Flora and Fauna Guarantee Act 1988

FLORA AND FAUNA GUARANTEE (FOREST PRODUCE HARVESTING)
ORDER NO. 2/2004

The Lieutenant-Governor, as the Governor’s deputy, with the advice of the Executive Council, makes the following Order:

1. **Title**
   
   This Order may be cited as the Flora and Fauna Guarantee (Forest Produce Harvesting) Order No. 2/2004.

2. **Objective**
   
   The objective of this Order is to authorise, subject to certain terms and conditions, the taking of protected flora in State forest and Crown land where that taking is a result of or incidental to forest produce (including timber) harvesting operations or associated roadworks authorised under the *Forests Act 1958* or timber harvesting operations authorised under the *Sustainable Forests (Timber) Act 2004*.

3. **Authorising provision**
   
   This Order is made under section 48(3) of the *Flora and Fauna Guarantee Act 1988*.

4. **Revocation**
   

5. **Definitions**
   
   In this Order—
   
   “allocation order” has the same meaning as it has in the *Sustainable Forests (Timber) Act 2004*;
   
   “approved timber release plan” has the same meaning as it has in the *Sustainable Forests (Timber) Act 2004*;
   
   “authorised operations” has the same meaning as it has in section 45(2)(a) and (b)(i) of the *Sustainable Forests (Timber) Act 2004*;
   
   “Forest Management Plan” has the same meaning as it has in the Code of Forest Practices for Timber Production made under Part 5 of the *Conservation, Forests and Lands Act 1987*;
   
   “forest management area” means an area to which a Forest Management Plan applies;
   
   “forest produce” has the same meaning as it has in the *Forests Act 1958*;
   
   “grasstree” means any plant of the taxon *Xanthorrhoea*;
   
   “harvest” includes cut, dig or take away;
   
   “regeneration” means the renewal of forest flora by natural or artificial means;
   
   “restoration work” means further action taken to renew forest flora where regeneration has not achieved the conservation objectives of this Order;
   
   “roadworks” means the construction, inspection, maintenance or repair of roads or tracks;
   
   “taxon” has the same meaning as it has in the *Flora and Fauna Guarantee Act 1988*;
   
   “timber harvesting operations” has the same meaning as it has in the *Sustainable Forests (Timber) Act 2004*;
“sphagnum moss” means any plant of the taxon Sphagnum;
“State forest” has the same meaning as it has in the Forests Act 1958;
“tree fern” means plants that are members of the taxa—
(i) Dicksonia antarctica (Soft Tree-fern); and
(ii) Todea barbara (Austral King-fern); and
(iii) Cyathea australis (Rough Tree-fern); and
(iv) Cyathea cunninghamii (Slender Tree-fern); and
(v) Cyathea leichhardtiana (Prickly Tree-fern); and
(iv) Cyathea x marcescens (Skirted Tree-fern);

6. Conservation objectives
The conservation objectives of this Order are—
(a) the objectives set out in section 4(1)(a) to (e) of the Flora and Fauna Guarantee Act 1988; and
(b) to ensure that, across each forest management area, each taxon of protected flora that is taken is maintained in a state that is no less viable than it was before the taking occurred.

7. Authority to take protected flora
(1) A person may take protected flora as a result of or incidental to timber or other forest produce harvesting, including roadworks, in State forest or Crown land if that person—
(a) is undertaking timber harvesting operations that are authorised operations under the Sustainable Forests (Timber) Act 2004 and that are conducted in accordance with the relevant allocation order and approved timber release plan; or
(b) is harvesting timber or other forest produce in accordance with a licence or permit issued under the Forests Act 1958 and in accordance with any relevant Forest Management Plan or Wood Utilisation Plan; or
(c) is an employee or contractor of the Secretary to the Department of the Sustainability and Environment; or
(d) is authorised to carry out roadworks in State forest or Crown land and the taking of the protected flora—
(e) is planned, executed and followed by regeneration work that is carried out in such a way that it is reasonable to expect that the conservation objectives of this Order will be achieved; and
(f) if regeneration has not achieved the conservation objectives of this Order within 2 years of the taking occurring, is followed by restoration work.

(2) Sub-clause (1) does not authorise a person to take protected flora from a critical habitat determined under section 20 of the Flora and Fauna Guarantee Act 1988.

(3) Sub-clause (1) does not authorise a person to take tree ferns, grasstrees or sphagnum moss for the purpose of sale.