currently provide for the payment of compensation for land disturbance to landholders who will now be entitled to a share of royalties under the proposed amendments. Schedule 1 (2) and (7) are consequential amendments.

Savings and transitional provisions

Schedule 1 (6) also inserts provisions dealing with the phasing-in of the royalty apportionment scheme and the phasing-out of the repealed compensation scheme.

Under section 30K, the repealed compensation scheme will continue to apply to particular land after its repeal but only so as to enable the assessment and payment

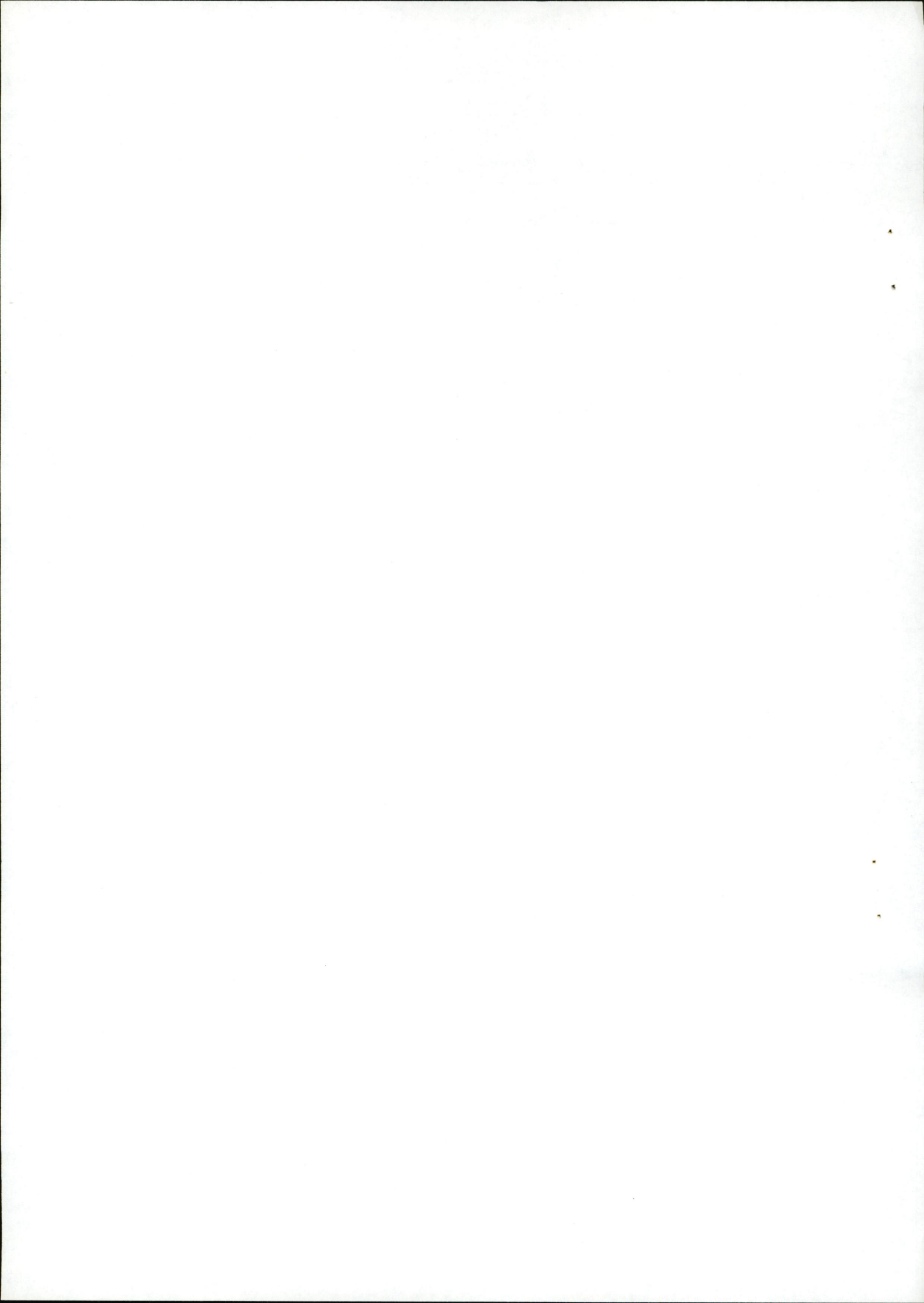
Forestry (Amendment) 1989

of compensation on the first occasion on which compensation would have been payable had the provisions not been repealed.

Under section 30L, the new royalty apportionment scheme will only apply to a royalty that becomes payable after the repealed compensation scheme ceases to apply to the land concerned.

Minor amendment

Schedule 1 (5) makes an amendment that is consequential on the repeal of the Forestry (Amendment) Act 1984.



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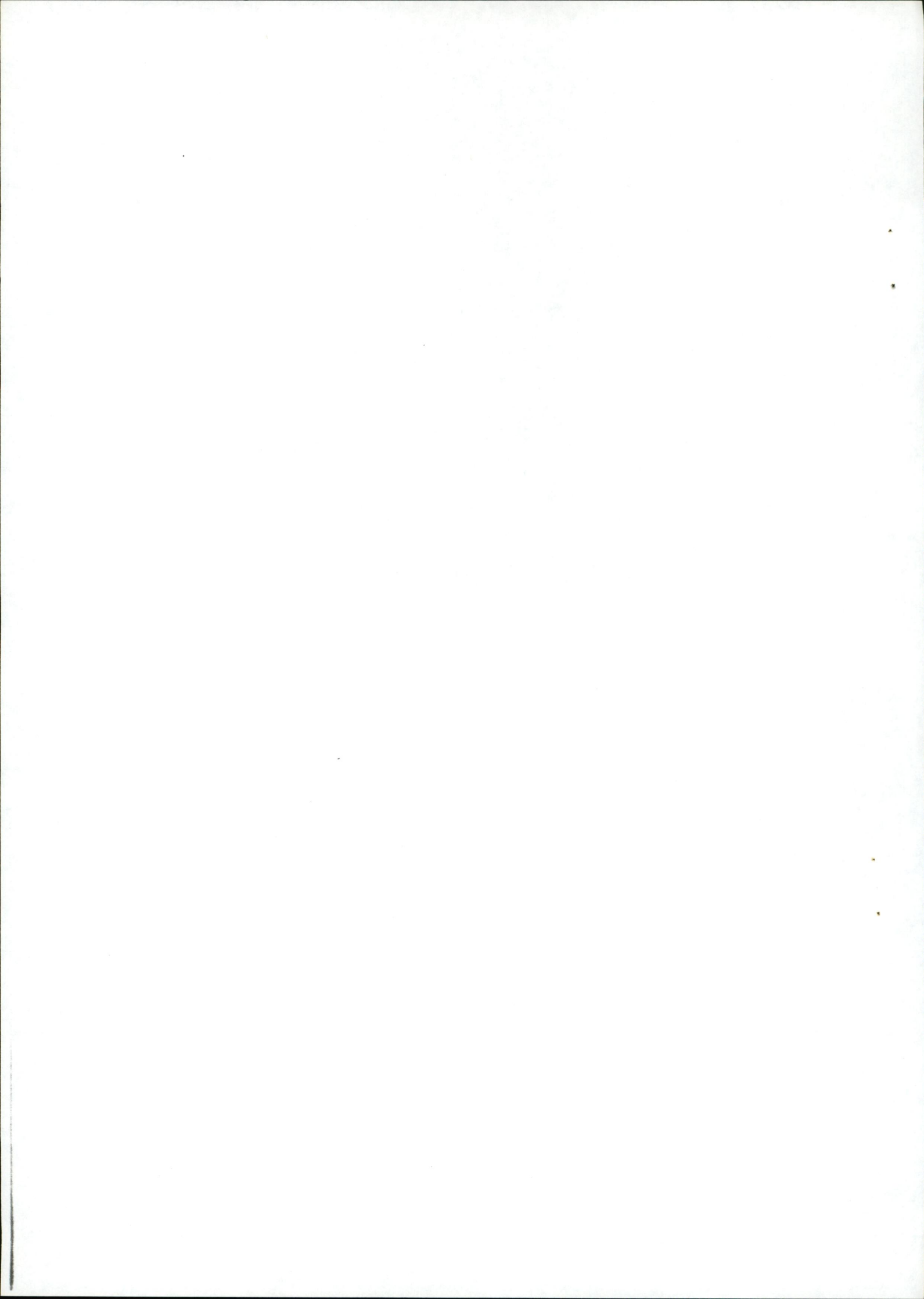
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Forestry Act 1916 No. 55
4. Repeal of Forestry (Amendment) Act 1984 No. 145

SCHEDULE 1 - AMENDMENTS



FORESTRY (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Forestry Act 1916 with respect to the payment and apportionment of royalties; to repeal the Forestry (Amendment) Act 1984; and for other purposes.

Forestry (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Forestry (Amendment) Act 1989.

Commencement

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

Amendment of Forestry Act 1916 No. 55

3. The Forestry Act 1916 is amended as set out in Schedule 1.

Repeal of Forestry (Amendment) Act 1984 No. 145

4. The Forestry (Amendment) Act 1984 is repealed.

SCHEDULE 1 - AMENDMENTS

- (1) Section 30 (**Definitions**): (Sec. 3)

Insert in alphabetical order:

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

- (a) in the case of land held under a lease specified in the Second Schedule - 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 control of a Pastures Protection Board - the Pastures Protection Board having control of the land;

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

"prescribed land" means:

- (a) land held by a lessee under a lease specified in the Second Schedule; or
- (b) purchase-tenure land; or

- (c) land under the control of a Pastures Protection Board, being land that consists of a travelling stock reserve, a camping reserve or a public watering-place;

(2) Section 30c (**Compensation fund**):

Omit the section.

(3) Sections 30E, 30F:

Omit section 30E, insert instead:

Apportionment of royalty - certain land

30E. (1) This section applies to a royalty payable in respect of timber, products or forest materials taken on or from prescribed land.

(2) When a royalty to which this section applies is paid to the commission, the commission is required to pay to the landholder concerned one-third of the balance of the royalty remaining after deduction of the following amounts:

- (a) any part of the royalty that is payable pursuant to a determination under section 30D (payments to certain timber organisations);
 - (b) any costs incurred by the commission in connection with the establishment, planting, maintenance, improvement and protection of the timber, products or forest materials;
 - (c) any costs incurred by the commission in connection with the facilitation of the taking of the timber, 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 commission.
- (4) A share of royalty payable by the commission to a landholder under this section must be paid before the expiration of 1 month after the end of the financial year of

the commission that is current when the royalty concerned is paid to the commission.

(5) Nothing in this Division entitles a landholder to be paid an amount of royalty in respect of the taking of timber, products or forest materials under a licence held by the landholder.

Royalty payments by commission

30F. If the commission takes timber or products from prescribed land, the commission is required:

- (a) to pay to an organisation specified in a determination under section 30D the amount that would have been payable under the determination; and
- (b) to pay to the landholder concerned the amount that would have been payable to the landholder under section 30E,

if the timber or products had been taken under a timber licence or products licence and a royalty had been paid to the commission in respect of the timber or products in accordance with this Division.

- (4) **Section 30H (Liability for royalty if timber etc. taken without licence):**

After section 30H (1), insert:

(2) Section 30E applies in respect of an amount recovered by the commission under this section as if the amount were a royalty paid to the commission under section 30A.

(3) Subsection (2) does not require the commission, 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.

- (5) **Section 30I (Taking of small quantities of timber etc. from certain lands):**

From section 30I (1), omit "such value as may be prescribed" wherever occurring, insert instead "\$400 or such other amount as may be prescribed".

(6) Part 3, Division 5:

Omit the Division, insert instead:

Division 5 - Savings and transitional provisions

Definitions

30j. In this Division:

"amending Act" means the Forestry (Amendment) Act 1989;

"former compensation provisions" means the provisions of this Division as in force immediately before their repeal by the amending Act, including any regulations in force for the purposes of those provisions.

Phasing-in of royalty apportionment scheme

30k. The former compensation provisions continue to apply in respect of land to which those provisions applied immediately before their repeal, but only so as to enable:

- (a) the assessment of compensation in respect of that land on one occasion only after the repeal of the former compensation provisions; and
- (b) the payment of any compensation so assessed.

Prevention of payment of compensation and royalty apportionment for same period

30l. Section 30e (2) (payment of one-third of royalty to landholder) applies only in respect of a royalty that becomes payable after whichever of the following events is applicable in the particular case:

- (a) the repeal of the former compensation provisions if those provisions do not continue to apply to the land concerned under section 30k;
- (b) if those provisions do continue to apply to the land - the first occasion following their repeal on which the commission is required to make an assessment of compensation under those provisions in respect of the land.

(7) **Section 41 (Regulations):**

Omit section 41 (1) (e1).

(8) **Section 46A (Penalty notice for certain offences):**

After section 46A (7), insert:

(8) Section 30E applies in respect of any royalty paid to the commission under this section as if it were a royalty paid to the commission under section 30A.

(9) Subsection (8) does not require the commission, in respect of any royalty paid to it under this section, to make a payment out of the royalty to the person by whom the royalty was paid.

(9) **Section 48 (Compensation):**

After section 48 (4), insert:

(5) If an amount is ordered to be paid to the commission under subsection (2) (c), section 30E applies in respect of an amount paid pursuant to the order as if it were a royalty paid to the commission under section 30A.

(6) Subsection (5) does not require the commission, in respect of an amount paid as ordered under subsection (2) (c), to make a payment out of the amount to the person by whom the amount was paid.

FORESTRY (AMENDMENT) ACT 1989 No. 111

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Forestry Act 1916 No. 55
4. Repeal of Forestry (Amendment) Act 1984 No. 145

SCHEDULE 1 - AMENDMENTS



FORESTRY (AMENDMENT) ACT 1989 No. 111

NEW SOUTH WALES



Act No. 111, 1989

An Act to amend the Forestry Act 1916 with respect to the payment and apportionment of royalties; to repeal the Forestry (Amendment) Act 1984; and for other purposes. [Assented to 24 August 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Forestry (Amendment) Act 1989.

Commencement

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

Amendment of Forestry Act 1916 No. 55

3. The Forestry Act 1916 is amended as set out in Schedule 1.

Repeal of Forestry (Amendment) Act 1984 No. 145

4. The Forestry (Amendment) Act 1984 is repealed.

SCHEDULE 1 - AMENDMENTS

- (1) Section 30 (**Definitions**):

(Sec. 3)

Insert in alphabetical order:

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

- (a) in the case of land held under a lease specified in the Second Schedule - 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 control of a Pastures Protection Board - the Pastures Protection Board having control of the land;

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

"prescribed land" means:

- (a) land held by a lessee under a lease specified in the Second Schedule; or
- (b) purchase-tenure land; or

- (c) land under the control of a Pastures Protection Board, being land that consists of a travelling stock reserve, a camping reserve or a public watering-place;

(2) Section 30c (**Compensation fund**):

Omit the section.

(3) Sections 30E, 30F:

Omit section 30E, insert instead:

Apportionment of royalty - certain land

30E. (1) This section applies to a royalty payable in respect of timber, products or forest materials taken on or from prescribed land.

(2) When a royalty to which this section applies is paid to the commission, the commission is required to pay to the landholder concerned one-third of the balance of the royalty remaining after deduction of the following amounts:

- (a) any part of the royalty that is payable pursuant to a determination under section 30D (payments to certain timber organisations);
- (b) any costs incurred by the commission in connection with the establishment, planting, maintenance, improvement and protection of the timber, products or forest materials;
- (c) any costs incurred by the commission in connection with the facilitation of the taking of the timber, 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 commission.

(4) A share of royalty payable by the commission to a landholder under this section must be paid before the expiration of 1 month after the end of the financial year of

the commission that is current when the royalty concerned is paid to the commission.

(5) Nothing in this Division entitles a landholder to be paid an amount of royalty in respect of the taking of timber, products or forest materials under a licence held by the landholder.

Royalty payments by commission

30F. If the commission takes timber or products from prescribed land, the commission is required:

- (a) to pay to an organisation specified in a determination under section 30D the amount that would have been payable under the determination; and
- (b) to pay to the landholder concerned the amount that would have been payable to the landholder under section 30E,

if the timber or products had been taken under a timber licence or products licence and a royalty had been paid to the commission in respect of the timber or products in accordance with this Division.

(4) **Section 30H (Liability for royalty if timber etc. taken without licence):**

After section 30H (1), insert:

(2) Section 30E applies in respect of an amount recovered by the commission under this section as if the amount were a royalty paid to the commission under section 30A.

(3) Subsection (2) does not require the commission, 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.

(5) **Section 30I (Taking of small quantities of timber etc. from certain lands):**

From section 30I (1), omit "such value as may be prescribed" wherever occurring, insert instead "\$400 or such other amount as may be prescribed".

(6) Part 3, Division 5:

Omit the Division, insert instead:

Division 5 - Savings and transitional provisions

Definitions

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- (a) the assessment of compensation in respect of that land on one occasion only after the repeal of the former compensation provisions; and
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Prevention of payment of compensation and royalty apportionment for same period

30L. Section 30E (2) (payment of one-third of royalty to landholder) applies only in respect of a royalty that becomes payable after whichever of the following events is applicable in the particular case:

- (a) the repeal of the former compensation provisions if those provisions do not continue to apply to the land concerned under section 30k;
- (b) if those provisions do continue to apply to the land - the first occasion following their repeal on which the commission is required to make an assessment of compensation under those provisions in respect of the land.

(7) Section 41 (**Regulations**):

Omit section 41 (1) (e1).

(8) Section 46A (**Penalty notice for certain offences**):

After section 46A (7), insert:

(8) Section 30E applies in respect of any royalty paid to the commission under this section as if it were a royalty paid to the commission under section 30A.

(9) Subsection (8) does not require the commission, in respect of any royalty paid to it under this section, to make a payment out of the royalty to the person by whom the royalty was paid.

(9) Section 48 (**Compensation**):

After section 48 (4), insert:

(5) If an amount is ordered to be paid to the commission under subsection (2) (c), section 30E applies in respect of an amount paid pursuant to the order as if it were a royalty paid to the commission under section 30A.

(6) Subsection (5) does not require the commission, in respect of an amount paid as ordered under subsection (2) (c), to make a payment out of the amount to the person by whom the amount was paid.

[*Minister's second reading speech made in -
Legislative Assembly on 25 July 1989
Legislative Council on 1 August 1989*]