

FIRST PRINT

**FORESTRY (ENVIRONMENTAL AND FAUNA IMPACT
ASSESSMENT) BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are to co-ordinate environmental impact assessment and the fauna impact assessment for forestry operations and to promote certainty for the continuation of those forestry operations after those assessments are made and the necessary approvals are given.

The Bill affects the operation of the provisions of Part 5 of the Environmental Planning and Assessment Act 1979 (the "EPA Act") and the provisions relating to fauna of the National Parks and Wildlife Act 1974 (the "NPW Act").

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 declares that the proposed Act applies only to forestry operations carried out by the Forestry Commission in State forests or on other land managed by that Commission (or by licensees or others with the authority of that Commission).

Clause 5 contains definitions of terms used in the proposed Act. In particular, the clause defines the following terms:

"approved forestry operations" is defined as those operations approved by the Minister for Planning under Division 4 of Part 5 of the EPA Act. Forestry operations require the approval of the Minister for Planning if they are carried out by or under the authority of the Forestry Commission and if an EIS is required under Part 5 of the EPA Act.

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“EIS” means an environmental impact statement under Part 5 of the EPA Act—an EIS is required for any activity to which Part 5 of the EPA Act applies if it is likely to significantly affect the environment.

“fauna licence” is defined as a licence granted by the Director-General of National Parks and Wildlife under the NPW Act (the “NPW Director-General”). A fauna licence is required if forestry or other operations would, among other things, cause a “significant modification of the habitat of endangered fauna which is likely to adversely affect its essential behavioural patterns”.

“FIS” means a fauna impact statement under section 92D of the NPW Act—an FIS or an FIS component of an EIS is required to accompany an application for a fauna licence in respect of endangered fauna.

Clause 6 defines “forestry operations”. Those operations include logging operations, forest products operations and silvicultural or similar operations. They do not include the clearing of natural vegetation for plantations or agricultural or other use. Accordingly, the proposed Act has no application to any such clearing operations.

PART 2—FAUNA SURVEY METHODOLOGY FOR FIS OR FIS COMPONENT OF EIS FOR FORESTRY OPERATIONS

Clause 7 requires the NPW Director-General to issue guidelines setting out the fauna survey methodology to be adopted in preparing an FIS or an FIS component for forestry operations.

Clause 8 protects an FIS or an FIS component from legal challenge relating to the fauna survey methodology adopted if it was prepared in accordance with the guidelines of the NPW Director-General.

PART 3—FAUNA LICENCES FOR APPROVED FORESTRY OPERATIONS

Clause 9 provides that the proposed Part applies to forestry operations approved by the Minister for Planning if the EIS contained an FIS component or is accompanied by an FIS.

Clause 10 requires the NPW Director-General, in dealing with an application for a fauna licence for approved forestry operations, to have regard to:

- (a) the fact that the operations have been approved by the Minister for Planning; and
- (b) all aspects of the EIS (including social, economic and other impacts that are not part of the FIS component of the EIS).

Clause 11 ensures that the term of a fauna licence for approved forestry operations is the same as the period of the approval of the Minister for Planning.

Clause 12 imposes a 40-day time limit for consideration of an application for a fauna licence for forestry operations approved by the Minister for Planning. If the application is not dealt with within that time, a fauna licence is deemed to have been issued on the same conditions relating to fauna as the Ministerial planning approval.

Clause 13 imposes restrictions on appeals against the issue of fauna licences for approved forestry operations.

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Clause 14 restricts the cancellation or variation of a fauna licence for approved forestry operations. Generally, the cancellation or variation must result from new information or circumstances which requires a re-assessment of the fauna impact, being a re-assessment that indicates a significant adverse affect on the survival of the species of fauna concerned in the State or a region of the State.

Clause 15 limits legal challenges to the validity of a fauna licence for approved forestry operations to 3 months after the issue of the licence.

PART 4—MINISTERIAL PLANNING APPROVAL FOR FORESTRY OPERATIONS

Clause 16 requires the Minister for Planning to take into account submissions from the NPW Director-General when dealing with an application for approval of forestry operations under the EPA Act.

Clause 17 limits legal challenges to an approval of the Minister for Planning for forestry operations to 3 months after the approval is published. That limitation on legal challenges also extends to any alleged contravention by the Forestry Commission of Part 5 of the EPA Act before that approval is given (eg. an alleged contravention of the requirements for the EIS considered by the Minister for Planning).

Clause 18 ensures that the Forestry Commission is not required to comply with any continuing environmental assessment required by Part 5 of the EPA Act once the approval of the Minister for Planning is obtained and for so long as the Commission complies with the conditions of that approval.

Clause 19 ensures that a Ministerial planning approval may authorise the carrying out of forestry operations over a particular period specified in the approval or over a period of indefinite duration described in the approval. For example, the approval may authorise the carrying out of forestry operations until the happening of a particular event or until a particular change in circumstances. Different periods may be specified for different areas.

PART 5—EXCLUSION OF CONSERVATION ORDERS

Clause 20 prevents the issue under the NPW Act of interim protection orders or stop work orders that prevent or interfere with forestry operations approved by the Minister for Planning (so long as the Commission and other persons comply with the conditions of that approval and any fauna licence).

Clause 21 prevents the issue under the Heritage Act of instruments that would prevent or interfere with forestry operations approved by the Minister for Planning (so long as the Commission and other persons comply with the conditions of that approval and any fauna licence).

Clause 22 ensures that the proposed Part does not affect orders or instruments for the protection of Aboriginal relics or places.

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PART 6—MISCELLANEOUS

Clause 23 declares that the proposed Act binds the Crown.

Clause 24 empowers the making of regulations for the purposes of the proposed Act.

Clause 25 contains transitional provisions relating to the operation of the proposed Act.

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**FORESTRY (ENVIRONMENTAL AND FAUNA IMPACT
ASSESSMENT) BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to make further provision with respect to environmental and fauna impact assessment and other requirements for forestry operations.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the Forestry (Environmental and Fauna Impact Assessment) Act 1994.

Commencement

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

Objects of Act

10 3. The objects of this Act are to co-ordinate the environmental impact assessment and the fauna impact assessment for forestry operations and to promote certainty for the continuation of those forestry operations after those assessments are made and the necessary approvals are given.

Application of Act

15 4. (1) This Act applies only to forestry operations carried out by the Forestry Commission on land under the management of that Commission or carried out by any other person on that land with the authority of that Commission.

20 (2) Land under the management of the Forestry Commission includes State forests and other Crown-timber lands within the meaning of the Forestry Act 1916.

Definitions

5. In this Act:

25 “**approved forestry operations**” means forestry operations that have been approved by the Minister administering the EPA Act under Division 4 of Part 5 of the EPA Act;

“**EIS**” means an environmental impact statement under Part 5 of the EPA Act;

30 “**EPA Act**” means the Environmental Planning and Assessment Act 1979;

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- “**fauna licence**” means a general licence under section 120 of the NPW Act;
- “**fauna survey methodology**” for preparing an FIS or an FIS component of an EIS, means the appropriate survey techniques for species or groups of species of fauna and the appropriate use of those techniques (including with respect to the types of habitat to be surveyed); 5
- “**FIS**” means a fauna impact statement under section 92D of the NPW Act (whether prepared for the purposes of the NPW Act or the EPA Act); 10
- “**FIS component**” of an EIS means that part of an EIS that addresses the matters set out in section 92D (1) of the NPW Act;
- “**forestry operations**” is defined in section 6;
- “**legal proceedings**” means legal proceedings of any kind, including: 15
- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief; and
 - (b) proceedings under section 123 of the EPA Act, section 176A of the NPW Act, section 153 of the Heritage Act 1977 or section 25 of the Environmental Offences and Penalties Act 1989; and 20
 - (c) an appeal under section 92C of the NPW Act; and
 - (d) proceedings in any court or tribunal or in any inquiry;
- “**Ministerial planning approval**” means an approval of the Minister administering the EPA Act under Division 4 of Part 5 of the EPA Act for the carrying out of an activity to which that Division applies; 25
- “**NPW Act**” means the National Parks and Wildlife Act 1974;
- “**NPW Director-General**” means the Director-General of National Parks and Wildlife.
- Definition of “forestry operations”** 30
6. (1) In this Act, “**forestry operations**” means:
- (a) logging operations, namely the cutting and removal of timber for the purpose of timber production, and includes the provision of access roads or tracks to enable or assist the cutting and removal of timber; or 35
 - (b) forest products operations, namely harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value; or

(c) silvicultural and similar operations, namely activities (such as thinning, planting and bush fire hazard reduction) relating to the management of forested land for timber production.

5 (2) Forestry operations do not include the clearing of natural vegetation for the purpose of establishing a tree plantation or for agricultural or other uses.

PART 2—FAUNA SURVEY METHODOLOGY FOR FIS OR FIS COMPONENT OF EIS FOR FORESTRY OPERATIONS

Fauna survey methodology for FIS or FIS component of EIS

10 7. (1) The NPW Director-General is to issue guidelines setting out the fauna survey methodology that may be adopted in preparing an FIS or an FIS component of an EIS in connection with forestry operations.

(2) Any such guidelines may relate to the fauna survey methodology in a particular case, a class of cases or all cases.

15 (3) The NPW Director-General may, from time to time, amend or replace any such guidelines or issue additional guidelines. However, if the guidelines are amended or replaced, the guidelines applicable to an applicant for a fauna licence at the end of the 28-day period during which the NPW Director-General must notify requirements for preparing an FIS under section 92D (2) of the NPW Act continue to apply in respect of the applicant unless the applicant approves of the amendment or replacement of the guidelines.

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(4) The fact that any such guidelines set out a particular fauna survey methodology does not prevent the adoption of any other appropriate methodology.

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Validity of FIS etc. prepared in accordance with guidelines

30 8. (1) The validity of an FIS or an FIS component of an EIS in connection with forestry operations cannot be challenged or questioned in any legal proceedings on any ground that relates, whether directly or indirectly, to the fauna survey methodology adopted in its preparation if it was prepared in accordance with the guidelines of the NPW Director-General under this Part.

(2) This Part is not to be construed as conferring a right to challenge or question the validity of an FIS or an FIS component of an EIS.

35 (3) In this section, the **validity** of an FIS or an FIS component of an EIS includes its compliance with relevant statutory requirements or its adequacy for the purposes of those requirements.

PART 3—FAUNA LICENCES FOR APPROVED FORESTRY OPERATIONS**Application of Part**

9. This Part applies to approved forestry operations if the EIS considered when the Ministerial planning approval was given contained an FIS component or was accompanied by an FIS. 5

Matters to be considered on application for fauna licence

10. The NPW Director-General, when deciding whether to grant or reject an application for a fauna licence in respect of approved forestry operations to which this Part applies (or to impose conditions on such a licence), must have regard to the following: 10

- (a) the fact that the forestry operations have Ministerial planning approval and the terms of that approval (including any conditions or modifications to which the approval is subject);
- (b) all aspects of the EIS considered when that approval was given (including social, economic and other impacts that are not part of the FIS component of the EIS). 15

Term of fauna licence

11. (1) The term for which a fauna licence is issued in respect of approved forestry operations to which this Part applies is to be the period for which the Ministerial planning approval remains in force. 20

(2) This section is subject to section 14.

Time limit for considering application for fauna licence

12. (1) The NPW Director-General must decide whether to grant or reject an application for a fauna licence in respect of approved forestry operations to which this Part applies within 40 days after the application is made. 25

(2) However, if the application was made before the Ministerial planning approval is given, that 40-day period commences when the approval is given. 30

(3) If a decision on the application is not made within the relevant 40-day period, a fauna licence in the terms applied for is taken to have been issued by the NPW Director-General subject to the following:

- (a) the licence is taken to be subject to any conditions to which the Ministerial planning approval is subject and that are identified in that approval as conditions relating to fauna; 35

(b) the licence is taken to be issued for the term for which the Ministerial planning approval remains in force;

(c) the licence is taken to apply only to those species of fauna to which the relevant FIS or FIS component of the EIS relates.

5 (4) This section does not prevent the NPW Director-General from issuing a fauna licence after the relevant 40-day period, but the licence can not be issued subject to conditions that are additional to those to which the Ministerial planning approval is subject.

10 (5) If an application for a fauna licence is made before an application for Ministerial planning approval of the forestry operations concerned is made or determined, the NPW Director-General must, if requested to do so by the applicant for the licence, postpone a decision on the licence until a decision is made on the application for Ministerial planning approval.

15 (6) This section does not apply to an application for a fauna licence unless the application is made in sufficient time for the public exhibition of the application under section 92B (5) of the NPW Act before the relevant Ministerial planning approval is given.

Restriction on certain appeals against issue of fauna licences

20 13. An appeal may not be made under section 92C of the NPW Act against a decision of the NPW Director-General to issue a fauna licence in respect of approved forestry operations to which this Part applies if the conditions under which the activity may be carried out under the licence are similar to the conditions relating to fauna under which the activity may be carried out under the Ministerial planning approval concerned.

Restriction on variation or cancellation of fauna licence

30 14. (1) A fauna licence issued in respect of approved forestry operations to which this Part applies may not be cancelled or varied unless:

(a) as a result of new information or circumstances the impact of the activity to which the licence relates on the fauna concerned is re-assessed; and

35 (b) the impact (as so re-assessed) is, in the opinion of the NPW Director-General, likely to have a significant adverse effect on the survival of the species of fauna concerned in the State or a biogeographical region of the State.

(2) This section does not apply to a cancellation or variation of a fauna licence because of a contravention of the licence or at the request of the holder of the licence.

(3) In this section:

“**variation**” includes a variation of a fauna licence to extend it to other species of fauna.

Limit on challenges to fauna licences

15. (1) The validity of a fauna licence in respect of approved forestry operations to which this Part applies (or the variation of such a licence) cannot be challenged or questioned in any legal proceedings, except those commenced in the Land and Environment Court within 3 months after the issue (or variation) of the licence. 5

(2) The Land and Environment Court or any other court cannot dispense with or vary the requirements of this section. 10

(3) In this section, the **validity** of a fauna licence (or variation) includes its compliance with relevant statutory requirements or its appropriateness.

PART 4—MINISTERIAL PLANNING APPROVAL FOR FORESTRY OPERATIONS 15

Minister for Planning to consider submissions by NPW Director-General

16. (1) When making a decision on a Ministerial planning approval in respect of forestry operations, the Minister administering the EPA Act is to take into account any submission from the NPW Director-General. 20

(2) This section applies to a decision on whether to give such an approval, on the conditions of that approval or on any other aspect of that approval.

(3) This section is in addition to, and does not limit, any other requirement imposed on the Minister concerned when making that decision. 25

Limit on challenges to Ministerial planning approvals and certain other environmental assessment requirements

17. (1) The validity of a Ministerial planning approval in respect of forestry operations (or the variation of such an approval) cannot be challenged or questioned in any legal proceedings, except those commenced within 3 months after that approval (or variation) is made public. 30

(2) The Forestry Commission’s compliance with Part 5 of the EPA Act in respect of proposed forestry operations before Ministerial planning approval is given for those operations cannot be challenged or questioned in any legal proceedings, except those commenced before or within 3 35

months after the Ministerial planning approval is made public. Examples of any such matter are an alleged contravention of any requirement made by or under the EPA Act for the preparation of an EIS or an alleged contravention of section 111 of the EPA Act.

5 (3) The Land and Environment Court or any other court cannot dispense with or vary the requirements of this section.

(4) In this section, the **validity** of a Ministerial planning approval (or variation) includes its compliance with relevant statutory requirements or its appropriateness.

10 **Non-application of Part 5 of EPA Act following approval of forestry operations**

15 **18. (1)** The Forestry Commission is not required to comply with the provisions of section 111, section 112 or any other provision of Part 5 of the EPA Act, after Ministerial planning approval is given, in respect of approved forestry operations (including in respect of the giving of any approval by the Forestry Commission to carry out those operations).

(2) This section applies only while the forestry operations are being carried out in accordance with the Ministerial planning approval.

Duration of Ministerial planning approvals

20 **19. (1)** Without limiting Part 5 of the EPA Act, a Ministerial planning approval may authorise the carrying out of forestry operations over a particular period specified in the approval or over a period of indefinite duration described in the approval. For example, the approval may authorise the carrying out of forestry operations until the happening of a particular event or until a particular change in circumstances.

(2) Different periods may be specified for different areas.

PART 5—EXCLUSION OF CONSERVATION ORDERS

Approved forestry operations not subject to certain orders under the NPW Act

30 **20. (1)** An interim protection order (within the meaning of the NPW Act) may not be made so as to prevent or interfere with the carrying out of approved forestry operations.

35 (2) An order under section 92E (Stop work order) of the NPW Act may not be issued so as to prevent or interfere with the carrying out of approved forestry operations.

(3) This section applies only while the forestry operations are being carried out in accordance with the Ministerial planning approval and any fauna licence issued in respect of those operations.

Approved forestry operations not subject to certain instruments under the Heritage Act 1977 5

21. (1) A conservation instrument (within the meaning of the Heritage Act 1977) may not be made so as to prevent or interfere with the carrying out of approved forestry operations.

(2) This section applies only while the forestry operations are being carried out in accordance with the Ministerial planning approval and any fauna licence issued in respect of those operations. 10

Protection of Aboriginal relics and places not affected

22. Nothing in this Part affects the making of any order or instrument that is made for the purpose of protecting any Aboriginal relic or place.

PART 6—MISCELLANEOUS 15

Act binds Crown

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

Regulations 20

24. (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. 25

Transitional provisions

25. (1) Part 2 extends to an FIS or an FIS component of an EIS that was prepared, or was in the course of preparation, before the commencement of that Part. 30

(2) Sections 10–12 extend to a Ministerial planning approval given before the commencement of the relevant section, but do not extend to applications for fauna licences pending on that commencement.

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(3) Section 13 extends to a fauna licence issued, or Ministerial planning approval given, before the commencement of that section.

5 (4) Section 14 extends to a fauna licence issued before the commencement of that section, but in that case is limited to the cancellation or variation of a fauna licence after that commencement.

(5) Section 15 extends to a fauna licence issued before the commencement of that section, but in that case the period of 3 months mentioned in that section is the period of 3 months after that commencement.

10 (6) Section 16 extends to an application for Ministerial planning approval pending on the commencement of that section.

15 (7) Section 17 extends to a Ministerial planning approval given before the commencement of that section (and to any alleged contravention of Part 5 of the EPA Act occurring before that commencement), but in that case the period of 3 months mentioned in that section is the period of 3 months after that commencement.

(8) Sections 18 and 19 extend to a Ministerial planning approval given before the commencement of the relevant section.

20 (9) Part 5 extends to a Ministerial planning approval given, or fauna licence issued, before the commencement of that Part.
