



New South Wales

Forestry Bill 2012

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to constitute the Forestry Corporation of New South Wales (*the Corporation*) as a statutory State owned corporation and to confer on it functions relating to the management of the State's timber resources,
- (b) to authorise the Corporation to carry out forestry operations in State forests and on other Crown-timber land,
- (c) to continue without any change the current system of integrated approvals for forestry operations,
- (d) to provide for the use and management of State forests for non-forestry purposes,
- (e) to dissolve the Forestry Commission and to provide for the transfer of its assets, rights and liabilities to the Corporation,
- (f) to repeal the *Forestry Act 1916* and the *Timber Marketing Act 1977*,
- (g) to make consequential and minor amendments to other legislation.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines words and expressions used in the proposed Act. *Forestry operations* is defined to mean logging operations, the harvesting of forest products, on-going forestry management operations or ancillary road construction.

Clause 4 defines the term *plantation* as an area of Crown-timber land, or an area of land owned by the Corporation, 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, for the protection of the environment or for any other purpose (but not for the production of food or produce other than timber).

Part 2 Forestry Corporation

Division 1 Constitution and management of Forestry Corporation

Clause 5 constitutes a corporation with the corporate name of the Forestry Corporation of New South Wales. Schedule 4 to the proposed Act amends the *State Owned Corporations Act 1989* (the *SOC Act*) to make the Corporation a statutory State owned corporation.

Clause 6 provides that the Corporation is to have a board of directors.

Clause 7 provides for the chief executive officer of the Corporation to be appointed by the board but only with the approval of the voting shareholders of the Corporation.

Clause 8 provides for the appointment of an acting chief executive officer during the illness or absence of the chief executive officer.

Clause 9 makes it clear that the provisions of the proposed Act are in addition to and do not derogate from the provisions of the SOC Act.

Division 2 Objectives and functions of Forestry Corporation

Clause 10 set out the objectives of the Corporation which include being an efficient and environmentally sustainable supplier of timber from Crown-timber land and land owned by it or otherwise under its control or management.

Clause 11 sets out the functions of the Corporation, which include to carry out or authorise the carrying out of forestry operations in accordance with good forestry practice on Crown-timber land or land owned by the Corporation.

Clause 12 provides that the Corporation is the owner of the trees in any plantation that is or is part of a State forest.

Part 3 State forests and flora reserves

Division 1 Dedication of Crown land

Clause 13 provides for the Minister to classify Crown land for the purpose of selecting land that is suitable and desirable in the public interest to be dedicated as State forest. The proposed section specifies the matters that the Minister is to take into account in classifying Crown land for that purpose.

Clause 14 provides that the Governor may dedicate as State forest any Crown land that is not the subject of a tenure from the Crown. The consequence of land being dedicated as State forest is that it cannot be dealt with otherwise than as provided by the proposed Act.

Clause 15 provides that the dedication of land as State forest cannot be altered or revoked unless Parliament has approved the alteration or revocation.

Clause 16 provides for the Governor to dedicate certain Crown land, or land that is a State forest, as a flora reserve for the preservation of native flora. Any such dedication cannot be revoked except by an Act of Parliament.

Clause 17 requires the Minister to continuously review the dedication of land as State forests to determine if the land should continue to be so dedicated.

Division 2 Special management zones

Clause 18 provides for the Minister to declare an area of State forest of special conservation value to be a special management zone. The object of the declaration is to protect the special conservation value of the land. Any such declaration cannot be revoked except by an Act of Parliament.

Clause 19 sets out the consequences of land being declared to be a special management zone which include that general purpose logging is prohibited. The Minister may also prohibit particular kinds of forestry operations in special management zones or may impose conditions on any forestry operations in such zones.

Clause 20 provides that the Governor may revoke the declaration of land as a special management zone.

Division 3 Management plans and working plans

Clause 21 requires the Corporation to prepare and adopt plans for its management of State forests.

Clause 22 prevents the Corporation from adopting a management plan for a State forest that is wholly or partly located in the area to which an integrated forestry operations approval applies unless the management plan is in accordance with the terms of that approval. Any inconsistent provisions of a management plan are overridden by the approval.

Clause 23 requires a draft management plan to be published, and for information to be provided about it, before the final management plan is adopted.

Clause 24 requires the Corporation to review any management plan for a State forest after any review and amendment of any integrated forestry operations approval that applies to the same land to ensure they remain consistent. The Corporation may also review a management plan at any other time it considers appropriate.

Clause 25 requires the Corporation to prepare a detailed written scheme of the operations to be carried out on or in relation to each flora reserve. A separate working scheme must be prepared for each reserve, with the object of preserving the native flora of the flora reserve.

Division 4 Acquisition and sale of land

Clause 26 empowers the Minister to acquire land (whether by agreement or compulsory process) for the purposes of a State forest, for providing access to a State forest or for any purpose necessary for or incidental to the management or control of a State forest. If the land is compulsorily acquired, the *Land Acquisition (Just Terms Compensation) Act 1991* applies to the acquisition.

Clause 27 provides for the Minister to compulsorily acquire land dedicated as State forest for the purpose of giving effect to a land exchange agreement. Such an acquisition would revoke any dedication of the land as State forest.

Clause 28 provides for the Minister to acquire land (whether by agreement or compulsory process) for the purpose of a future lease grant or dealing.

Clause 29 authorises the Minister to sell acquired land in certain circumstances.

Clause 30 provides that any acquisition of land under the proposed Division is taken to be for an authorised work for the purposes of the *Public Works Act 1912*. The Minister is taken to be the Constructing Authority under that Act.

Division 5 Miscellaneous

Clause 31 authorises the Minister to enter into an agreement for the sale or other disposal of land dedicated as State forest, subject to the sale of other land (or an interest in other land) to the Crown for the purpose of a State forest or for access to a State forest.

Clause 32 provides for revocation of the dedication of a small area of land as State forest if the Minister is of the opinion that the land should be made available for a public work or authorised work or for a public purpose.

Clause 33 prohibits the granting of a lease to occupy land within a State forest or flora reserve except in accordance with the proposed Act.

Clause 34 provides for the Minister to grant, and accept the surrender of, easements and rights of way through or over land within a State forest or flora reserve.

Clause 35 specifies the ways in which land within a State forest or flora reserve is subject to certain mining legislation. Such land is to be treated as an exempted area under such Acts and the exercise of any right under the Acts on land within a State forest or flora reserve is to be subject to such conditions and restrictions relating to forestry or the purposes of the flora reserve as may be prescribed by the regulations. The Minister may exempt any part of a State forest or flora reserve from the mining legislation.

Clause 36 provides that leases or licences from the Crown are not affected by the dedication of land as State forest, the declaration of land as a special management zone or the dedication or setting apart of land as a flora reserve, unless the proposed Act specifies how such leases or licences are affected. In particular, the proposed section provides that an existing lease or licence may not be renewed or extended.

Clause 37 provides that the Minister may declare roads constructed on land dedicated as a State forest or flora reserve to be a road of access to land purchased or held under a lease or licence under certain Acts relating to Crown lands.

Part 4 Taking of timber, forest products and forest materials

Division 1 General offence

Clause 38 creates an offence of unlawfully taking timber. The offence prohibits a person from cutting, stripping, obtaining, removing, destroying or damaging any timber, or digging for, extracting, obtaining, removing, destroying or damaging any forest products (or causing or allowing any of those actions) on any Crown-timber land. It also prohibits quarrying, digging for, extracting, obtaining, removing, destroying or damaging any forest materials (or causing or allowing any of those actions) on any State forest or flora reserve. The proposed section sets out exemptions, including when such activities are carried out under the authority of a licence or small quantity authorisation under the proposed Act or are authorised by legislation dealing with native vegetation, mining or other matters. Also, the proposed section does not apply to forestry operations carried out by or on behalf of the Corporation or forest products or forest materials taken by the Corporation.

Division 2 Licensing scheme

Clause 39 specifies the types of licences that may be issued by the Corporation (namely, timber licences, forest products licences, forest materials licences and clearing licences). The proposed section also provides that the authority conferred by a licence is subject to the regulations.

Clause 40 provides that a timber licence authorises the holder to take timber, or such class or description of timber as is specified in the licence, on Crown-timber land and specifies the duration of such a licence.

Clause 41 provides that a forest products licence authorises the holder to take forest products, or such class or description of forest products as is specified in the licence, on Crown-timber land and specifies the duration of such a licence.

Clause 42 provides that a forest materials licence authorises the holder to take forest materials, or such class or description of forest materials as is specified in the licence, from a State forest and specifies the duration of such a licence.

Clause 43 provides that a clearing licence authorises the holder (and successors in title to the relevant land) to ringbark or otherwise kill or destroy trees, or such class or description of trees as is specified in the licence, on such Crown-timber land as is specified in the licence.

Clause 44 sets out restrictions on the issue of licences of various classes.

Clause 45 provides that the Corporation may authorise a person to take small quantities of timber, forest products or forest materials from land within a State forest (other than land set apart as a flora reserve) or to take small quantities of timber or forest products from Crown land.

Clause 46 authorises the Corporation to suspend or revoke a licence or small quantity authorisation in certain circumstances.

Clause 47 provides for the Corporation to delegate any of its functions under the proposed Division that relate to clearing licences (except in respect of State forests and timber reserves) or small quantity authorisations.

Division 3 Payment of resource acquisition fee

Clause 48 defines words and phrases used in the proposed Division.

Clause 49 requires the holder of a timber licence, forest products licence or forest materials licence to pay a resource acquisition fee in respect of the timber, forest products or forest materials taken under the authority of the licence. Any such resource acquisition fee is payable to and recoverable by the Corporation. A resource acquisition fee is not payable in respect of timber taken under the authority of a timber licence from land the subject of a Crown tenure if the timber is derived from trees which, in the opinion of the Corporation, have been planted or established and have been maintained by careful tending and improvement as a woodlot or forest or for the purpose of tree-farming or have been planted or established as a windbreak or for the beautification of the land.

Clause 50 specifies the circumstances in which the Corporation is not entitled to a resource acquisition fee, namely in respect of timber or forest products derived from trees that have been established on land that is the subject of a forestry right and taken in accordance with the forestry right and any restriction on use or covenant imposed in connection with the forestry right, unless the forestry right is granted by the Corporation.

Clause 51 provides that the Corporation may determine the amount of a resource acquisition fee, either generally or in a particular case or class of cases, subject to any maximum amount prescribed by a regulation made with the concurrence of the Treasurer.

Clause 52 provides that the Corporation may pay part of a resource acquisition fee to an organisation established for the promotion or improvement of the use or marketing of timber or forest products produced in New South Wales.

Clause 53 requires, in relation to land held by a lessee under certain leases, purchase-tenure land or a controlled travelling stock reserve, that the Corporation pay to the landholder concerned one-third of the balance of the resource acquisition fee remaining after deduction of the costs of the Corporation and certain other amounts.

Clause 54 requires the Corporation to make certain resource acquisition fee payments in certain circumstances.

Clause 55 provides for the recovery of an amount equivalent to a resource acquisition fee in relation to timber, forest products or forest materials taken without lawful authority.

Clause 56 provides for the Corporation to enter into an agreement with the holder of a timber licence, forest products licence or forest materials licence for the construction by the licence holder of any works that, in the opinion of the Corporation, are necessary to enable timber, forest products or forest materials to be taken from the land in respect of which the licence is issued and for the cost of the works to be deducted from any resource acquisition fee that the holder would otherwise be liable to pay.

Part 5 Use of forestry areas for non-forestry purposes

Division 1 Land managers

Clause 57 provides that the Corporation is the land manager of forestry areas (eg State forests and flora reserves) except if the Minister, with the concurrence of the voting shareholders of the Corporation, appoints a different land manager for specified forestry areas (either generally or only for the purpose of exercising specified land management functions in relation to that area). The proposed section provides that the land manager of a forestry area has the functions conferred or imposed by the proposed Act or any other Act in relation to the forestry area unless the functions are limited by the Ministerial order appointing the land manager.

Clause 58 provides that the functions of a land manager of a forestry area are confined to non-forestry uses, that is, the functions that the land manager may exercise do not include functions relating to the carrying out of forestry operations or functions of the kind conferred or imposed on the Corporation under proposed Part 2.

Clause 59 sets out the objectives of the land manager of a forestry area in the exercise of functions as land manager, namely to facilitate public access to the forestry area, to promote the recreational use of the forestry area and to conserve fauna (other than feral animals) living in the forestry area. The proposed section also specifies the manner in which the functions of the land manager of a forestry area are to be exercised.

Division 2 Forest permits and leases

Clause 60 provides for the land manager of a forestry area to issue forest permits. Such permits authorise the holder to use the forestry area for the purposes (including recreational, sporting or commercial activities) specified in the permit.

Clause 61 specifies the circumstances in which a forest permit may not be issued and makes other provision in relation to forest permits.

Clause 62 provides that the land manager of a forestry area that is, or is part of, a State forest may lease land within the area for any purpose specified in the lease.

Clause 63 provides for the suspension and revocation of forest permits and leases.

Division 3 Provision of services and facilities for non-forestry purposes

Clause 64 provides that the land manager of a forestry area may enter into an agreement with the Minister under which the land manager agrees to provide, or facilitate the provision of, services and facilities for the benefit of persons who use the area otherwise than to carry out forestry operations, including fire protection measures, the establishment and maintenance of roads and the management of recreational areas.

Clause 65 empowers the Minister to direct the land manager of a forestry area to provide or facilitate the provision of services and facilities in the area that the Minister is satisfied are for the benefit of persons who use the area otherwise than to carry out forestry operations.

Clause 66 provides for the resolution of disputes between the Minister and a land manager to whom such a direction has been given.

Division 4 Miscellaneous

Clause 67 makes it an offence to use any land within a forestry area without lawful authority.

Clause 68 creates offences relating to hunting and using firearms or other weapons in a forestry area. Exemptions are specified, including where a person is acting under the authority of a forest permit or forest lease or has the consent of the land manager.

Clause 69 empowers the land manager of a forestry area to remove any unauthorised structure from the forestry area.

Part 6 Investigations and enforcement powers

Division 1 Appointment of authorised officers

Clause 70 provides for the appointment of authorised officers who will have investigation and enforcement powers under the proposed Act.

Clause 71 provides that a police officer may exercise the functions of an authorised officer under the proposed Act.

Clause 72 provides for authorised officers to be issued with identification cards and requires such officers to carry those cards with them when exercising functions under the Act that involve entering premises and to produce the cards when required to do so by the occupier of the relevant premises.

Division 2 Powers of authorised officers

Clause 73 defines terms used in the proposed Division.

Clause 74 specifies that the powers of authorised officers may only be exercised for determining whether there has been a contravention of the proposed Act or the regulations, for obtaining information or records for purposes connected with the administration of the proposed Act or in connection with exercising the functions of an authorised officer under the proposed Act.

Clause 75 empowers authorised officers to enter premises for authorised purposes. The power of entry does not extend to any part of premises used only for residential purposes (unless the authorised officer has the permission of the occupier or has obtained a search warrant).

Clause 76 provides for the issue of search warrants in cases where the issuing officer has reasonable grounds for believing that a provision of the proposed Act or the regulations has been or is being contravened in or about the relevant premises.

Clause 77 empowers authorised officers to search premises, to examine, inspect and seize certain things and to require records to be produced for inspection.

Clause 78 empowers authorised officers to detain and search vehicles or vessels.

Clause 79 provides for the forfeiture of things seized under the proposed Division, or for their return, in specified circumstances.

Clause 80 empowers an authorised officer to require a person to furnish information and records in connection with any matter arising under or in connection with the proposed Act.

Clause 81 empowers an authorised officer to require a person whom the officer reasonably suspects has committed an offence under the proposed Act or the regulations to state his or her name and address. The proposed section also empowers an authorised officer to require the driver of a motor vehicle in a forestry area to produce his or her driver licence and state his or her name and address.

Clause 82 empowers an authorised officer to require the owner of a motor vehicle or any other person to give information if the officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence under the proposed Act.

Clause 83 makes any failure to comply with a requirement of the proposed Division, or the giving of false or misleading information in purported compliance with the proposed Part, an offence. The proposed section also makes it an offence to obstruct, delay, hinder, impersonate, assault, threaten or intimidate, or attempt to bribe, an authorised officer.

Part 7 Criminal proceedings and related matters

Clause 84 provides that proceedings under the proposed Act or the regulations are to be dealt with summarily before the Local Court and specifies the time limit for bringing proceedings.

Clause 85 provides for the issue of penalty notices for certain offences under the proposed Act or the regulations.

Clause 86 provides for the making of orders for compensation for any loss or damage to any land or property owned by or under the control or management of the Corporation or costs and expenses incurred by the Corporation in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage, by reason of the commission of an offence for which a person has been convicted.

Clause 87 imposes liability on vehicle owners for parking offences.

Clause 88 makes provision for the evidentiary value of certain notices or facts.

Part 8 Miscellaneous

Clause 89 provides for the review of certain decisions under the proposed Act by the Administrative Decisions Tribunal.

Clause 90 provides for the delegation of the Minister's functions under the proposed Act.

Clause 91 requires the Corporation to review its native timber harvesting and haulage costs every 3 years and to report on the results of the review. The report is required to be provided to the Independent Pricing and Regulatory Tribunal which is authorised to review the report and make recommendations.

Clause 92 provides for the making of regulations under the proposed Act.

Clause 93 provides for the review of the proposed Act after 5 years from the date of assent.

Schedule 1 Special provisions relating to purchase-tenure land

Schedule 1 transfers, with minor modifications only, provisions relating to purchase-tenure land from the *Forestry Act 1916*.

Schedule 2 Dissolution of Forestry Commission

Schedule 2 dissolves the Forestry Commission and provides for the vesting of assets, rights and liabilities of the Forestry Commission in the Corporation, for the transfer of certain other assets, rights and liabilities and for the transfer of certain staff to the Corporation. The Schedule also provides for the transfer to the Corporation of certain existing offices, workshops and depots used by the Forestry Commission.

Schedule 3 Savings, transitional and other provisions

Schedule 3 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and includes provisions relating to the Forestry Commission and other matters that are consequent on the enactment of the proposed Act and the repeal of the *Timber Marketing Act 1977*. In particular, existing forest agreements and integrated forestry operations approvals under the *Forestry and National Park Estate Act 1998* are taken to be forest agreements and integrated forestry operations approvals in force under the proposed Act.

Schedule 4 Amendment of other legislation

Schedule 4 amends other legislation as a consequence of the enactment of the proposed Act. The amendments generally replace references to the former Act and the Forestry Commission with references to the proposed Act and the Corporation. **Schedule 4.11 [16]** transfers Parts 3 and 4 of the *Forestry and National Park Estate Act 1998* (which relate to forest agreements and integrated forestry operations approvals) to the proposed Act as Parts 5A and 5B respectively. That Act is currently administered by the Minister for the Environment and the transfer is not intended to change existing Ministerial administration arrangements in relation to those provisions.

Schedule 5 Repeals

Schedule 5 repeals the *Forestry Act 1916* and the *Timber Marketing Act 1977* and the regulations made under those Acts.