

FOREST PRACTICES ACT 1985

No. 48 of 1985

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FOREST PRACTICES ACT 1985

—————
 No. 48 of 1985
 —————

AN ACT to ensure that all forest practices are conducted in accordance with the Forest Practices Code, to provide for the issue of that Code, to provide for the creation of private timber reserves, to provide for the constitution of the Forest Practices Tribunal, and to provide for incidental and consequential matters.

[Royal Assent 23 May 1985]

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—This Act may be cited as the *Forest Practices Act 1985*. Short title.

2—(1) Parts I and IV shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Interpretation.

3—(1) In this Act, unless the contrary intention appears—

- “ approved timber harvesting plan ” means a timber harvesting plan approved by the Commission and in force under this Act and includes a timber harvesting plan varied in accordance with Part III;
- “ chief chairman ” means the chief chairman of the Tribunal;
- “ Commission ” means the Forestry Commission constituted under the *Forestry Act 1920*;
- “ Council ” means the Private Forestry Council established under Part IIA of the *Forestry Act 1920*;
- “ Department ” means the Forestry Department;
- “ deputy chief chairman ” means the deputy chief chairman of the Tribunal;
- “ division ” means a division of the Tribunal;
- “ forest practices ” means the processes involved in establishing forests, or growing or harvesting timber, and includes the construction of roads and other works connected with establishing forests, or growing or harvesting timber;
- “ Forest Practices Code ” means the Forest Practices Code issued by the Commission pursuant to section 30 and in force under this Act and includes any amendments that may from time to time be made to that Code;
- “ forest practices officer ” means a forest practices officer referred to in section 39;
- “ forestry right ” has the meaning assigned to that expression in the *Forestry Act 1920*;
- “ harvest ”, used in relation to timber, means to cut and remove that timber from a forest;
- “ owner of land ” means—
 - (a) in the case of land held in fee simple—the person in whom the estate of fee simple is vested;
 - (b) in the case of land held under a tenancy for life—the person who is the life tenant;
 - (c) in the case of land held under a lease for a term of not less than 99 years—the person who is the lessee of the land; or

(d) in the case of land held under any other interest declared by the regulations to be an interest for the purposes of this definition—the person who is the holder of the land under that interest;

“ private timber reserve ” means land that has been declared as a private timber reserve under section 11;

“ process ”, used in relation to timber, means to pulp, chip, cut, or saw timber;

“ registrar ” means the registrar of the Registry of the Forest Practices Tribunal;

“ the regulations ” means the regulations made and in force under this Act;

“ timber ” has the meaning assigned to that expression in the *Forestry Act 1920*;

“ timber harvesting plan ” means a plan referred to in section 18;

“ timber processor ” means a person who processes timber for the purpose of producing—

(a) wood pulp;

(b) wood chips;

(c) sawn timber;

(d) poles, piles, or posts; or

(e) industrial fuel wood,

for sale;

“ trees ” has the meaning assigned to that expression in the *Forestry Act 1920*;

“ Tribunal ” means the Forest Practices Tribunal established under section 34.

(2) A reference in this Act to provisions, in relation to a timber harvesting plan, includes a reference to any condition, restriction, or specification contained or referred to in that plan.

4—This Act binds the Crown not only in right of this State but also, so far as the legislative power of Parliament permits, binds the Crown in all of its other capacities.

Act binds the Crown.

PART II

PRIVATE TIMBER RESERVES

Application to
have land
declared as
private
timber
reserve.

5—(1) A person who wishes to have any land owned by him declared as a private timber reserve may make application to the Commission.

(2) An application referred to in subsection (1) shall—

- (a) be in writing in a form approved by the Commission;
- (b) contain a description of the area of land that the applicant seeks to have declared as a private timber reserve;
- (c) contain a list of all persons (other than the applicant) who have a legal or equitable interest in the land, or in timber on the land, to which the application relates; and
- (d) be accompanied by the fee (if any) prescribed in the regulations.

(3) An applicant under this section shall, if required by the Commission to do so, provide such further particulars in relation to the application as the Commission requires.

(4) An applicant under this section shall, as soon as is practicable after making his application, notify all persons referred to in subsection (2) (c) that he has made an application referred to in subsection (1).

Notice of
application,
&c.

6—(1) Where an application for the declaration of land as a private timber reserve has been made in accordance with section 5, the Commission shall cause a notice containing the prescribed particulars to be published in the daily newspapers published in this State and a copy of the notice to be sent to the local authority exercising jurisdiction over the land and any local authority exercising jurisdiction over any land adjacent to that land.

(2) For the purposes of subsection (1), “prescribed particulars” means—

- (a) a description of the area of land to which the application relates;

- (b) a statement advising that objections to the declaration as a private timber reserve of the area of land described in the advertisement may be lodged with the Commission by the date specified in the notice, being a date not earlier than 28 days after the date on which the notice is published in the newspaper; and
- (c) such other particulars of the application as the Commission considers necessary.

(3) Any person may, on payment of the fee prescribed in the regulations, inspect an application made under section 5 at the office of the Commission.

7—(1) Any prescribed person who wishes to object to the granting of an application for the declaration of any land as a private timber reserve may, at any time before the expiration of the period referred to in the notice relating to the application published in accordance with section 6, lodge with the Commission an objection in writing to the granting of the application on any grounds on which the application may be refused under section 8 (2).

Objections to
declaration of
land as
private
timber
reserve.

(2) An objection lodged under subsection (1) may not be entertained by the Commission, unless—

- (a) it specifies the ground for the objection;
- (b) the ground for the objection is a ground on which the Commission is required to refuse an application under section 8 (2); and
- (c) the objector has lodged the objection with the Commission and has served a copy of the objection on the applicant before the expiration of the period referred to in subsection (1).

(3) A person who made an application under section 5 may, within a period of 14 days after the date on which the copy of an objection is served on him, submit in writing to the Commission any representations with respect to his application and any objection to that application.

(4) For the purposes of this section—

“prescribed person” means—

- (a) a local authority exercising jurisdiction over the land, or any part of the land, to which the application relates, or over any land adjacent to that land;

(b) a State authority; or

(c) a person who has a legal or equitable interest in the land, or in timber on the land, to which the application relates;

“State authority” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister, or another State authority.

Grant or refusal of application for declaration of land as private timber reserve.

8—(1) Where an application for the declaration of land as a private timber reserve complies with section 5, the Commission shall, except where the application is refused as provided in subsection (2), grant the application as soon as is reasonably practicable after—

- (a) the expiration of the period referred to in the notice relating to the application published in accordance with section 6; or
- (b) if a hearing is required to be held in respect of the application as provided by subsection (3), the conclusion of the hearing.

(2) An application for a declaration of land as a private timber reserve shall be refused if the Commission is satisfied that—

- (a) the application has not been made in good faith and honestly;
- (b) the land is not suitable for declaration as a private timber reserve;
- (c) a person who has a legal or equitable interest in the land, or in timber on the land, would be disadvantaged if the application was granted;
- (d) by virtue of the operation of any Act, the owner of the land is prohibited from establishing forests, or growing or harvesting timber, on the land; or
- (e) it would not be in the public interest to grant the application.

(3) An application for the declaration of land as a private timber reserve shall not be refused unless the Commission—

(a) has first held a hearing with respect to the application; and

(b) has afforded the applicant and, where a person has lodged an objection to the application in accordance with section 7, that person an opportunity to appear and to make submissions and adduce evidence at the hearing.

(4) Where the Commission refuses an application made under section 5, it shall forthwith, by notice in writing served on the applicant, inform him of the refusal and of the reasons for the refusal.

(5) Where the Commission grants an application made under section 5 in respect of which an objection has been lodged in accordance with section 7, it shall forthwith, by notice in writing served on the person who lodged the objection, inform him of the granting of the application.

9—(1) Where a person who made an application under section 5 is aggrieved by the refusal of the Commission to grant his application, he may appeal to the Tribunal.

Appeal in respect of application under section 5.

(2) Where an application made under section 5 is granted by the Commission, a person who lodged an objection under section 7 in respect of that application may appeal to the Tribunal.

(3) An appeal under this section shall be instituted by giving written notice to the registrar within a period of 14 days after—

(a) in the case of an appeal against the refusal to grant an application made under section 5, the service of a notice under section 8 (4); or

(b) in the case of an appeal against the granting of an application made under section 5, the service of a notice under section 8 (5).

(4) Where a person who made an application under section 5 appeals to the Tribunal the registrar shall, within 7 days of the appeal being lodged—

(a) serve a copy of the notice of appeal on each person who lodged an objection under section 7 in respect of the application; and

- (b) publish an advertisement containing a copy of the notice of appeal in a daily newspaper circulating in the area in which the land to which the application relates is located.

(5) Where a person who made an application under section 5 appeals to the Tribunal, any person who lodged an objection under section 7 in respect of that application may intervene in the appeal by giving written notice to the registrar within 7 days of the date on which the advertisement referred to in subsection (4) (b) was published and shall, on intervening, be a party to the appeal.

(6) In the determination of an appeal under this section, the Tribunal, unless it dismisses the appeal, may quash the decision of the Commission and direct the Commission to take such action as it considers necessary with respect to the application.

10—Where—

- (a) the Commission grants an application made under section 5 and no appeal is lodged in accordance with section 9 in respect of the granting of that application;
- (b) the Commission grants an application made under section 5, and an appeal is lodged in accordance with section 9 in respect of the granting of that application and the Tribunal dismisses the appeal; or
- (c) the Commission refuses to grant an application made under section 5, and an appeal is lodged in accordance with section 9 in respect of that refusal and the Tribunal quashes the decision of the Commission and directs the Commission to grant the application,

the Commission shall recommend to the Governor that the land to which the application relates be declared as a private timber reserve.

11—(1) The Governor may, on the recommendation of the Commission made pursuant to section 10, by notice published in the *Gazette*, declare any land specified in the notice as a private timber reserve.

(2) The Commission shall cause a copy of a notice under subsection (1) to be sent to the local authority exercising jurisdiction over the land to which the notice relates and any local authority exercising jurisdiction over any land adjacent to that land.

(3) A notice under subsection (1) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Recommendation to Governor that land be declared as private timber reserve.

Declaration of land as private timber reserve.

12—(1) Where land has been declared as a private timber reserve in accordance with section 11 (1), it shall be used only for establishing forests, or growing or harvesting timber in accordance with the Forest Practices Code and such other activities which the Commission considers to be compatible with establishing forests, or growing or harvesting timber.

Effect of declaration of land as private timber reserve.

(2) Where land has been declared as a private timber reserve in accordance with section 11 (1), any Act prescribed in the regulations, and the prescribed provisions of any Act prescribed in the regulations shall not apply to the private timber reserve.

13—(1) Where the Commission is satisfied that a private timber reserve or part of a private timber reserve is not being used for establishing forests, or growing or harvesting timber in accordance with the Forest Practices Code, or is not being used for activities which the Commission considers to be compatible with establishing forests, or growing or harvesting timber, it may, by notice in writing served on the owner of the reserve, inform him that it intends to recommend to the Governor that the reserve or part of the reserve, as the case may be, shall cease to be, or cease to form part of, a private timber reserve.

Revocation of private timber reserve at instigation of Commission.

(2) The owner of a private timber reserve referred to in subsection (1) may, if aggrieved by the intention of the Commission to make a recommendation referred to in that subsection, appeal to the Tribunal.

(3) An appeal under subsection (2) shall be instituted by giving written notice to the registrar within a period of 14 days after the service of the notice referred to in subsection (1).

(4) In the determination of an appeal under subsection (2), the Tribunal, unless it dismisses the appeal, may direct the Commission to take such action as it considers necessary.

(5) Where—

(a) no appeal is lodged under subsection (2) within the period specified in subsection (3) in respect of the Commission's intention to recommend to the Governor that the private timber reserve or part of the private timber reserve referred to in subsection (1) shall cease to be, or cease to form part of, a private timber reserve;

or

- (b) an appeal is lodged under subsection (2) within the period specified in subsection (3) and the Tribunal dismisses the appeal,

the Commission shall recommend to the Governor that the reserve or part of the reserve, as the case may be, shall cease to be, or cease to form part of, a private timber reserve.

(6) The Governor may, on the recommendation of the Commission, by notice published in the *Gazette*, declare that the private timber reserve or part of the private timber reserve, as the case may be, specified in the notice shall cease to be, or cease to form part of, a private timber reserve.

(7) The Commission shall cause a copy of a notice under subsection (6) to be sent to the local authority exercising jurisdiction over the land to which the notice relates and any local authority exercising jurisdiction over any land adjacent to that land.

(8) A notice under subsection (6) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Revocation of private timber reserve on application of owner of reserve.

14—(1) The owner of a private timber reserve may make application to the Commission for the reserve or such part of the reserve as the owner specifies in the application to cease to be, or cease to form part of, a private timber reserve.

(2) An application under subsection (1) shall—

- (a) be in writing in a form approved by the Commission;
- (b) contain a description of the private timber reserve or part of the private timber reserve that the applicant wishes to cease to be, or cease to form part of, a private timber reserve; and
- (c) specify the reasons why the application is made.

(3) An applicant under subsection (1) shall, if required by the Commission to do so, provide such further particulars in relation to the application as the Commission requires.

(4) Subject to subsection (5), the Commission shall grant an application under subsection (1) unless—

- (a) the Commission has rendered financial assistance by way of a grant or loan under Division II of Part IIA of the *Forestry Act 1920*, or any other person has rendered financial assistance, to the applicant under subsection (1) for the development or maintenance of the private timber reserve to which the application relates; or

(b) the private timber reserve to which the application relates has been recognized and treated as such for the purposes of sections 756 (4) and 759 of the *Local Government Act* 1962, any Act prescribed in the regulations, or the prescribed provisions of any Act prescribed in the regulations.

(5) Subsection (4) (a) does not apply if the financial assistance that has been rendered to the applicant has been repaid to the Commission or, as the case may be, any other person who rendered the financial assistance.

(6) The Commission shall, by notice in writing served on the applicant, inform him of its decision and, in the case of a refusal to grant an application, shall inform the applicant of the reasons for the refusal.

(7) Where a person who made an application under subsection (1) is aggrieved by the refusal of the Commission to grant his application, he may appeal to the Tribunal.

(8) An appeal under subsection (7) shall be instituted by giving written notice to the registrar within a period of 14 days after the service of the notice referred to in subsection (6).

(9) In the determination of an appeal under subsection (7), the Tribunal, unless it dismisses the appeal, may quash the decision of the Commission and direct the Commission to take such action as it considers necessary in respect of the application.

(10) Where—

(a) the Commission grants an application under subsection (1); or

(b) the Commission refuses to grant an application under subsection (1) and the applicant appeals to the tribunal pursuant to subsection (7) within the period specified in subsection (8) in respect of the refusal of the Commission to grant the application and the Tribunal quashes the decision of the Commission and directs the Commission to grant the application,

the Commission shall recommend to the Governor that the private timber reserve or part of the private timber reserve in respect of which the application relates, as the case may be, shall cease to be, or cease to form part of, a private timber reserve.

(11) The Governor may, on the recommendation of the Commission, by notice published in the *Gazette*, declare that the private timber reserve or part of the private timber reserve specified in the notice shall cease to be, or cease to form part of, as the case may be, a private timber reserve.

(12) The Commission shall cause a copy of a notice under subsection (11) to be sent to the local authority exercising jurisdiction over the land to which the notice relates and any local authority exercising jurisdiction over any land adjacent to that land.

(13) A notice under subsection (11) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Registration of notice relating to private timber reserve.

15—(1) Where a notice is published in the *Gazette* under section 11 declaring any land as a private timber reserve, the Commission shall forthwith cause the notice to be registered in respect of that land.

(2) Where a notice is published in the *Gazette* under section 13 (6) or 14 (11) by which the whole or any part of a private timber reserve ceases to be, or ceases to form part of, a private timber reserve, the Commission shall forthwith cause the notice to be registered in respect of the land to which it relates.

(3) The provisions of Schedule 1 have effect in relation to the registration of notices under this section.

(4) Nothing in section 40 of the *Land Titles Act 1980* shall be construed as affecting the validity of any notice referred to in this section or as prejudicing or affecting the registration of any such notice.

Compensation may be payable where application refused.

16—(1) Subject to this section, where—

- (a) the Commission has refused to grant an application for a declaration of land as a private timber reserve only on the ground referred to in section 8 (2) (d) or (e);
- (b) the owner of the land has appealed to the Tribunal against the refusal to grant the application and the appeal has been dismissed; and
- (c) timber on the land is thereby made less valuable to the owner of the land by virtue of the fact that he is prevented from using the land for timber production,

he is entitled to compensation from the Commission for the value of the timber crop growing on that land in accordance with this section.

(2) The Commission is not required to consider an application for compensation under this section unless the application is received by it within 30 days after the Tribunal has made its decision in respect of the appeal.

(3) An owner of land is entitled to compensation under this section if he can satisfy the Commission that—

(a) he has been actively managing the land for the establishment of forests, or the growing, with the intention of harvesting, of timber for a period of at least 2 years before he made application to the Commission under section 5; and

(b) in the case of an application that was refused on the ground referred to in section 8 (2) (d), he had an intention to apply to the Commission for the declaration of the land as a private timber reserve during the time that he was actively managing the land before the prohibition was imposed.

(4) Where an application for declaration of land as a private timber reserve was refused on the ground referred to in section 8 (2) (d), compensation is not payable to the owner of the land unless the prohibition was imposed within the period of 3 months immediately prior to him making the application to the Commission under section 5, and that compensation is not payable to him in respect of the imposition of the prohibition under that Act or any other Act (other than this Act).

(5) Where an owner of land is entitled to compensation under this section the Commission shall request the Valuer-General to determine the amount of compensation that is payable by the Commission.

(6) Unless the Commission or the owner of the land disputes the amount of compensation determined by the Valuer-General, the Commission shall pay the amount determined by the Valuer-General to the owner of the land.

(7) If the Commission or the owner of the land disputes the amount of compensation determined by the Valuer-General, the amount of compensation may be determined—

(a) if both parties agree, by arbitration under the *Arbitration Act 1892*; or

(b) if the parties cannot agree upon arbitration, by the Supreme Court on the application of the Commission.

(8) Any compensation payable under this section shall be paid out of moneys appropriated by Parliament for that purpose.

PART III

TIMBER HARVESTING

Division 1—Timber harvesting plans

Restriction on purchasing or acquiring timber.

17—(1) Subject to subsection (2), a timber processor who, for the purpose of processing for sale, purchases or acquires timber that has been harvested from land in respect of which there is not in existence at the time of harvesting an approved timber harvesting plan is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$15 000.

(2) Subsection (1) does not apply in circumstances prescribed in the regulations.

Application for approval of timber harvesting plan.

18—(1) Any person may—

- (a) prepare, or cause to be prepared, a timber harvesting plan in relation to any land; and
- (b) make application to the Commission for approval of that plan.

(2) A timber harvesting plan shall contain—

- (a) specifications of the forest practices to be carried out on the land referred to in the plan in connection with the harvesting of timber;
- (b) in the case of a private timber reserve, or where the owner of the land referred to in the plan wishes to restock the land with trees, specifications in connection with the restocking of the land with trees;
- (c) an estimate of the period during which the harvesting shall be carried out; and
- (d) the name of the timber processor by whom the timber harvested under the plan is intended or expected to be processed.

(3) Any specifications referred to in subsection (2) shall be in accordance with the Forest Practices Code as in force at the time the timber harvesting plan is prepared.

(4) An application referred to in subsection (1) (b)—

(a) shall be in writing;

(b) shall be accompanied by a memorandum in writing signed by the owner of the land referred to in the plan or, if the land is subject to a forestry right, the holder of the right, stating that he has given his approval for the plan to be submitted to the Commission; and

(c) shall be accompanied by the fee (if any) prescribed in the regulations.

(5) An applicant under this section shall, if required by the Commission to do so, provide such further particulars in relation to the timber harvesting plan as the Commission specifies.

19—(1) Where an application for approval of a timber harvesting plan is made in accordance with section 18, the Commission may—

Commission to approve or refuse to approve timber harvesting plan.

(a) approve the plan;

(b) refuse to approve the plan; or

(c) amend the plan—

(i) by inserting conditions and restrictions to be complied with in the harvesting of timber;

(ii) by inserting new specifications in the plan or amending the specifications contained in the plan submitted to it; or

(iii) in such other manner as it considers necessary, and approve the plan as so amended.

(2) Except where the Commission has requested further particulars in relation to an application for approval of a timber harvesting plan, the Commission shall take such action as is referred to in subsection (1) (a), (b), or (c) within 28 days of receipt of the application.

(3) Where the Commission approves a timber harvesting plan, refuses to approve a timber harvesting plan, or approves a plan as amended in accordance with subsection (1) (c), it shall, by notice in writing served on the person who applied under section 17 for approval of the plan and the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, inform them of its decision.

Authority of approved timber harvesting plan.

20—An approved timber harvesting plan authorizes the carrying out or causing or permitting to be carried out of the harvesting of timber and any operations associated with the harvesting of timber on the land specified in the plan in accordance with the provisions of that plan during the period specified in the plan.

Contravention, &c., of approved timber harvesting plan.

21—(1) Where a timber harvesting plan has been approved by the Commission in respect of the harvesting of timber on any land and is in force under this Act—

(a) any person who in the process of harvesting timber on that land or in the process of carrying out any operations associated with the harvesting of timber on that land contravenes or fails to comply with the provisions of the plan; or

(b) any timber processor who knowingly causes the harvesting of timber on that land or any operations associated with the harvesting of timber on that land to be carried out in contravention of the provisions of the plan,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$15 000 or a daily penalty not exceeding \$1 000.

(2) Where a daily penalty is imposed under subsection (1) for a contravention of that subsection the total of the penalty imposed shall not exceed \$15 000.

(3) Where an approved timber harvesting plan includes provisions relating to the restocking of the land to which the plan relates with trees, any person required in that plan to comply with any of those provisions who fails to comply with those provisions is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$5 000.

(4) It is a defence to a charge under subsection (3) if the defendant proves to the satisfaction of the court that he did not consent to the imposition on him in the approved timber harvesting plan of the requirement to comply with any of the provisions of that plan.

22—(1) The Commission may, subject to subsection (2), vary the provisions of an approved timber harvesting plan.

Variation of approved timber harvesting plan at instigation of Commission.

(2) The Commission shall not exercise its powers under subsection (1) unless it has first afforded the person who applied to it under section 18 for approval of the plan and the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, an opportunity to make submissions to it in relation to the matter.

(3) Where the Commission varies the provisions of an approved timber harvesting plan, it shall, by notice in writing served on the person who applied to it under section 18 for approval of the plan and the owner of the land referred to in the plan, inform them of the variation, and the variation shall, subject to section 25 (3), take effect on such date as the Commission specifies in the notices, being a date not earlier than 14 days after the service of the notice on the first-mentioned person.

23—(1) A person who applied to the Commission under section 18 for approval of a timber harvesting plan and who wishes to have the provisions of the plan varied after it has been approved by the Commission may make application to the Commission for a variation of the plan.

Application for variation of approved timber harvesting plan.

(2) An application under this section—

- (a) shall be in writing in a form approved by the Commission;
- (b) shall specify the manner in which the applicant requires the provisions of the approved timber harvesting plan to be varied;
- (c) shall be accompanied by a memorandum in writing signed by the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, stating that he has given his approval for the application to be made to the Commission; and
- (d) shall be accompanied by the fee (if any) prescribed in the regulations.

(3) An applicant under this section shall, if required by the Commission to do so, provide such further particulars in relation to the application as the Commission requires.

Grant or refusal of application for variation of approved timber harvesting plan.

24—(1) Where an application is made in accordance with section 23, the Commission may grant the application and vary the provisions of the approved timber harvesting plan, or may refuse to grant the application.

(2) Where an application for the variation of an approved timber harvesting plan is refused, the Commission shall forthwith, by notice in writing served on the applicant and the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, inform them of the refusal and the reasons for the refusal.

Appeal in respect of timber harvesting plan.

25—(1) A person who applied to the Commission under section 18 for approval of a timber harvesting plan and who is aggrieved by—

- (a) the refusal of the Commission to approve the timber harvesting plan;
- (b) the amendments made to the timber harvesting plan by the Commission pursuant to section 19 (1) (c);
- (c) the variation of the provisions of the approved timber harvesting plan by the Commission pursuant to section 22; or
- (d) the refusal of the Commission to grant his application for the variation of the provisions of the approved timber harvesting plan,

may appeal to the Tribunal.

(2) An appeal under this section shall be instituted by giving written notice to the registrar within a period of 14 days after—

- (a) the service of a notice on the appellant under section 19 (3), in the case of an appeal against the refusal to approve a timber harvesting plan or the amendments made to the plan by the Commission;
- (b) the service of a notice on the appellant under section 22 (3), in the case of an appeal against the variation of the provisions of an approved timber harvesting plan by the Commission; or
- (c) the service of a notice on the appellant under section 24 (2), in the case of an appeal against the refusal of the Commission to grant an application for the variation of the provisions of an approved timber harvesting plan.

(3) Where an appeal is brought under this section in respect of the variation of the provisions of an approved timber harvesting plan made by the Commission pursuant to section 22, the variation shall not have effect until the determination or withdrawal of the appeal or until such other date as the Tribunal may determine.

(4) In the determination of an appeal under this section, the Tribunal, unless it dismisses the appeal, may quash the decision of the Commission and direct the Commission to take such action as it considers necessary.

26—Any Act prescribed in the regulations and the prescribed provisions of any Act prescribed in the regulations shall not apply to or affect anything contained in an approved timber harvesting plan in so far as that plan relates to a private timber reserve.

Non-appli-
cation of other
Acts to
approved
timber
harvesting
plan.

Division 2—Three-year plans

27—(1) Any person who, as at 1st May in a year, has harvested or caused to be harvested more than 100 000 tonnes of timber in Tasmania in the immediately preceding period of 12 months and such other persons as may be prescribed shall, not later than 1st June in that year, lodge with the Commission a plan (in this Act referred to as a “three-year plan”) for the period of 3 years commencing on 1st July next following containing the details referred to in subsection (2).

Three-year
plans.

(2) A three-year plan shall contain details of—

- (a) the location or locations of the land (other than Crown land) from which timber is intended to be harvested;
- (b) the approximate volumes of timber intended to be harvested from each location; and
- (c) the routes by which it is proposed to transport the timber harvested out of each location,

in each of the 3 years specified in the plan.

(3) A person referred to in subsection (1) shall, if required by the Commission to do so, provide such further particulars in relation to the three-year plan as the Commission requires within such further period as the Commission specifies.

(4) Where a person referred to in subsection (1) fails to lodge a three-year plan with the Commission by the date referred to in that subsection, or, having lodged such a plan, fails to provide further particulars requested by the Commission pursuant to subsection (3) within the period specified by the Commission, the Commission may—

- (a) where that person is harvesting timber in accordance with an approved timber harvesting plan or approved timber harvesting plans, suspend the operation of all or any of those plans; or
- (b) where that person has submitted a timber harvesting plan for approval pursuant to section 18, refuse to consider that plan for approval,

until a three-year plan has been lodged, or, as the case may be, the further particulars are supplied, by that person.

(5) Where a three-year plan is lodged with the Commission the person referred to in subsection (1) shall cause a summary of the plan, which shall include details of—

- (a) estimated tonnages of timber intended to be harvested and transported under the plan;
- (b) the routes by which it is proposed to transport the timber out of each location; and
- (c) such other matters as may be prescribed,

to be sent to each local authority exercising jurisdiction over any land through which it is proposed to transport the timber.

(6) Where a three-year plan is varied—

- (a) as a result of a decision made by the Commission in accordance with section 28 (4); or
- (b) in accordance with section 28 (7),

the person referred to in subsection (1) shall cause a summary of the variations to be sent to those local authorities referred to in subsection (5).

Power of Commission to call a conference for purpose of varying a three-year plan.

28—(1) Where the Commission, after considering the effect of 2 or more three-year plans lodged by different persons, is of the opinion that more effective use of routes for the transportation of timber could be achieved or that the plans indicate an excessive concentration of harvesting in a particular location, it may arrange for a conference to be held between it, any person who may be invited to attend the conference pursuant to subsection (2), and the persons who lodged those plans for the purpose of varying those plans.

(2) The Commission may invite a representative of any local authority and the owner of any land from which timber is intended to be harvested to attend a conference arranged by it under subsection (1).

(3) Where a person who lodged a plan fails without reasonable excuse to attend a conference arranged by the Commission under subsection (1), the Commission may—

(a) where that person is harvesting timber in accordance with an approved timber harvesting plan or approved timber harvesting plans, suspend the operation of all or any of those plans; or

(b) where that person has submitted a timber harvesting plan for approval pursuant to section 18, refuse to consider that plan for approval,

until that person attends a conference arranged by it.

(4) The Commission may, at the conference arranged by it under subsection (1), make a decision requesting a person attending the conference to vary the proposals in a three-year plan lodged by him in order to make better use of routes for the transportation of timber or to reduce the concentration of harvesting in a particular location.

(5) In making a decision to request the variation of a three-year plan under subsection (4), the Commission shall take into account the cost to be incurred by the person who lodged the three-year plan in implementing that plan in accordance with the variation.

(6) Where a person fails without reasonable excuse to vary the proposals specified in the three-year plan lodged by him in accordance with the request of the Commission, the Commission may—

(a) where that person is harvesting timber in accordance with an approved timber harvesting plan or approved timber harvesting plans, suspend the operation of all or any of those plans; or

(b) where the person has submitted a timber harvesting plan for approval pursuant to section 18, refuse to consider that plan for approval,

until that person varies the proposals in that plan in the manner requested by the Commission.

(7) The Commission may approve or refuse to approve the variation of a three-year plan at any time.

Aggrieved
person
may appeal
to Tribunal.

29—(1) A person who lodged a three-year plan with the Commission or an owner of land who is aggrieved by—

- (a) the Commission's decision to request the person to vary the proposals in the three-year plan; or
- (b) the Commission's decision to refuse to approve the variation of the three-year plan,

may appeal to the Tribunal.

(2) An appeal under this section shall be instituted by giving written notice to the registrar within a period of 28 days after—

- (a) the Commission making the request, in the case of an appeal against the Commission's decision to make a request referred to in subsection (1) (a); or
- (b) the Commission refusing to approve the variation, in the case of an appeal against the Commission's decision to refuse to approve the variation of a three-year plan.

(3) Where an appeal is brought under this section in respect of the Commission's decision to request a person to vary the proposals in a three-year plan lodged by the person, and the Commission has imposed one of the sanctions referred to in section 28 (6), the sanction shall not have effect until the determination or withdrawal of the appeal or until such later date as the Tribunal may determine.

(4) In the determination of an appeal under this section, the Tribunal, unless it dismisses the appeal, may quash the decision of the Commission and direct the Commission to take such action as it considers necessary, including the lifting of any sanction that may have been imposed under section 28 (6).

PART IV

FOREST PRACTICES CODE

Issue of
Forest
Practices
Code.

30—(1) The Commission shall, after consulting with the Council, issue a draft Code on the conduct of forest practices.

(2) When the Commission issues the draft Code referred to in subsection (1) it shall cause a notice that the draft Code has been so issued to be published in the *Gazette* and in the daily newspapers published in this State.

(3) A notice referred to in subsection (2) shall—

- (a) specify the places where the draft Code may be purchased or inspected;

- (b) invite submissions with respect to the draft Code from the public for consideration by the Commission; and
- (c) specify that the submissions have to be received by the Commission within the period of 60 days after the publication of the notice in the newspaper.

(4) Any person may, without payment of a fee, inspect the draft Code at the places specified in the notice referred to in subsection (2).

(5) The Commission shall, after consulting with the Council and considering any public submissions received under this section with respect to the draft Code, issue a Code to be called the Forest Practices Code.

(6) When the Commission issues the Code referred to in subsection (5), it shall cause a notice that the Code has been so issued to be published in the *Gazette* and in the daily newspapers published in this State.

(7) A notice referred to in subsection (6)—

- (a) shall specify the date on which the Forest Practices Code shall take effect; and
- (b) shall specify the places where the Forest Practices Code may be purchased or inspected.

(8) Any person may, without payment of a fee, inspect the Forest Practices Code at the places specified in the notice referred to in subsection (6).

(9) The notices referred to in subsections (2) and (6) are not statutory rules within the meaning of the *Rules Publication Act* 1953.

31—(1) The Forest Practices Code shall prescribe the manner in which forest practices shall be conducted so as to provide reasonable protection to the environment. Purpose, &c, of
Forest
Practices
Code.

(2) Without limiting the generality of subsection (1), the Forest Practices Code shall prescribe the manner in which the following forest practices shall be conducted:—

- (a) the establishment and maintenance of forests including standards to be complied with in the restocking of land with trees;
- (b) the harvesting of timber;

(c) the construction of roads and other works connected with the establishment of forests, or the growing or harvesting of timber.

(3) Without limiting the generality of subsection (1), the provision of reasonable protection to the environment includes landscape management and the control of soil erosion.

(4) The Forest Practices Code may apply generally or in specified areas or may apply differently according to such factors as may be specified in the Code or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(5) The Forest Practices Code may authorize any matter or thing to be from time to time determined, applied, or regulated by a forest practices officer.

Amendment,
&c., of Forest
Practices
Code.

32—(1) The Commission may, after consulting with the Council, amend the Forest Practices Code or rescind the Forest Practices Code and issue a new Forest Practices Code in substitution for the rescinded Code.

(2) A person may, in writing, request the Commission to amend the Forest Practices Code.

(3) Where the Commission intends to amend the Forest Practices Code, it shall cause a notice containing the prescribed particulars to be published in the daily newspapers published in this State.

(4) For the purposes of subsection (3), “prescribed particulars” means—

(a) notification of the Commission’s intention to amend the Forest Practices Code;

(b) a brief description of the effect of the proposed amendments;

(c) a statement to the effect that—

(i) the amendments to the Forest Practices Code proposed to be made by the Commission are set forth in a document kept at the office of the Commission and may be inspected at that office by any person without payment of a fee; and

(ii) objections to the amendments referred to in subparagraph (i) may be lodged with the Commission by the date specified in the notice, being a date not earlier than 60 days after the date on which the notice is published in the newspaper; and

(d) such other particulars as the Commission considers necessary.

33—(1) Any person who wishes to object to the amendment of the Forest Practices Code which the Commission intends to make, may, at any time before the expiration of the period of 60 days after the notice referred to in section 32 is published in accordance with that section, lodge with the Commission an objection in writing to the amendments intended to be made by the Commission.

Objection to amendment, &c., of Forest Practices Code.

(2) An objection lodged under subsection (1) may not be entertained by the Commission unless—

(a) it specifies the ground of the objection; and

(b) it has been lodged with the Commission before the expiration of the period referred to in that subsection.

(3) The Commission shall, after considering any objections that are lodged with it in accordance with subsection (1), publish a notice in the *Gazette* specifying the amendment to the Forest Practices Code.

(4) A notice published in accordance with subsection (3) shall specify the date on which the amendment of the Forest Practices Code shall take effect.

(5) A notice referred to in subsection (3) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

PART V

FOREST PRACTICES TRIBUNAL

34—(1) For the purposes of this Act there shall be established a Tribunal to be known as the Forest Practices Tribunal.

Forest Practices Tribunal.

(2) The Tribunal shall be appointed by the Governor and shall consist of—

(a) such number of barristers or legal practitioners as the Governor considers necessary who have practised as barristers or legal practitioners for not less than 5 years;

- (b) such number of persons as the Governor considers necessary who possess a sound and practical knowledge of forestry, road construction in forests, and harvesting of timber; and
- (c) such number of persons as the Governor considers necessary who possess tertiary qualifications in the sciences appropriate to land and forest management and have had substantial practical experience in those sciences.

(3) The Governor may appoint one of the persons referred to in subsection (2) (a) to be chief chairman of the Tribunal and another of the persons referred to in subsection (2) (a) to be deputy chief chairman of the Tribunal.

(4) The deputy chief chairman shall act as chief chairman during any period when the chief chairman is absent or unable, whether on account of illness or otherwise, to perform the duties of his office, or when the office of chief chairman is vacant.

(5) The deputy chief chairman shall, while acting as chief chairman, have all the powers and functions of the chief chairman.

(6) The jurisdiction, powers, and duties conferred or imposed on the Tribunal by this Act shall be exercised or performed by divisions of the Tribunal.

(7) A division shall consist of 3 persons nominated by the chief chairman from the panel of persons referred to in subsection (2), of whom—

- (a) one shall be a person referred to in subsection (2) (a);
- (b) one shall be a person referred to in subsection (2) (b);
and
- (c) one shall be a person referred to in subsection (2) (c).

(8) The chief chairman may nominate himself or the deputy chief chairman as the member of a division required to be nominated from the persons referred to in subsection (2) (a).

(9) Where—

- (a) the chief chairman nominates himself as a member of a division, he shall act as chairman of the division; or
- (b) the chief chairman does not nominate himself as a member of a division, the member of the division nominated from the persons referred to in subsection (2) (a) shall act as chairman of the division.

(10) The chief chairman and the deputy chief chairman are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of them.

(11) The members of a division are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of them.

(12) Schedule 2 has effect with respect to membership of the Tribunal.

35—(1) There shall be established and maintained in the office of the Commission a Registry of the Forest Practices Tribunal at which shall be kept all records of the Forest Practices Tribunal.

Registry of the
Forest Practices
Tribunal.

(2) The Commission shall appoint an employee employed in the Department as registrar to the Registry of the Forest Practices Tribunal.

(3) An employee employed in the Department may be appointed and hold office under subsection (2) in conjunction with his position in the State Service.

36—(1) On receipt of an appeal under this Act, the registrar shall notify the chief chairman who shall nominate members of the panel referred to in section 34 (2) to constitute a division for the purposes of hearing the appeal and shall advise the registrar of the members so nominated.

Procedure on
receipt of
an appeal.

(2) The registrar shall advise the parties to the appeal of the members of the panel referred to in section 34 (2) who are nominated by the chief chairman to constitute a division for the purposes of hearing the appeal.

(3) The Commission shall be deemed to be a party to all proceedings before the Tribunal.

(4) A party to an appeal may, by notice in writing served on the registrar or by such other manner as may be prescribed, object to the nomination of a member of the panel referred to in section 34 (2) to constitute the division for the purposes of hearing the appeal.

(5) The registrar shall forward an objection received by him pursuant to subsection (4) to the chief chairman.

(6) The chief chairman may, on receipt of an objection referred to in subsection (5), replace the person in respect of whom the objection was made with another person referred to in section 34 (2) (a), (b), or (c), as the case may require, or refuse to alter the members of the panel nominated by him to constitute the division, and shall notify the registrar of his decision.

(7) The registrar shall notify the parties to the appeal of the decision of the chief chairman made pursuant to subsection (6).

Procedure,
&c., of
Tribunal.

37—(1) The Tribunal may be constituted at any time and at any place in Tasmania.

(2) The registrar shall notify all parties to the appeal of the time and place at which the appeal is to be heard.

(3) The chairman of the Tribunal may, by notice in writing served on any person, summon that person to give evidence on the hearing of an appeal by the Tribunal or to produce documents or records in his possession or under his control at the hearing.

(4) Any person who, without reasonable excuse, fails to comply with a summons served on him under subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(5) For the purposes of hearing and determining an appeal before it, the Tribunal may take evidence on oath or affirmation and, for those purposes, the chairman of the Tribunal may administer an oath or affirmation.

(6) The Tribunal may join any person as a party to proceedings before the Tribunal.

(7) A party to proceedings before the Tribunal is, at those proceedings, entitled to tender evidence to the Tribunal and to examine any other person who tenders evidence in those proceedings.

(8) A party to proceedings before the Tribunal is not entitled to be represented by a barrister or a legal practitioner.

(9) In the hearing of an appeal before the Tribunal—

(a) the procedure of the Tribunal is, subject to this Part, within the discretion of the Tribunal;

(b) the Tribunal shall observe the rules of natural justice;

(c) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Tribunal permits;

(d) the Tribunal may admit any relevant evidence notwithstanding that the evidence would not be admissible in a court of law;

(e) the Tribunal may inform itself on any matter as it thinks fit.

(10) The Tribunal may adjourn its proceedings from time to time or from place to place and may determine an appeal notwithstanding that the appellant has failed to appear before the Tribunal at the time and place fixed for the hearing.

(11) A decision of a majority of the members of the Tribunal shall be a decision of the Tribunal.

(12) The Tribunal shall, in making a determination under this Act, have regard to the financial effect of its determination on the parties to the appeal.

(13) The Tribunal may make such order as to costs as it thinks necessary.

(14) The Tribunal shall give its decision in respect of an appeal in such manner, as it may determine.

(15) The registrar shall cause a copy of the Tribunal's decision in respect of an appeal to be served on each of the parties to the appeal within 7 days of its determination of the appeal.

(16) The Commission shall comply with any directions given to it by the Tribunal.

(17) The decision of the Tribunal in respect of an appeal under this Act is final.

PART VI

MISCELLANEOUS

38—(1) The Commission may appoint any employee employed in the Department, any person employed by the Commission, any person employed by a body corporate which has an involvement in forest practices in Tasmania, or any person whom it regards as being suitably qualified, to be an officer for the purposes of this Act.

Appointment and employment of officers for purposes of this Act.

(2) Notwithstanding subsection (1), a body corporate that is required by section 27 (1) to lodge a three-year plan with the Commission is, while it is operating under a three-year plan, entitled to have at least one suitably qualified person nominated by it appointed by the Commission to be an officer for the purposes of this Act.

(3) A person appointed under this section may hold office as an officer for the purposes of this Act in conjunction with any other office or appointment held by that person.

(4) A person appointed under this section shall perform such functions as may be specified in the instrument of his appointment and such other functions as the Commission may from time to time determine.

(5) A person appointed under this section is not, by virtue of his appointment for the purposes of this Act, subject to the *Tasmanian State Service Act 1984*.

(6) Subject to subsection (7), the Commission may pay such fees to persons appointed under this section as the Commission may determine.

(7) No fee is payable under subsection (6) to a person who is an employee within the meaning of the *Tasmanian State Service Act 1984*.

39—The Commission—

(a) may, in the case of a person for the time being appointed as an officer under section 38 (1); and

(b) shall, in the case of a person for the time being appointed as an officer under section 38 (2),

by warrant under its seal authorize the person to be a forest practices officer for the purposes of this Act.

40—(1) For the purposes of this Act, a forest practices officer, on production of his warrant of authorization as such, may at any reasonable time and with such assistants as he considers necessary enter and remain—

(a) on any land on which forest practices are being carried out, to ensure that the forest practices are being carried out in accordance with the approved timber harvesting plan relating to that land or to ensure that the provisions of this Act are being complied with; or

(b) on any private timber reserve to ensure that the reserve is being used for establishing forests, or growing or harvesting timber.

(2) For the purposes of this Act, a forest practices officer, on production of his warrant of authorization as such, may at any reasonable time request any person associated with the forest practices carried out on land referred to in subsection (1) (a) or on a private timber reserve—

Forest
practices
officers.

Powers, &c.,
of forest
practices
officers.

- (a) to produce any record or document which relates to any forest practices carried out on that land or reserve; and
- (b) to answer any question relating to any such record or document or the forest practices carried out on that land or reserve.

(3) Any person who—

- (a) prevents or attempts to prevent a forest practices officer from exercising any power conferred on him by subsection (1) or (2);
- (b) hinders or obstructs a forest practices officer in the exercise of any such power; or
- (c) fails to comply with a request of a forest practices officer under subsection (2),

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500 or to imprisonment for a term not exceeding 3 months, or both.

(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) if he proves to the satisfaction of the court before which he is prosecuted for the offence that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(5) A person is not excused from answering any question if required to do so under subsection (2) on the ground that the answer might tend to incriminate him or make him liable to a penalty, but the information provided by him shall not be admissible against him in any proceedings, civil or criminal.

41—(1) Where in the opinion of a forest practices officer the provisions of an approved timber harvesting plan are not being complied with on any land to which the plan relates or the provisions of this Act are not being complied with he may, either orally or in writing, request the person apparently in charge of the forest practices being carried out on that land to comply with the provisions of the approved timber harvesting plan or the provisions of this Act, as the case may be.

Failure to comply with approved timber harvesting plan or provisions of this Act.

(2) Where on a further inspection of the land referred to in subsection (1) the forest practices officer considers that his request referred to in that subsection has not been complied with within a reasonable period of time he may, by notice in writing personally served on the person apparently in charge of the forest practices being carried out on that land, direct that person to—

- (a) cease the forest practices specified in the notice;
- (b) where in the opinion of the officer it is practical and economically feasible to do so, repair any damage caused by the forest practices specified in the notice in the manner and within the period specified in the notice; and
- (c) carry out such other work as may be specified in the notice within the period specified in the notice.

(3) A notice under subsection (2) shall, subject to section 42 (3), take effect on such date as is specified in the notice, being a date not earlier than 2 days after the service of the notice on the person apparently in charge of the forest practices.

(4) A person who is served with a notice under subsection (2) and who has not appealed to the Tribunal in respect of the notice pursuant to section 42 (1) shall comply with the directions contained in the notice in the manner and within the period specified in the notice.

(5) A person referred to in subsection (4) who fails to comply with the directions contained in a notice under subsection (2) in the manner and within the period specified in the notice is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$10 000.

(6) Where a person referred to in subsection (4) fails to comply with a notice under subsection (2) in the manner and within the period specified in the notice, the Commission or a person authorized by the Commission for the purpose may—

- (a) repair the damage referred to in subsection (2) (b) and carry out the works specified in the notice and for those purposes may enter and remain on the land to which the notice relates; and
- (b) recover in any court of competent jurisdiction as a debt due to the Commission the expenses incurred by the Commission in rectifying the damage and carrying out the works.

42—(1) A person who is aggrieved by a notice served on him under section 41 (2) may, within 2 days after the date of service of that notice on him, appeal to the Tribunal.

(2) An appeal under subsection (1) shall be instituted by giving written notice to the registrar or in such other manner as may be prescribed.

(3) Where an appeal is brought under this section in respect of a notice, the notice shall not take effect until the determination or abandonment of the appeal or until such other date as the Tribunal may determine.

(4) At the hearing of an appeal under this section, the Tribunal may confirm, modify, or cancel the notice referred to in section 41 (2).

(5) A person referred to in subsection (1) who fails to comply with a notice as modified or confirmed by the Tribunal is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$10 000.

(6) Where a person referred to in subsection (1) fails to comply with a notice as modified or confirmed by the Tribunal, the Commission or a person authorized by the Commission for the purpose may—

- (a) repair the damage referred to in the notice and carry out the works specified in the notice and for those purposes may enter and remain on the land to which the notice relates; and
- (b) recover in any court of competent jurisdiction as a debt due to the Commission the expenses incurred by the Commission in rectifying the damage and carrying out the works.

43—(1) The Commission may, by instrument in writing, delegate to a person specified in the instrument the performance or exercise of such of the Commission's functions and powers under Division 1 of Part III as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.

Delegation
by Commission.

(2) Notwithstanding subsection (1), the Commission shall, by instrument in writing, delegate to any person for the time being appointed as an officer under section 38 (2), the performance or exercise of the Commission's functions and powers under Division 1 of Part III, and shall not revoke wholly or in part the delegation while he holds that appointment.

(3) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.

(5) Notwithstanding any delegation under this section, the Commission may continue to perform or exercise all or any of the functions or powers delegated.

(6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by or to the Commission and shall be deemed to have been done by or to the Commission.

(7) An instrument purporting to be signed by a delegate of the Commission in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commission under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Commission under this section.

Expenses of
this Act.

44—Except as provided by section 16 (8), any expenses incurred by the Commission under this Act with respect to land, other than Crown land, shall be paid out of money provided by Parliament, and any revenue received by the Commission under this Act with respect to that land shall be paid into the Consolidated Revenue Fund.

False or
misleading
statements.

45—(1) Subject to subsection (2), a person who—

- (a) makes an application under this Act;
- (b) provides any particulars to the Commission with respect to an application under this Act;
- (c) makes an answer, whether orally or in writing, to a question put to him pursuant to this Act by the Commission or by a forest practices officer; or
- (d) lodges a plan or other document with the Commission under this Act,

that is or are false or misleading in a material respect is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

(2) It is a defence to a charge under subsection (1) if it is proved that, at the time the application was made, the particulars with respect to the application were provided, the answer was given to the question, or the plan or other document was lodged, the defendant believed on reasonable grounds that the application, answer, plan, or other document was, or particulars were, neither false nor misleading.

46—(1) Where under this Act a document or notice is required Service of documents, &c. to be served on a person, the document or notice may be served—

(a) in the case of a person who is neither a body corporate nor a firm—

- (i) by delivering it to him personally;
- (ii) by leaving it at that person's place of residence last known to the person required to serve the document or notice with someone who apparently resides there, or at that person's place of business or employment last known to the person required to serve the document or notice with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to that person's place of residence, business, or employment last known to the person required to serve the document or notice;

(b) in the case of a body corporate—

- (i) by delivering it personally to the person who is, within the meaning of the *Companies (Tasmania) Code*, the principal executive officer of the body corporate;
- (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or

- (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate;
or
- (c) in the case of a firm—
 - (i) by delivering it to a member of the firm personally;
 - (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required to serve the document or notice with a person apparently employed there, being a person who has or apparently has attained the age of 16 years;
or
 - (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required to serve the document or notice.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

Proceedings on
prosecutions.

47—(1) Notwithstanding anything in the *Justices Act 1959* to the contrary, proceedings in respect of an offence against this Act may be commenced at any time within a period of 12 months after the time when the offence is alleged to have been committed.

(2) A complaint in respect of an offence against this Act may be made in the name of the Commission by an officer appointed under section 38 and authorized to make complaints on behalf of the Commission, and any prosecution instituted in the name of the Commission shall, in the absence of evidence to the contrary, be deemed to have been instituted by its authority.

(3) An officer referred to in subsection (2) may appear on behalf of the Commission in any proceedings for an offence against this Act.

48—A certificate purporting to be sealed by the Commission Evidence. certifying—

(a) that a person specified in the certificate was a forest practices officer at a time or during a period so specified;

or

(b) that a timber harvesting plan was approved by the Commission in relation to a particular area of land specified in the certificate,

is admissible in any proceedings under this Act and shall, until the contrary is established, be evidence of the matters so certified.

49—The Commission shall, at such intervals as may be agreed with the Council from time to time, provide the Council with reports on the operation of this Act. Commission to provide Council with reports.

50—(1) The Governor, on the recommendation of the Commission, may make regulations for the purposes of this Act. Regulations.

(2) The Commission shall not make a recommendation to the Governor with respect to the making of regulations for the purposes of this Act until it has consulted with the Council as to the subject-matter of the proposed regulations.

(3) The regulations may be made subject to such conditions, or be made to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(4) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding \$500 and where the offence is a continuing one, further penalties not exceeding \$50 for each day during which the offence continues.

(5) The regulations may authorize any matter or thing to be from time to time determined, applied, or regulated by any person specified in the regulations.

SCHEDULE 1

Section 15

REGISTRATION OF NOTICES

Lodgement of notices.

1—(1) A notice required to be registered under section 15 (1) shall be so registered by lodging with the Recorder—

(a) a copy of the notice; and

(b) particulars of the title to the land to which the notice relates.

(2) Where a notice has been lodged under subclause (1), the Recorder shall record the notice on the folio of the Register constituting the title to the land to which the notice relates.

Requirement to bring land under *Land Titles Act* 1980.

2—(1) Where the whole or any part of the land referred to in clause 1 (1) (b) is not under the *Land Titles Act* 1980, the Recorder shall bring under that Act so much of the land that is not under that Act by registering a qualified title to it in accordance with section 21 of that Act.

(2) Where part only of the land referred to in clause 1 (1) (b) to which a notice relates is required to be brought under the *Land Titles Act* 1980 by this clause, the Recorder shall issue a consolidated title to the whole of the land to which the notice relates and for that purpose may call in and cancel in accordance with section 163 of that Act the certificates of title to the parts of the land.

(3) The Recorder is not bound, for the purposes of subclause (1), to investigate the title to any land.

Particulars, &c., to be contained in notice.

3—(1) A notice required to be registered under section 15 (2)—

(a) shall contain particulars of the title of the area of land ceasing to be, or to form part of, a private timber reserve by virtue of the notice; and

(b) shall be so registered by lodging with the Recorder a copy of the notice.

(2) Where a notice has been lodged under subclause (1), the Recorder shall record on the folio of the Register constituting the title to the area of land to which the notice relates that the area of land has ceased to be, or to form part of, the private timber reserve declared by the notice previously registered in respect of that private timber reserve.

Exemption from Registration fees.

4—No fee is payable in respect of the registration of a notice in accordance with this Schedule.

Interpretation.

5—In this Schedule—

“Recorder” means the Recorder of Titles appointed and holding office under the *Land Titles Act* 1980;

“Register” has the same meaning as it has in the *Land Titles Act* 1980.

SCHEDULE 2

Section 34 (12)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF FOREST PRACTICES TRIBUNAL

1—(1) A member shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment. Terms of office.

(2) A member shall be eligible for re-appointment for such term or terms, not exceeding 3 years, as is specified in the instrument of his re-appointment.

2—(1) Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his time to the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office as a member of the Tribunal or from accepting and retaining any remuneration payable to a member under this Act. Provisions relating to members.

(2) The office of a member shall not, for the purposes of any Act, be deemed to be an office of profit under the Crown.

3—The provisions of the *Tasmanian State Service Act 1984* shall not apply to or in respect of the appointment of a member and a member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office. Tasmanian State Service Act 1984 not to apply.

4—(1) The office of a member becomes vacant—

- (a) when he dies;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (c) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;
- (d) if he is convicted in this State of an offence which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in this State of an offence which, if committed in this State, would be a crime or an offence so punishable, or has been convicted, whether in this State or elsewhere, of a crime or offence for which he has been sentenced to imprisonment;
- (e) if he is convicted of an offence against this Act;
- (f) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the Resignation; or
- (g) if he is removed from office by the Governor under subclause (2).

Vacation of office.

(2) The Governor may remove a member from office for misbehaviour or incompetence.

Filling of
casual
vacancies.

5—On the occurrence of a vacancy in the office of a member, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.