

FIRST PRINT

TREE PLANTATIONS (HARVEST SECURITY) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to remove impediments to the harvesting of trees planted for the purpose of producing timber or timber products so as to encourage the establishment of commercial tree plantations. In order to achieve this object, the Bill:

- (a) provides a scheme for the accreditation of tree plantations; and
- (b) removes the need to obtain licences under the National Parks and Wildlife Act 1974 in connection with the carrying out of harvesting operations on accredited tree plantations; and
- (c) removes the need for development consent under Part 4 of the Environmental Planning and Assessment Act 1979, or environmental assessment under Part 5 of that Act, in relation to the carrying out of harvesting operations on accredited tree plantations; and
- (d) provides for the protection of the environment by requiring harvesting operations on accredited tree plantations to be carried out in accordance with tree plantation (environment protection) harvesting codes.

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 object of the proposed Act.

Clause 4 makes it clear that the proposed Act applies to existing tree plantations as well as to new tree plantations. Clause 4 also provides that the proposed Act does not apply to land on which logging operations are prohibited under the Timber Industry (Interim Protection) Act 1992 (e.g. certain old growth forests specified in Schedule 1 or 2 to that Act).

Tree Plantations (Harvest Security) 1994

Clause 5 contains definitions used in the proposed Act. The term "Code" means a tree plantation (environment protection) harvesting code in force under the proposed Act. "Director-General" refers to the Director-General of the Department of Conservation and Land Management.

Clause 6 defines a "tree plantation" as an area of land on which the predominant number of trees are trees that have been planted for the purpose of producing timber or timber products. It is not relevant when the area was planted with trees, so long as it is not a natural forest.

Clause 7 defines "harvesting operations" as the cutting and removal of trees for the purpose of producing timber or timber products. The term does not include activities carried out for the purpose of establishing a tree plantation (e.g. clearing of natural forests), but it does include the provision of access roads to enable or assist the cutting and removal of trees.

PART 2—TREE HARVEST SECURITY

Division 1—Harvesting operations on accredited tree plantations

Clause 8 provides that harvesting operations on an accredited tree plantation are not subject to the environmental assessment or approval procedures of Part 5 of the Environmental Planning and Assessment Act 1979, and that such operations do not require development consent under Part 4 of that Act. Clause 8 also provides that harvesting operations cannot be prohibited or restricted by an environmental planning instrument.

Clause 9 exempts a person who is carrying out harvesting operations on an accredited tree plantation from certain offence provisions under the National Parks and Wildlife Act 1974. This will apply only if the operations are carried out in accordance with any Code applying to the tree plantation and in relation to things reasonably connected with the carrying out of the operations. The offence provisions which are exempted relate to the taking or killing of protected and endangered fauna, and if those provisions were to apply, the person carrying out the harvesting operations would need to obtain a general licence under that Act authorising the person to take or kill fauna in the course of carrying out the operations. Under that Act, "take" includes significant modification of the habitat of fauna which is likely to adversely affect its essential behavioural patterns.

Clause 9 also provides that interim protection orders and stop work orders under the National Parks and Wildlife Act 1974, and conservation instruments under the Heritage Act 1977, may not be made so as to prevent or interfere with the carrying out of harvesting operations on accredited tree plantations.

Clause 10 provides that a local council may not give an order under the Local Government Act 1993 so as to prevent or interfere with the carrying out of harvesting operations on an accredited tree plantation.

Clause 11 provides that harvesting operations on an accredited tree plantation are to be subject to any Code applying to the tree plantation, and are subject to other relevant laws.

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Division 2—Accreditation of tree plantations

This Division (clauses 12–18) makes provision for the accreditation of tree plantations. Accreditation is the mechanism by which tree plantations benefit from the harvest security provisions described above. The Division contains provisions relating to applications for accreditation, the determination of applications and review by the Minister of the Director-General's decisions, certificates of accreditation, the duration of accreditation, and public notification of accredited tree plantations. The accreditation of a tree plantation may be cancelled if the Director-General is satisfied that there has been a significant breach of a Code applying to the tree plantation, or if the area of land concerned (or part of it) is no longer a tree plantation.

**PART 3—TREE PLANTATION (ENVIRONMENT PROTECTION)
HARVESTING CODES**

Clause 19 requires the Director-General to prepare a draft Code (which must be approved by the Minister before being finalised).

Clause 20 authorises a Code, for the purpose of protecting the environment, to regulate the carrying out of harvesting operations on accredited tree plantations. A Code may deal with such matters as soil erosion and native animals and plants.

Clause 21 provides that a Code may not contain provisions that are inconsistent with the provisions of any Act applying to harvesting operations (e.g. the Clean Waters Act 1970).

Clause 22 requires a Code to be adopted by regulation before it comes into force. Any such regulation will need to comply with the requirements of the Subordinate Legislation Act 1989 (e.g. the proposed regulation must be advertised, consultation must take place and a regulatory impact statement must be prepared).

Clause 23 requires the owner and manager of a tree plantation (including the licensees of the Forestry Commission) to ensure that harvesting operations on the tree plantation are carried out in accordance with any Code applying to the tree plantation.

Clause 24 provides for the appointment of tree plantation officers to supervise compliance with Codes.

PART 4—MISCELLANEOUS

Clause 25 provides that the proposed Act binds the Crown.

Clause 26 enables proceedings for offences under the proposed Act to be dealt with by Local Courts.

Clause 27 empowers the Governor to make regulations for the purposes of the proposed Act, including savings and transitional provisions consequent on the enactment of the proposed Act.

Clause 28 amends section 27 (3) of the Forestry Act 1916 as a consequence of the proposed Act. That provision in effect permits a person to take timber from certain Crown timber land if the Forestry Commission certifies that the tree has been planted for the purpose of tree farming. The amendment provides that this certification will not be necessary if the tree is situated on an accredited tree plantation.

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Clause 29 amends the note to section 124 of the Local Government Act 1993 so that it refers to the operation of clause 10.

Clause 30 provides for the proposed Act to be reviewed by the Minister after 5 years.

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TREE PLANTATIONS (HARVEST SECURITY) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act relating to the harvesting of tree plantations.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the Tree Plantations (Harvest Security) Act 1994.

Commencement

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

Object of Act

- 10 3. (1) The object of this Act is to remove impediments to the harvesting of trees planted for the purpose of producing timber or timber products so as to encourage the establishment of commercial tree plantations.

(2) In order to achieve this object, this Act:

- 15 (a) provides a scheme for the accreditation of tree plantations; and
 (b) removes the need to obtain licences under the NPW Act in connection with the carrying out of harvesting operations on accredited tree plantations; and
 (c) removes the need for development consent under Part 4 of the EPA Act, or environmental assessment under Part 5 of that Act, in relation to the carrying out of harvesting operations on accredited tree plantations; and
20 (d) provides for the protection of the environment by requiring harvesting operations on accredited tree plantations to be carried out in accordance with tree plantation (environment protection) harvesting codes.

Application of Act

- 25 4. (1) This Act applies to tree plantations established before or after the commencement of this section.

(2) This Act does not apply to any land on which logging operations (within the meaning of the Timber Industry (Interim Protection) Act 1992) are prohibited by or under that Act.

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Definitions

5. In this Act:

“**accredited tree plantation**” means a tree plantation accredited for the time being under this Act;

“**Code**” means a tree plantation (environment protection) harvesting code in force under this Act; 5

“**Crown timber land**” has the same meaning as in the Forestry Act 1916;

“**Director-General**” means the Director-General of the Department of Conservation and Land Management; 10

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

“**harvesting operations**” is defined in section 7;

“**manager**” of a tree plantation means the person in charge of harvesting operations on the tree plantation; 15

“**NPW Act**” means the National Parks and Wildlife Act 1974;

“**owner**” of a tree plantation includes:

(a) a lessee of the land comprising the tree plantation; or

(b) in the case of a tree plantation which is a State Forest or other Crown timber land under the management of the Forestry Commission—the Forestry Commission; or 20

(c) a person who has a forestry right (within the meaning of section 87A of the Conveyancing Act 1919) in relation to the tree plantation;

“**tree**” means a tree of any description and includes a sapling or a seedling of a tree; 25

“**tree plantation**” is defined in section 6.

Definition of “tree plantation”

6. (1) In this Act, “**tree plantation**” means an area of land on which the predominant number of trees are trees that have been planted (whether by sowing seed or otherwise) for the purpose of producing timber or timber products. 30

(2) To avoid doubt, a natural forest is not a tree plantation. However, an area is not a natural forest merely because it contains some native trees that have not been planted. 35

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(3) A tree plantation can be a privately owned area of land, or it can be a State Forest or other Crown timber land, or any other land.

(4) A tree plantation can comprise more than one area of land if those areas are under the same ownership or management.

5 **Definition of "harvesting operations"**

7. (1) In this Act, "harvesting operations" means the cutting and removal of trees for the purpose of producing timber or timber products.

10 (2) Harvesting operations do not include any activity carried out for the purpose of establishing a tree plantation (for example, the clearing of natural forests and the use of pesticides, herbicides and fertilisers for the purpose of establishing a tree plantation).

(3) Harvesting operations includes the provision of access roads after establishment of a tree plantation to enable or assist the cutting and removal of trees.

15 **PART 2—TREE HARVEST SECURITY**

Division 1—Harvesting operations on accredited tree plantations

Harvesting operations not subject to Parts 4 and 5 of the EPA Act

8. (1) Development consent under Part 4 of the EPA Act is not required for harvesting operations on an accredited tree plantation.

20 (2) Part 5 of the EPA Act does not apply in respect of the carrying out of harvesting operations on an accredited tree plantation (including the giving of any approval to carry out those operations).

25 (3) Harvesting operations carried out on an accredited tree plantation cannot be prohibited or restricted by an environmental planning instrument (whether made before or after the commencement of this section) under the EPA Act.

Harvesting operations not subject to certain provisions of the NPW Act and Heritage Act 1977

30 9. (1) A person carrying out harvesting operations on an accredited tree plantation is exempt from the provisions of sections 98 (2) and 99 (1) of the NPW Act (relating to protected and endangered fauna).

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(2) Subsection (1) exempts the person only:

- (a) if the harvesting operations are carried out in accordance with any Code applying to the tree plantation; and
- (b) in relation to things that are reasonably connected with the carrying out of the harvesting operations.

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(3) 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 harvesting operations on an accredited tree plantation.

(4) An order under section 92E (stop work order) of the NPW Act may not be made so as to prevent or interfere with the carrying out of harvesting operations on an accredited tree plantation.

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(5) 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 harvesting operations on an accredited tree plantation.

(6) However, nothing in this section affects the making of any such order or instrument that is made for the purpose of protecting any Aboriginal relic or place.

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Harvesting operations not subject to certain orders under the Local Government Act 1993

10. A local council may not give an order under section 124 of the Local Government Act 1993 so as to prevent or interfere with the carrying out of harvesting operations on an accredited tree plantation.

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Harvesting operations subject to Codes and other laws

11. Harvesting operations on accredited tree plantations are subject to any Code applying to the tree plantation and, except as provided by this Act, are subject to the relevant provisions of any other law.

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Division 2—Accreditation of tree plantations

Application for accreditation

12. (1) The owner or manager of a tree plantation may, at any time after the tree plantation is established, apply to the Director-General for the accreditation of the tree plantation under this Part.

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(2) An application for accreditation must:

- (a) be in such form, and be accompanied by such fee, as the Director-General may determine; and

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- (b) identify the area or areas of land comprising the tree plantation by way of a map or other suitable means; and
- (c) be accompanied by such particulars and supporting evidence relating to the tree plantation as may be required by the Director-General.

Determination of applications for accreditation

13. (1) Within 60 days after receiving an application for accreditation, the Director-General is to determine the application:

- (a) by accrediting the tree plantation concerned; or
- (b) by refusing to accredit the tree plantation.

(2) Written notice of the Director-General's decision is to be given to the owner or manager of the tree plantation as soon as practicable after the decision is made.

(3) Without limiting subsection (1), the Director-General may refuse to accredit the tree plantation if the Director-General is satisfied that it has not been established in accordance with the requirements of the EPA Act and any other relevant law.

(4) To avoid doubt, the accreditation of a tree plantation is not to be regarded for the purposes of any law as an approval under Part 5 of the EPA Act, and the Director-General is not a determining authority for the purposes of that Part when granting an accreditation.

Certificate of accreditation

14. (1) The Director-General is to issue a certificate to the owner or manager of each tree plantation accredited under this Part.

(2) Such a certificate is:

- (a) to be in a form approved by the Director-General; and
- (b) to specify the date on which the accreditation was granted.

Duration of accreditation

15. (1) The accreditation of a tree plantation remains in force unless it is cancelled by the Director-General.

(2) Any change in the ownership or management of an accredited tree plantation does not affect the accreditation of the tree plantation.

Cancellation of accreditation

16. (1) The accreditation of a tree plantation (or any part of the tree plantation) may be cancelled by the Director-General at the request of the owner of the tree plantation or if the Director-General is satisfied:

- (a) that there has been a significant breach of the provisions of any Code applying to the tree plantation and that such a breach has not been remedied; or 5
- (b) that the tree plantation has been abandoned; or
- (c) that harvesting operations have been completed and the area of land concerned is no longer a tree plantation. 10

(2) Cancellation of accreditation takes effect when a written notice by the Director-General is served on the owner of the tree plantation.

(3) Nothing in this section prevents the accreditation of a tree plantation that is re-established on the land.

Review by Minister

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17. (1) The owner or manager of a tree plantation may, in writing, request the Minister to review the decision of the Director-General:

- (a) not to accredit the tree plantation; or
- (b) to cancel the accreditation of the tree plantation.

(2) Any such request can only be made within 60 days after notice of the decision was served on the owner or manager of the tree plantation. 20

(3) The Minister may, in reviewing the decision:

- (a) confirm the Director-General's decision to refuse accreditation or to cancel accreditation; or
- (b) direct the Director-General to accredit the tree plantation; or 25
- (c) revoke the Director-General's decision to cancel accreditation and direct the Director-General to reinstate the accreditation.

(4) The Director-General must give effect to any such direction by the Minister.

Notification of accredited tree plantations

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18. (1) The Director-General must, when a tree plantation is accredited, publish in the Gazette a notice of the accreditation. Such a notice must identify the tree plantation and include details describing its location.

(2) The Director-General is to maintain a register of accredited tree plantations. 35

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(3) The register is:

- (a) to include the details referred to in subsection (1); and
- (b) to be made available for inspection by any person without charge at the head office of the Department of Conservation and Land Management during ordinary office hours.

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PART 3—TREE PLANTATION (ENVIRONMENT PROTECTION) HARVESTING CODES

Preparation of Codes

10 **19. (1)** A draft tree plantation (environment protection) harvesting code is to be prepared by the Director-General as soon as practicable after the commencement of this Part.

(2) A Code must be approved by the Minister before it is finalised by the Director-General.

(3) More than one such Code may be prepared.

15 **Matters to be regulated by Codes**

20. (1) A Code may, for the purposes of protecting the environment, regulate the carrying out of harvesting operations on an accredited tree plantation.

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

- 20 (a) harvesting plans;
- (b) works ancillary to harvesting operations;
- (c) soil erosion and sediment control;
- (d) native animals and plants;
- (e) Aboriginal relics and places;
- (f) post-harvest bush fire hazard reduction burning.

25 **(3)** A Code may:

- (a) apply generally to all tree plantations or to a specified class of tree plantation; and
- (b) apply differently according to different factors; and
- 30 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

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Codes not to be inconsistent with laws applying to tree plantations

21. (1) Except as provided by this Act, a Code may not contain provisions which are inconsistent with any Act applying to the carrying out of harvesting operations. Any such inconsistent provision in the Code is void. 5

(2) In particular, the provisions of a Code may not be inconsistent with the provisions of the Soil Conservation Act 1938, the Clean Waters Act 1970 or the Pollution Control Act 1970 in their application to tree plantations.

Adoption and amendment of Codes by regulations 10

22. (1) The regulations may adopt a Code in accordance with this Act.

(2) A Code:

(a) does not have any effect unless it is so adopted; and

(b) is to be set out in the regulation that adopts it; and 15

(c) ceases to have effect if the regulation that adopts it is repealed.

(3) A Code may be amended by the regulations.

Compliance with Codes

23. (1) The owner and manager of an accredited tree plantation must ensure that harvesting operations on the tree plantation are carried out in accordance with any Code applying to the tree plantation. 20

(2) In the case of an accredited tree plantation which is a State Forest or other Crown timber land, this requirement is a condition of any relevant licence, lease or other authority (whether issued before or after the commencement of this section). 25

Tree plantation officers

24. (1) The Director-General may appoint public servants (or such other persons as may be prescribed by the regulations) as tree plantation officers to investigate and report to the Director-General on whether a Code is being complied with. 30

(2) For the purposes of exercising those functions, any such officer may enter an accredited tree plantation and require the owner or manager to provide such information as the officer requires.

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(3) The owner or manager must not:

- (a) fail without reasonable excuse to provide the information required by the officer; or
- (b) provide information to the officer which the owner or manager knows is false or misleading in a material respect.

Maximum penalty: 10 penalty units.

PART 4—MISCELLANEOUS

Act binds Crown

25. 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.

Proceedings for offences

26. Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

27. (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) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

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

Consequential amendment of section 27 (penalty for unlawfully taking timber, products or forest materials) of Forestry Act 1916

28. The Forestry Act 1916 is amended by inserting in section 27 (3) (a) (iii) after the word "tree-farming" the words ", or where the tree is or was situated on an accredited tree plantation within the meaning of the Tree Plantations (Harvest Security) Act 1994".

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Consequential amendment of note to section 124 of the Local Government Act 1993 (relating to orders by local councils)

29. The note to section 124 of the Local Government Act 1993 is amended by inserting at the end of the note the following words:

Section 10 of the Tree Plantations (Harvest Security) Act 1994 provides that a local council may not give an order under this section so as to prevent or interfere with the carrying out of harvesting operations on an accredited tree plantation (as defined in that Act). 5

Review of Act

30. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 10

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 15
