



FOREST PRACTICES AMENDMENT ACT 1994

No. 29 of 1994

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FOREST PRACTICES AMENDMENT ACT 1994

No. 29 of 1994

AN ACT to amend the *Forest Practices Act 1985*

[Royal Assent 10 May 1994]

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:—

Short title

1—This Act may be cited as the *Forest Practices Amendment Act 1994*.

Commencement

2—This Act commences on the day on which the *Forestry Amendment (Forestry Corporation) Act 1994* commences.

Principal Act

3—In this Act, the *Forest Practices Act 1985** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended as follows:—

(a) by omitting “Commission” from the definition of “approved timber harvesting plan” and substituting “Board”;

(b) by inserting the following definition after the definition of “approved timber harvesting plan”:—

“**Board**” means the Forest Practices Board established under section 12X of the *Forestry Act 1920*;

(c) by inserting the following definition after the definition of “chief chairman”:—

“**chief forest practices officer**” means the chief forest practices officer appointed under section 39A;

(d) by omitting the definition of “Commission”;

(e) by omitting the definition of “Council” and substituting the following definition:—

“**Council**” means the Forest Practices Advisory Council established under section 37A;

(f) by inserting the following definition after the definition of “division”:—

“**financial year**” means the period of 12 months ending on 30 June in any year;

(g) by omitting “Commission” from the definition of “Forest Practices Code” and substituting “Board”;

(h) by inserting the following definition after the definition of “forest practices officer”:—

“**Forestry corporation**” means the corporation of that name established under section 6 of the *Forestry Act 1920*;

(i) by omitting the definition of “forestry right” and substituting the following definition:—

“**forestry right**” has the same meaning as in Part IIIA of the *Forestry Act 1920*;

* No. 48 of 1985. Amended by No. 91 of 1986, No. 5 of 1990 and No. 42 of 1991.

- (j) by omitting the definition of “Private Forestry Council” and substituting the following definition:—
“Private Forests Tasmania” means the body of that name established under section 4 of the *Private Forests Act 1994*;
- (k) by omitting the definition of “timber processor” and substituting the following definition:—
“timber processor” means a person who processes or harvests timber for the purpose of—
- (a) producing logs for export; or
 - (b) producing for sale any one or more of the following products:—
 - (i) fuel wood;
 - (ii) poles, piles or posts;
 - (iii) timber;
 - (iv) veneer;
 - (v) wood chips;
 - (vi) wood pulp;

Part 1A inserted

5—The Principal Act is amended by inserting the following Part after section 4:—

PART 1A

FOREST PRACTICES BOARD

Membership of Board

- 4A—(1) The Board consists of—
- (a) the Director of Environmental Control; and
 - (b) the director of Private Forests Tasmania referred to in section 8 (1) (c) of the *Private Forests Act 1994*; and
 - (c) 2 directors of the Forestry corporation, being—
 - (i) one of the directors referred to in section 12E (1) (b) of the *Forestry Act 1920*, appointed by the Minister; and
 - (ii) the director referred to in section 12E (1) (c) of the *Forestry Act 1920*.

(2) The members of the Board are to elect one of their number having expertise in forestry land management as chairperson of the Board.

(3) Schedule 3 has effect with respect to membership of the Board.

(4) Schedule 4 has effect with respect to meetings of the Board.

Objective of Board

4B—(1) The Board is part of the State's forest practices system, the objective of which is set out in Schedule 7.

(2) The Board is to act in all matters in a manner that—

- (a) best advances the objective of the State's forest practices system; and
- (b) fosters a co-operative approach towards policy development and management in forest practices matters.

Functions of Board

4C—The Board has the following functions:—

- (a) to advise the Minister on forest practices policy in respect of both Crown land and private land;
- (b) to regularly advise and inform the Minister on its work and activities under this Act;
- (c) to advise the Minister on the operation and review of this Act;
- (d) to issue and maintain the Forest Practices Code;

- (e) to oversee standards for timber harvesting plans;
- (f) to oversee the administration of private timber reserves by Private Forests Tasmania;
- (g) to oversee the training of forest practices officers;
- (h) to appoint the chief forest practices officer;
- (i) to perform such other functions as are imposed on it by or under this or any other Act.

Powers of Board

4D—(1) The Board has such powers as are conferred on it under this Act including, in particular—

- (a) the power to appoint forest practices officers; and
- (b) the power to mediate between parties in respect of three-year plans.

(2) The Board has power to do anything incidental to any of its powers.

Annual assessment of forest practices system

4E—(1) The Board must, at least once in each financial year—

- (a) assess the degree to which the forest practices system is self-funding and self-regulating; and
- (b) assess the implementation and effectiveness of a representative sample of timber harvesting plans.

(2) The Board must, as soon as practicable after completing the assessment, prepare a report of its findings.

(3) The report prepared under subsection (2) is to be included in the report prepared by the Board in respect of the same financial year under section 4F.

Annual report

4F—(1) The chairperson of the Board must, not later than 5 months after the end of each financial year, prepare and give to the Minister a report on the operations of the Board during that financial year.

(2) The Minister may, in writing, direct the Board to prepare the report in a particular way or to include particular information in the report.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament within the first 10 sitting days of the House after the report is received by the Minister.

Enforcement of Act and Forest Practices Code

4G—The Board must—

- (a) monitor the degree of compliance with this Act and the Forest Practices Code; and
- (b) through the chief forest practices officer and other persons whom it authorizes for the purpose— cause complaints to be made in respect of offences under this Act.

Committees

4H—The Board may establish committees of its members for the purpose of advising it on any matter related to its functions or powers.

Section 13 amended (Revocation of private timber reserve at instigation of Board)

6—Section 13 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” (twice occurring) and substituting “Board”;
- (b) by omitting from subsection (2) “Commission” and substituting “Board”;
- (c) by omitting from subsection (5) (a) “Commission’s” and substituting “Board’s”;
- (d) by omitting from subsection (5) “Commission” and substituting “Board”;
- (e) by omitting from subsection (6) “Commission” and substituting “Board”;
- (f) by omitting from subsection (7) “Commission” and substituting “Board”.

Section 14 amended (Revocation of private timber reserve on application of owner of reserve)

7—Section 14 of the Principal Act is amended as follows:—

- (a) by omitting paragraph (a) of subsection (4) and substituting the following paragraph:—
 - (a) Private Forests Tasmania has rendered financial assistance to the applicant by way of a grant or loan under the *Private Forests Act 1994*, or any other person has rendered financial assistance to the applicant, for the development or maintenance of the private timber reserve to which the application relates; or
- (b) by omitting from paragraph (b) of subsection (4) “sections 756 (4) and 759 of the *Local Government Act 1962*,”;
- (c) by omitting from subsection (5) “the Commission” and substituting “Private Forests Tasmania”.

Section 16 amended (Compensation may be payable where application refused)

8—Section 16 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (a) “Commission” and substituting “Board”;
- (b) by omitting from subsection (1) “from the Commission”;
- (c) by omitting subsection (2) and substituting the following subsections:—
 - (2) An application for compensation under this section is to be made to the Board.
 - (2A) A person is not entitled to compensation under this section if the application is received by the Board after the expiration of a period of 30 days after the Tribunal has made its decision in respect of the appeal.
- (d) by omitting from subsection (3) “Commission” (wherever occurring) and substituting “Board”;
- (e) by omitting from subsection (4) “Commission” and substituting “Board”;

- (f) by omitting from subsection (5) “Commission” (first occurring) and substituting “Board”;
- (g) by omitting from subsection (5) “by the Commission”;
- (h) by omitting from subsection (6) “Commission” (first occurring) and substituting “Board”;
- (i) by omitting from subsection (6) “Commission shall pay the amount determined by the Valuer-General to the owner of the land” and substituting “owner of the land is to be paid the amount of compensation determined by the Valuer-General”;
- (j) by omitting subsection (7) and substituting the following subsection:—

(7) If the Board or the owner of the land disputes the amount of compensation determined by the Valuer-General, that amount is to be determined in the same manner as a disputed claim for compensation under the *Land Acquisition Act 1993*.

Section 17 substituted

9—Section 17 of the Principal Act is repealed and the following section is substituted:—

Restrictions on harvesting timber, &c.

- 17—(1) In this section, “responsible person” means—
- (a) in the case of Crown land—the timber processor having the immediate right, whether by virtue of a contract or otherwise, to process the timber harvested on that land; or
 - (b) in the case of private land—
 - (i) the owner of the land; or
 - (ii) if the owner has assigned his or her responsibilities under this section to another person in accordance with subsection (2)—that other person instead of the owner.

(2) An owner of private land may enter into an agreement in writing under seal with any person under which that person is assigned the owner’s responsibilities under this section.

(3) No duty is payable under the *Stamp Duties Act 1931* in respect of an agreement under subsection (2).

(4) A responsible person must not harvest timber, or cause or allow timber to be harvested, from land in respect of which there is not in existence at the time of harvesting an approved timber harvesting plan.

Penalty: Fine not exceeding 150 penalty units.

(5) A timber processor must not purchase or acquire timber that has been harvested from land in respect of which there is not in existence at the time of the harvesting an approved timber harvesting plan.

Penalty: Fine not exceeding 150 penalty units.

(6) Subsections (4) and (5) do not apply in prescribed circumstances.

Section 19 amended (Board to approve or refuse to approve timber harvesting plans)

10—Section 19 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” and substituting “Board”;
- (b) by omitting from subsection (2) “Commission” (twice occurring) and substituting “Board”;
- (c) by omitting from subsection (3) “Commission” and substituting “Board”.

Section 21 amended (Contravention, &c., of approved timber harvesting plan)

11—Section 21 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” and substituting “Board”;
- (b) by omitting from subsection (1) (b) “knowingly”;
- (c) by omitting from subsection (1) (b) “plan,” and substituting “plan; or”;
- (d) by inserting in subsection (1) the following paragraph after paragraph (b):—
 - (c) any owner of land who 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—

(e) by inserting the following subsections after subsection (1):—

(1A) A person is guilty of an offence under subsection (1) if it is proven, on the balance of probabilities, that the person committed the offence.

(1B) In any proceedings under subsection (1) the production of a certificate purporting to be signed by the chairperson of the Board stating that, at a time or during a period specified in the certificate, a physical feature specified in the certificate was within a particular classification or had a particular status under the Forest Practices Code, as specified in the certificate, is evidence of the matters contained in the certificate.

Section 22 amended (Variation of approved timber harvesting plan at instigation of Board)

12—Section 22 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” and substituting “Board”;
- (b) by omitting from subsection (2) “Commission” and substituting “Board”;
- (c) by omitting from subsection (3) “Commission” (twice occurring) and substituting “Board”.

Section 24A inserted

13—After section 24 of the Principal Act the following section is inserted:—

Revocation of approved timber harvesting plans

24A—(1) Subject to this section, the Board may revoke an approved timber harvesting plan for any reason it considers sufficient.

(2) The Board must not exercise its power under subsection (1) without first giving the person who applied under section 18 for approval of the plan and, if that person is not the owner of the relevant land, the owner of the land an opportunity to make submissions to it in relation to the proposed revocation.

(3) If the Board revokes an approved timber harvesting plan—

- (a) it must serve written notice of the revocation on the person who applied under section 18 for approval of the plan and, if that person is not the owner of the relevant land, the owner of the land; and
- (b) the revocation takes effect on such date as the Board specifies in the notice, being a date not earlier than 14 days after the service of the notice on the person who applied for approval of the plan.

Section 25 amended (Appeal in respect of timber harvesting plan)

14—Section 25 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” (wherever occurring) and substituting “Board”;
- (b) by omitting from subsection (1) (d) “plan,” and substituting “plan; or”;
- (c) by inserting in subsection (1) the following paragraph after paragraph (d):—
 - (e) the revocation of the approved timber harvesting plan by the Board pursuant to section 24A—
- (d) by omitting from subsection (2) “Commission” (wherever occurring) and substituting “Board”;
- (e) by omitting from subsection (2) (c) “plan.” and substituting “plan; or”;
- (f) by inserting in subsection (2) the following paragraph after paragraph (c):—
 - (d) the service of a notice on the appellant under section 24A (3) in the case of an appeal against the revocation by the Board of an approved timber harvesting plan.

- (g) by omitting from subsection (3) “Commission” and substituting “Board”;
- (h) by inserting the following subsection after subsection (3):—

(3A) Where an appeal is brought under this section in respect of the revocation of an approved timber harvesting plan pursuant to section 24A, the revocation does not take effect until the determination or withdrawal of the appeal or until such other date as the Tribunal may determine.

- (i) by omitting from subsection (4) “Commission” (twice occurring) and substituting “Board”.

Section 28 amended (Power of Board to call conference for purpose of varying three-year plan)

15—Section 28 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” and substituting “Board”;
- (b) by omitting from subsection (2) “Commission” and substituting “Board”;
- (c) by omitting from subsection (3) “Commission” (twice occurring) and substituting “Board”;
- (d) by omitting from subsection (4) “Commission” and substituting “Board”;
- (e) by omitting from subsection (5) “Commission” and substituting “Board”;
- (f) by omitting from subsection (6) “Commission” (wherever occurring) and substituting “Board”;
- (g) by omitting from subsection (7) “Commission” and substituting “Board”.

Section 32 amended (Amendment, &c., of Forest Practices Code)

16—Section 32 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission may, after consulting with the Council,” and substituting “Board, after consulting with Private Forests Tasmania, the Council and the Forestry corporation, may”;
- (b) by omitting from subsection (2) “Commission” and substituting “Board”;
- (c) by omitting from subsection (3) “Commission” and substituting “Board”;
- (d) by omitting from subsection (4) (a) “Commission’s” and substituting “Board’s”;
- (e) by omitting from subsection (4) (c) (i) “Commission” (first occurring) and substituting “Board”;
- (f) by omitting from subsection (4) (c) (i) “Commission” (second occurring) and substituting “Forestry corporation”;
- (g) by omitting from subsection (4) (c) (ii) “Commission” and substituting “Board”;
- (h) by omitting from subsection (4) (d) “Commission” and substituting “Board”.

Section 34 amended (Forest Practices Tribunal)

17—Section 34 (2A) (a) of the Principal Act is amended by omitting “the Private Forestry Council” and substituting “Private Forests Tasmania”.

Section 35 substituted

18—Section 35 of the Principal Act is repealed and the following section is substituted:—

Registry of the Forest Practices Tribunal

35—(1) There is to be established and maintained in the office of the Forestry corporation a Registry of the Forest Practices Tribunal at which all the records of the Tribunal are to be kept.

(2) The Forestry corporation must appoint an employee of the Forestry corporation as registrar to the Registry of the Tribunal.

(3) An employee of the Forestry corporation may be appointed to hold office under subsection (2) in conjunction with his or her position in the Forestry corporation.

Part VA inserted

19—The Principal Act is amended by inserting the following Part after section 37:—

PART VA

FOREST PRACTICES ADVISORY COUNCIL

Forest Practices Advisory Council

37A—(1) A Forest Practices Advisory Council is established.

(2) The Council consists of—

- (a) the chairperson of the Board, or that person's nominee; and
- (b) a person nominated by the Secretary of the responsible Department in relation to the *Environment Protection Act 1973*; and
- (c) a scientist who in the opinion of the Minister has particular expertise in forest conservation; and
- (d) a person nominated by the Municipal Association of Tasmania; and
- (e) a person to represent the interests of the sawmilling industry, being one of the following nominees selected by the Minister after considering both nominees:—
 - (i) a nominee of the Forest Industries Association of Tasmania;
 - (ii) a nominee of the Country Sawmillers Federation; and

- (f) a person nominated by the Forest Industries Association of Tasmania to represent the interests of the pulpwood industry; and
- (g) a person nominated by Private Forests Tasmania.

(3) The members referred to in subsection (2) (b), (c), (d), (e), (f) and (g) are appointed by the Minister.

(4) The person referred to in subsection (2) (a) is chairperson of the Council.

(5) The Minister may require a body referred to in subsection (2) (d), (e), (f) or (g) to submit a nomination within a specified period, being a period of not less than 2 months.

(6) If a body referred to in subsection (2) (d), (f) or (g) fails to comply with subsection (5), the Minister may appoint a person as a member for the purposes of that subsection.

(7) If both of the bodies referred to in subsection (2) (e) fail to comply with subsection (5), the Minister may appoint a person as a member for the purposes of that subsection.

(8) If one of the bodies referred to in subsection (2) (e) fails to comply with subsection (5), the Minister may appoint the person nominated by the other body referred to in that subsection as a member of the Council without further reference or notice to the body that has so failed to comply.

(9) If a body referred to in paragraph (d), (e), (f) or (g) of subsection (2) changes its name the Governor may, by order, amend that paragraph by substituting the body's new name.

(10) If a body referred to in paragraph (d), (e), (f) or (g) of subsection (2) ceases to exist, the Governor, on the recommendation of the Board, may, by order, amend that paragraph by substituting the name of a body which the Governor is satisfied substantially represents the interests represented by the first-mentioned body.

(11) Schedule 5 has effect with respect to membership of the Council.

(12) Schedule 6 has effect with respect to meetings of the Council.

Objective of Council

37B—(1) The Council is part of the State's forest practices system, the objective of which is set out in Schedule 7.

(2) The Council is to act in all matters in a manner that best advances the objective of the State's forest practices system.

Functions of Council

37C—The Council has the following functions:—

- (a) to advise the Board on the review of this Act and the Forest Practices Code;
- (b) to advise the Board on the quality, relevance and cost effectiveness of forest practices administration, operations and research;
- (c) to advise the Board on financial matters including the self-funding of forest practices;
- (d) to promote discussion within government and the forestry industry, and by land owners and land users, of forest practices issues.

Committees

37D—The Council may establish committees of its members for the purpose of advising it on any matter related to its functions.

Section 38 amended (Appointment of officers for purposes of Act)

20—Section 38 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) "Commission may appoint any employee employed in the Department, any person employed by the Commission," and substituting "Board may appoint any person employed by the Forestry corporation,";
- (b) by omitting from subsection (2) "Commission" (twice occurring) and substituting "Board";

- (c) by omitting from subsection (4) “Commission” and substituting “Board”;
- (d) by omitting subsections (6) and (7).

Section 39 amended (Forest Practices Officers)

21—Section 39 of the Principal Act is amended as follows:—

- (a) by omitting “The Commission” and substituting “(1) Subject to this section, the Board”;
- (b) by omitting from subsection (1) “under its seal” and substituting “signed by the chairperson of the Board”;
- (c) by inserting the following subsections after subsection (1):—

(2) The Board may, by notice in writing, revoke a warrant authorizing a person to be a forest practices officer for the purpose of this Act and, upon service of the notice on that person, the authorization is revoked.

(3) For the purposes of subsection (2), the Board may at any time revoke the authorization of a person to be a forest practices officer for any reason it considers sufficient and, without limiting the generality of this, the Board may revoke any such authorization on the grounds that the person concerned—

- (a) has been negligent or not diligent in performing the duties and exercising the powers of a forest practices officer; or
- (b) has been convicted of an offence against the *Forestry Act 1920* or this Act; or
- (c) has been convicted, in Tasmania or elsewhere, of an offence involving dishonesty; or
- (d) is physically or mentally incapable of adequately performing the duties or exercising the powers of a forest practices officer.

(4) A forest practices officer may at any time, by notice in writing to the Board, surrender his or her authorization as such officer.

(5) A forest practices officer does not incur any personal liability for any act done or purported or omitted to be done by that officer acting as such in good faith under this Act.

Section 39A inserted

22—After section 39 of the Principal Act the following section is inserted:—

Chief forest practices officer

39A—(1) The Board is to appoint a person who has extensive expertise in forestry and extensive experience in forest operations as chief forest practices officer.

(2) The chief forest practices officer is responsible for overseeing the day to day administration of forest practices.

(3) The chief forest practices officer—

(a) is required to devote the whole of his or her time to the duties of that office; and

(b) is not entitled to hold any other position or employment within the forestry industry in conjunction with that office.

(4) A person who is appointed as chief forest practices officer who is not a forest practices officer at the time of his or her appointment to that office is, by virtue of that appointment and without further authorization than this section, a forest practices officer for the purposes of this Act.

(5) The chief forest practices officer does not incur any personal liability for any act done or purported or omitted to be done by the chief forest practices officer acting as such in good faith under this Act.

Section 40 amended (Powers, &c., of forest practices officers)

23—Section 40 of the Principal Act is amended as follows:—

(a) by inserting in subsection (5) “, except in a case to which subsection (6) applies,” after “but”;

(b) by inserting the following subsection after subsection (5):—

(6) Information provided by a person in response to a question under subsection (2) is admissible against that person in any civil or criminal proceedings if and only if—

(a) the question is asked by the chief forest practices officer, or by an officer appointed under section 38 who is authorized under section 47 to make complaints under this Act; and

(b) the chief forest practices officer or that officer warns the person, before asking the question, that any information supplied in answer to the question is so admissible.

Section 41 amended (Failure to comply with approved timber harvesting plan or provisions of this Act)

24—Section 41 of the Principal Act is amended as follows:—

(a) by inserting the following subsection after subsection (5):—

(5A) Subsection (5) does not apply to the Forestry corporation.

(b) by omitting subsection (6) and substituting the following subsections:—

(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 chief forest practices officer may request any person to do either or both of the following:—

(a) repair the damage referred to in subsection (2) (b);

(b) carry out the works specified in the notice.

(7) A person who complies with a request under subsection (6) may, for that purpose, enter and remain on the land to which the notice referred to in that subsection relates.

(8) The costs and expenses incurred by a person in repairing any damage or carrying out any work in compliance with a request made to that person by the chief forest practices officer under subsection (6) may be recovered in a court of competent jurisdiction as a debt due to that person from the person who failed to comply with the notice referred to in that subsection.

Section 42 amended (Appeal to Tribunal by person aggrieved by notice served under section 41 (2))

25—Section 42 of the Principal Act is amended as follows:—

(a) by inserting the following subsection after subsection (5):—

(5A) Subsection (5) does not apply to the Forestry corporation.

(b) by omitting subsection (6) and substituting the following subsections:—

(6) Where a person referred to in subsection (1) fails to comply with a notice under section 41 (2), as modified or confirmed by the Tribunal, the chief forest practices officer may request any person to do either or both of the following:—

(a) repair the damage referred to in section 41 (2) (b);

(b) carry out the works specified in the notice.

(7) A person who complies with a request under subsection (6) may, for that purpose, enter and remain on the land to which the notice referred to in that subsection relates.

(8) The costs and expenses incurred by a person in repairing any damage or carrying out any work in compliance with a request made to that person by the chief forest practices officer under subsection (6) may be recovered in a court of competent jurisdiction as a debt due to that person from the person who failed to comply with the notice referred to in that subsection.

Section 43 amended (Delegation by Board)

26—Section 43 of the Principal Act is amended as follows:—

- (a) by omitting subsection (1) and substituting the following subsection:—
 - (1) Subject to subsection (2), the Board may delegate any of its functions or powers other than this power of delegation.
- (b) by omitting from subsection (2) “Notwithstanding subsection (1), the Commission” and substituting “The Board”;
- (c) by omitting from subsection (2) “Commission’s” and substituting “Board’s”;
- (d) by omitting subsections (3), (4), (5), (6) and (7).

Section 44 substituted

27—Section 44 of the Principal Act is repealed and the following section is substituted:—

Costs and expenses of Act

44—(1) The following costs and expenses incurred under this Act are to be paid out of money provided by Parliament for the purpose:—

- (a) the costs and expenses of carrying out an annual assessment and preparing a report under section 4E;
- (b) the costs and expenses of preparing an annual report under section 4F;
- (c) the costs and expenses of detecting and investigating contraventions of, or failures to comply with, this Act and the Forest Practices Code;
- (d) the costs and expenses of making complaints and prosecuting offences under this Act;
- (e) the amount of any compensation that is payable under section 16 (3);
- (f) the remuneration, and any allowances or benefits, payable to the chief forest practices officer;

- (g) the costs and expenses of administrative and other services and facilities that are necessary for the effective exercise of the powers, and the effective performance of the duties, of the chief forest practices officer;
- (h) such other costs and expenses as are incurred in the exercise of the Board's powers or the performance of the Board's functions in respect of land other than Crown land.

(2) Notwithstanding subsection (1), any money not provided by Parliament which is at the Board's disposal may be applied towards the payment of any of the costs and expenses referred to in that subsection.

Section 46 substituted

28—Section 46 of the Principal Act is repealed and the following section is substituted:—

Service of notices and other documents

46—(1) A notice, application or other document is effectively served under this Act if—

- (a) in the case of a natural person, it is—
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by this Act to serve the notice, application or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is—
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.

(2) A notice, application or other document required by this Act to be served on the Board must be served on the chief forest practices officer.

Section 47 amended (Proceedings and prosecutions)

29—Section 47 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:—

(2) A complaint in respect of an offence against this Act may be made by—

(a) the chief forest practices officer; or

(b) a police officer; or

(c) any other person who is authorized by the Board, in writing, to make complaints under this Act.

(3) In the exercise of their powers and the performance of their functions under this section, the chief forest practices officer and the persons referred to in subsection (2) (c) are subject to the direction of the Board.

Sections 47A, 47B and 47C inserted

30—After section 47 of the Principal Act, the following sections are inserted:—

Recovery of costs for loss or damage

47A—A court that convicts a person of an offence under section 17 (4), 17 (5), 21 (1), 21 (3), 41 (5) or 42 (5) may, in addition to any other penalty it may impose, order that person to pay to a person specified by the court—

(a) the cost of making good any damage done or any loss incurred by reason of the convicted person's act; and

(b) such other costs as the court considers appropriate.

Alternative to prosecution

47B—(1) In this section, “**prescribed fine**” means a fine of an amount that the Board accepts is equal, or approximately equal, to twice the amount required to make good any damage done or any loss incurred by reason of the commission of an offence under this Act.

(2) If the Board is satisfied that a person has committed an offence under section 17 (4), 17 (5), 21 (1), 21 (3), 41 (5) or 42 (5) but the circumstances do not merit the imposition of a penalty, the Board may, upon payment of a prescribed fine by the alleged offender—

- (a) cause any proceedings in respect of the alleged offence to be waived or discontinued; and
- (b) if the alleged offence involves the unlawful harvesting of timber—allow the alleged offender or another person specified by the Board to retain the whole or any part of the timber that has allegedly been unlawfully harvested.

(3) The amount of a prescribed fine is, after deducting such amount as the Board determines for the purpose of making good any damage done or any loss incurred by reason of the commission of the offence, to be paid into the Consolidated Fund.

Vicarious liability

47C—(1) If an offence is committed against section 17 (4), 17 (5), 21 (1), 21 (3), 41 (5) or 42 (5) by a person acting as the agent or servant of another person, the other person is, without prejudice to the liability of the agent or servant, liable under that section in the same manner and to the same extent as if he or she had committed the offence personally.

(2) Notwithstanding subsection (1), it is a defence for the other person referred to in that subsection to prove, on the balance of probabilities, that the offence was committed by the agent or servant without the person’s knowledge or consent and that the person took reasonable precautions and exercised due diligence to prevent the agent or servant committing the offence.

Section 48 substituted

31—Section 48 of the Principal Act is repealed and the following subsection is substituted:—

Evidence

48—(1) In any proceedings under this Act, the production of a certificate purporting to be signed by the chairperson of the Board stating that, at a time or during a period specified in the certificate—

- (a) a person specified in the certificate was or was not the chief forest practices officer; or
- (b) a person specified in the certificate was or was not a forest practices officer; or
- (c) a person specified in the certificate was or was not appointed under section 38 as an officer for the purposes of this Act; or
- (d) a person specified in the certificate was authorized under this Act to take an action specified in the certificate; or
- (e) there was or was not an approved timber harvesting plan in existence in respect of land described in the certificate; or
- (f) land described in the certificate was a private timber reserve—

is evidence of the matter stated in the certificate.

(2) For the purpose of subsection (1) (e) and (f), land may be described by means of a verbal description or a plan, or both.

(3) A certificate under subsection (1) may contain any one or more of the statements that may be made under that subsection.

Section 49 repealed

32—Section 49 of the Principal Act is repealed.

Section 50 amended (Regulations)

33—Section 50 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Commission” and substituting “Board”;
- (b) by omitting from subsection (2) “Commission” and substituting “Board”;
- (c) by omitting from subsection (2) “the Council” and substituting “Private Forests Tasmania”.

Schedules 3, 4, 5, 6 and 7 inserted

34—After Schedule 2 to the Principal Act, the following Schedules are inserted:—

SCHEDULE 3

Section 4A (3)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF BOARD**Interpretation**

1—In this Schedule, “member” means a member of the Board and includes the chairperson.

Holding other office

2—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of a member;
or
- (b) accepting any remuneration payable to a member.

Remuneration of members

3—(1) A member is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Minister determines.

(2) A member of the Board who is employed under the *Tasmanian State Service Act 1984* is not entitled to remuneration under subclause (1) except with the approval of the Minister administering that Act.

Validity of proceedings

4—(1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.

(2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if a person was disqualified from acting as, or incapable of being, a member.

Disclosure of interests

5—(1) If—

- (a) a member or the spouse of a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter—

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the Board otherwise determines, the member is not to—

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the board in relation to the matter.

(3) For the purpose of making a determination under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not to—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

Presumptions

6—In any proceedings, unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the presence of a quorum at any meeting of the Board.

SCHEDULE 4

Section 4A (4)

PROVISIONS WITH RESPECT TO MEETINGS OF BOARD

Interpretation

1—In this Schedule, “**member**” means a member of the Board and, unless the contrary intention is shown, includes the chairperson.

Meetings

2—A meeting of the Board may be convened at any time by the chairperson or by any 2 members.

Procedure at meetings

3—(1) Three members form a quorum at any duly convened meeting of the Board.

(2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.

(3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the members present and voting.

(4) In the event of an equality of votes on a question arising at a meeting of the Board the question stands adjourned until the next meeting.

Chairperson

4—(1) The chairperson of the Board is to preside at all meetings of the Board at which he or she is present.

(2) If the chairperson is not present at a meeting of the Board a member elected by the members present is to preside at that meeting.

Minutes

5—The Board is to keep minutes of its proceedings.

General procedures

6—Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Board is as determined by the Board.

SCHEDULE 5

Section 37A (11)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF COUNCIL

Interpretation

1—In this Schedule, “**appointed member**” means a member of the Council referred to in section 37A (2) (b), (c), (d), (e), (f) or (g).

Term of appointment

2—An appointed member is to be appointed for such term, not exceeding 3 years, as is specified in the member’s instrument of appointment and, if otherwise qualified, is eligible for re-appointment.

Holding other office

3—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from holding that office and also the office of a member.

Termination of appointment

4—The Minister may terminate the appointment of an appointed member if the member—

- (a) is absent from 4 consecutive meetings of the Council without the permission of the Council; or
- (b) becomes mentally or physically incapable of performing the duties of a member; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for that benefit; or
- (d) is convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 2 years or longer; or
- (e) is convicted of an offence against this Act or the *Forestry Act 1920*.

Resignation

5—An appointed member may resign by signed notice given to the Minister.

Validity of proceedings

6—(1) An act or proceeding of the Council is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Council.

(2) An act or proceeding of the Council is valid even if—

- (a) the appointment of a member was defective; or
 - (b) an appointed member was disqualified from acting as, or incapable of being, a member.
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SCHEDULE 6

Section 37A (12)

PROVISIONS WITH RESPECT TO MEETINGS OF COUNCIL

Interpretation

1—In this Schedule, “**member**” means a member of the Council and, unless the contrary intention is shown, includes the chairperson.

Meetings

2—(1) Subject to subclause (2), a meeting of the Council may be convened at any time by the chairperson or by any 2 members.

(2) The Council must hold not less than 3 meetings in each financial year.

Procedure at meetings

3—(1) Four members form a quorum at any duly convened meeting of the Council.

(2) Any duly convened meeting of the Council at which a quorum is present is competent to transact any business of the Council.

(3) Questions arising at a meeting of the Council are to be determined by a majority of votes of the members present and voting.

(4) In the event of an equality of votes on a question arising at a meeting of the Council the question stands adjourned until its next meeting.

Chairperson

4—(1) The chairperson of the Council is to preside at all meetings of the Council at which he or she is present.

(2) If the chairperson is not present at a meeting of the Council a member elected by the members present is to preside at that meeting.

Minutes

5—The Council is to keep minutes of its proceedings.

General procedures

6—Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Council is as determined by the Council.

SCHEDULE 7

Sections 4B and 37B

**OBJECTIVE OF THE FOREST PRACTICES SYSTEM OF
TASMANIA**

The objective of the State's forest practices system is to achieve sustainable management of Crown and private forests with due care for the environment while delivering, in a way that is as far as possible self-funding—

- (a) an emphasis on self-regulation; and
 - (b) planning before forest operations; and
 - (c) delegated and decentralized approvals for timber harvesting plans and other forest practices matters; and
 - (d) a forest practices code which provides practical standards for forest management, timber harvesting and other forest operations; and
 - (e) an emphasis on consultation and education; and
 - (f) provision for the rehabilitation of land in cases where the forest practices code is contravened; and
 - (g) an independent appeal process; and
 - (h) through the declaration of private timber reserves—a means by which private land holders are able to ensure the security of their forest resources.
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Consequential amendments

35—The Principal Act is amended as set out in Schedule 1.

Conversion of monetary penalties into penalty units

36—The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 35

CONSEQUENTIAL AMENDMENTS

1. From each of the following sections omit "Commission" (wherever occurring) and substitute "Board":—

5 (1), 5 (2) (a), 5 (3), 6 (1), 6 (2) (b), 6 (2) (c), 7 (1), 7 (2), 7 (2) (b), 7 (2) (c), 7 (3), 8 (1), 8 (2), 8 (3), 8 (4), 8 (5), 9 (1), 9 (2), 9 (6), 10, 11 (1), 11 (2), 12 (1), 14 (1), 14 (2), 14 (3), 14 (4), 14 (6), 14 (7), 14 (9), 14 (10), 14 (11), 14 (12), 15 (1), 15 (2), 18 (1) (b), 18 (4) (b), 18 (5), 23 (1), 23 (2) (a), 23 (2) (c), 23 (3), 24 (1), 24 (2), 27 (1), 27 (3), 27 (4), 27 (5), 27 (6), 29 (1), 29 (2) (a), 29 (2) (b), 29 (3), 29 (4), 30 (1), 30 (2), 30 (3) (b), 30 (3) (c), 30 (5), 30 (6), 33 (1), 33 (2), 33 (3), 36 (3), 37 (16), 45 (1) (b), 45 (1) (c), 45 (1) (d).

2. From each of the following sections, omit "Commission's" (wherever occurring) and substitute "Board's":—

29 (1) (a), 29 (1) (b), 29 (2) (a), 29 (2) (b), 29 (3).

3. From section 6 (3) omit "the Commission" and substitute "Private Forests Tasmania".

4. From sections 30 (1) and 30 (5) omit "the Council" and substitute "Private Forests Tasmania".

SCHEDULE 2

Section 36

CONVERSION OF MONETARY PENALTIES INTO PENALTY UNITS

1. Section 21 (1)—

Omit "penalty not exceeding \$15 000 or a daily penalty not exceeding \$1 000" and substitute "fine not exceeding 150 penalty units or a daily fine not exceeding 10 penalty units".

2. Section 21 (2)—
 - (a) Omit “daily penalty” and substitute “daily fine”; and
 - (b) Omit “of the penalty imposed shall not exceed \$15 000” and substitute “fine imposed is not to exceed 150 penalty units”.
 3. Section 21 (3)—

Omit “penalty not exceeding \$5 000” and substitute “fine not exceeding 50 penalty units”.
 4. Section 37 (4)—

Omit “penalty not exceeding \$500” and substitute “fine not exceeding 5 penalty units”.
 5. Section 40 (3)—

Omit “penalty not exceeding \$500” and substitute “fine not exceeding 5 penalty units”.
 6. Section 41 (5)—

Omit “penalty not exceeding \$10 000” and substitute “fine not exceeding 100 penalty units”.
 7. Section 42 (5)—

Omit “penalty not exceeding \$10 000” and substitute “fine not exceeding 100 penalty units”.
 8. Section 45 (1)—

Omit “penalty not exceeding \$1 000” and substitute “fine not exceeding 10 penalty units”.
 9. Section 50 (4)—
 - (a) Omit “penalty not exceeding \$500” and substitute “fine not exceeding 5 penalty units”; and
 - (b) Omit “further penalties not exceeding \$50” and substitute “a further fine not exceeding 0.5 penalty units”.
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*[Second reading presentation speech made in:—
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