

Queensland



**TIMBER PLANTATIONS
(HARVEST GUARANTEE)
BILL 1999**



TIMBER PLANTATIONS (HARVEST GUARANTEE) BILL 1999

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1999

A BILL

FOR

An Act about harvesting of timber plantations

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Division 1—Introduction

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Short title

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1. This Act may be cited as the *Timber Plantations (Harvest Guarantee) Act 1999*.

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Division 2—Purpose and application of Act

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Purpose of Act

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2. The purpose of this Act is to encourage the establishment of timber plantations, while at the same time providing for environmental protection in timber plantation areas.

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How purpose of Act is to be achieved

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3.(1) This Act encourages the establishment of timber plantations by—

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(a) establishing an accreditation scheme for timber plantations and proposed timber plantations; and

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(b) removing restrictions under the following Acts on harvesting operations on accredited timber plantations—

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(i) the *Environmental Protection Act 1994* (the “**EPA**”);

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(ii) the *Integrated Planning Act 1997* (the “**IPA**”);

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(iii) the *Local Government Act 1993* (the “**LGA**”);

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(iv) the *Nature Conservation Act 1992* (the “**NCA**”).

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(2) Environmental protection in accredited timber plantation areas is

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Timber Plantations (Harvest Guarantee)

provided by requiring harvesting operations on accredited timber plantations to be carried out under a harvesting code. 1
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Act binds all persons 3

4.(1) This Act binds all persons, including the State. 4

(2) However, the State can not be prosecuted for an offence against this Act. 5
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Division 3—Definitions 7

Subdivision 1—Dictionary 8

Definitions 9

5. The dictionary in the schedule defines particular words used in this Act. 10
11

Subdivision 2—Key definitions 12

What is a “timber plantation” 13

6.(1) A “**timber plantation**” is an area of land— 14

(a) on which the predominant number of canopy trees have been planted, whether by sowing seed or otherwise, for commercial timber production; and 15
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(b) that is not a natural forest area. 18

(2) For subsection (1), an area of land may consist of more than 1 lot or parcel of land if the lots or parcels are owned or managed by the same person. 19
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(3) To remove any doubt, it is declared that an area of land to which subsection (1) applies is a timber plantation even if the canopy trees were planted before this section commences. 22
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Timber Plantations (Harvest Guarantee)

What is a “harvesting operation”

7.(1) A “harvesting operation” is the cutting and removal of timber for commercial timber production.

(2) A harvesting operation also includes the following activities for a timber plantation—

- (a) making access roads after establishing the plantation to enable or assist the cutting and removal of timber;
- (b) activities necessary for the efficient cutting and removal of timber;
- (c) activities relating to the on-going management of the plantation.

Examples for paragraph (c)—

Silvicultural thinning, weed control and similar maintenance operations.

(3) However, an activity for establishing a timber plantation is not a harvesting operation.

Examples for subsection (3)—

- clearing natural forests
- using pesticides, herbicides or fertilisers to establish a timber plantation.

PART 2—ACCREDITATION

Division 1—Obtaining accreditation

Who may apply for accreditation

8.(1) The owner or manager of a timber plantation or proposed timber plantation may apply to the chief executive for the grant of an accreditation for the plantation or proposed plantation.

(2) An application may be made whether or not the timber plantation is established when the application is made.

Requirements for application**9.(1)** The application must—

- (a) be in the approved form; and
- (b) be accompanied by the prescribed fee; and
- (c) if the applicant is the manager of the timber plantation or proposed timber plantation the subject of the application—state that the application is being made for its owner; and
- (d) sufficiently identify each area of land for the timber plantation or proposed timber plantation, including, for example, by way of a map; and
- (e) be supported by enough other information to enable the chief executive to decide the application.

(2) Also, if the application is for a proposed timber plantation, it must be accompanied by a copy, or evidence of, any approval, consent or licence for the establishment of the proposed plantation required under the EPA, IPA or any other relevant law.

Consideration of application

10.(1) The chief executive must consider the application on or before the day that is the later of following (the “**relevant day**”)—

- (a) 60 days after the application is received;
- (b) 60 days after the chief executive receives all necessary information relevant to the application.

(2) The chief executive must, on or before the relevant day, decide to grant or to refuse the accreditation applied for.

(3) If the chief executive does not grant the accreditation on or before the relevant day the chief executive is taken to have—

- (a) refused the application; and
- (b) given the applicant a notice under section 13 rejecting the application on the relevant day.

Restrictions on granting accreditation

11. The chief executive may grant the accreditation applied for only if the chief executive considers the timber plantation or proposed timber plantation the subject of the application has been established, or is being established, as required under the EPA, IPA or any other relevant law.

Accreditation conditions

12.(1) The chief executive may impose reasonable conditions (“**accreditation conditions**”) for the granting of the accreditation for a proposed timber plantation.

(2) However, an accreditation condition may relate only to the way in which the proposed timber plantation must be established.

(3) If the chief executive decides to impose an accreditation condition, the chief executive must give notice of the decision within 7 days after making the decision to the following persons—

- (a) the applicant; and
- (b) if the applicant was not the owner of the timber plantation or proposed timber plantation the subject of the application—its owner.

(4) The notice must state—

- (a) the condition imposed, and the reasons for imposing it; and
- (b) that the person may, under section 38, apply to the Minister for a review of the decision; and
- (c) how to apply for a review.

Notice of refusal of application

13.(1) If the chief executive decides to refuse the application the chief executive must give notice of the decision within 7 days after making the decision to the following persons—

- (a) the applicant;
- (b) if the applicant was not the owner of the timber plantation or proposed timber plantation the subject of the application—its

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owner.

(2) The notice must state—

- (a) the refusal, and the reasons for it; and
- (b) that the person may, under section 38, apply to the Minister for a review of the decision; and
- (c) how to apply for a review.

Division 2—Accreditation certificates

Issue of accreditation certificate

14.(1) If the chief executive grants an accreditation, the chief executive must issue an accreditation certificate to the applicant as soon as practicable.

(2) The certificate must—

- (a) be in the approved form; and
- (b) identify the accredited timber plantation and describe its location; and
- (c) state the day the accreditation was granted; and
- (d) state any accreditation conditions imposed for the grant.

Replacement accreditation certificate

15.(1) The owner of an accredited timber plantation may ask the chief executive for a replacement accreditation certificate if the certificate has been damaged, destroyed or lost.

(2) The chief executive may replace the certificate if the chief executive is satisfied it has been damaged, destroyed or lost.

Division 3—Term of accreditation**Term**

16.(1) An accreditation for a timber plantation remains in force unless it is cancelled or suspended by the chief executive or surrendered by the plantation's owner.

(2) An accreditation for a proposed timber plantation ends on the third anniversary of the day it was granted, unless—

- (a) the owner or manager of the proposed plantation has given the chief executive notice stating the planting of trees forming the proposed plantation has been completed; and
- (b) the chief executive is satisfied the planting of trees for the proposed plantation has been completed under any accreditation conditions imposed for the accreditation.

(3) The chief executive may be satisfied under subsection (2) by evidence given by the proposed timber plantation's owner or manager or by the chief executive's own investigations.

Surrender of accreditation

17.(1) The owner of an accredited timber plantation may surrender the accreditation for the plantation by giving notice of surrender to the chief executive.

(2) The notice must be accompanied by the accreditation certificate.

Accreditation term not affected by ownership change, harvesting etc.

18. An accreditation is not affected by—

- (a) a change in the ownership or management of the accredited timber plantation; or
- (b) the harvesting of, or the removal or replanting of trees from, the plantation.

Duty to notify chief executive of change of owner

19.(1) This section applies to a person if the person becomes or ceases to be the owner of an accredited timber plantation.

(2) The person must, within 21 days, give the chief executive notice stating—

- (a) that the ownership of the timber plantation has changed; and
- (b) the name of the plantation's owner after the change.

Maximum penalty for subsection (2)—10 penalty units.

Division 4—Publication and registration of accreditations**Gazettal of accreditation**

20.(1) The chief executive must, by gazette notice, give notice of the issue of each accreditation certificate as soon as practicable after it is issued.

(2) The notice must—

- (a) describe the location of the relevant accredited timber plantation; and
- (b) state the name and address of its owner; and
- (c) state the day the accreditation was granted.

Accreditation register

21.(1) The chief executive must keep a register of accredited timber plantations (the “**accreditation register**”).

(2) The register must—

- (a) describe the location of each accredited timber plantation; and
- (b) state the name and address of its owner; and
- (c) state the day the accreditation was granted; and
- (d) include other information prescribed under a regulation.

(3) The register may include any other information the chief executive considers appropriate.

(4) The chief executive may keep the register in the way the chief executive considers appropriate.

Inspection of register

22. The chief executive must—

- (a) keep the accreditation register open for inspection, free of charge, by members of the public during office hours on business days at the department's office dealing with the administration of this Act; and
- (b) allow a person to take extracts, free of charge, from the register; and
- (c) give a person a copy of the register, or a part of it, on payment of the fee prescribed under a regulation.

Division 5—Amendment, cancellation or suspension of accreditation

Subdivision 1—When accreditation may be amended, cancelled or suspended

General conditions for amendment, cancellation or suspension

23. The chief executive may amend, cancel or suspend an accreditation only if—

- (a) the relevant owner asks for the amendment, cancellation or suspension; or
- (b) the chief executive considers a ground exists for the amendment, cancellation or suspension and the procedure under subdivision 3 is followed; or
- (c) the chief executive proposes to amend the accreditation to correct a formal or clerical error and notice of the amendment has been given to the owner.

Subdivision 2—Grounds

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Operation of sdiv 2

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24.(1) This subdivision provides for the grounds on which an accreditation may be amended, cancelled or suspended by the chief executive.

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(2) If the chief executive considers a ground exists, the chief executive may, under subdivision 3, amend, cancel or suspend the whole or only part of the accreditation.

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General grounds

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25. Each of the following is a ground for amending, cancelling or suspending an accreditation—

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- (a) the accreditation was issued in error or because of a document or representation that is false, misleading or omits a material particular;
- (b) the relevant owner, after the grant of the accreditation, has been convicted of an offence against section 49;¹
- (c) there has been a significant contravention of a harvesting code that applies to the accredited timber plantation and the contravention has not been remedied;
- (d) the accredited timber plantation has been abandoned;
- (e) the amendment, cancellation or suspension is necessary to protect unique or special wildlife values and that compensation for the cancellation under a harvesting code that applies to the timber plantation has been paid to the owner;
- (f) harvesting operations have been completed and the land to which the accreditation relates is not intended to be continued as a timber plantation.

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¹ Section 49 (Compliance with harvesting codes)

Further grounds for proposed timber plantations

26. An accreditation for a proposed timber plantation may also be amended, cancelled or suspended if—

- (a) the term of the accreditation has ended under section 17(2); or
- (b) the proposed timber plantation has not been established, or is not being established, as required under the EPA, IPA or any other relevant law.

Subdivision 3—Procedure**Application of sdiv 3**

27. This subdivision applies if the chief executive decides to—

- (a) amend an accreditation, other than to correct a formal or clerical error; or
- (b) cancel or suspend an accreditation.

Show cause notice

28.(1) The chief executive must give the relevant owner a notice (a “**show cause notice**”) stating the following—

- (a) the action (the “**proposed action**”) the chief executive proposes taking under this division;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is to amend the accreditation, the proposed amendment;
- (e) if the proposed action is to suspend the accreditation, the proposed suspension period;
- (f) that the owner may make, within a stated period (the “**show cause period**”), written representations to show why the proposed action should not be taken.

(2) If any ground stated in the show cause notice is based on

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section 26(b), the show cause period must end at least 60 days after the owner is given the show cause notice.

(3) Otherwise, the show cause period must end at least 28 days after the owner is given the show cause notice.

Immediate suspension

29.(1) The chief executive may by a notice (a “**suspension notice**”) suspend an accreditation immediately if the chief executive reasonably believes—

- (a) a ground exists to amend, cancel or suspend the accreditation; and
- (b) the chief executive considers it necessary in the public interest.

(2) The suspension notice must state the following—

- (a) that the accreditation is suspended;
- (b) the grounds for the suspension;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) the suspension period;
- (e) that the owner may make, within a stated period (also a “**show cause period**”), written representations to show why the accreditation should not be suspended for the suspension period.

(3) The suspension—

- (a) operates immediately the suspension notice is given; and
- (b) subject to section 31(4), continues to operate until the suspension period ends.

Considering representations

30. The chief executive must consider any written representation made during the show cause period by the relevant owner.

Rectification direction

31.(1) This section applies if, after considering any representations made

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for a show cause notice or suspension notice by the relevant owner, the chief executive— 1
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(a) still believes a ground exists to amend, cancel or suspend the accreditation; but 3
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(b) considers a matter relating to the ground for amendment, cancellation or suspension is capable of being rectified and it is appropriate to give the owner an opportunity to rectify the matter. 5
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(2) The chief executive may, by notice given to the owner (a “**rectification direction**”) direct the owner to rectify the matter within a stated period. 8
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(3) The period must be reasonable, having regard to the nature of the matter to be rectified. 11
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(4) If the owner was given a suspension notice, the suspension is stayed pending the owner’s rectification of the matter in the period. 13
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Decision on proposed action 15

32.(1) This section applies if— 16

(a) after considering any written representations made during the show cause period by the relevant owner, the chief executive still believes a ground exists to amend, cancel or suspend the accreditation; or 17
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(b) the owner has not complied with a rectification direction. 21

(2) The chief executive may— 22

(a) if the proposed action was to amend the accreditation in a stated way—make that amendment; or 23
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(b) if the proposed action was to suspend the accreditation for a stated period—suspend the accreditation for no longer than the proposed suspension period; or 25
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(c) if the proposed action was to cancel the accreditation—either cancel the accreditation or suspend it for a period. 28
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Notice of decision

33.(1) The chief executive must give the relevant owner notice of any decision made under section 32.

(2) The notice must state—

- (a) the decision, and the reasons for it; and
- (b) that the applicant may, under section 38, apply to the Minister for a review of the decision; and
- (c) how to apply for a review.

(3) The decision takes effect on the earlier of the following—

- (a) the day an acknowledgment for the giving of the notice, or the giving of an envelope that contained the notice, is signed by or for the owner;
- (b) if the owner is an individual—the day the notice is given to the owner personally;
- (c) if the owner is a corporation with a registered office—the day the notice is left at the registered office.

Subdivision 4—Miscellaneous**Return of accreditation certificate**

34.(1) This section applies if the relevant owner of an accredited timber plantation receives a notice under section 33 or a notice from the chief executive to return the relevant accreditation certificate for correction of a stated formal or clerical error.

(2) The owner must return the relevant accreditation certificate to the chief executive within 7 days after the notice was received, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(3) If an accreditation certificate is returned to the chief executive for amendment, the chief executive must return it to the owner as soon as practicable after amending it.

(4) If a suspended accreditation is returned to the chief executive, the

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chief executive must return it to the relevant owner at the end of the suspension period. 1
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(5) However, the amendment of an accreditation does not depend on the accreditation certificate being returned. 3
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Reaccreditation after cancellation 5

35.(1) This section applies if the accreditation for a timber plantation or proposed timber plantation is cancelled. 6
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(2) If the cancellation was on the ground mentioned in section 25(e), a timber plantation that is re-established on the land to which the cancellation relates, or a proposed timber plantation for the land, must not be accredited. 8
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(3) Otherwise, a timber plantation or proposed timber plantation for the land may be accredited under this part, despite the cancellation. 11
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Division 6—Reviews and appeals 13

Subdivision 1—Ministerial review 14

Decisions subject to review 15

36. This subdivision applies if the chief executive makes a decision as follows (an “**original decision**”) to— 16
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- (a) refuse an application to accredit a timber plantation or proposed timber plantation; 18
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- (b) impose an accreditation condition; 20
- (c) amend, cancel or suspend an accreditation under section 32. 21

Who may apply for review 22

37. The owner or the manager of the timber plantation or proposed timber plantation to which the original decision relates may apply to the Minister to review the decision. 23
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Starting review

38.(1) A review is started by giving the Minister notice applying for a review of the original decision.

(2) The notice must be given within 60 days after notice of the decision is given to the owner.

(3) However, the Minister may at any time extend the time for giving the notice.

Minister's powers on review

39.(1) The Minister, in reviewing the original decision, has the same powers as the chief executive.

(2) The Minister must make a decision (a “**review decision**”) to—

(a) confirm the original decision; or

(b) set aside the original decision and substitute another decision; or

(c) set aside the original decision and return the matter to the chief executive with directions the Minister considers appropriate.

(3) In substituting another decision, the Minister has the same powers as the chief executive.

(4) If the Minister substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the original decision.

Stay of operation of original decisions

40.(1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to the District Court.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay may be given on conditions the court considers appropriate and has effect for the period stated by the court.

(4) The period of a stay must not extend past the time when the Minister reviews the original decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.

Subdivision 2—Appeals from review decision

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Who may appeal

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41. If a review decision is made and the owner or manager of the timber plantation or proposed timber plantation to which it relates is dissatisfied with it, the owner or manager may appeal against the decision to the District Court.

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Starting appeal

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42.(1) An appeal is started by—

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(a) filing written notice of appeal with the District Court; and

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(b) serving a copy of the notice on the Minister; and

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(c) complying with rules of court applicable to the appeal.

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(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the review decision.

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(3) The court may at any time extend the time for filing the notice of appeal.

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(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

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Stay of operation of review decision

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43.(1) The District Court may grant a stay of the operation of the review decision to secure the effectiveness of the appeal.

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(2) A stay—

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(a) may be granted on conditions the court considers appropriate; and

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(b) operates for the period stated by the court; and

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(c) may be amended or revoked by the court.

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(3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.

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(4) An appeal affects the review decision only if the decision is stayed.

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Hearing procedures

44.(1) In deciding an appeal, the District Court—

- (a) has the same powers as the Minister; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in public or in private.

(2) An appeal is by way of rehearing.

General powers of District Court on appeal

45.(1) In deciding an appeal, the District Court may—

- (a) confirm the review decision; or
- (b) set aside the review decision and substitute another decision; or
- (c) set aside the decision and return the matter to the Minister with directions the court considers appropriate.

(2) In substituting another decision, the court has the same powers as the Minister.

(3) If the court substitutes another decision, the substituted decision is taken for this Act, other than this division, to be the Minister's decision.

Appeal to Supreme Court

46. An appeal lies to the Supreme Court from a decision of the District Court, but only on a question of law.

PART 3—TIMBER PLANTATION (ENVIRONMENT PROTECTION) HARVESTING CODES

Making harvesting codes

47.(1) The chief executive may make harvesting codes.

(2) A harvesting code does not have effect unless it is approved by regulation.

Content of harvesting codes

48.(1) A harvesting code may regulate the carrying out of harvesting operations on an accredited timber plantation to protect the environment.

(2) In particular, a harvesting code may deal with any of the following—

- (a) harvesting plans;
- (b) works ancillary to harvesting operations;
- (c) soil erosion and sediment control;
- (d) native animals and plants;
- (e) protected wildlife and their habitats under the NCA;
- (f) critical habitats under the NCA;
- (g) Aboriginal relics and places;
- (h) post-harvest bush fire hazard reduction burning;
- (i) the circumstances in which compensation will be given to protect unique or special wildlife values;
- (j) the giving of, and entitlement to, compensation.

Compliance with harvesting codes

49.(1) This section applies if—

- (a) a harvesting code applies to an accredited timber plantation; and
- (b) the code makes provision for harvesting operations on the plantation.

(2) The owner and manager of the timber plantation must ensure harvesting operations on the plantation are carried out under the provisions.

Maximum penalty—100 penalty units.

(3) Subsection (2) is taken to be a condition of any relevant licence, lease or other authority for the timber plantation, whether issued before or after this section commences.

PART 4—TIMBER HARVEST GUARANTEE**Certain laws do not apply to harvesting under harvesting code****50.(1)** This section applies if—

- (a) a harvesting code applies to an accredited timber plantation; and
- (b) the code makes provision for harvesting operations on the plantation; and
- (c) the provisions of the code, to the extent they are relevant to the plantation, have been complied with; and
- (d) a harvesting operation for the plantation is carried out or proposed to be carried out under the code.

(2) The provisions of the following Acts (“**excluded provisions**”) do not apply to the harvesting operation to the extent they prohibit or regulate the carrying out of the harvesting operation—

- (a) the EPA;
- (b) the IPA;
- (c) the LGA;
- (d) the NCA.

(3) A person carrying out the harvesting operation is exempt from complying with the excluded provisions.

(4) To remove any doubt, it is declared that the harvesting operation is subject to any other law that, subject to this section, relates to the management or harvesting of timber.

PART 5—TIMBER PLANTATION OFFICERS

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Division 1—Appointment

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Appointment

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51.(1) The chief executive may appoint a public service officer as a timber plantation officer.

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(2) The chief executive may appoint an officer as a timber plantation officer only if, in the chief executive's opinion, the officer has the necessary expertise or experience to be a timber plantation officer.

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Appointment conditions

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52.(1) A timber plantation officer holds office on the conditions stated in the instrument of appointment.

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(2) A timber plantation officer ceases holding office—

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(a) if the appointment provides for a term of appointment—at the end of the term; and

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(b) if the appointment conditions provide—on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

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(3) A timber plantation officer may resign by signed notice of resignation given to the chief executive.

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(4) However, a timber plantation officer may not resign from the office under this Act (the “**secondary office**”) if a condition of appointment to the main office requires the officer to hold the secondary office.

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Functions

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53. The functions of a timber plantation officer are to—

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- (a) conduct investigations to monitor or enforce compliance with section 49;² and 1
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- (b) report to the chief executive on the officer's investigations. 3

Powers—general 4

54. For this Act, a timber plantation officer has the powers given to the person under this Act. 5
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Limitation of powers 7

55. The powers of a timber plantation officer may be limited— 8
- (a) under a regulation; or 9
 - (b) under a condition of appointment; or 10
 - (c) by written notice of the chief executive given to the officer. 11

Identity card 12

56.(1) The chief executive must give each timber plantation officer an identity card. 13
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- (2) The identity card must— 15
- (a) contain a recent photograph of the officer; and 16
 - (b) be in a form approved by the chief executive; and 17
 - (c) be signed by the officer; and 18
 - (d) identify the person as a timber plantation officer under this Act. 19

(3) A person who ceases to be a timber plantation officer must return the person's identity card to the chief executive within 21 days after the person ceases to be a timber plantation officer, unless the person has a reasonable excuse. 20
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Maximum penalty for subsection (3)—10 penalty units. 24

² Section 49 (Compliance with harvesting codes)

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(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

Production or display of identity card

57.(1) A timber plantation officer may exercise a power under this Act in relation to a person only if the officer—

- (a) first produces the officer's identity card for inspection by the person; or
- (b) has the officer's identity card displayed so that it is clearly visible to the person.

(2) However, if, for any reason, it is not practicable to comply with subsection (1), the officer must produce the identity card for inspection by the person at the first reasonable opportunity.

Division 2—Powers of timber plantation officers

Subdivision 1—Entry of places

Power to enter

58.(1) A timber plantation officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is an accredited timber plantation and the officer has given the owner or manager of the plantation at least 7 days notice of the officer's intention to enter the plantation.

(2) For the purpose of asking the occupier of a place for consent to enter, a timber plantation officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is

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- reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), an accredited timber plantation does not include a part of the plantation where a person resides.

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Subdivision 2—Procedure for entry

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Entry with consent

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59.(1) This section applies if a timber plantation officer intends to ask an occupier of a place to consent to the officer or another timber plantation officer entering the place under section 58(1)(a).

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(2) Before asking for the consent, the officer must tell the occupier—

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(a) the purpose of the entry; and

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(b) that the occupier is not required to consent.

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(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

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(4) The acknowledgment must state—

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(a) the occupier has been told—

19

(i) the purpose of the entry; and

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(ii) that the occupier is not required to consent; and

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(b) the purpose of the entry; and

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(c) the occupier gives the officer consent to enter the place and exercise powers under this part; and

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(d) the time and date the consent was given.

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(5) If the occupier signs the acknowledgment, the officer must immediately give a copy to the occupier.

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(6) A court must find the occupier of a place did not consent to a timber plantation officer entering the place under this part if—

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- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 58(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

Application for warrant

60.(1) A timber plantation officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

Issue of warrant

61.(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against section 49;³ and
- (b) the evidence is at the place or, within the next 3 days, may be at the place.

(2) The warrant must state—

- (a) that a stated timber plantation officer may, with necessary and reasonable help and force—

³ Section 49 (Compliance with harvesting codes)

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- (i) enter the place and any other place necessary for entry; and 1
- (ii) exercise the officer's powers under this part; and 2
- (b) the offence for which the warrant is sought; and 3
- (c) the evidence that may be seized under the warrant; and 4
- (d) the hours of the day or night when the place may be entered; and 5
- (e) the date, within 7 days after the warrant's issue, the warrant ends. 6

Special warrants 7

62.(1) A plantation officer may apply for a warrant (a "**special warrant**") by phone, fax, radio or another form of communication if the officer considers it necessary because of— 8
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- (a) urgent circumstances; or 11
- (b) other special circumstances, including, for example, the officer's remote location. 12
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(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought. 14
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(3) The officer may apply for the warrant before the application is sworn. 16

(4) After issuing the warrant, the magistrate must promptly fax a copy to the officer if it is reasonably practicable to fax the copy. 17
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(5) If it is not reasonably practicable to fax a copy to the officer— 19

- (a) the magistrate must tell the officer— 20
 - (i) what the terms of the warrant are; and 21
 - (ii) the date and time the warrant was issued; and 22
- (b) the officer must complete a form of warrant (a "**warrant form**") 23
and write on it— 24
 - (i) the magistrate's name; and 25
 - (ii) the date and time the magistrate issued the warrant; and 26
 - (iii) the terms of the warrant. 27

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the 28
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warrant issued by the magistrate.

(7) The officer must, at the first reasonable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find the exercise of the power by a plantation officer was not authorised by a special warrant if—

(a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

Warrants—procedure before entry

63.(1) This section applies if a timber plantation officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—

(a) give the person a copy of the warrant;

(b) tell the person the officer is permitted by the warrant to enter the place;

(c) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the officer need not comply with subsection (2) if the officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—Powers after entry**General powers after entering places**

64.(1) This section applies to a timber plantation officer who enters a place.

(2) However, if a timber plantation officer—

- (a) enters a place to get the occupier’s consent to enter premises, this section applies to the officer only if the consent is given; or
- (b) enters a place under a warrant, this section applies subject to the warrant.

(3) For monitoring or enforcing compliance with section 49, the officer may—

- (a) search any part of the place; or
- (b) inspect a document in or on the place; or
- (c) take extracts from, or make copies of, a document in or on the place; or
- (d) take into or onto the place any persons, equipment and materials the officer reasonably requires for exercising a power under this Act; or
- (e) require the occupier of the place, or a person at the place, to give the officer reasonable help to exercise the officer’s powers under paragraphs (a) to (d) (a **“help requirement”**); or
- (f) require the occupier of the place, or a person at the place, to give the officer information to help the officer find out whether section 49 is being complied with (an **“information requirement”**).

(4) When making a help requirement or information requirement, the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Failure to help or give timber plantation officer information

65.(1) A person of whom a help requirement or information requirement

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has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) It is a reasonable excuse for the person not to comply with the requirement if—

- (a) complying with it might tend to incriminate the person; or
- (b) the help or information required concerns managing or harvesting for an accredited timber plantation and is commercially sensitive.

False or misleading statements

66.(1) A person must not state anything to a timber plantation officer in response to a help requirement or information requirement that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

Subdivision 4—Power to seize evidence

Power to seize evidence from places

67.(1) A timber plantation officer who enters a place under section 58(1)(d) may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against section 49.

(2) A timber plantation officer who enters a place under this division under a warrant may seize the evidence for which the warrant was issued.

(3) A timber plantation officer who enters a place under this division under a warrant, or enters a place with the occupier’s consent, may seize a thing if the officer suspects, on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against section 49; and
- (b) the seizure is necessary to prevent—

- (i) the thing's concealment, loss or destruction; or 1
- (ii) the thing's use in committing, continuing or repeating the 2
offence. 3

Receipts for seized things 4

68.(1) As soon as practicable after a timber plantation officer seizes a 5
thing, the timber plantation officer must give a receipt for it to the person 6
from whom it was seized. 7

(2) However, if for any reason it is not practicable to comply with 8
subsection (1), the officer must leave the receipt at the place of seizure in a 9
conspicuous position and in a reasonably secure way. 10

(3) The receipt must describe generally the thing seized and its condition. 11

Timber plantation officer to allow inspection etc. 12

69. Until a seized thing is returned or otherwise finally dealt with under 13
this Act, a timber plantation officer must allow a person who would be 14
entitled to possession of it, if it had not been seized— 15

- (a) to inspect it free of charge; or 16
- (b) if it is a document, to obtain a copy of it free of charge. 17

Obligation to return seized things 18

70.(1) This section applies if a thing is seized under this subdivision. 19

(2) The chief executive must return the seized thing to its owner at the 20
end of— 21

- (a) 6 months; or 22
- (b) if a prosecution for an offence involving the thing is started within 23
the 6 months—the prosecution for the offence and any appeal 24
from the prosecution. 25

(3) Despite subsection (2), the chief executive must return the seized 26
thing to the owner immediately if the chief executive stops being satisfied its 27
retention as evidence is necessary. 28

Subdivision 5—Power to obtain documents

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Power to require production of documents

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71.(1) A timber plantation officer may require (a “**document production requirement**”) a person to produce a stated document held or kept by the person to help the officer find out whether section 49 is being complied with.

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(2) In making the document production requirement, the officer must nominate a reasonable time and place to produce the document.

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(3) The officer may keep the document to copy it.

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(4) The officer must return the document to the person as soon as practicable after copying it.

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Failure to produce document

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72.(1) A person of whom a document production requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

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Maximum penalty—100 penalty units.

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(2) It is a reasonable excuse for the person not to comply with the requirement if—

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(a) complying with it might tend to incriminate the person; or

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(b) the document concerns managing or harvesting of an accredited timber plantation and is commercially sensitive.

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Subdivision 6—General enforcement matters

22

Obstructing a timber plantation officer

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73.(1) A person must not obstruct a timber plantation officer in the exercise of a power, unless the person has a reasonable excuse.

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Maximum penalty—40 penalty units.

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(2) In this section—	1
“obstruct” includes hinder and resist, and attempt to obstruct.	2
Compensation	3
74.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this division.	4 5 6
(2) Payment of compensation may be claimed and ordered in a proceeding for—	7 8
(a) compensation brought in a court of competent jurisdiction; or	9
(b) an offence against this Act brought against the person making the claim for compensation.	10 11
(3) A court may order the payment of compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.	12 13 14

PART 6—MISCELLANEOUS 15

Offences are summary offences 16

75. An offence against this Act is a summary offence.	17
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Appointments and authority 18

76.(1) It is not necessary to prove in a proceeding under this Act—	19
(a) the chief executive’s appointment; or	20
(b) a timber plantation officer’s appointment; or	21
(c) the authority of the chief executive or a timber plantation officer to do anything under this Act.	22 23
(2) Subsection (1) does not apply if reasonable notice is given to the party	24

relying on the appointment or authority that the appointment or authority is to be challenged.	1 2
Evidentiary provisions	3
77.(1) This section applies to a proceeding under this Act.	4
(2) A signature purporting to be the signature of the chief executive or a timber plantation officer is evidence of the signature it purports to be.	5 6
(3) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—	7 8
(a) a particular timber plantation was or was not accredited at a time stated in the certificate;	9 10
(b) on a stated day, a stated person was given a stated notice under this Act.	11 12
Review of Act	13
78.(1) The Minister must review this Act to decide whether—	14
(a) the purpose of the Act is still appropriate; and	15
(b) the provisions of this Act are still appropriate for the purpose.	16
(2) The review must start as soon as possible after the fifth anniversary of the date of assent.	17 18
(3) The Minister must table in the Legislative Assembly a report on the outcome of the review within 1 year after the fifth anniversary.	19 20
Approved forms	21
79. The chief executive may approve forms for use under this Act.	22
Regulation-making power	23
80.(1) The Governor in Council may make regulations under this Act.	24
(2) A regulation may impose—	25
(a) a fee; or	26

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- (b) a penalty of not more than 20 penalty units for contravention of a regulation. 1
2
- (3) A regulation may make provision about a matter for which— 3
- (a) it is necessary to make provision of a savings or transitional 4
nature consequent on the enactment of this Act; and 5
- (b) this Act does not make provision or sufficient provision. 6
- (4) Subsection (3) and this subsection expire 1 year after the date of 7
assent. 8

PART 7—TRANSITIONAL PROVISION 9

Harvesting code to be made within 1 year 10

81. The chief executive must make a harvesting code applicable for all 11
accredited timber plantations within 1 year after the date of assent. 12

Expiry of pt 7 13

82. This part expires 1 year after the date of assent. 14

SCHEDULE	1
DICTIONARY	2
section 5	3
“accreditation” means accreditation under this Act as an accredited timber plantation.	4 5
“accreditation certificate” means an accreditation certificate issued under section 14(1).	6 7
“accreditation conditions” see section 12(1).	8
“accreditation register” see section 21(1).	9
“accredited timber plantation” means a timber plantation or proposed timber plantation for which an accreditation under part 2 is in force.	10 11
“approved form” means a form approved under section 79.	12
“canopy trees” , for an area of land, means the trees that—	13
(a) form the tree canopy for the area; or	14
(b) are expected to form the tree canopy for the area when they mature.	15 16
“document production requirement” see section 71(1).	17
“EPA” see section 3(1)(b).	18
“harvesting code” means a timber plantation (environment protection) harvesting code made under section 47.	19 20
“harvesting operation” see section 7.	21
“help requirement” see section 64(3)(e).	22
“information requirement” see section 64(3)(f).	23
“IPA” see section 3(1)(b).	24
“LGA” see section 3(1)(b).	25

SCHEDULE (continued)

“manager” , of a timber plantation or proposed timber plantation, means the person in charge of harvesting operations on the timber plantation or proposed timber plantation.	1 2 3
“NCA” see section 3(1)(b).	4
“natural forest area” means an area of land on which the predominant number of canopy trees—	5 6
(a) grow naturally in the area; or	7
(b) have been self-sown; or	8
(c) have not been planted.	9
“notice” means a notice in writing.	10
“original decision” see section 36.	11
“owner” , of a timber plantation or proposed timber plantation, means—	12
(a) for freehold land—the registered proprietor or a lessee of the land; or	13 14
(b) for land that is held from the State for an estate or interest less than fee simple and for which the interest is recorded in a register mentioned in the <i>Land Act 1994</i> , section 276—the person recorded in the register as the registered holder of the interest.	15 16 17 18
“proposed timber plantation” means land on which it is proposed to establish a timber plantation.	19 20
“rectification direction” see section 31(2).	21
“relevant owner” , for an accreditation, means each owner of the timber plantation or proposed timber plantation to which the accreditation relates.	22 23 24
“review decision” see section 39(2).	25
“show cause notice” see section 28(1).	26
“show cause period” see section 28(1)(f) and 29(2)(e).	27
“suspension notice” see section 29(1).	28
“timber plantation” see section 6.	29

SCHEDULE (continued)

“timber plantation officer” means a person who is appointed under this
Act as a timber plantation officer.

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