

FIRST PRINT

FOREST (RESOURCE SECURITY) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Natural Resources Management Council Bill 1992. The objects of this Bill are:

- (a) to provide for resource security with respect to forested public land by its allocation for timber production in accordance with Government decisions based on reports of the proposed Natural Resources Management Council; and
- (b) to provide for resource security with respect to forested public land by contractual arrangement for compensation for withdrawal of that land from timber production.

PART 1—PRELIMINARY

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 sets out the objects of the proposed Act.

Clause 4 contains definitions used in the proposed Act. Key definitions are those of "forested public land" which includes all State forests and timber reserves and "forestry operations" which includes logging and other operations for the purposes of timber production.

PART 2—RESOURCE SECURITY BY ALLOCATION OF FORESTED PUBLIC LAND FOR TIMBER PRODUCTION

Division 1—Classification of forested public land

Clause 5 states that the Part applies to forested public land classified for the purposes of the Part.

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Clause 6 provides 3 classifications of forested public land for the purposes of the Part, namely, Preserved Native Forest, Restricted Use Forest and Timber Production Forest.

Clause 7 sets out the objectives of each classification. Generally:

- Preserved Native Forest is valuable native forest which should be preserved;
- Restricted Use Forest is native forest in which restricted harvesting of valuable timber resources should be allowed subject to the usual environmental planning and assessment requirements;
- Timber Production Forest is timber plantation forest or native forest of low conservation value in which the harvesting of timber resources should be secure.

Clause 8 provides that forested public land may be classified by an environmental planning instrument.

Clause 9 ensures that, before land is classified or its classification is changed or revoked, the proposed Natural Resources Management Council is required to report on the use of the land.

Clause 10 provides, however, that certain land in the South-east forests which has been the subject of thorough assessment may be classified without a report from the proposed Council.

Clause 11 promotes resource security by preventing land being withdrawn from the Timber Production Forest classification unless the proposed Council has changed its assessment of the value of the land because of new information or circumstances.

Clause 12 ensures that national parks and other dedicated and reserved land can not be classified for forest operations and that any such dedication or reservation may be made despite their classification under the Part.

Clause 13 prevents the classification of any land subject to the Timber Industry (Interim Protection) Act 1992 until that Act expires on 31 December 1994 or until the Forestry Commission obtains an E.I.S. for the land (whichever first occurs).

Division 2—Land use of classified forested public land

Clause 14 provides for the prohibition of all forestry operations on land classified as Preserved Native Forest.

Clause 15 provides for forestry operations on land classified as Restricted Use Forest subject to compliance with all relevant environmental planning and assessment laws and the proposed Forestry Practices Codes.

Clause 16 ensures that forestry operations may be carried out on land classified as Timber Production Forest and, for that purpose, declares that the operations are not subject to the environmental assessment or approval procedures of Part 5 of the Environmental Planning and Assessment Act 1979, that the operations do not require development consent under Part 4 of that Act and that forestry operations may not be prohibited or restricted by an environmental planning instrument. However, forestry operations are to be subject to the proposed Forestry Practices Codes.

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Clause 17 provides that, if land ceases to be classified as Timber Production Forest or Restricted Use Forest, there are to be no existing use rights to continue forestry operations on that land.

Clause 18 provides that, except as otherwise provided by the Division, the Environmental Planning and Assessment Act 1979 and environmental planning instruments apply to classified land.

**PART 3—RESOURCE SECURITY BY CONTRACTUAL ARRANGEMENTS
FOR COMPENSATION FOR WITHDRAWAL OF FORESTED LAND FROM
TIMBER PRODUCTION**

Clause 19 states that the Part applies to timber supply contracts with the Forestry Commission for taking timber from land classified as Timber Production Forest.

Clause 20 provides for the inclusion in relevant timber supply contracts of a right to compensation if the Forestry Commission is unable to supply timber under the contract because land classified as Timber Production Forest is withdrawn from timber production.

Clause 21 provides that land classified as Timber Production Forest is withdrawn from timber production for the purposes of the Part if the land ceases to be classified as Timber Production Forest or forestry operations are prohibited or restricted by State legislation or State Government decisions.

Clause 22 provides for the reimbursement of the Forestry Commission from public money of any such compensation paid by it under a contract approved by the Treasurer.

Clause 23 ensures that the Part does not limit the powers of the Forestry Commission.

PART 4—FORESTRY PRACTICES CODES

Clause 24 declares that Forestry Practices Codes apply to forestry operations on land classified as Timber Production Forest or Restricted Use Forest. The Codes may be applied to other land by or under another Act.

Clause 25 enables Codes to regulate the manner in which forestry operations and ancillary activities are carried out for the purpose of protecting the environment and promoting ecologically sustainable forest use.

Clause 26 authorises the Minister to prepare Codes.

Clause 27 requires the Minister, when preparing Codes, to consult relevant persons and give the public an opportunity for comment.

Clause 28 requires Codes to be adopted by regulation before they come into force.

Clause 29 requires the Forestry Commission and its licensees to take all practicable steps to comply with any relevant Codes.

Clause 30 provides that Forestry Commission plans of management and logging practices continue to apply subject to compliance with the Codes.

Clause 31 provides for the appointment of forestry practices officers to supervise compliance with Codes.

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PART 5—MISCELLANEOUS

Clause 32 provides that the proposed Act binds the Crown.

Clause 33 empowers the Governor to make regulations, including transitional provisions consequent on the enactment of the proposed Act.

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PART 5—MISCELLANEOUS

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FOREST (RESOURCE SECURITY) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for resource security with respect to forested public land; and for other purposes.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Forest (Resource Security) Act 1992.

5 Commencement

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

Objects of Act

3. The objects of this Act are:
- 10 (a) to provide for resource security with respect to forested public land by its allocation for timber production in accordance with Government decisions based on reports of the Natural Resources Management Council; and
- 15 (b) to provide for resource security with respect to forested public land by contractual arrangement for compensation for withdrawal of that land from timber production.

Definitions

4. In this Act:
- 20 “**environmental planning instrument**” has the same meaning as in the Environmental Planning and Assessment Act 1979;
- “**forested public land**” means:
- (a) any State forest, flora reserve or timber reserve within the meaning of the Forestry Act 1916; or
- 25 (b) any other land that is public land within the meaning of the Natural Resources Management Council Act 1992 (other than a body of water);
- “**forestry operations**” means:
- 30 (a) logging operations, namely, the cutting and removal of timber from land for the purposes of timber production and the provision of access roads to enable or assist the cutting and removal of the timber, but not the clearing of native forest for pine or other exotic timber plantations or for agricultural or other uses; or

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- (b) forest products operations, namely, the harvesting of products of trees, shrubs or other vegetation (other than timber) that are of economic value; or
- (c) silviculture, namely, silvicultural activities (such as thinning, planting or bush fire hazard reduction) relating to the management of forested public land for timber production; 5
- “Forestry Practices Code”** means a Forestry Practices Code in force under Part 4;
- “government agency”** means any public or local authority, and includes: 10
- (a) a government department, State owned corporation and council of a local government area; and
- (b) the head of a government agency;
- “Natural Resources Management Council”** means the Natural Resources Management Council of New South Wales established by the Natural Resources Management Council Act 1992. 15

PART 2—RESOURCE SECURITY BY ALLOCATION OF FORESTED PUBLIC LAND FOR TIMBER PRODUCTION

Division 1—Classification of forested public land

Part to apply to classified forested public land 20

5. This Part applies to any forested public land in the State which is classified for the purposes of this Part.

Classifications of forested public land

6. The 3 classifications of forested public land for the purposes of this Part are as follows: 25

- Preserved Native Forest
- Restricted Use Forest
- Timber Production Forest

Objectives of classifications of forested public land

7. The objectives of the classification of forested public land for the purposes of this Part are as follows: 30

Preserved Native Forest—to preserve native forested public land with high conservation value.

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Restricted Use Forest—to enable restricted harvesting of valuable timber resources on native forested public land with significant conservation value in accordance with relevant environmental planning and assessment requirements.

- 5 **Timber Production Forest**—to secure the harvesting of timber resources on timber plantations and on native forested public land with low conservation value.

State policy or other planning instrument to effect classification

- 10 8. (1) Forested public land may be classified for the purposes of this Part by a State environmental planning policy or other environmental planning instrument.

(2) Any such classification is taken to be of significance for environmental planning for the State and for any region concerned.

15 **Classification of forested public land subject to prior review by Natural Resources Management Council**

- 20 9. (1) Forested public land is not to be classified for the purposes of this Part until the Natural Resources Management Council has reported on the use of the land under the Natural Resources Management Council Act 1992. Any such classification is not to be changed or revoked until the Council has made a further report on the use of the land.

25 (2) The Natural Resources Management Council, in any regional review of forested public land, is required to consider whether the land should be classified for the purposes of this Part or whether any such classification should be changed. If so, the Council is required to assess and recommend the appropriate classification.

(3) The Natural Resources Management Council may make a recommendation as to the appropriate classification of land despite any dedication or reservation of the land under any Act.

30 **Certain land in South-east forests may be classified without prior review by Council**

10. (1) Forested public land to which this section applies may be classified for the purposes of this Part even though the Natural Resources Management Council has not reported on the use of the land as referred to in section 9.

- 35 (2) This section applies to forested public land within the following State forests:

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Bemboka (No. 1007); Bermagui (No. 142); Bombala (No. 130); Bondi (No. 128); Broadwater (No. 570); Bruces Creek (No. 777); Cathcart (No. 607); Coolangubra (No. 547); East Boyd (No. 127); Glen Allen (No. 1031); Glenbog (No. 149); Gnupa (No. 132); Mumbulla (No. 605); Murrabrine (No. 947); Murrah (No. 140); Nadgee (No. 125); Nalbaugh (No. 129); Nullica (No. 545); Nungatta (No. 131); Tanja (No. 544); Tantawangalo (No. 134); Timbillica (No. 768); Towamba (No. 908); Yambulla (No. 126); Yurammie (No. 133). 5

Restriction on withdrawal of land from Timber Production Forest classification 10

11. The classification of forested public land as Timber Production Forest is not to be changed or revoked unless the Minister for Planning certifies that it is necessary to do so because the Natural Resources Management Council has changed its assessment of the conservation, economic or other significance of the land to the State as a result of new information or circumstances. 15

Dedicated or reserved land

12. (1) In this section, “dedicated or reserved land” means land declared as a wilderness area under the Wilderness Act 1987, land dedicated or reserved under the National Parks and Wildlife Act 1974, land dedicated as a flora reserve under the Forestry Act 1916 or land dedicated for a similar public purpose under the Crown Lands Act 1989. 20

(2) Dedicated or reserved land may not be classified for the purposes of this Part as Restricted Use Forest or Timber Production Forest while it remains dedicated or reserved land. 25

(3) Nothing in this Part prevents land classified for the purposes of this Part becoming dedicated or reserved land.

(4) If land classified for the purposes of this Part as Restricted Use Forest or Timber Production Forest becomes dedicated or reserved land, that classification is revoked. 30

Prohibition on classification of land subject to Timber Industry (Interim Protection) Act 1992

13. (1) Any land specified in Schedule 1, 2 or 4 to the Timber Industry (Interim Protection) Act 1992 is not to be classified for the purposes of this Part until: 35

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- (a) that Act expires; or
 - (b) the Forestry Commission has obtained any environmental impact statement required by that Act in respect of logging operations on the land,
- 5 whichever first occurs.
- (2) If the approval of the Minister for Planning is sought under Division 4 of Part 5 of the Environmental Planning and Assessment Act 1979 for forestry operations on any such land, that Minister may:
- 10 (a) deal with the matter under that Division whether or not the land is classified for the purposes of this Part; or
 - (b) decline to deal with the matter under that Division if the land is so classified.

Division 2—Land use of classified forested public land

Preserved Native Forest

- 15 14. An environmental planning instrument that classifies land as Preserved Native Forest must prohibit all forestry operations on the land.

Restricted Use Forest

- 20 15. (1) An environmental planning instrument that classifies land as Restricted Use Forest must permit forestry operations on the land, subject to any requirement for environmental assessment or approval under Part 5 of the Environmental Planning and Assessment Act 1979 or for development consent under Part 4 of that Act or any other provision of the instrument.

- 25 (2) Forestry operations on any such land are subject to Part 4 (Forestry Practices Codes).

Timber Production Forest

- 30 16. (1) Forestry operations on land classified under this Part as Timber Production Forest are permitted, subject to compliance with this Act and the relevant provisions of any other law.
- (2) Part 5 of the Environmental Planning and Assessment Act 1979 does not apply in respect of the carrying out of forestry operations by the Forestry Commission on any such land.
- 35 (3) Development consent under Part 4 of the Environmental Planning and Assessment Act 1979 is not required for forestry operations by the Forestry Commission on any such land.

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(4) Forestry operations by the Forestry Commission on any such land may not be prohibited or restricted by an environmental planning instrument.

(5) Forestry operations on any such land are subject to Part 4 (Forestry Practices Codes). 5

(6) A reference in this section to forestry operations by the Forestry Commission includes a reference to forestry operations by any person under a licence or other authority issued by the Forestry Commission.

No existing use rights if land reclassified etc.

17. If land classified as Timber Production Forest or Restricted Use Forest ceases to be so classified, Division 2 of Part 4 of the Environmental Planning and Assessment Act 1979 does not apply so as to authorise the continued use of the land for forestry operations. 10

EPA Act and instruments apply subject to this Division

18. (1) Except as otherwise provided by this Division, the Environmental Planning and Assessment Act 1979 and any environmental planning instruments apply to any forested public land classified for the purposes of this Part. 15

(2) Without limiting subsection (1), that Act and those instruments apply so as to enable the regulation or prohibition of any development on that land, whether or not related to forestry operations. 20

**PART 3—RESOURCE SECURITY BY CONTRACTUAL
ARRANGEMENTS FOR COMPENSATION FOR
WITHDRAWAL OF FORESTED LAND FROM TIMBER
PRODUCTION**

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Timber supply contracts with Forestry Commission to which Part applies

19. This Part applies to any timber supply contract between the Forestry Commission and any other person under which:

(a) the Forestry Commission agrees to supply timber to the person or to issue licences under the Forestry Act 1916 for the taking of timber by the person; and 30

(b) any of the timber is to be taken from land classified as Timber Production Forest for the purposes of Part 2.

Resource security compensation arrangements in timber supply contracts

20. (1) In any timber supply contract to which this Part applies provision may be included for the payment of compensation by the
5 Forestry Commission if it is unable to supply timber (or to issue the relevant licences) in accordance with the contract because of a withdrawal from timber production of forested public land classified as Timber Production Forest for the purposes of Part 2.

10 (2) The manner of determining the amount of compensation and any conditions of payment are to be as agreed between the parties to the contract.

Withdrawal of forested public land from timber production

21. For the purposes of this Part, forested public land is withdrawn from timber production if the land is classified as Timber Production
15 Forest and:

- (a) the land ceases to be so classified; or
- (b) forestry operations on the land are prohibited or restricted by the enactment of legislation of this State or the making of any statutory instrument of this State; or
- 20 (c) forestry operations on the land are prohibited or restricted by a decision of a Minister of this State or government agency of this State (other than the Forestry Commission).

Reimbursement of Forestry Commission from public money if compensation payable

25 22. (1) If the Forestry Commission pays any such compensation under a timber supply contract approved by the Treasurer for the purposes of this section, the Forestry Commission is to be reimbursed for the payment from public money.

30 (2) The amount to be reimbursed is to be paid, from money advanced by the Treasurer or appropriated by Parliament for the purpose, at such times and in such amounts as the Treasurer determines.

(3) The approval of a timber supply contract by the Treasurer for the purposes of this section may be subject to conditions imposed by the Treasurer when giving that approval.

Powers of Forestry Commission not limited by this Part

23. Nothing in this Part limits the powers of the Forestry Commission with respect to contracts for the supply of timber or for the issue of licences under the Forestry Act 1916.

PART 4—FORESTRY PRACTICES CODES

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Application of Codes to forested public land

24. (1) Forestry Practices Codes apply to forested public lands classified as Timber Production Forest or Restricted Use Forest for the purposes of Part 2.

(2) Forestry Practices Codes may also be applied to other land by or under any other Act, including by conditions of any statutory authority. 10

Matters to be regulated by Codes

25. (1) A Forestry Practices Code may regulate the manner in which forestry operations and ancillary activities are carried out for the purposes of protecting the environment and promoting ecologically sustainable forest use. 15

(2) In particular, a Forestry Practices Code may deal with the following matters:

(a) the establishment and maintenance of forests (including standards for restocking land with trees); 20

(b) the harvesting of timber (including harvesting plans);

(c) road construction and other works ancillary to forestry operations;

(d) soil deterioration, erosion and salination;

(e) water quality and flow;

(f) native animals and plants; 25

(g) bush fire hazard reduction.

(3) A Forestry Practices Code may apply to all relevant land or only to land in a particular region or of a particular kind.

(4) A Forestry Practices Code may apply differently according to different factors, such as whether the forest is a native forest or a timber plantation. 30

Minister to prepare Codes

26. (1) Forestry Practices Codes are to be prepared by the Minister in accordance with this Part.

(2) The Minister is to prepare such a Code applying to all relevant land as soon as practicable after the commencement of this Part.

Public consultation during preparation of Codes

5 27. (1) The Minister, when preparing a draft Forestry Practices Code, is to consult any particular Ministers, government agencies, representatives of the timber industry or conservation groups or other persons who he or she considers have an interest in the Code.

(2) The Minister is to make a draft Forestry Practices Code available to the public at least 30 days before finalising the Code.

10 (3) The Minister is to take into account any submissions made on the draft Code before it is finalised.

Adoption of Code by regulations

28. (1) The regulations may adopt a Forestry Practices Code prepared by the Minister in accordance with this Act.

15 (2) A Forestry Practices Code does not have any effect unless it is so adopted.

(3) A Forestry Practices Code is to be set out in the regulation that adopts it.

20 (4) A Forestry Practices Code ceases to have effect if the regulation that adopts it is repealed.

(5) A Forestry Practices Code that has been adopted may be amended by a further regulation that amends the regulation adopting the Code. The provisions of this Act relating to the preparation of a Forestry Practices Code apply to any such amendment unless the Minister certifies that the nature of the amendment does not require compliance with those provisions.

Forestry Commission and licensees to comply with Codes

29. (1) The Forestry Commission is to take all practicable steps to ensure that forestry operations and ancillary activities are carried out in accordance with any Forestry Practices Code applying to them.

35 (2) It is a condition of every licence or other authority issued by the Forestry Commission (whether before or after the commencement of this section) in respect of forestry operations and ancillary activities that all practicable steps are taken to ensure that those operations and activities are carried out in accordance with any Forestry Practices Code applying to them.

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Codes prevail over management plans and codes of logging practice of Forestry Commission

30. Management plans and codes of logging practice prepared under the Forestry Act 1916 continue to apply to any relevant forested public land, but Forestry Practices Codes prevail to the extent of any inconsistency. 5

Forestry practices officers

31. (1) The Minister may appoint persons as forestry practices officers to investigate and report to the Minister on whether Forestry Practices Codes are being complied with. 10

(2) For the purposes of exercising those functions, such an officer may enter any forested public land classified for the purposes of Part 2 and require the person conducting or authorising the conduct of forestry operations on that land to provide such information as the officer requires. 15

(3) Any such right of entry or information is a condition of every licence or other authority issued by the Forestry Commission (whether before or after the commencement of this section) in respect of forestry operations on those lands.

PART 5—MISCELLANEOUS 20

Act binds Crown

32. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Regulations 25

33. (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) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 30
