

**CONVEYANCING (FORESTRY RIGHTS) AMENDMENT
BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Real Property (Forestry Rights) Amendment Bill 1987;

Forestry (Forestry Rights) Amendment Bill 1987.

The object of this Bill is to amend the Conveyancing Act 1919 so as—

- (a) to make provision with respect to the creation, variation, conveyance and termination of those interests in land that are known as “profits à prendre”;
- (b) to make provision with respect to forestry rights and the imposition of positive covenants on land subject to forestry rights;
- (c) to make other provisions of a minor, consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1)–(3), (6), (14)–(16) amend sections 45, 45A, 67, 88B, 109, 110 and 195D so as to remove any doubt as to the application of those sections to profits à prendre.

Schedule 1 (4) (a) amends the definition of “positive covenant” in section 87A of the Principal Act so as to reflect the nature of the covenant that the definition describes.

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Schedule 1 (4) (b) inserts new definitions of “forestry covenant”, “forestry right” and “positive covenant” into section 87A of the Principal Act. A “forestry covenant” is to mean a positive covenant that can be imposed in relation to land the subject of a “forestry right”. A “forestry right” is to mean an interest (in the nature of a profit à prendre) under which a person having the benefit of the interest will be entitled to enter land, to establish, maintain and harvest a crop of trees and to construct and use ancillary buildings, works and facilities. A “positive covenant” is to mean a forestry covenant or a public positive covenant.

Schedule 1 (5) inserts new sections 88AA and 88AB into the Principal Act.

Proposed section 88AA provides that a profit à prendre is to be enforceable only if it is created by an instrument that indicates the land to be burdened, and (in the case of a profit à prendre that is expressed to benefit land) the land to be benefited, by the profit à prendre.

Proposed section 88AB provides that a forestry right shall, for all purposes, be deemed to be a profit à prendre.

Schedule 1 (7), (8), (10) (b) and (11)–(13) amend sections 88D, 88E, 88F, 88G, 88I and 88J of the Principal Act as a consequence of the amendment effected by Schedule 1 (4) (a).

Schedule 1 (9) inserts a new section 88EA into the Principal Act. The proposed section enables the use of land that is subject to a forestry right to be regulated by a forestry covenant.

Schedule 1 (10) (a) amends section 88F (1) of the Principal Act as a consequence of the amendment effected by Schedule 1 (9).
