



New South Wales

Timber Plantations (Harvest Guarantee) Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to remove impediments to the harvesting of plantation timber (ie trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations. In order to achieve this object, the Bill:

- (a) provides a scheme for the accreditation of timber 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 timber 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 timber plantations, and
 - (d) provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes.
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Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called 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 timber plantations as well as to new timber 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* (eg certain old growth forests specified in Schedule 1 or 2 to that Act).

Clause 5 contains definitions used in the proposed Act. The term *Code* means a timber plantation (environment protection) harvesting code in force under the proposed Act. *Director-General* refers to the Director-General of the Department of Urban Affairs and Planning.

Clause 6 defines a *timber plantation* as an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted for the purpose of timber production. 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 timber for the purpose of timber production. The term does not include activities carried out for the purpose of establishing a timber plantation (eg clearing of natural forests), but it does include the provision of access roads to enable or assist the cutting and removal of timber.

Part 2 Timber harvest guarantee

Division 1 Harvesting operations on accredited timber plantations

Clause 8 provides that harvesting operations on an accredited timber 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.

Explanatory note

Clause 9 exempts a person who is carrying out harvesting operations on an accredited timber 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 the Code (or Codes) applying to the timber 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 to the picking of native plants. If those provisions were to apply, the person carrying out the harvesting operations would need to obtain a licence under that Act authorising the person to take or kill fauna, or to pick native plants, 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. *Pick* includes cut, destroy, remove or injure.

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 timber 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 timber plantation.

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

Division 2 Accreditation of timber plantations

This Division (**clauses 12–18**) makes provision for the accreditation of timber plantations. Accreditation is the mechanism by which timber plantations benefit from the harvest guarantee 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 timber plantations. The accreditation of a timber plantation may be cancelled if the Director-General is satisfied that there has been a significant breach of a Code applying to the timber plantation, or that the timber plantation has been abandoned, or that the area of land concerned (or part of it) is no longer a timber plantation.

One particular ground on which the Director-General may refuse to accredit a timber plantation is if the Director-General is satisfied that, in the establishment of the timber plantation, the area concerned was cleared of native vegetation without the consent of the Director-General of the Department of Land and Water Conservation.

Part 3 Timber 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 timber plantations. A Code may deal with such matters as soil erosion, native animals and plants, and the circumstances in which compensation will be available because of the need to protect unique or special wildlife values.

Clause 21 provides that a Code may not contain provisions that are inconsistent with the provisions of any Act applying to harvesting operations (eg 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* (eg 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 timber plantation (including the licensees of the Forestry Commission) to ensure that harvesting operations on the timber plantation are carried out in accordance with the Code (or Codes) applying to the timber plantation.

Clause 24 provides for the appointment of appropriately qualified timber 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.

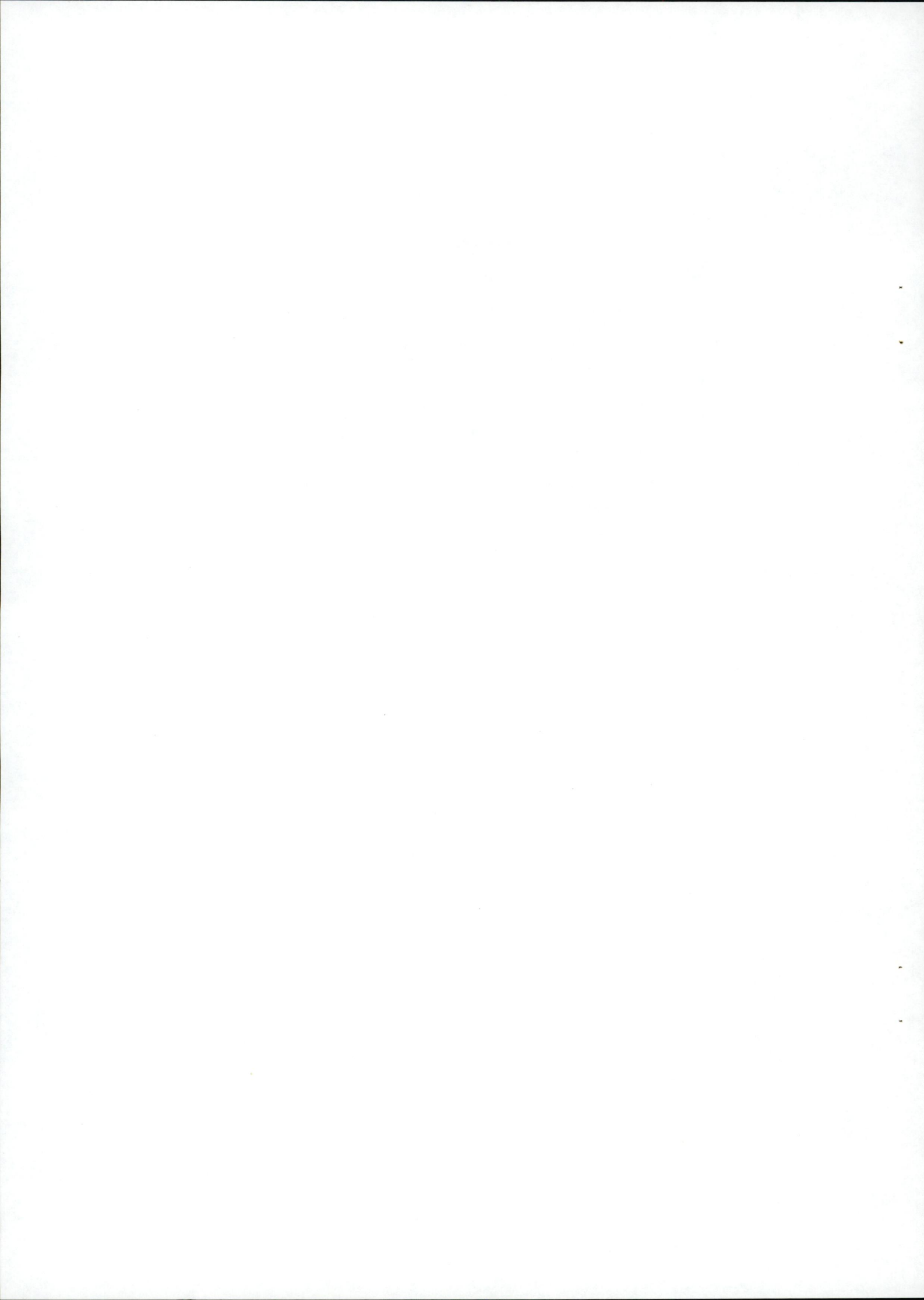
Timber Plantations (Harvest Guarantee) Bill 1995

Explanatory note

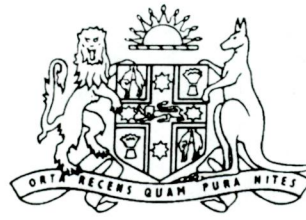
Clause 28 amends section 27 (3) of the *Forestry Act 1916* as a consequence of the proposed Act. That provision in effect permits a person to take timber from certain Crown timber land if the Forestry Commission certifies that the tree has been planted for the purpose of tree farming. The amendment provides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

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.



First print



New South Wales

Timber Plantations (Harvest Guarantee) Bill 1995

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New South Wales

Timber Plantations (Harvest Guarantee) Bill 1995

No. , 1995

A Bill for

An Act relating to the harvesting of timber plantations.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Timber Plantations (Harvest Guarantee) Act 1995*.

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2 Commencement

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

3 Object of Act

- (1) The object of this Act is to remove impediments to the harvesting of plantation timber (that is, trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations. 10
- (2) In order to achieve this object, this Act:
- (a) provides a scheme for the accreditation of timber plantations, and 15
 - (b) removes the need to obtain licences under the NPW Act in connection with the carrying out of harvesting operations on accredited timber 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 timber plantations, and 20
 - (d) provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes. 25

4 Application of Act

- (1) This Act applies to timber plantations established before or after the commencement of this section. 30

- (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.

5 Definitions

In this Act:

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accredited timber plantation means a timber plantation accredited for the time being under this Act.

Code means a timber plantation (environment protection) harvesting code in force under this Act.

Crown timber land has the same meaning as in the *Forestry Act 1916*. 10

Director-General means the Director-General of the Department of Urban Affairs and Planning.

EPA Act means the *Environmental Planning and Assessment Act 1979*. 15

harvesting operations is defined in section 7.

manager of a timber plantation means the person in charge of harvesting operations on the timber plantation.

NPW Act means the *National Parks and Wildlife Act 1974*.

owner of a timber plantation includes: 20

- (a) a lessee of the land comprising the timber plantation, or
- (b) in the case of a timber plantation which is a State Forest or other Crown timber land under the management of the Forestry Commission—the Forestry Commission, or
- (c) a person who has a forestry right (within the meaning of section 87A of the *Conveyancing Act 1919*) in relation to the timber plantation. 25

timber plantation is defined in section 6.

6 Definition of timber plantation

- (1) In this Act, **timber plantation** means an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted (whether by sowing seed or otherwise) for the purpose of timber production. 30

- (2) To avoid doubt, a natural forest is not a timber plantation. However, an area is not a natural forest merely because it contains some native trees that have not been planted.
- (3) A timber 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. 5
- (4) A timber plantation can comprise more than one area of land if those areas are under the same ownership or management.

7 Definition of harvesting operations

- (1) In this Act, *harvesting operations* means the cutting and removal of timber for the purpose of timber production, and includes:
 - (a) the provision of access roads after establishment of a timber plantation to enable or assist the cutting and removal of timber, or
 - (b) the carrying out of such activities as are necessary for the efficient cutting and removal of timber, or 15
 - (c) the carrying out of activities relating to the on-going management of the timber plantation (eg silvicultural thinning, weed control and similar maintenance operations). 20
- (2) An activity carried out for the purpose of establishing a timber plantation (eg, the clearing of natural forests and the use of pesticides, herbicides and fertilisers in establishing a timber plantation) is not, for the purposes of this Act, an activity constituting harvesting operations. 25

Part 2 Timber harvest guarantee

Division 1 Harvesting operations on accredited timber plantations

- 8 Harvesting operations not subject to Parts 4 and 5 of the EPA Act** 5
- (1) Development consent under Part 4 of the EPA Act is not required for harvesting operations on an accredited timber plantation.
- (2) Part 5 of the EPA Act does not apply in respect of the carrying out of harvesting operations on an accredited timber plantation (including the giving of any approval to carry out those operations). 10
- (3) Harvesting operations carried out on an accredited timber 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. 15
- 9 Harvesting operations not subject to certain provisions of the NPW Act and Heritage Act 1977**
- (1) A person carrying out harvesting operations on an accredited timber plantation is exempt from the provisions of sections 98 (2) and 99 (1) of the NPW Act (relating to protected and endangered fauna) and section 117 (1) of that Act (relating to native plants). 20
- (2) Subsection (1) exempts the person only:
- (a) if the harvesting operations are carried out in accordance with the Code (or Codes) applying to the timber plantation, and 25
- (b) in relation to things that are reasonably connected with the carrying out of the harvesting operations.
- (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 timber plantation. 30

Clause 9 Timber Plantations (Harvest Guarantee) Bill 1995

Part 2 Timber harvest guarantee
Division 1

- (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 timber plantation.
- (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 timber plantation. 5
- (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 specified in a Code applying to the timber plantation concerned. 10

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

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 timber plantation. 15

11 Harvesting operations subject to Codes and other laws

Harvesting operations on an accredited timber plantation are subject to the Code (or Codes) applying to the timber plantation and, except as provided by this Act, are subject to the provisions of any other law that relate to the management or harvesting of timber. 20

Division 2 Accreditation of timber plantations

12 Application for accreditation 25

- (1) The owner or manager of a timber plantation may, at any time after the timber plantation is established, apply to the Director-General for the accreditation of the timber plantation under this Part.
- (2) An application for accreditation must: 30
- (a) be in such form, and be accompanied by such fee, as the Director-General may determine, and

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

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13 Determination of applications for accreditation

- (1) Within 60 days after receiving an application for accreditation, the Director-General is to determine the application:
 - (a) by accrediting the timber plantation concerned, or
 - (b) by refusing to accredit the timber plantation.
- (2) Written notice of the Director-General's decision is to be given to the owner or manager of the timber plantation as soon as practicable after the decision is made.
- (3) Without limiting subsection (1), the Director-General may refuse to accredit the timber plantation if the Director-General makes a determination that:
 - (a) it has not been established in accordance with the requirements of the EPA Act and any other relevant law, or
 - (b) it has been established in contravention of State Environmental Planning Policy No. 46—Protection and Management of Native Vegetation (or any similar law dealing with native vegetation management and control) if that Policy (or similar law) applies to the timber plantation.
- (4) To avoid doubt, the accreditation of a timber 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.

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14 Certificate of accreditation

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

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- (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.

15 Duration of accreditation

- (1) The accreditation of a timber plantation remains in force unless it is cancelled by the Director-General. 5
- (2) Any change in the ownership or management of an accredited timber plantation does not affect the accreditation of the timber plantation.
- (3) The harvesting of an accredited timber plantation, or the removal or replanting of trees from or on the plantation, does not, subject to section 16, affect the accreditation of the timber plantation. 10

16 Cancellation of accreditation

- (1) The accreditation of a timber plantation (or any part of the timber plantation) may be cancelled by the Director-General at the request of the owner of the timber plantation or if the Director-General is satisfied: 15
 - (a) that there has been a significant breach of the provisions of the Code (or Codes) applying to the timber plantation and that such a breach has not been remedied, or 20
 - (b) that the timber plantation has been abandoned, or
 - (c) that harvesting operations have been completed and the area of land concerned is not intended to be continued as a timber plantation.
- (2) Cancellation of accreditation takes effect when a written notice by the Director-General of the cancellation is served on the owner of the timber plantation. 25
- (3) Nothing in this section prevents the accreditation of a timber plantation that is re-established on the land.

17 Review by Minister

- (1) The owner or manager of a timber plantation may, in writing, request the Minister to review a decision of the Director-General: 30
 - (a) not to accredit the timber plantation, or
 - (b) to cancel the accreditation of the timber plantation.

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- (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 timber plantation.
- (3) The Minister may, in reviewing the decision:
- (a) confirm the Director-General's decision to refuse accreditation or to cancel accreditation, or 5
 - (b) direct the Director-General to accredit the timber plantation, or
 - (c) revoke the Director-General's decision to cancel accreditation and direct the Director-General to reinstate the accreditation. 10
- (4) The Director-General must give effect to any such direction by the Minister.

18 Notification of accredited timber plantations

- (1) The Director-General must, when a timber plantation is accredited, cause a notice to be published in the Gazette of the accreditation. Such a notice must identify the timber plantation and include details describing its location. 15
- (2) The Director-General is to maintain a register of accredited timber plantations. 20
- (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 Urban Affairs and Planning during ordinary office hours. 25

Part 3 Timber plantation (environment protection) harvesting codes

19 Preparation of Codes

- (1) A draft timber plantation (environment protection) harvesting code is to be prepared by the Director-General as soon as practicable after the commencement of this Part. 5
- (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.

20 Matters to be regulated by Codes 10

- (1) A Code may, for the purposes of protecting the environment, regulate the carrying out of harvesting operations on an accredited timber plantation.
- (2) In particular, a Code may deal with the following matters:
 - (a) harvesting plans, 15
 - (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, 20
 - (g) the circumstances in which compensation will be available in order to protect unique or special wildlife values, and matters relating to the provision of, and entitlement to, such compensation.
- (3) A Code may: 25
 - (a) apply generally to all timber plantations or to a specified class of timber plantation, and
 - (b) apply differently according to different factors, and
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body. 30

Timber Plantations (Harvest Guarantee) Bill 1995 Clause 21

Timber plantation (environment protection) harvesting codes Part 3

21 Codes not to be inconsistent with laws applying to timber plantations

- (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 timber plantations. 10

22 Adoption and amendment of Codes by regulations

- (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.

23 Compliance with Codes

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

24 Timber plantation officers

- (1) The Director-General may appoint appropriately qualified public servants (or such other qualified persons as may be prescribed by 30

the regulations) as timber plantation officers to investigate and report to the Director-General on whether a Code is being complied with.

- (2) For the purposes of exercising those functions, any such officer may, on giving reasonable notice to the owner or manager, enter an accredited timber plantation and require the owner or manager to provide such information as the officer requires. 5
- (3) The information that can be required by a timber plantation officer must relate to matters that are reasonably connected with the administration of this Act, or be information that is required for the purposes of determining whether this Act, or a Code, is being complied with. This does not extend to information of a commercially sensitive nature. 10
- (4) The owner or manager must not:
 - (a) fail without reasonable excuse to provide the information required by the officer, or 15
 - (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

25 Act binds Crown

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.

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26 Proceedings for offences

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.

27 Regulations

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(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.

15

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

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

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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 timber plantation within the meaning of the *Timber Plantations (Harvest Guarantee) Act 1995*".

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Clause 29 Timber Plantations (Harvest Guarantee) Bill 1995

Part 4 Miscellaneous

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

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 *Timber Plantations (Harvest Guarantee) Act 1995* 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 timber plantation (as defined in that Act). 5

30 Review of Act 10

- (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.
- (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. 15
- (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.

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Greens (Cohen)

LEGISLATIVE COUNCIL

TIMBER PLANTATIONS (HARVEST GUARANTEE) BILL 1995

First Print

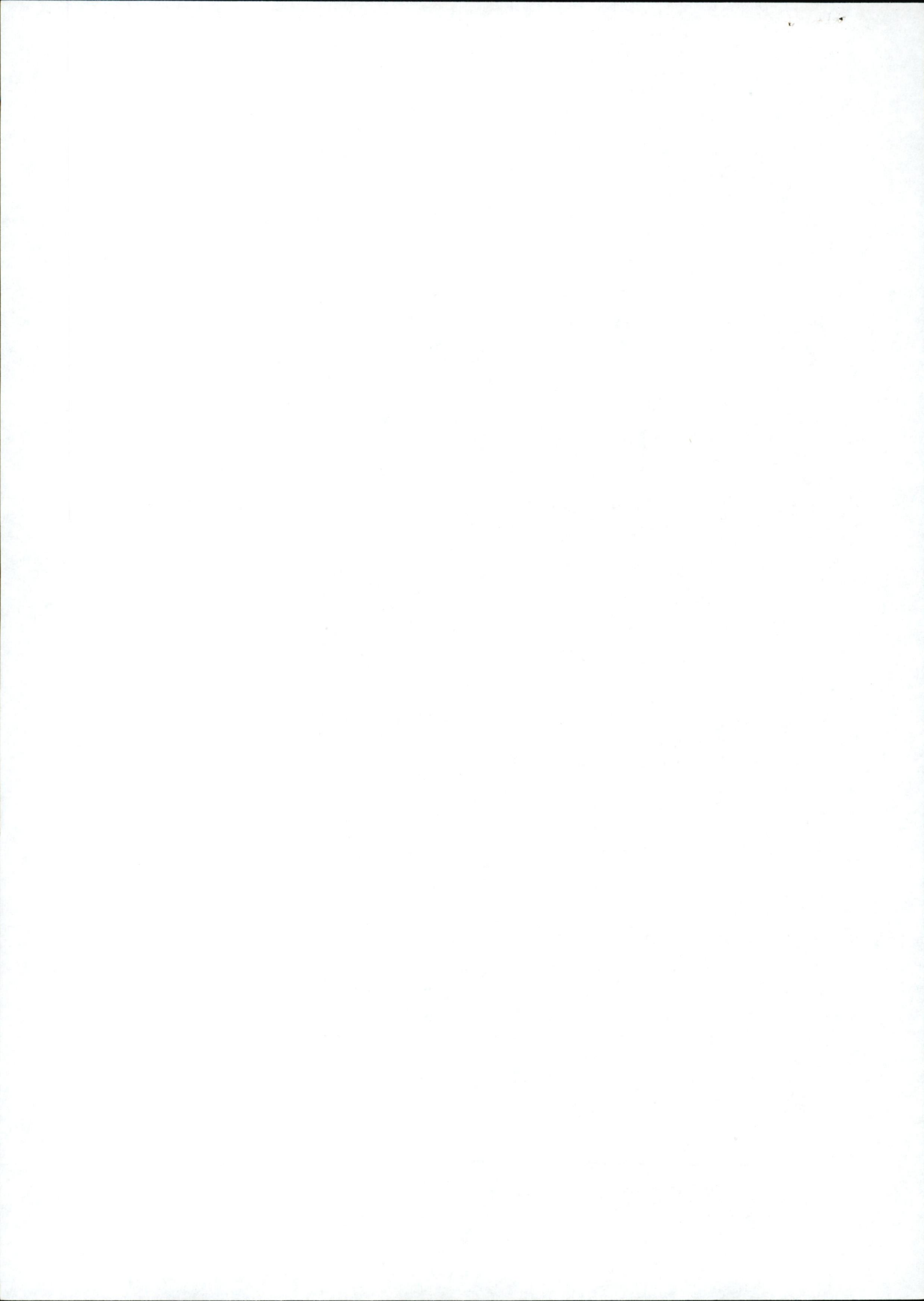
Amendments to be moved in Committee

- 1 Page 3, clause 6 (1), lines 30 to 33, and page 4, clause 6 (2), lines 1 to 3. Omit all words on those lines, insert instead:
 - (1) In this Act, *timber plantation* means an intensively managed stand of trees (comprising native or exotic species, or both) established:
 - (a) by the regular placement of seedlings or seeds, and
 - (b) on land that has been cleared before 1 December 1995.
 - (2) A natural forest is not a timber plantation for the purposes of this Act.

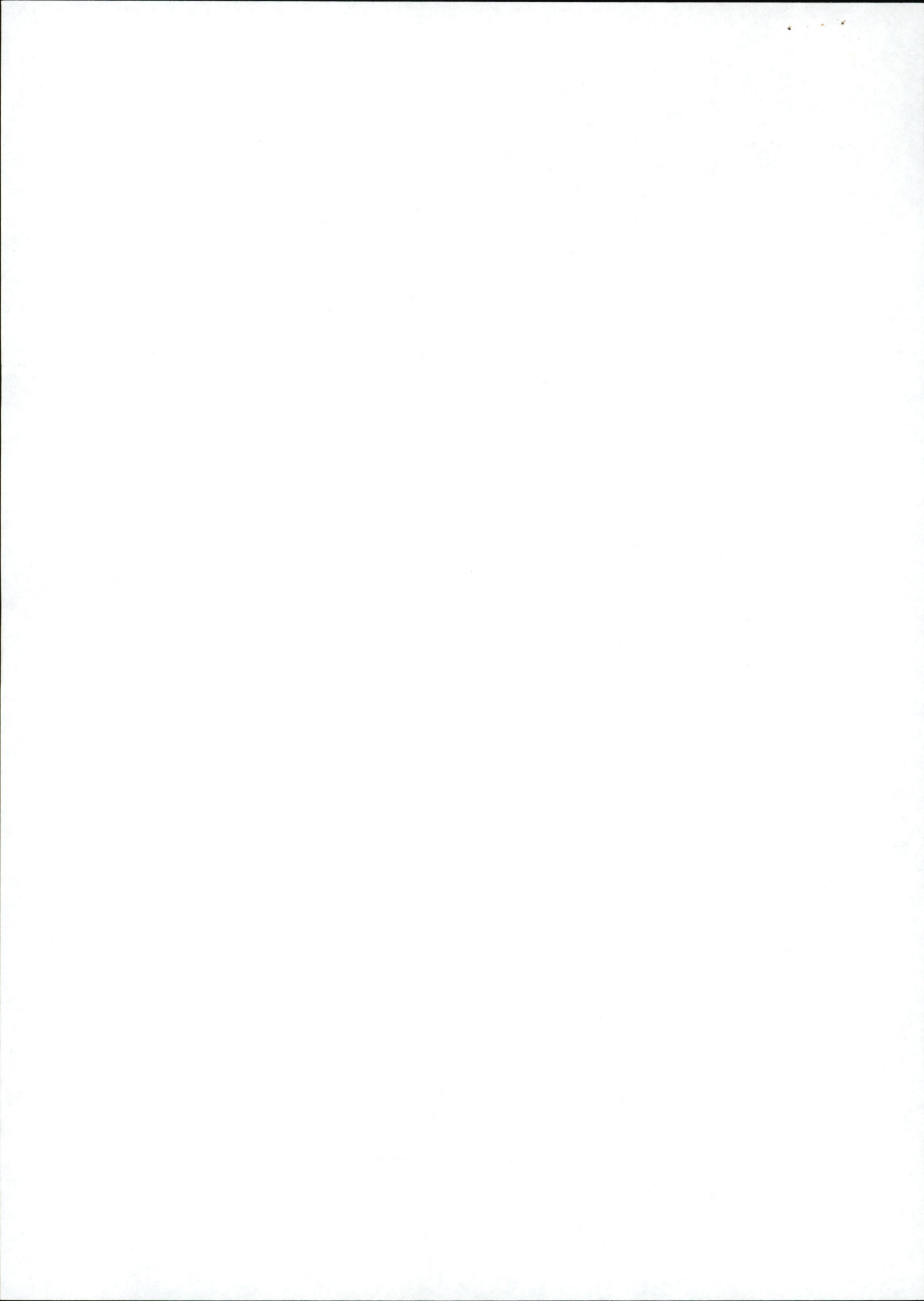
- 2 Page 7, clause 13 (3), lines 14 to 16. Omit "may refuse to accredit the timber plantation if the Director-General makes a determination that", insert instead "must refuse to accredit the timber plantation if".

- 3 Page 7, clause 13 (3). At the end of line 24, insert:
 - , or
 - (c) the owner of the timber plantation cannot prove that the plantation is established on land that was cleared before 1 December 1995.

- 4 Page 13. After line 5, insert:
 - 26 **Restraint of breaches of Act**
 - (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed as a consequence of that breach.



- (2) The Land and Environment Court has, by virtue of this section, jurisdiction to hear and dispose of such proceedings (and which are taken to be "class 4" proceedings for the purposes of the *Land and Environment Court Act 1979*).
 - (3) Proceedings under this section may be brought by a person on the person's behalf or on behalf of another person (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling body), having like or common interests.
 - (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
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Timber Plantations (Harvest Guarantee) Bill 1995

Second Reading Speech - Legislative Council

I move that this Bill be read a second time.

Mr President,

The object of this Bill is to remove impediments to the harvesting of plantation timber so as to encourage the establishment of commercial timber plantations.

In order to achieve this the Bill provides a scheme for the accreditation of timber plantations, and removes the need to obtain licences under the National Parks and Wildlife Act before harvesting timber in an accredited plantations.

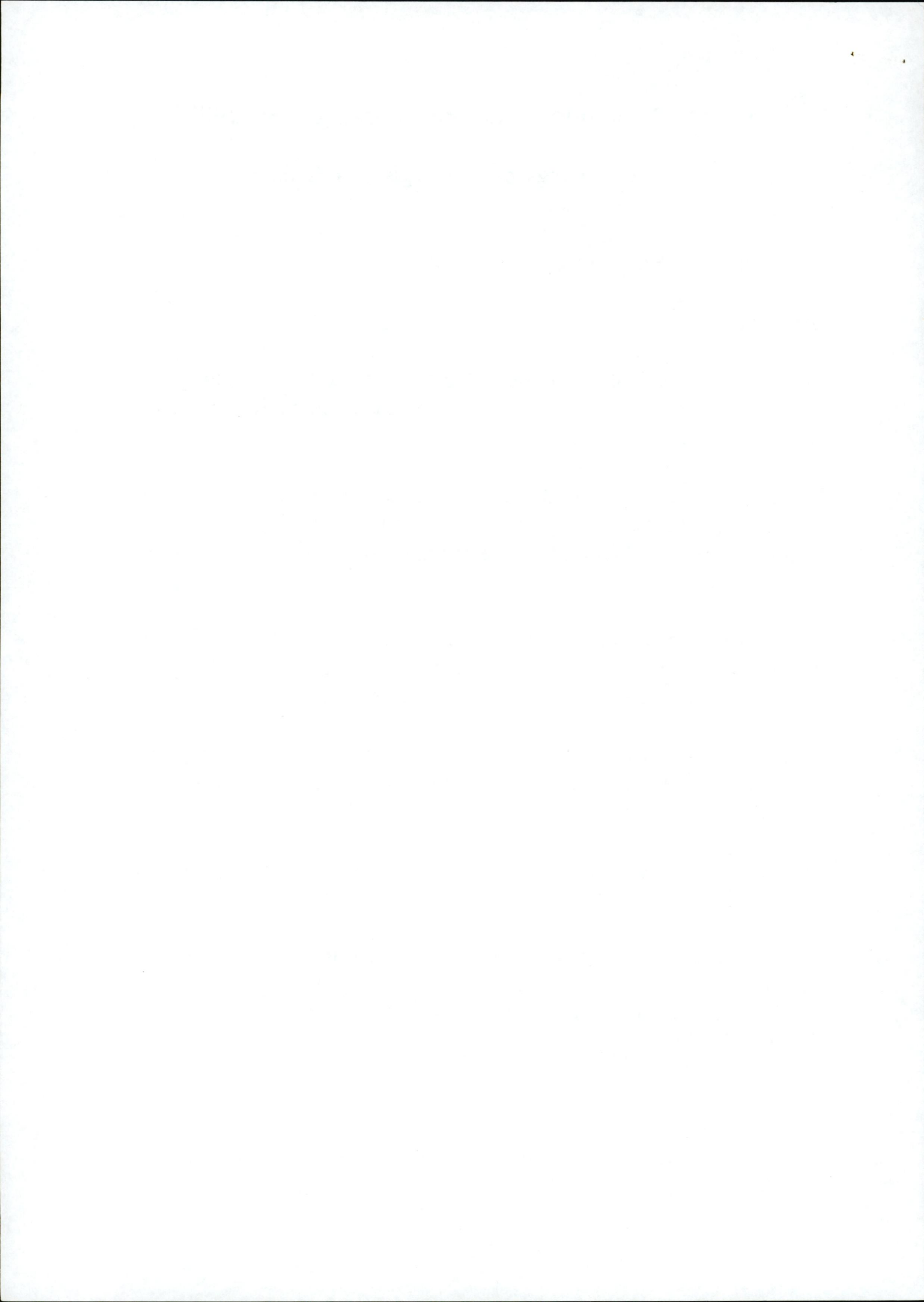
It removes the need for development consent for harvesting operations under Part 4 of the Environmental Planning and Assessment Act 1979, or environmental assessment under Part 5 of that Act.

It also provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with harvesting codes.

This Bill is a crucial legislative component in the Government's major program of nature conservation and forestry reforms.

If the Government is to realise its aim of maintaining a viable timber industry while reducing our dependence on old growth native forest logging then we must find practical ways to increase the rate of plantation establishment.

As with any other forestry reform there are trade-offs. Plantations



accredited under this legislation will be subject to a more streamlined and less onerous system of planning and environmental control. However, there are sufficient safeguards to ensure proper environmental standards.

In essence the legislation seeks to treat plantations as tree farms rather than native forests. This recognises that their purpose and function are closer to those of commercial crops.

The bottom line is this: we cannot reserve a large proportion of our native forests unless we are willing to expand our capacity to produce plantation timber, especially hardwoods. The necessary investment by both public and private sectors will only occur if we move decisively to remove the disincentives that currently inhibit landholders and investors from planting trees.

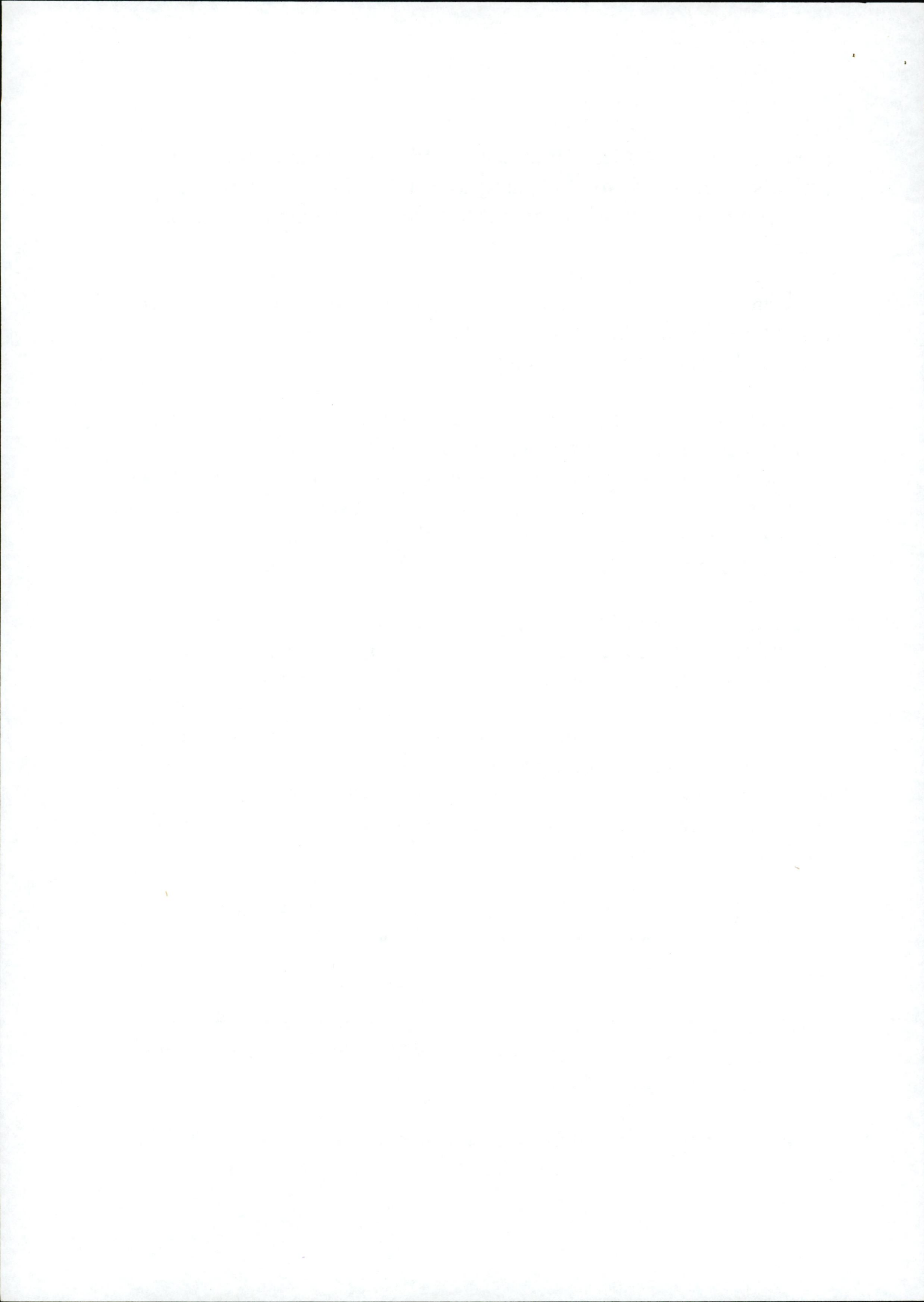
There are a number of factors that have discouraged potential investors, including the taxation treatment of plantations, uncertainty over markets, and inconsistent treatment by local government.

These have been well documented by many major studies including the Resource Assessment Commission's **Forest and Timber Enquiry Final Report** and the Industry Commission's 1993 report on **Adding Further Value to Australia's Forest Products** and the report of the National Plantations Advisory Committee.

In all of these studies one factor stands out as the key disincentive inhibiting the establishment of native hardwood plantations: lack of guarantee of harvest.

If we want people to devote land and money to growing commercial tree crops, we **must** guarantee that they will be able to harvest the crop that they have planted.

Both current and potential plantation owners are acutely aware that the



rigorous environmental laws that regulate native forestry may apply to them and could potentially be used by third parties to prevent or delay their harvest.

The law as it now stands does not discriminate between natural forests and tree farms. By inhibiting the growth of plantations the lack of legal discrimination is indirectly working against the conservation of native forests and the development of the timber industry.

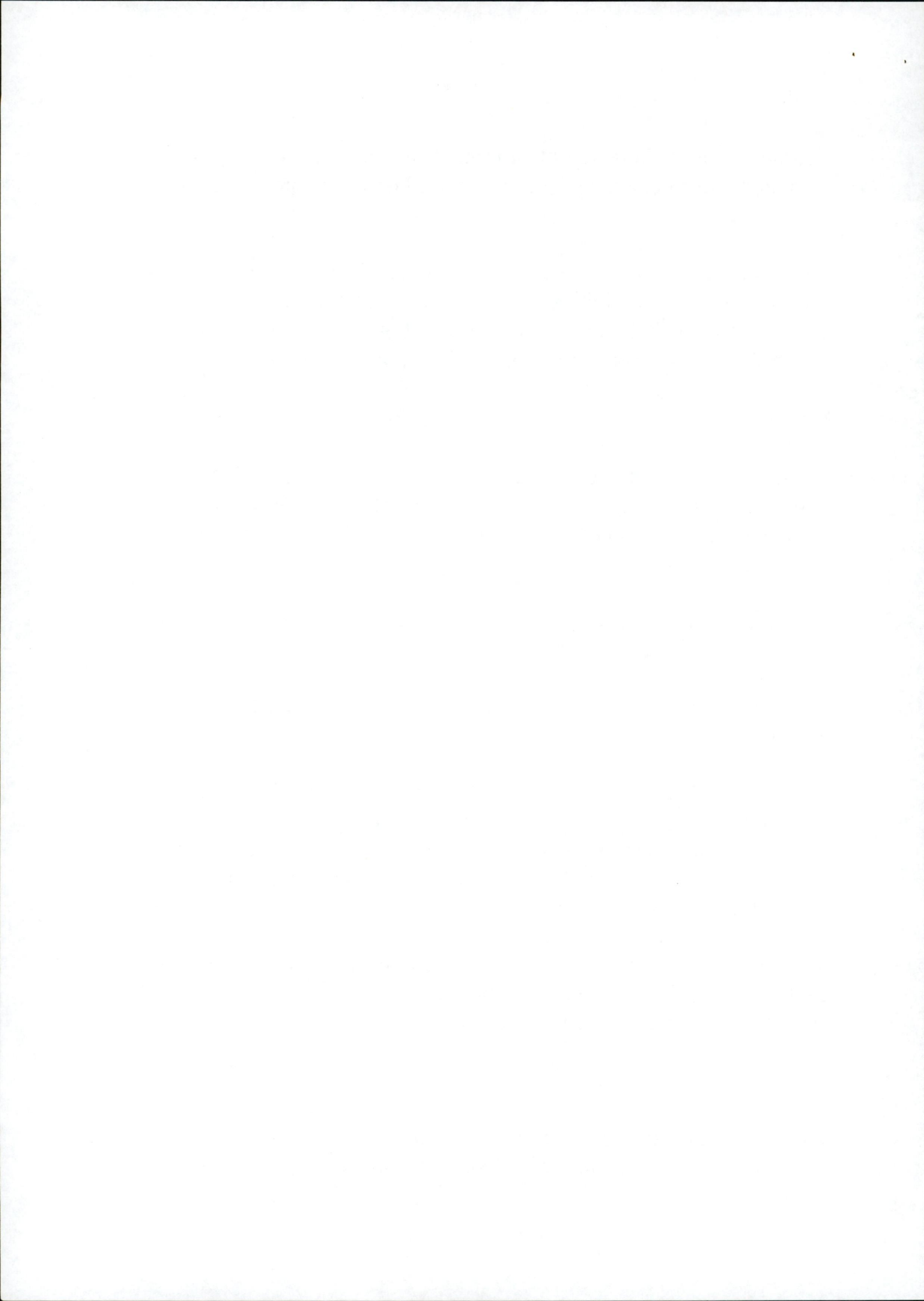
Mr President,

At this point I would like to place the Bill in the context of other initiatives that the Government has announced and show how it contributes towards the objectives we have set ourselves. These objectives can be summarised as:

- The establishment of a comprehensive, adequate and representative forest reserve system;
- Action to ensure that forestry is carried out in an ecologically sustainable manner;
- Implementation of a strategy to restructure native forest based timber industry, to reduce its dependence on high conservation value old growth forests. This will also increase its capacity to process regrowth timber and plantations, and increase the value added to hardwood logs.

In order to achieve these objectives we have already moved to reschedule logging of high conservation old growth forests and identified wilderness into regrowth forests and plantations.

We have established a nine-month interim assessment process that will identify areas of forest that should be protected pending the findings of



comprehensive regional assessments and those areas that will be available for logging.

We are now finalising details of a Forestry Structural Adjustment Package that will assist timber industry workers with retraining, redeployment, relocation or redundancy.

We have committed \$47 million over three years to allow State Forests to double its hardwood plantation establishment target to 10,000 hectares per year by 1997. We have embarked upon a major expansion of the softwood plantation estate.

We are making long-needed improvements to community consultation by establishing a high-level Forestry Advisory Council representing major stakeholders. Involvement of the public will also be a central feature of the preparation of comprehensive regional assessments of all forestry regions in the State.

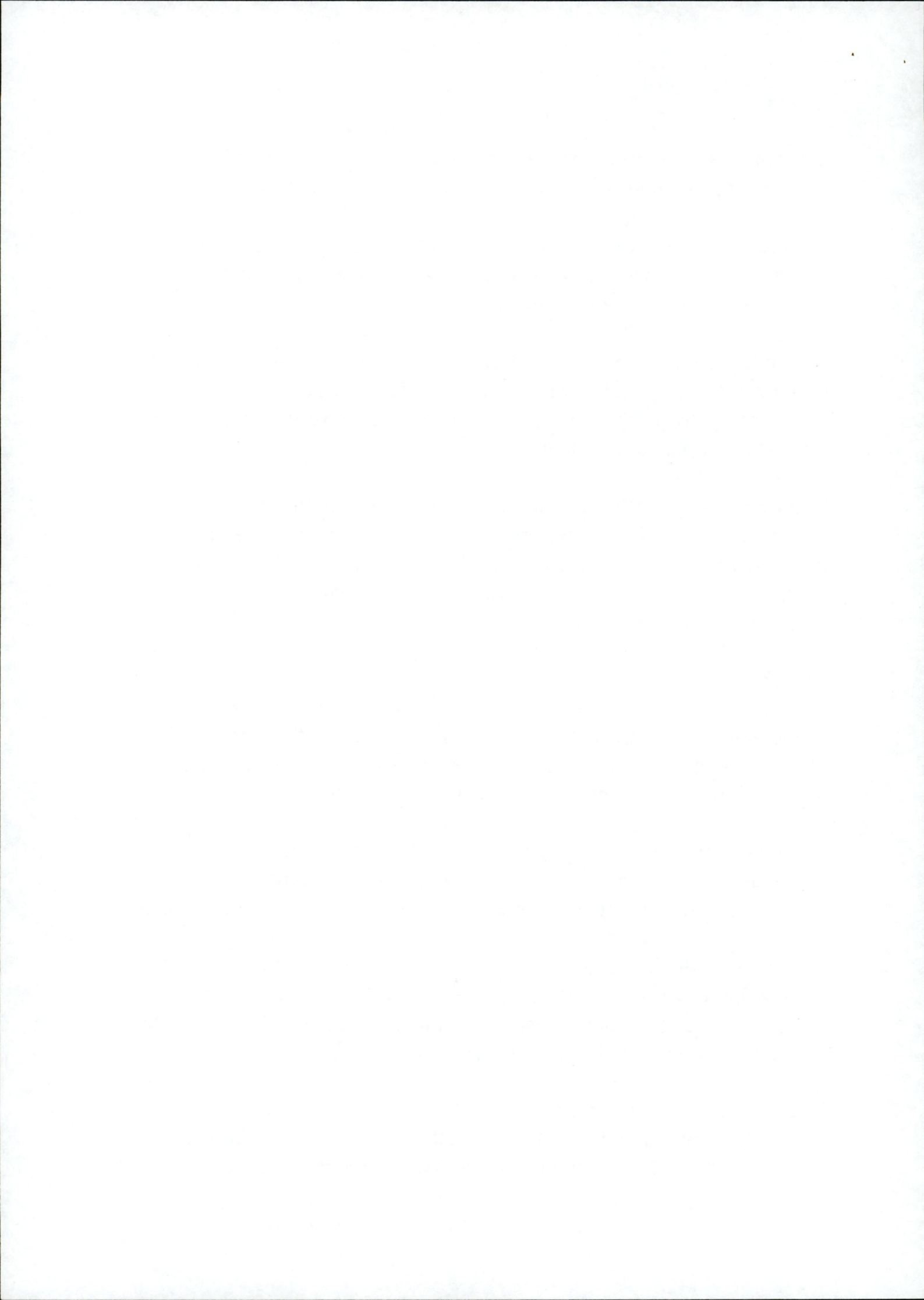
Mr President,

There is wide support for a legislative guarantee that the harvest of tree plantations should not be prevented or unreasonably constrained by laws designed to protect native forests.

There is, however some disagreement about how the the legislation should be framed. This was reflected in the 20 submissions received during the Government's community consultation process for this Bill.

An exposure draft of this Bill was forwarded to all principal stakeholder groups for comment. It was also made generally available through regional offices of State Forests. The final Bill that is before the House was prepared with the benefit of their submissions.

Not surprisingly it has not been possible to accommodate every view, but the Government has incorporated suggestions that will improve the operation of the Bill and are consistent with its general thrust.



The lack of support for the Bill by the environment movement is disappointing.

Their concerns about the supposed threat the Bill posed to native vegetation are unfounded.

Their criticism of the Bill introduced by the Opposition earlier this year was justified because that Bill had insufficient safeguards against its unintended consequence of encouraging clearing of native forest.

This criticism cannot be levelled at the Bill before us now because this Government has taken decisive action to bring all clearing of native vegetation under the control of a State Environment Planning Policy, SEPP 46.

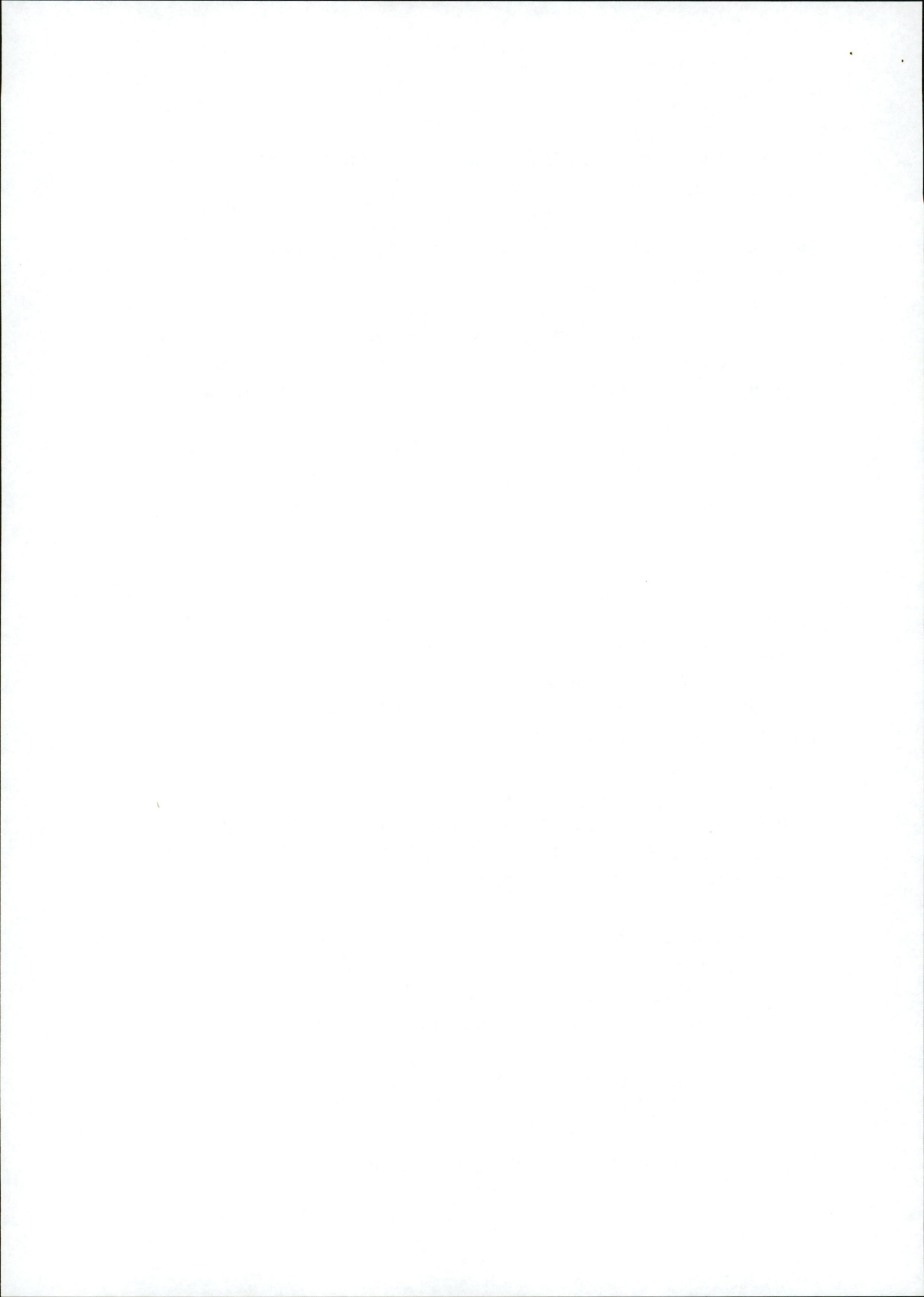
On the other side of the fence, there were criticisms of the Bill by some private growers who were offended at the very notion of State environmental controls being applied to private lands. Their submission too could not be accepted as it would have overturned the objects of the legislation: to remove impediments to harvesting plantations, and to encourage the establishment of plantations.

The Bill before us, like every other workable piece of environmental legislation represents a balance between the need to encourage economic activity to sustain our community, and the need to protect the environment on which we all depend.

From the very beginning this Government has shown that it was willing to take the difficult decisions in forestry policy. We have demonstrated that we will listen to all groups, but we will be hostages to none, and our final decision will be made in the public interest.

We are determined that plantation development in NSW will not continue to lag behind Western Australia, Victoria and Tasmania.

This is the third Bill dealing with plantation harvest security to come



before this House in the last year.

The previous Minister for Land and Water Conservation introduced the **Tree Plantations (Harvest Security) Bill** in October last year. The Labor Party supported the general thrust of the Bill, but we had some important reservations about its lack of safeguards.

We would have been willing to support the Bill only with a number of amendments. However the Bill lapsed when Parliament was prorogued.

The Member for Ballina attempted to revive the same Bill in May this year. In opposing his Bill, the Minister for Land and Water Conservation indicated that the Government would introduce its own legislation, after appropriate consultation with stakeholders.

He also indicated that we would address problems associated with establishing (as distinct from harvesting) plantations. The Government has since decided that this will be dealt with in a separate measure.

The Bill before the House shares the objectives of its predecessors, but has some important differences. A number of key definitions have been changed, and its regulatory powers will now be placed in the hands of the Department of Urban Affairs and Planning.

This Bill is the second stage of a four-stage reform process to accelerate the development of the State's commercial hardwood plantations resource. There will also be benefits for the softwood plantation industry.

The first stage, involving a doubling of State Forests' hardwood plantation establishment target was announced on 13 June, and initial funding of \$8.5 million for 1995-96 was contained in the Budget.

The third stage, is the publication of a hardwood plantation strategy for NSW. A discussion paper aimed at eliciting public and stakeholder

input into this strategy will be released in the near future.

The fourth stage will bring NSW planning and development regulations affecting the establishment of plantations into line with the requirements of the National Forest Policy Statement. The emphasis will be to achieve consistency of development requirements and "as of right" plantation establishment within designated planning zones.

The outcome of this four-stage, integrated strategy will be a progressive, incentive-driven framework for plantation establishment, linked to relevant NSW and Commonwealth policies.

This Bill's definition of plantation has been refined to avoid any possibility that native forest might be designated as plantation and so escape from proper environmental controls.

Unlike its predecessor this Bill has benefitted from proper public consultation and from other policies that have been put in place by this Government, notably SEPP 46.

A key objection to the earlier Bill was its lack of adequate safeguards to prevent the clearing of native forest for the establishment of plantations.

By creating a different environmental regime for plantations it gave an incentive to landowners to convert their natural forests into plantations. Under the last Government there were no effective clearing controls, other than on protected lands or in the Western Division.

There was also no adequate mechanism to monitor and enforce those limited controls that did exist. This has now changed completely with the gazettal of SEPP 46.

This is the first Government to introduce a complete forestry reform package that goes beyond the creation of individual national parks or nature reserves. The strategy, firmly based on the National Forest

Policy Statement, is designed to address both the nature conservation and socio-economic values of our forests.

The National Forest Policy Statement commits its signatories to establishing a comprehensive, adequate and representative reserve system. It also states that forests not required for this reserve system should continue to be managed for timber production in an ecologically sustainable manner.

It recognises that an increasing proportion of Australia's timber needs will be met from plantations and calls for continuing Government and private sector participation in plantation establishment. The relevant words in the NFPS are these:

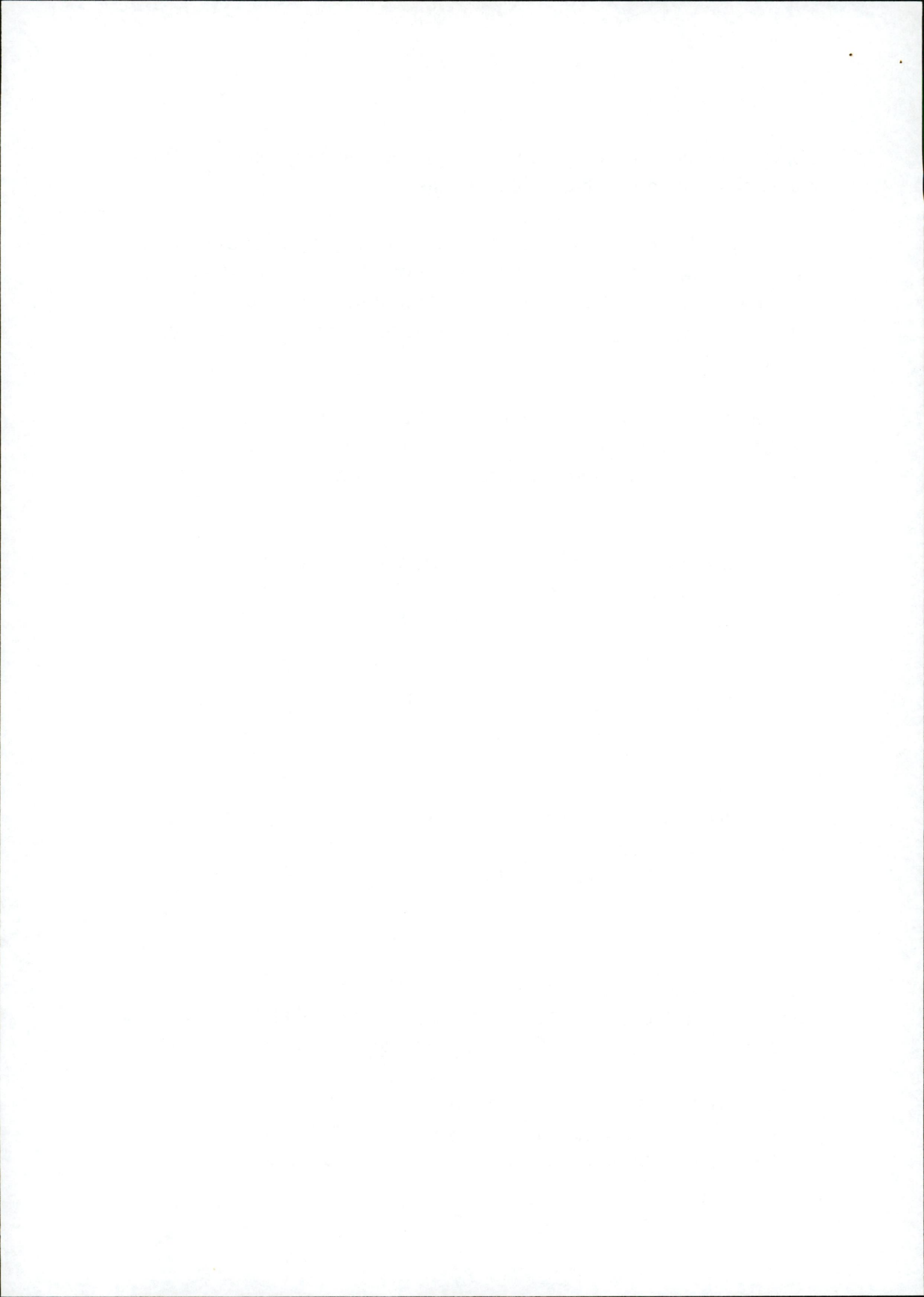
**“Plantations will become increasingly important.
... State and local governments will provide a planning
framework that facilitates the development of large-scale
industrial plantations.”**

The NFPS explicitly recognises the role farmers will play through the establishment of woodlots and agroforestry plantings.

**“There is considerable scope for the commercial growing of
wood to be extended on cleared agricultural land,
particularly in higher rainfall areas that are close to
markets.”**

Plantations are different from native forests, although they may in time come to resemble them in some respects. The principal difference is in their purpose. Native State forests are managed for multiple purposes.

Timber production in native state forests has been balanced with water conservation, wildlife, grazing, honey production, and recreation. Plantations may possess other values, but they are incidental to the



purpose of the plantation. In essence they are cellulose crops, an intensive form of agriculture.

Plantations' tendency to dominate the landscape has meant that they have been regarded and treated differently from other crops. Their superficial resemblance to and physical proximity to native forests has led to confusion about their purpose, leading to conflict over logging.

The economic reality is this: the community cannot afford to manage plantations as though they were native forests. We cannot afford to reserve a large proportion of our native forests unless we are prepared to manage some native regrowth forests and all plantations intensively for timber production.

The alternative is to import even more of our timber, and Australia is already running a \$2 billion trade deficit in forest products.

If we as a community want investment in new plantations we must create enough certainty to justify the investment.

Uncertainty about a plantation owner's ability to harvest will kill off investment. There is no doubt about this. If we want investment, if we want an expansion of our plantation estate, if we want to reduce our dependence on high conservation value old growth forests we must restore certainty by providing a reasonable guarantee of harvest.

Mr President,

I now come to the details of the Bill.

Clause 4 makes it clear that the proposed Act applies to existing timber plantations as well as to new timber plantations.

Clause 5 contains definitions. Code refers to a timber plantation

(environmental protection) code in force under the proposed Act. Director General refers to the Director General of the Department of Urban Affairs and Planning.

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

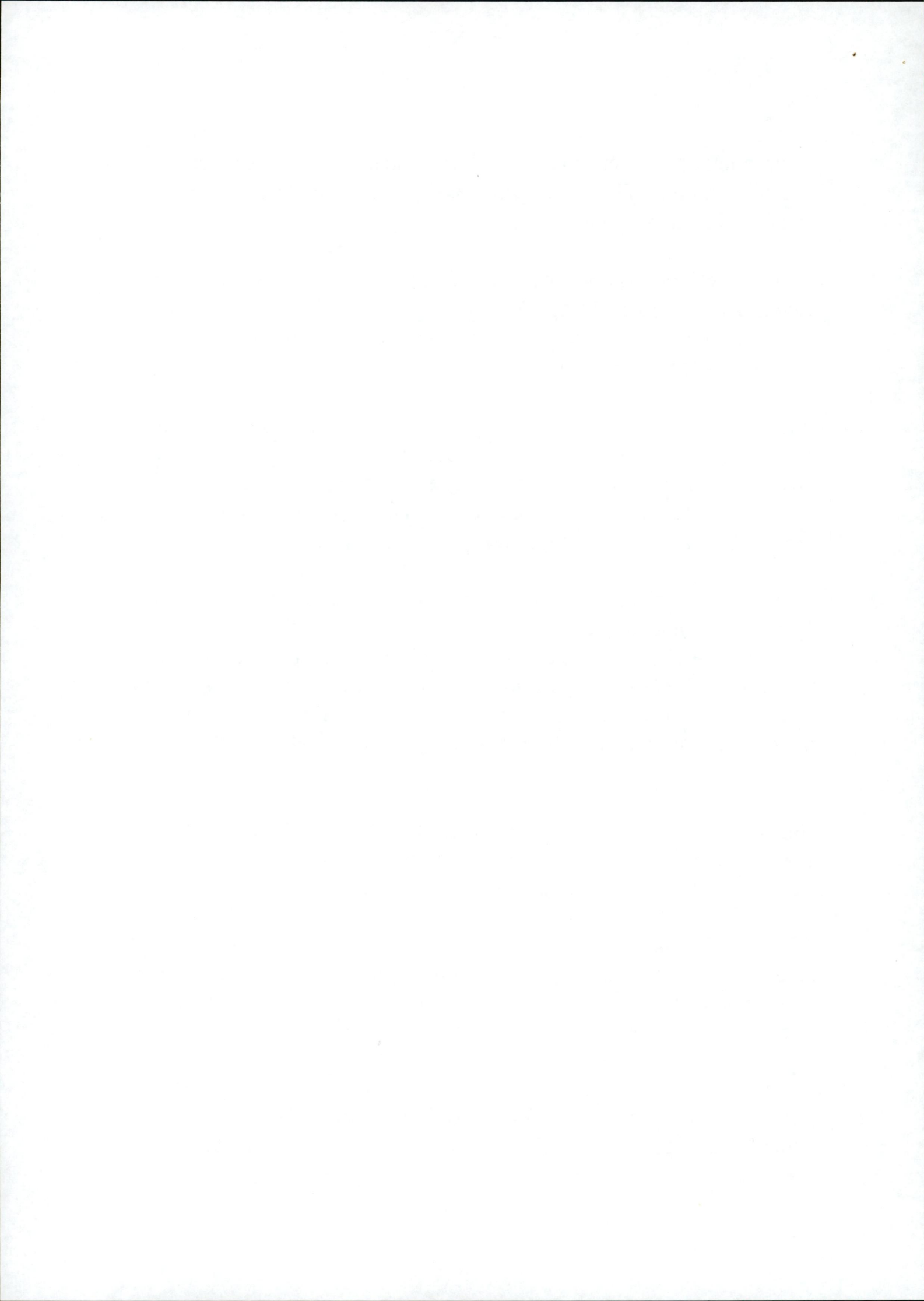
Clause 7 defines harvesting operations as the cutting and removal of timber for the purpose of timber production. The term does not include activities carried out for the purpose of establishing a timber plantation (eg clearing of natural forest), but it does include the provision of access roads, silvicultural thinning and weed control.

Clause 8 provides that harvesting operations on an accredited timber 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. It 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 timber 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 the Code (or Codes) applying to the timber plantations. These offence provisions relate to the taking or killing of protected and endangered fauna.

Under current law a person harvesting timber must obtain a general licence from the National Parks and Wildlife Service. Recent decisions by the Land and Environment Court have made it clear that “take”



includes significant modification of animal habitat.

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

Clause 10 provides that a local council may not give an order under the Local Government Act 1993 to prevent harvesting operations on an accredited timber plantation.

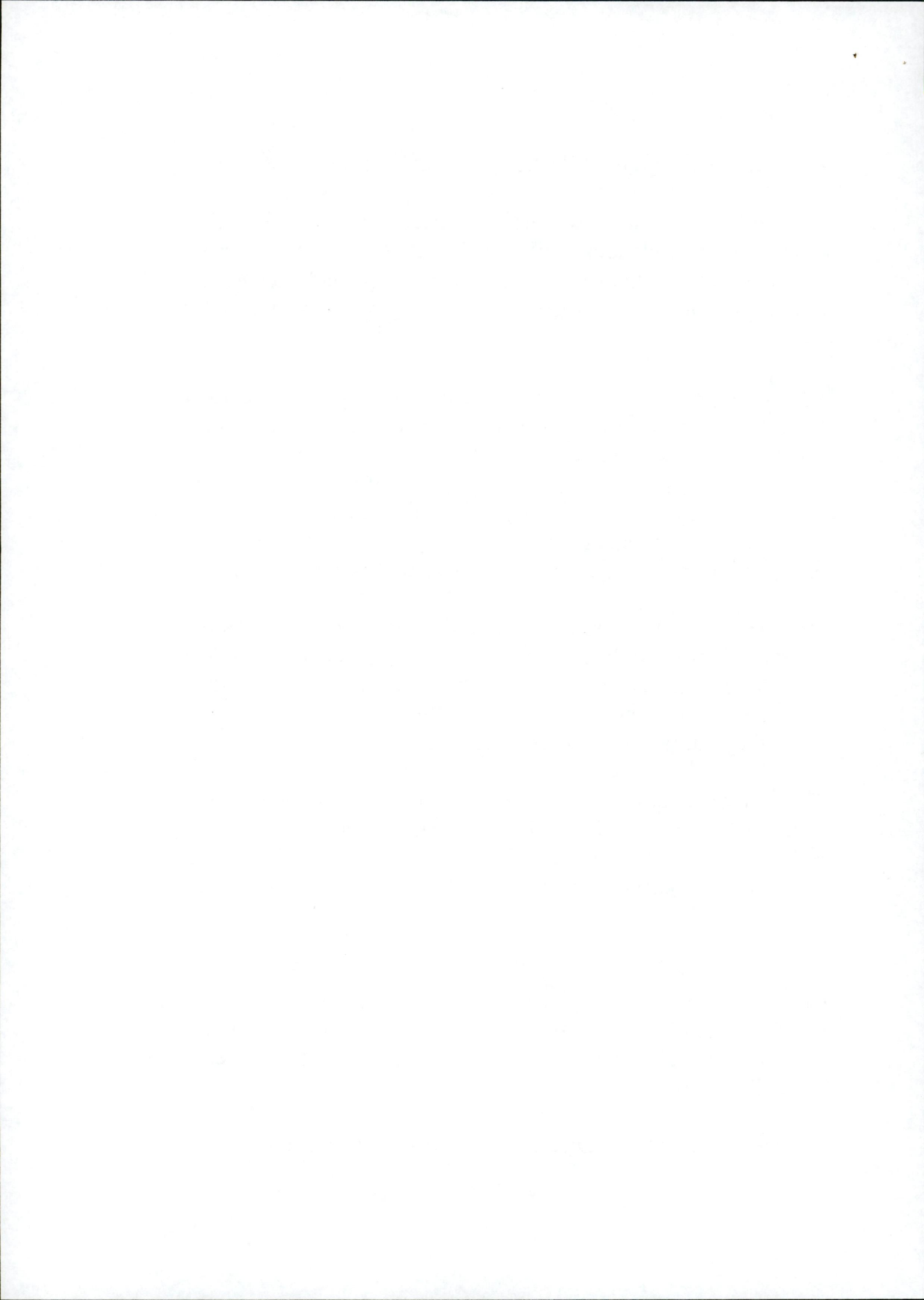
Clause 11 provides that harvesting operations on an accredited timber plantation are to be subject to the Code applying to the timber plantation, and are subject to other relevant laws.

Clauses 12 to 18 deal with the accreditation of timber plantations. They provide for 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 plantations.

The accreditation of a timber plantation may be cancelled if the Director-General is satisfied that there has been a significant breach of a Code applying to the timber plantation, or if the land is no longer a timber plantation. The accreditation of a plantation will not be affected by it being felled and replanted.

The Director-General may refuse to accredit a timber plantation if the area has been cleared of native vegetation without the consent of the Director-General of the Department of Land and Water Conservation under SEPP 46.

Clause 19 requires the Director-General to prepare a draft Code, which



must be approved by the Minister for Land and Water Conservation before being finalised.

Clause 20 provides for an environmental protection Code to regulate harvesting operations on accredited timber plantations. A code may deal with such matters as harvesting plans, soil erosion, native animals and plants.

It may also deal with Aboriginal relics and places and specify the circumstances in which compensation may be available to protect unique or special wildlife values.

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

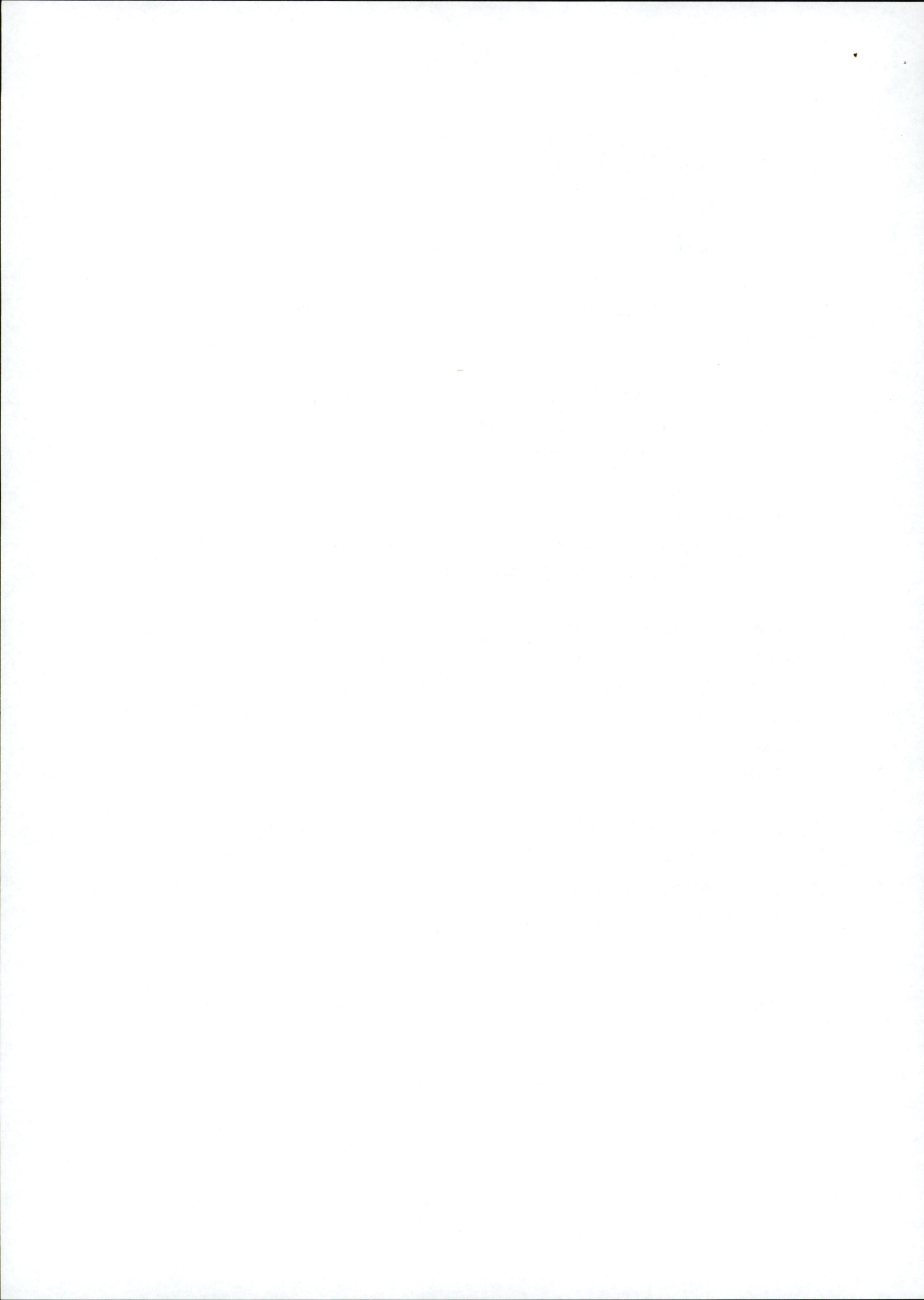
Clause 22 requires a Code to be adopted by regulation before it comes into force. Any such regulation will need to comply with the requirements of the **Subordinate Legislation Act 1989**. For example the proposed regulation must be advertised, consultation must take place and a regulatory impact statement must be prepared. Stakeholder input into the Code is assured.

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

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

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 timber plantation.

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

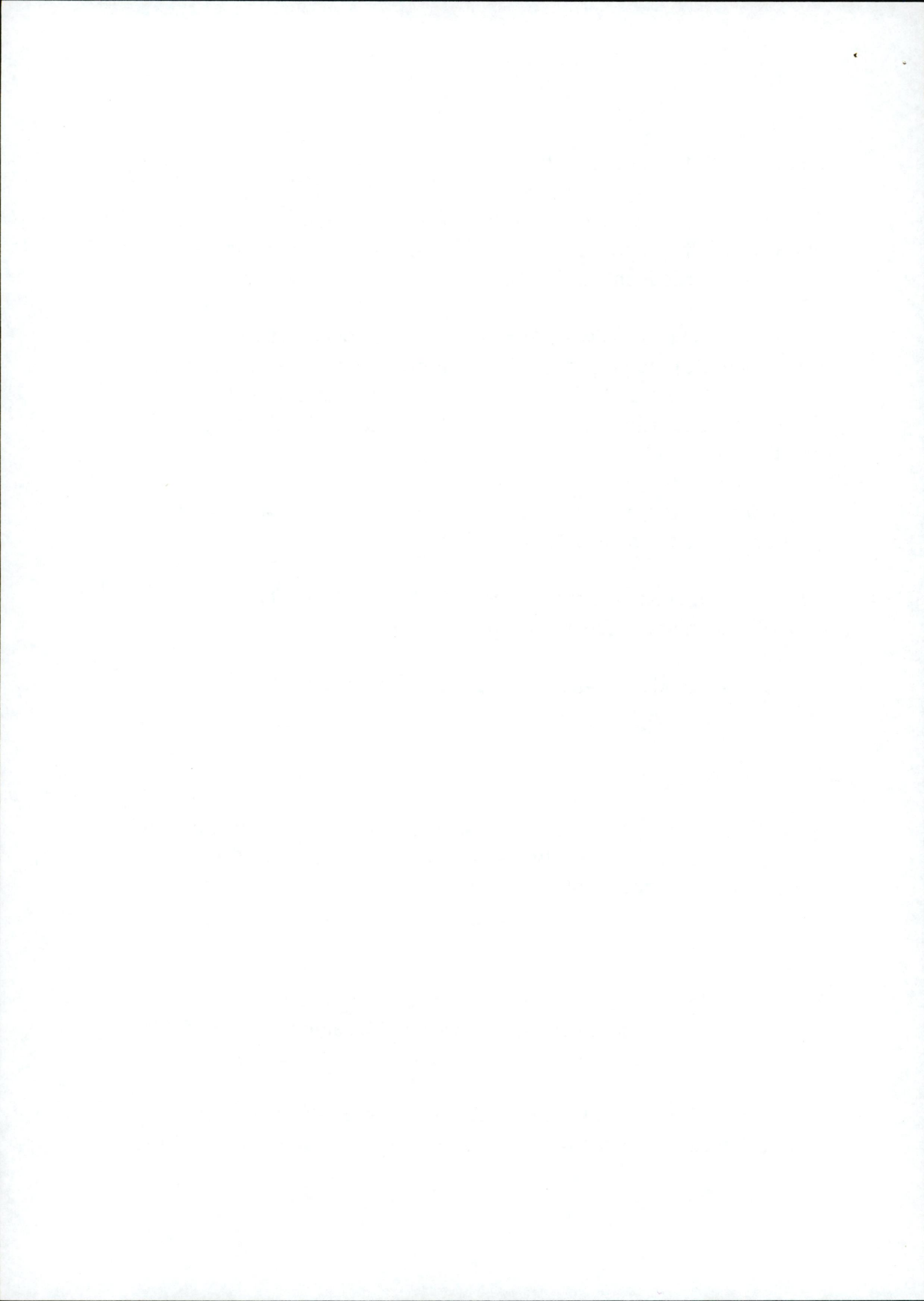
Clause 30 provides for the proposed Act to be reviewed by the Minister after 5 years.

Mr President,

This Bill has been prepared as an integral element of the Government's forestry strategy. Its passage by this Parliament is essential if we are to increase our reliance on plantation timber.

The Bill's objective is essentially reasonable: to guarantee that people who plant trees for commercial purposes will be able to harvest those trees.

It does so by discriminating between natural forests and artificial forests, based on the demonstrable truth that these forests **are** different



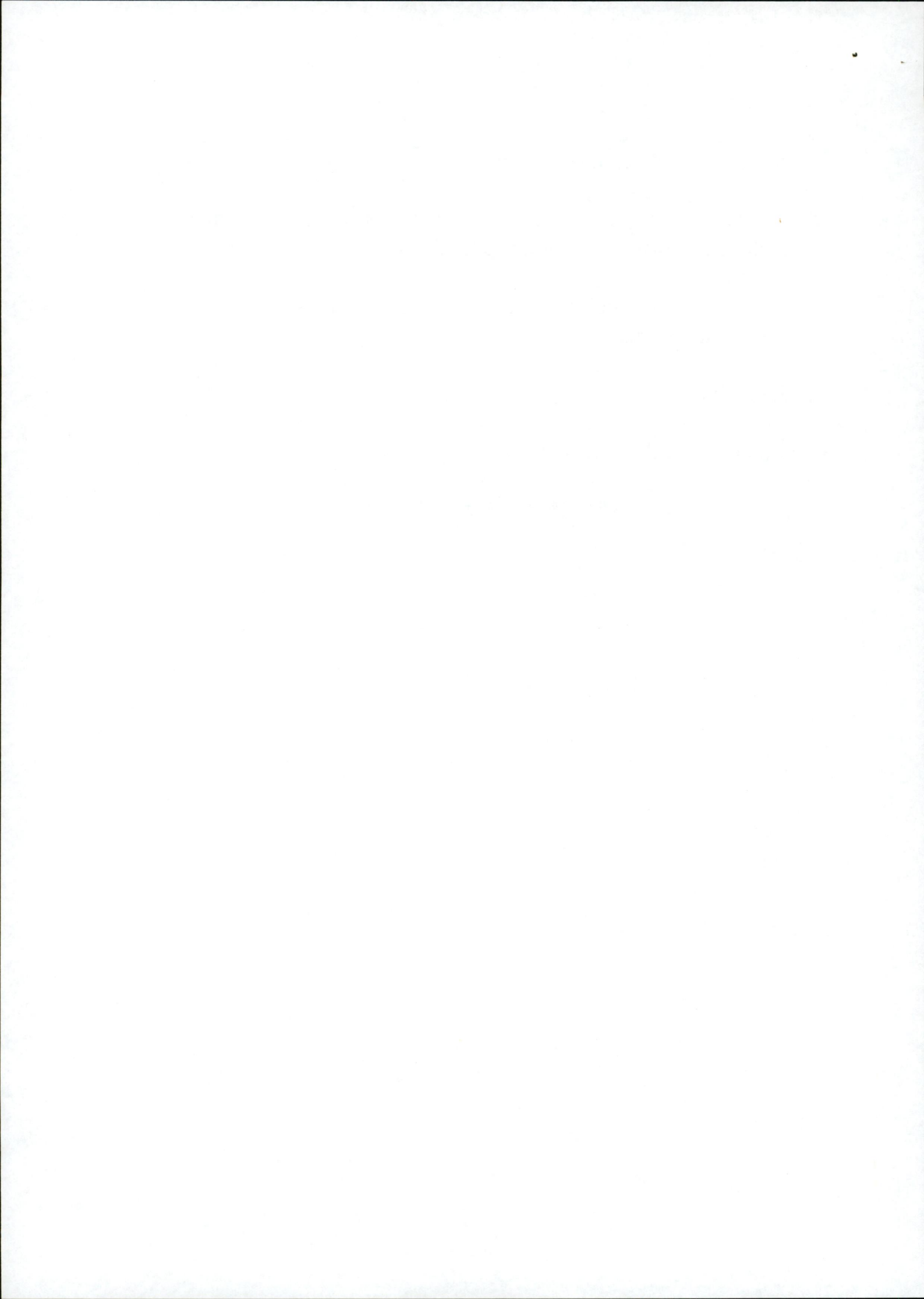
and have different purposes.

In preparing this legislation the Government has consulted widely and has include adequate environmental and administrative safeguards.

It is a balanced and moderate measure which deserves the support of every member of this House.

Mr President,

I commend the Bill to the House.





New South Wales

Timber Plantations (Harvest Guarantee) Act 1995 No 92

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New South Wales

Timber Plantations (Harvest Guarantee) Act 1995 No 92

Act No 92, 1995

An Act relating to the harvesting of timber plantations. [Assented to 21
December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Timber Plantations (Harvest Guarantee) Act 1995*.

2 Commencement

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

3 Object of Act

- (1) The object of this Act is to remove impediments to the harvesting of plantation timber (that is, trees that have been planted for the purpose of timber production) so as to encourage the establishment of commercial timber plantations.
- (2) In order to achieve this object, this Act:
 - (a) provides a scheme for the accreditation of timber plantations, and
 - (b) removes the need to obtain licences under the NPW Act in connection with the carrying out of harvesting operations on accredited timber 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 timber plantations, and
 - (d) provides for the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes.

4 Application of Act

- (1) This Act applies to timber 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.

5 Definitions

In this Act:

accredited timber plantation means a timber plantation accredited for the time being under this Act.

Code means a timber plantation (environment protection) harvesting code in force under this Act.

Crown timber land has the same meaning as in the *Forestry Act 1916*.

Director-General means the Director-General of the Department of Urban Affairs and Planning.

EPA Act means the *Environmental Planning and Assessment Act 1979*.

harvesting operations is defined in section 7.

manager of a timber plantation means the person in charge of harvesting operations on the timber plantation.

NPW Act means the *National Parks and Wildlife Act 1974*.

owner of a timber plantation includes:

- (a) a lessee of the land comprising the timber plantation, or
- (b) in the case of a timber plantation which is a State Forest or other Crown timber land under the management of the Forestry Commission—the Forestry Commission, or
- (c) a person who has a forestry right (within the meaning of section 87A of the *Conveyancing Act 1919*) in relation to the timber plantation.

timber plantation is defined in section 6.

6 Definition of timber plantation

- (1) In this Act, **timber plantation** means an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted (whether by sowing seed or otherwise) for the purpose of timber production.

- (2) To avoid doubt, a natural forest is not a timber plantation. However, an area is not a natural forest merely because it contains some native trees that have not been planted.
- (3) A timber 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 timber plantation can comprise more than one area of land if those areas are under the same ownership or management.

7 Definition of harvesting operations

- (1) In this Act, *harvesting operations* means the cutting and removal of timber for the purpose of timber production, and includes:
 - (a) the provision of access roads after establishment of a timber plantation to enable or assist the cutting and removal of timber, or
 - (b) the carrying out of such activities as are necessary for the efficient cutting and removal of timber, or
 - (c) the carrying out of activities relating to the on-going management of the timber plantation (eg silvicultural thinning, weed control and similar maintenance operations).
- (2) An activity carried out for the purpose of establishing a timber plantation (eg, the clearing of natural forests and the use of pesticides, herbicides and fertilisers in establishing a timber plantation) is not, for the purposes of this Act, an activity constituting harvesting operations.

Part 2 Timber harvest guarantee

Division 1 Harvesting operations on accredited timber plantations

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

- (1) Development consent under Part 4 of the EPA Act is not required for harvesting operations on an accredited timber plantation.
- (2) Part 5 of the EPA Act does not apply in respect of the carrying out of harvesting operations on an accredited timber plantation (including the giving of any approval to carry out those operations).
- (3) Harvesting operations carried out on an accredited timber 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.

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

- (1) A person carrying out harvesting operations on an accredited timber plantation is exempt from the provisions of sections 98 (2) and 99 (1) of the NPW Act (relating to protected and endangered fauna) and section 117 (1) of that Act (relating to native plants).
- (2) Subsection (1) exempts the person only:
 - (a) if the harvesting operations are carried out in accordance with the Code (or Codes) applying to the timber plantation, and
 - (b) in relation to things that are reasonably connected with the carrying out of the harvesting operations.
- (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 timber 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 timber plantation.
- (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 timber 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 specified in a Code applying to the timber plantation concerned.

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

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 timber plantation.

11 Harvesting operations subject to Codes and other laws

Harvesting operations on an accredited timber plantation are subject to the Code (or Codes) applying to the timber plantation and, except as provided by this Act, are subject to the provisions of any other law that relate to the management or harvesting of timber.

Division 2 Accreditation of timber plantations

12 Application for accreditation

- (1) The owner or manager of a timber plantation may, at any time after the timber plantation is established, apply to the Director-General for the accreditation of the timber plantation under this Part.
- (2) An application for accreditation must:
 - (a) be in such form, and be accompanied by such fee, as the Director-General may determine, and

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

13 Determination of applications for accreditation

- (1) Within 60 days after receiving an application for accreditation, the Director-General is to determine the application:
 - (a) by accrediting the timber plantation concerned, or
 - (b) by refusing to accredit the timber plantation.
- (2) Written notice of the Director-General's decision is to be given to the owner or manager of the timber plantation as soon as practicable after the decision is made.
- (3) Without limiting subsection (1), the Director-General may refuse to accredit the timber plantation if the Director-General makes a determination that:
 - (a) it has not been established in accordance with the requirements of the EPA Act and any other relevant law, or
 - (b) it has been established in contravention of State Environmental Planning Policy No. 46—Protection and Management of Native Vegetation (or any similar law dealing with native vegetation management and control) if that Policy (or similar law) applies to the timber plantation.
- (4) To avoid doubt, the accreditation of a timber 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.

14 Certificate of accreditation

- (1) The Director-General is to issue a certificate to the owner or manager of each timber 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.

15 Duration of accreditation

- (1) The accreditation of a timber plantation remains in force unless it is cancelled by the Director-General.
- (2) Any change in the ownership or management of an accredited timber plantation does not affect the accreditation of the timber plantation.
- (3) The harvesting of an accredited timber plantation, or the removal or replanting of trees from or on the plantation, does not, subject to section 16, affect the accreditation of the timber plantation.

16 Cancellation of accreditation

- (1) The accreditation of a timber plantation (or any part of the timber plantation) may be cancelled by the Director-General at the request of the owner of the timber plantation or if the Director-General is satisfied:
 - (a) that there has been a significant breach of the provisions of the Code (or Codes) applying to the timber plantation and that such a breach has not been remedied, or
 - (b) that the timber plantation has been abandoned, or
 - (c) that harvesting operations have been completed and the area of land concerned is not intended to be continued as a timber plantation.
- (2) Cancellation of accreditation takes effect when a written notice by the Director-General of the cancellation is served on the owner of the timber plantation.
- (3) Nothing in this section prevents the accreditation of a timber plantation that is re-established on the land.

17 Review by Minister

- (1) The owner or manager of a timber plantation may, in writing, request the Minister to review a decision of the Director-General:
 - (a) not to accredit the timber plantation, or
 - (b) to cancel the accreditation of the timber 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 timber plantation.
- (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 timber plantation, or
 - (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.

18 Notification of accredited timber plantations

- (1) The Director-General must, when a timber plantation is accredited, cause a notice to be published in the Gazette of the accreditation. Such a notice must identify the timber plantation and include details describing its location.
- (2) The Director-General is to maintain a register of accredited timber plantations.
- (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 Urban Affairs and Planning during ordinary office hours.

Part 3 Timber plantation (environment protection) harvesting codes

19 Preparation of Codes

- (1) A draft timber 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.

20 Matters to be regulated by Codes

- (1) A Code may, for the purposes of protecting the environment, regulate the carrying out of harvesting operations on an accredited timber plantation.
- (2) In particular, a Code may deal with the following matters:
 - (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,
 - (g) the circumstances in which compensation will be available in order to protect unique or special wildlife values, and matters relating to the provision of, and entitlement to, such compensation.
- (3) A Code may:
 - (a) apply generally to all timber plantations or to a specified class of timber plantation, and
 - (b) apply differently according to different factors, and
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

21 Codes not to be inconsistent with laws applying to timber plantations

- (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.
- (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 timber plantations.

22 Adoption and amendment of Codes by regulations

- (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
 - (c) ceases to have effect if the regulation that adopts it is repealed.
- (3) A Code may be amended by the regulations.

23 Compliance with Codes

- (1) The owner and manager of an accredited timber plantation must ensure that harvesting operations on the timber plantation are carried out in accordance with any Code applying to the timber plantation.
- (2) In the case of an accredited timber 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).

24 Timber plantation officers

- (1) The Director-General may appoint appropriately qualified public servants (or such other qualified persons as may be prescribed by

the regulations) as timber plantation officers to investigate and report to the Director-General on whether a Code is being complied with.

- (2) For the purposes of exercising those functions, any such officer may, on giving reasonable notice to the owner or manager, enter an accredited timber plantation and require the owner or manager to provide such information as the officer requires.
- (3) The information that can be required by a timber plantation officer must relate to matters that are reasonably connected with the administration of this Act, or be information that is required for the purposes of determining whether this Act, or a Code, is being complied with. This does not extend to information of a commercially sensitive nature.
- (4) 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

25 Act binds Crown

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.

26 Proceedings for offences

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.

27 Regulations

- (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.

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

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 timber plantation within the meaning of the *Timber Plantations (Harvest Guarantee) Act 1995*".

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

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 *Timber Plantations (Harvest Guarantee) Act 1995* 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 timber plantation (as defined in that Act).

30 Review of Act

- (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.
- (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.

[Minister's second reading speech made in—
Legislative Assembly on 7 December 1995
Legislative Council on 15 December 1995]

BY AUTHORITY