
FORESTRY ACT 1977

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FORESTRY

No. 117 of 1977

AN ACT relating to private forestry development and certain other forestry matters.

[14 December 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *Forestry Act 1977*.

Short title and citation.

(2) The *Forestry Act 1920**, as subsequently amended, is in this Act referred to as the Principal Act.

* 11 Geo. V No. 60. For this Act, as amended to 1959, see Reprint of Statutes (1826-1959), Vol. 2, p. 717. Subsequently amended by No. 15 of 1962, No. 55 of 1965, No. 61 of 1916, No. 47 of 1970, No. 42 of 1974, Nos. 37 and 75 of 1975, and No. 28 of 1976.

PART II

PRIVATE FORESTRY

Interpretation.

2 Section 4 of the Principal Act is amended—

(a) by inserting, after the definition of “ Assistant Commissioner ”, the following definition:—

“ ‘ Assistant Commissioner (Private Forests)’ means the Assistant Commissioner (Private Forests) referred to in section 9A;”;

(b) by inserting, after the definition of “ contract of sale ”, the following definition:—

“ ‘ Council ’ means the Private Forestry Council established under Part IIA;”;

(c) by inserting after the definition of “ permit ” the following definitions:—

“ ‘ private forest ’ means any land (not being Crown land) that supports a merchantable stand of timber or that is being managed with a view to producing timber of merchantable quality;

‘ private forestry ’ includes all matters affecting the establishment, development, or management of private forests or the disposal or use of the produce thereof;”.

The Assistant
Commissioner
(Private
Forests).

3 Section 9A of the Principal Act is amended—

(a) by omitting from subsection (1) the word “ two ” and substituting therefor the word “ three ”;

(b) by omitting from that subsection the words “ and the other ” and substituting therefor the word “ another ”; and

(c) by adding at the end of that subsection the words “ and the other, to be known as the Assistant Commissioner (Private Forests), shall be a person having professional forestry qualifications.”.

4 After Part II of the Principal Act the following Part is inserted:—

“ PART IIA

“ PRIVATE FORESTS

“ *Division I—The Private Forestry Council*

“ 12A—(1) There shall be established a council to be called the Private Forestry Council. Establishment and functions of the Private Forestry Council.

“(2) It shall be the duty of the Council to advise the Commission on the exercise of its functions under this Part and generally on matters affecting or likely to affect private forestry.

“(3) Subject to subsection (4), where the Council is of opinion that any matter relating to private forestry should be referred to the Minister for his attention it may refer that matter to the Minister with such representations or recommendations in relation thereto as it considers appropriate.

“(4) No matter shall be referred to the Minister under subsection (3) except in pursuance of a resolution of the Council that the matter be so referred passed with the concurrence of at least 5 members of the Council.

“(5) The Minister may refer to the Council any matter related to private forestry and the Council shall, as soon as practicable, consider the matter and make a report thereon to the Minister with such recommendations as it considers appropriate in the circumstances.

“ 12B—(1) The Council shall consist of a chairman, two *ex officio* members, and six representative members, the chairman and the representative members being appointed by the Governor in accordance with this section. Constitution of the Council.

“(2) The *ex officio* members of the Council shall be—

- (a) the Assistant Commissioner (Private Forests); and
- (b) the Director of Agriculture or his nominee, being an officer of the department of which the Director is the permanent head,

and the Assistant Commissioner (Private Forests) shall be the deputy chairman of the Council.

“(3) A separate representative member shall be appointed to represent persons of each of the following groups:—

- (a) Owners of private forests in the southern region;
- (b) Owners of private forests in the northern region;
- (c) Owners of private forests in the north-western region;
- (d) Such organizations as the Minister is satisfied can properly be regarded as associations of owners of private forests carried on wholly or partly for the purpose of marketing the timber obtained from those forests;
- (e) Persons engaged in sawmilling or allied industries;
- (f) Persons engaged in industries using or processing pulpwood, including the production of woodchips.

“(4) The chairman of the Council shall be appointed for such term not exceeding 5 years as may be specified in his instrument of appointment.

“(5) A representative member of the Council shall be appointed for such term not exceeding 3 years as may be specified in his instrument of appointment.

“(6) The Minister shall pay to a member of the Council (not being an Assistant Commissioner or an officer or temporary employee of the Public Service) such remuneration and allowances as the Governor may approve.

Removal of
chairman or
representative
member in
certain cases.

“12C—(1) The Governor may remove from office the chairman, or any representative member, of the Council if the Governor is satisfied that he—

- (a) has become permanently incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
- (d) has been convicted (whether in this State or elsewhere) of an offence of such a nature that renders it improper for him to continue to hold his office.

“(2) The Governor may remove from office any representative member of Council—

- (a) if that member, without leave of the Council, is absent from 3 consecutive meetings of the Council; or

(b) if, by reason of circumstances that have arisen since he was appointed, the Governor is of the opinion that he is no longer a person suitable to represent the persons that, pursuant to section 12B (3), he was appointed to represent.

“ 12D—(1) The chairman, or, in his absence, the deputy chairman, or, in the absence of both, such one of the members present as they may choose shall preside at a meeting of the Council. Proceedings of the Council.

“(2) Five members of the Council constitute a quorum at any meeting of the Council.

“(3) The chairman or other person presiding at a meeting of the Council has a deliberative vote, but in the event of an equality of votes on any matter before a meeting of the Council, the chairman, if he is present, may exercise a second or casting vote and, if that right is not exercised, the matter stands adjourned to the next meeting of the Council.

“(4) Subject to this Act, the Council may regulate its own proceedings.

“ 12E—(1) The Council may establish committees under this section and, subject to this section— Committees of the Council.

(a) may refer to any such committee for advice or recommendation any matter that it is of opinion could be conveniently investigated or considered by the committee; and

(b) may delegate to any such committee, with or without restrictions, as it thinks fit, the exercise of any of the functions of the Council.

“(2) A committee established under this section shall not exercise any of the powers of the Council under section 12A (3).

“(3) The members of a committee established under this section may be appointed by the Council or be such persons, or appointed in such manner, as it may determine.

“(4) With the approval of the Minister a committee established under this section may comprise, or include, persons who are not members of the Council; but, with respect to the holding of office as a member of such a committee by an officer of the Department, the Minister may authorize that approval to be given by the Commission in his stead.

“(5) The Council may give directions to a committee appointed under this section with respect to the manner of the exercise of its functions, but subject to any such directions, any such committee may regulate its own proceedings.

“(6) The Minister shall pay to a member of a committee appointed under this section (not being an officer or temporary employee in the Public Service) such remuneration and allowances as the Governor may approve.

Secretariat of
Council and its
committees.

“12F—(1) The chairman of the Council, or, at his request, the Commission, may make arrangements for the provision of staff and other assistance required by the Council or any of the committees established by it under this Act.

“(2) Any such arrangements as are referred to in subsection (1) may provide for the giving of assistance to the Council, or any such committee as is referred to therein, by officers or temporary employees in the Public Service.

“*Division II—Functions of Commission in relation to Private Forests*

General
functions of
Commission
in relation to
private forests.

“12G—(1) Subject to this Division, the Commission shall keep under review all matters relating to private forestry in the State and shall make all such arrangements as it considers desirable in the public interest to promote the development and proper management of private forests and the utilization of their produce.

“(2) The Assistant Commissioner (Private Forests) shall advise the Commission on the exercise of its functions under this Division, and in exercising those functions the Commission shall take into consideration the advice so given.

“(3) Before adopting any policy that will, in its opinion, make a significant impact on private forestry the Commission shall seek the views of the Council.

“(4) Without prejudice to the generality of the foregoing provisions of this section the arrangements referred to in subsection (1) may be arrangements with respect to the following matters:—

- (a) The obtaining of information and the carrying out of investigations and research;
- (b) The publication or giving of information and advice, either generally, or in particular cases;

(c) At the request of the owner the carrying out, or assisting in the carrying out, of negotiations with a view to the establishment of contractual relations between interested parties.

“(5) Nothing in this section shall be construed as authorizing the Commission or any other person to enter upon land otherwise than with the consent of the owner thereof, or to compel the owner thereof to do any act or refrain from doing any act in relation to his land except in pursuance of an agreement entered into under this Division.

“12H—(1) The Commission, with the approval of the Treasurer, may enter into and carry into effect agreements for rendering financial assistance (whether by way of a grant or loan or otherwise) for the purpose of assisting the establishment, development, or proper management of private forests or the utilization of the produce thereof.

Financial assistance by Commission for private forestry.

“(2) The financial assistance under this section shall be rendered on such terms and conditions as may be agreed with the Commission, and any such terms and conditions may be terms and conditions giving the Commission rights in respect of the land in relation to which the assistance is given or its produce.

“(3) Subject to the terms of any agreement the Commission may sell or otherwise dispose of, in such manner as it thinks fit, any forest produce to which it becomes entitled under any agreement entered into for the purposes of this Division.

“12J—(1) Where financial assistance under this Division is given by way of a loan it shall be given on such security (if any) as the Commission requires, and the agreement by which the loan is made shall specify the period within which the loan is to be repaid.

Special provisions as to assistance by way of loan.

“(2) Any agreement under this Division whereby a loan is made by the Commission shall require the payment of interest on so much of that money as at any time remains unpaid at a rate not less than half the State rate referred to in section 24 (6) of the *Hydro-Electric Commission Act 1944* prevailing at that time.

“(3) In making a loan under this section the Commission may reserve to itself the right to alter the terms on which the loan is to be repaid, and the rate of interest payable in respect of that loan, and, where such a right is so reserved, the Commission shall exercise it in such manner as it considers reasonable in order to ensure that, having regard to the purposes for which the loan was made, arrangements are made for its repayment as soon as practicable, whether by way of borrowing of money from other sources or otherwise.

“(4) Where a loan under this Division is secured by a mortgage of land nothing in Division II of Part XVI of the *Local Government Act 1962* prevents the subdivision of a block in the exercise of any power of sale or other right arising under the mortgage.

Special provisions as to guarantees of loans.

“12K—(1) Without prejudice to the generality of the foregoing provisions of this Division the giving of a guarantee for the repayment of a loan or for the payment of interest or other charges in respect thereof shall be deemed to be the giving of financial assistance to the person liable to repay the loan or to pay that interest or those charges, and any such guarantee given under this section is in this section referred to as a ‘forestry loan guarantee’.

“(2) The aggregate of all sums borrowed by way of loans in respect of which forestry loan guarantees are in force under this Act, and have not been repaid, shall not exceed \$5 000 000.

“(3) Where in consequence of giving a forestry loan guarantee in respect of a loan the Commission is required to make a payment to the person to whom the money is required to be repaid, that payment shall without any authority other than this Act be paid by the Treasurer out of the Consolidated Revenue (which to the necessary extent is appropriated accordingly).

“(4) A forestry loan guarantee in respect of a loan shall require the person liable to repay the loan to pay to the Commission, on its demand, sums equal to the sums paid out of the Consolidated Revenue under subsection (3) in pursuance of the guarantee together with interest thereon at the same rate as that payable in respect of the principal moneys lent under the loan; and any moneys paid to the Commission in pursuance of such a requirement shall be paid into the Consolidated Revenue.

Limit on loans and loan guarantees.

“12L No loan shall be made to any person under this Division and no guarantee shall be given under this Division in respect of a loan made to any person if the effect of making the loan or giving the guarantee would result in the aggregate of the amount of any sums required to be repaid by that person under loans made to him under this Division or under loans in respect of which guarantees have been given under this Division, exceeding \$300 000.

Forestry dedication covenants.

“12M—(1) An agreement under this Division may contain a covenant to the effect that the land to which the covenant relates shall not, except with the previous consent in writing of the Com-

mission or in such other circumstances as may be specified in the agreement, be used otherwise than for the growing of timber or other forest products in accordance with the rules or practice of good forestry, or for purposes connected therewith.

“(2) A covenant referred to in subsection (1) that is entered into by a person having an estate in the land on behalf of himself, his successors in title, and persons deriving title under him or them, is referred to in this Act as a ‘forestry dedication covenant’, and is enforceable by the Commission against the covenantor or any such person in like manner and to the like extent as if the covenant had been entered into by the fee simple owner of the land for the benefit of adjacent land held by the Commission in fee simple that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Commission.

“(3) Subject to this section, the Commission may, at any time, by agreement with the person against whom a forestry dedication covenant is enforceable, discharge the covenant or may agree to a variation of the covenant.

“(4) Subject to subsection (5), where the land subject to a forestry dedication covenant is under the *Real Property Act* 1862, that Act and the Acts amending that Act have effect in relation to the covenant and the instrument creating it as if it were such a covenant as is referred to in section 27D of the *Real Property Act* 1886 for the benefit of land not under that Act, and as if the Commission held an estate in fee simple in that land and was entitled wholly to discharge the covenant.

“(5) Where a forestry dedication covenant is entered into by the registered proprietor of a lease under the *Real Property Act* 1862 in respect of which no certificate of title has been issued, the Recorder of Titles shall enter a notification of the instrument upon the memorandum of the lease burdened thereby.

“(6) Where the land subject to a forestry dedication covenant is not under the *Real Property Act* 1862, the covenant and any variation or discharge thereof shall be under seal and shall be deemed to be an instrument affecting that land within the meaning of the *Registration of Deeds Act* 1935.

“(7) A covenant entered into by a leaseholder under this section shall (unless the instrument creating it contains a provision to the contrary) remain in force so long as the covenantor or any person

deriving title under him other than a *bona fide* purchaser for value of the legal estate without notice of the covenant remains in possession of the land to which the covenant relates.

“(8) In this section, unless the contrary intention appears, ‘lease’ includes an agreement for a lease and ‘leaseholder’ includes a tenant under an agreement for a lease.

“(9) Section 90D of the *Conveyancing and Law of Property Act* 1884 (which enables the Recorder of Titles in certain cases to discharge or modify restrictive covenants) does not apply to forestry dedication covenants.

Registration of
general law
land subject to
forestry
dedication
covenants.

“12N—(1) Where the whole or any part of the land that is subject to a forestry dedication covenant is not under the *Real Property Act* 1862 the Recorder shall, on the application of the covenantor or any of his successors in title, bring under the Act so much of that land as is not under that Act by registering a qualified certificate of title thereto in accordance with section 19 of the Act.

“(2) The Recorder is not bound, for the purposes of subsection (1), to investigate the title to any land.

“(3) Where by this section the Recorder is required to bring any land under the *Real Property Act* 1862, and no survey such as he could require under section 104 of that Act is available, the land may be described on the certificate of title by means of a description by metes and bounds instead of by reference to a plan.

“(4) Where, in any certificate of title registered pursuant to this section, land is described by means of a description by metes and bounds—

- (a) no action shall be brought against the Recorder or the assurance fund constituted under the *Real Property Act* 1862 by reason or in respect of any difference between the area of the land or the position or dimensions of the boundaries stated in the certificate of title and the actual area, position, or dimensions as found by admeasurement on the ground;
- (b) a solicitor who acts for any party taking or proposing to take any estate or interest in the land from the registered proprietor of the certificate of title is not under any duty to check that the description in the certificate of title agrees with the description in the antecedent document of title; and

(c) upon such evidence of boundaries as he deems sufficient, the Recorder may cancel the certificate of title and replace it by a fresh certificate of title describing the land in accordance with that evidence.

“ 12P—(1) Except as otherwise expressly provided therein the expenses of the Commission under this Part shall be paid out of moneys provided by Parliament, and any revenue received by the Commission under this Part shall be paid into the Consolidated Revenue. Expenses of Part IIA.”

“(2) The Commission may receive funds from any source for the purpose of their application for any of the purposes of this Part and may so apply any funds so received.”.

5 Section 39 of the Principal Act is amended by adding at the end the following subsection:— Exclusion from forestry fund of private forestry expenses.

“(2) The fund referred to in subsection (1) shall not be applied to meet any expenditure incurred by the Commission under Part IIA or arising from the appointment of the Assistant Commissioner (Private Forests).”.

6 Section 40 of the Principal Act is amended by adding after paragraph (c) thereof the words “, but does not include any revenue received by the Department under Part IIA.”. Alteration of definition of “revenue of department”.

PART III

MISCELLANEOUS

7—(1) Section 4 of the Principal Act is amended by inserting in the definition of “State forest”, after the word “this”, the words “or any other”. State forests declared under other Acts.

(2) In relation to any land dedicated as a State forest under section 4 of the *Pulpwood Products Industry (Eastern and Central Tasmania) Act 1968* the Principal Act shall be deemed always to have had effect as if it were amended in the manner specified in subsection (1) and, accordingly, anything done in or in relation to an area so dedicated has effect, and shall be deemed always to have had effect, as if the Principal Act had been so amended.

(3) Nothing in this section shall be construed as prejudicing or affecting the operation of the *Pulpwood Products (Eastern and Central Tasmania) Act 1968* in relation to a State forest.

Working plans
under Principal
Act.

8 Section 22 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(4) A working plan shall be subject to the approval of the Governor, and when so approved shall take effect, and shall not be altered except by the Commission with the approval of the Governor.”.

Forest
reserves.

9 Section 4 of the *Pulpwood Products (Eastern and Central Tasmania) Act* 1968 is amended by omitting subsection (4).