

No. 3 of 2005.

Forestry (Amendment) Act 2005.

Certified on: 11 AUG 2005



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 3 of 2005.

Forestry (Amendment) Act 2005.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2005.

AN ACT

entitled

Forestry (Amendment) Act 2005,

Being a Bill to amend the *Forestry Act 1991*,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **INTERPRETATION (AMENDMENT OF SECTION 2).**

Section 2 of the Principal Act is amended –

- (a) by repealing the definition of “Chairman of the Provincial Forestry Management Committee” and replacing it with the following :-

“Chairman of the Provincial Forest Committee” means the Chairman of the Committee established for a province by the Provincial Executive Council to be responsible for forestry matters in that province, and, in relation to a province, means the Chairman of the Committee for that province;” and

- (b) by inserting after the definition of “Forest Officer” the following new definition:-

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“forest plantation” means an area of forest established artificially either by afforestation on land which has not carried forest within living memory or by reforestation of land which carried forest before but where the indigenous species are replaced with a species or genetic variety, and

(c) in the definition of “timber permit” –

(i) by adding at the end of Paragraph (b) the following:-

“and”; and

(ii) by adding the following new paragraph:-

“(c) an extension to an existing approved timber permit operation which is consolidated under an existing approved timber permit under Section 64;”.

2. FUNCTIONS OF THE AUTHORITY (AMENDMENT OF SECTION 7).

Section 7 of the Principal Act is amended –

(a) in Subsection (1)(c) by repealing the words “through the Managing Director”; and

(b) in Subsection (1)(e) by adding after the words “timber authorities” the following:-

“, large scale agricultural or other land use and road forest clearing authorities”.

3. MEMBERSHIP OF THE BOARD (AMENDMENT OF SECTION 10).

Section 10 of the Principal Act is amended –

(a) in Subsection (1) –

(i) by repealing Paragraph (c) and replacing it with the following:-

“(c) the President of the Forest Industries Association, *ex officio*, or his nominee; and”; and

(ii) by repealing Paragraph (f) and replacing it with following:-

“(f) one member from the community involved in forest activities; and”; and

(b) by adding at the end of that section the following new paragraph:-

“(i) the Minister’s nominee.” and

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(c) by repealing Subsection (2) and replacing it with the following:-

"(2) The *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* shall apply to and in relation to the appointment of the members referred to in Subsection (1)(e), (f), (g), (h) and (i)."; and

(d) by repealing Subsections (3) to (9) inclusive.

4. ALTERNATE MEMBERS (AMENDMENT OF SECTION 11).

Section 11 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following :-

"(1) For each of the members appointed under Section 10(e), (g) and (h), an alternate member shall be appointed in the same manner and subject to the same conditions."

5. CHAIRMAN AND DEPUTY CHAIRMAN (AMENDMENT OF SECTION 12).

Section 12 of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following:-

"(a) one of their number, other than the members holding office under Section 10(1)(a) and (c), to be the Chairman of the Board; and"

6. VACATION OF OFFICE (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended –

(a) in Subsection (2) –

(i) by adding at the end of Paragraph (g) the following:-

"or"; and

(ii) by inserting after Paragraph (g) the following new paragraph:-

"(h) divulges any information or releases any document relating to the proceedings of Board meetings or in relation to Board matters, without the express approval of the Board or except in the ordinary course of business of the Authority or for purposes of reporting to the organization or persons whom the member represents on the Board,"; and

(iii) by repealing Subsection (2A).

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7. REPORTS (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended –

- (a) by repealing the heading and replacing it with the following:-

“ANNUAL REPORTS.”; and

- (b) by repealing Subsection (1) and replacing it with the following:-

“(1) The Board shall, by 31 March in each year, furnish to the Minister an annual report on the progress, performance and finances of the Authority in relation to its functions during the year ended 31 December previously.”.

8. MEMBERSHIP OF FOREST MANAGEMENT COMMITTEES (AMENDMENT OF SECTION 22).

Section 22 of the Principal Act is amended in Subsection (2) –

- (a) in Paragraph (b) by repealing the words “Provincial Forest Management Committee” and replacing them with the following:-

“Board”; and

- (b) in Paragraph (c) by repealing the word “Minister” and replacing it with the following:-

“Board”.

9. VACATION OF OFFICE (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended –

- (a) by adding at the end of that section the following new subsections :-

“(7) The Board may, at any time, by written notice, advise a Provincial Forest Management Committee that it intends to suspend the Committee on the grounds of inefficiency in carrying out its powers and functions under the Act or failure to comply with, or non performance of, its powers and functions under the Act.

“(8) Within fourteen days of the date of service of a notice under Subsection (7), the Provincial Forest Management Committee may reply in writing to the Board and, where appropriate, the Board may suspend the Committee.

“(9) Where the Committee referred to in Subsection (7) does not reply in accordance with Subsection (8), it is deemed suspended at the expiration of the time specified in Subsection (8).

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"(10) The Board may revoke the suspension imposed by Subsection (9) on sufficient cause being shown."

10. CALLING OF MEETINGS (AMENDMENT OF SECTION 27).

Section 27 of the Principal Act is amended in Subsection (2) by repealing the words "Director General" and replacing them with the following:-

"Managing Director".

11. FUNCTIONS OF A PROVINCIAL FOREST MANAGEMENT COMMITTEE (AMENDMENT OF SECTION 30).

Section 30 of the Principal Act is amended in Subsection (1)(e)(ii) by repealing the words "extension, renewal, transfer,".

12. POWER TO ESTABLISH COMMITTEES (AMENDMENT OF SECTION 32).

Section 32 of the Principal Act is amended –

(a) by repealing the heading and replacing it with the following:-

"ESTABLISHMENT OF ADVISORY AND OTHER COMMITTEES."; and

(b) by repealing Subsection (3) and replacing it with the following:-

"(3) Subject to the *Boards (Fees and Allowances) Act* (Chapter 299), the terms and conditions of members of a Committee are as determined by the Board."; and

(c) by adding at the end of that section the following new subsection:-

"(4) A Committee shall meet as directed by the Board or as often as the business of the Committee requires."

13. NATIONAL FOREST PLAN (AMENDMENT OF SECTION 47).

Section 47 of the Principal Act is amended –

(a) in Subsection (2)(c) –

(i) by adding at the end of Subparagraph (iii) the following:-

"and"; and

(iii) by adding at the end of Paragraph (c) the following new subparagraph:-

(iv) provincial forest plans." and

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- (b) by adding after Subsection (3) the following new subsections:-

"(4) The National Forest Plan shall be reviewed every five years from the date of the coming into operation of the ***Forestry (Amendment) Act 2005*** and shall be submitted to the National Executive Council for its approval.

"(5) Where the National Forest Plan is not approved by the National Executive Council, it shall be referred to the Authority for review and recommendation for approval to the National Executive Council which shall grant its approval."

14. PROVINCIAL FOREST PLANS (AMENDMENT OF SECTION 49).

Section 49 of the Principal Act is amended –

- (a) in Subsection (3)(e) by repealing the words "renewed every three years" and replacing them with the following:-

"reviewed every five years from the date of the coming into operation of the ***Forestry (Amendment) Act 2005***;" and

- (b) by adding after Subsection (3) the following new subsections:-

"(4) A Provincial Forest Plan shall be submitted to the Authority within three months of the review under Subsection (3)(e).

"(5) Where a Provincial Forest Plan is not submitted to the Authority or is not submitted within the required period specified in Subsection (4), a new forest development area shall not be included in the Plan for the succeeding five years.

"(6) Notwithstanding the provisions of Subsection (4), the Board may grant an extension of time not exceeding six months from the date the National Forest Plan is tabled in Parliament under Section 48, for the submission of a Provincial Forest Plan and, upon approval by the Minister on the recommendation of the Board, the Provincial Forest Plan shall be deemed to form part of the National Forest Plan."

15. OBTAINING CONSENT OF CUSTOMARY OWNERS TO FOREST MANAGEMENT AGREEMENT (AMENDMENT OF SECTION 57).

Section 57 of the Principal Act is amended by adding at the end of that section the following new subsection:-

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"(3) Where the Authority intends to enter into a Forest Management Agreement, the Board shall consult with –

- (a) the Provincial Government for the province and the Local-level Government in which the area covered by the Agreement is situated, and
- (b) the member or members of Parliament for the Province and the electorate or electorates in which the area covered by the Agreement is situated,

in relation to the intentions of the Board to enter into the proposed Forest Management Agreement."

16. FOREST MANAGEMENT AGREEMENT (AMENDMENT OF SECTION 58).

Section 58 of the Principal Act is amended by adding at the end of that section the following new paragraph:-

"(g) specify and other forestry related land use options, if any."

17. REPEAL OF SECTION 59.

Section 59 of the Principal Act is repealed.

18. DEVELOPMENT OPTIONS STUDY BY THE BOARD (AMENDMENT OF SECTION 62).

Section 62 of the Principal Act is amended –

- (a) in Subsection (3)(d)(iii) by repealing the word "products" and replacing it with the following:-

"produce"; and

- (b) in Subsection (4) by repealing the words "feasibility study" and replacing them with the following:-

"development options study".

19. ADVERTISEMENT OF PROJECT (AMENDMENT OF SECTION 64).

Section 64 of the Principal Act is amended –

- (a) in Subsection (1)(a) by repealing the words "feasibility study" and replacing them with the following:-

"development options study"; and

- (b) by repealing Subsection (7) and replacing it with the following:-

"(7) A project proposal submitted to the Board under Section 64 shall be evaluated in accordance with Division 5.B."

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20. REGISTERED FOREST INDUSTRY PARTICIPANT MAY APPLY FOR PERMISSION TO CARRY OUT FEASIBILITY STUDY, ETC. (AMENDMENT OF SECTION 65).

Section 65 of the Principal Act is amended in Paragraph (a) by repealing the words "development options study" and replacing them with the following:-

"feasibility studies".

21. PROJECT PROPOSALS TO BE REFERRED TO PROVINCIAL FOREST MANAGEMENT COMMITTEE FOR EVALUATION (AMENDMENT OF SECTION 67).

Section 67 of the Principal Act is amended in Subsection (1) by repealing the reference "Section 66" and replacing it with the following:-

"Sections 64 and 66".

22. SUSPENSION OF RIGHTS (AMENDMENT OF SECTION 85).

Section 85 of the Principal Act is amended –

(a) in Subsection (1) by inserting after the words "timber authority" the following:-

", forestry clearing authorities under Sections 90B(22) and 90D(22)"; and

(b) by repealing Subsection (5) and replacing it with the following:-

"(5) On the application of the holder, the Managing Director shall re-instate rights suspended under this section where the holder has remedied the failure of performance or compliance for which the rights were suspended under this section."

23. TIMBER AUTHORITY (AMENDMENT OF SECTION 87).

Section 87 of the principal Act is amended in Section (1) –

(a) by adding at the end of Paragraph (c) the following:-

"and"; and

(b) by adding after Paragraph (c) the following new paragraph:-

"(d) for the purpose of harvesting a forest plantation including a State owned forest plantation."

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24. APPLICATION FOR TIMBER AUTHORITY (AMENDMENT OF SECTION 88).

Section 88 of the Principal Act is amended by inserting after Subsection (2) the following new subsections:-

"(3) To ensure the proper management and harvest of a forest plantation and before any rights under the timber authority are exercised, the holder of a forest plantation timber authority shall submit to the Provincial Forest Management Committee for approval a five year project statement setting out a general outline of the objectives and strategies of the timber authority holder, a five year working plan setting out the proposed activities over the succeeding five years and an annual logging plan setting out the details of the proposed work over the succeeding twelve months.

"(4) The five year project statement, five year working plan and annual logging plan may be renewed three months prior to the expiry of each respective term subject to the availability of any remaining harvestable resource."

25. APPLICATION TO BE REFERRED TO PROVINCIAL FOREST MANAGEMENT COMMITTEE (AMENDMENT OF SECTION 89).

Section 89 of the Principal Act is amended –

(a) in Subsection 1(b) by repealing the words "provincial Minister" and replacing them with the following:-

"Chairman of the Provincial Forest Committee"; and

(b) by repealing Subsections (4), (5) and (6) and replacing them with the following respectively:-

"(4) Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that the application is satisfactory, it shall prepare a report of its evaluation including a recommendation of an applicant, if any, and shall submit the report to the Chairman of the Provincial Forest Committee.

"(5) On receipt of the report under Subsection (4), the Chairman of the Provincial Forest Committee shall –

- (i) consider the report, and
- (ii) forward to the Board the report with a notification of his intention to grant a timber authority over the project area, and shall request the consent of the Board to the grant.

"(6) Subject to Subsection (7), the Board shall consider the report referred in Subsection (5) and may give consent to the grant of a timber authority."; and

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- (c) by inserting after Subsection (6) the following new subsection:-

"(7) Where the Board does not consent to the grant of a timber authority, it shall inform the Chairman of the Provincial Forest Committee accordingly and stating the reasons for not consenting to the grant, and the Chairman of the Provincial Forestry Committee shall not grant a timber authority but shall refer the matter to the Provincial Forest Management Committee for re-evaluation or fresh application, as the case may be."

26. PERSON NOT TO APPLY FOR OR BE GRANTED A LICENCE, ETC., UNLESS REGISTERED UNDER THIS PART (AMENDMENT OF SECTION 105).

Section 105 of the Principal Act is amended –

- (a) in Paragraph (b) by repealing the reference "Section 66" and replacing it with the following:-

"Sections 64 and 66"; and

- (b) in Paragraph (d) by adding at the end of that paragraph the following:-

"or"; and

- (c) by inserting after Paragraph (d) the following new paragraphs:-

"(e) apply for a forest clearing authority under Section 90B(22)
– unless registered as a forest industry participant under this Part; or

"(f) apply for a forest clearing authority under Section 90D(22)
– unless registered as a forest industry participant under this Part."

27. CANCELLATION OF REGISTRATION (AMENDMENT OF SECTION 112).

Section 112 of the Principal Act is amended –

- (a) in Subsection (1) by repealing Paragraph (a) and replacing it with the following:-

"(a) a person registered under this Part (or where a person so registered is a corporate person, any of the principals of that corporate person) –

(i) is convicted of –

(A) an offence against a provision of this Act; or

(B) an offence involving dishonesty under any law; or

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(ii) fails to comply with a condition of a timber permit, timber authority, licence, forest clearing authority under Section 90B(22) or forest clearing authority under Section 90D(22), which, in the opinion of the Managing Director, is sufficient to justify cancellation of registration; or"; and

(c) in Subsection (6) by inserting after the words "timber authority" the following:-

" , forest clearing authority under Section 90B(22), forest clearing authority under Section 90D(22)".

28. APPEAL (AMENDMENT OF SECTION 113).

Section 113 of the Principal Act is amended by repealing the reference "Section 109(1)(b)" and replacing it with the following:-

"Section 110(1)(b)".

29. OFFENCES (AMENDMENT OF SECTION 122).

Section 122 of the Principal Act is amended in Subsection (2)(h) by repealing the words "felled, cut, split, sawn or removed by the person or by an agent or employee of the person".

30. REGULATIONS (AMENDMENT OF SECTION 135).

Section 135 of the Principal Act is amended –

(a) in Subsection (1)(r) by adding after the words "timber authority" the following:-

" , other authorities"; and

(b) in Subsection (2)(e) by repealing the word "of"(second occurring) and replacing it with the following:-

"or".

31. SAVING OF EXISTING PERMITS, ETC., (AMENDMENT OF SECTION 137).

Section 137 of the Principal Act is amended –

(a) in Subsection (1)(b) by repealing the words "as if the Act under which they were granted or entered into had not been repealed."; and

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(b) by inserting after Subsection (1A) the following new subsections:-

"(1B) Where the term of a timber rights purchase agreement granted under the *Forestry Act* (Chapter 216)(repealed) is longer than the term of a timber permit granted in respect of the timber rights purchase agreement, the timber permit may be extended under this section subject to –

- (a) the social acceptability of the holder of the timber permit in the project area by the customary owners in writing; and
- (b) the satisfactory performance of the holder of the timber permit in carrying out the operations including compliance with the Act, the terms and conditions of the timber permit and the Papua New Guinea Logging Code of Practice; and
- (c) the amount of forest resources available in the project area to commercially support the operations for not less than two years; and
- (d) the rate of the annual allowable harvest which shall not be increased at the time of the application for extension; and
- (e) the currency of or payment of a performance bond as prescribed; and
- (f) where applicable, amendments to the terms and condition of the timber permit to include a time table for the delivery of infrastructure and other community based benefits and any forest management and other silvicultural treatments specified in the permit.

"(IC) The holder of a timber permit under Subsection (1)(b) may apply to the Board for an extension of the term of the timber permit in the prescribed form, be accompanied by the prescribed fee, and be lodged with the Managing Director.

"(ID) The Board shall obtain a report from the Provincial Forest Management Committee on the requirements in Subsection (1B) and where satisfactory, shall recommend to the Minister to extend the term of the timber permit and the Minister may grant such extension subject to the term of the timber rights purchase agreement.

"(1E) A timber permit under Subsection (1A) may be extended under this section by the Minister upon recommendation of the Board where the Board considers that the remaining forest resource in the project area is not sufficient to meet the requirements of Section 78.

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"(1F) All timber permits saved under Subsections (1) and (1A) and extended under Section 78 are deemed to be extended under this Section.

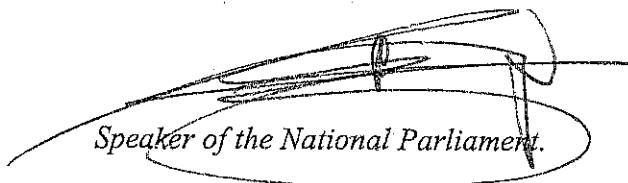
I hereby certify that the above is a fair print of the *Forestry (Amendment) Act 2005* which has been made by the National Parliament.

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

Clerk of the National Parliament.

11 AUG 2005

I hereby certify that the *Forestry (Amendment) Act 2005* was made by the National Parliament on 3 August 2005.

A handwritten signature in black ink, featuring a long, horizontal, sweeping stroke that curves upwards at the end, with several smaller, overlapping strokes beneath it.

Speaker of the National Parliament.

11 AUG 2005