



PRIVATE FORESTS ACT 1994

No. 28 of 1994

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PRIVATE FORESTS ACT 1994

No. 28 of 1994

AN ACT to establish an authority to provide assistance and advice on private forest management, to prescribe the functions and powers of that authority, to provide for related matters and to amend certain Acts

[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:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Private Forests Act 1994*.

Commencement

2—(1) This Act, except this section and sections 1 and 44, commences on the day on which the *Forestry Amendment (Forestry Corporation) Act 1994* commences.

(2) This section and sections 1 and 44 commence on the day on which this Act receives the Royal Assent.

Interpretation

3—In this Act, unless the contrary intention appears—

“**Authority**” means Private Forests Tasmania established under section 4;

“**Board**” means the Board of Directors of the Authority;

“**chairperson**” means the chairperson of the Board;

“**chief executive officer**” means the chief executive officer of the Authority appointed under section 16;

“**director**” means a person appointed as a director of the Board or the chief executive officer;

“**employee**” means a person appointed or employed pursuant to section 19;

“**forestry dedication covenant**” means a covenant referred to in section 33;

“**forest produce**” means all vegetable growth and the products of growing or dead trees, shrubs, timber or other vegetable growth;

“**functions**” includes duties and responsibilities;

“**industrial private forest grower**” means a grower of timber who is directly engaged in sawmilling or allied industries or in industries using or processing pulpwood (including the production of woodchips);

“**non-industrial private forest grower**” means a grower of timber other than an industrial private forest grower;

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

“**private commercial forestry**” includes all matters affecting the establishment, development or management of private commercial forests or the disposal or use of the produce of private commercial forests;

- “**regulations**” means regulations made and in force under this Act;
- “**spouse**” includes a person who is generally recognized as the husband or wife or another person although not legally married to that other person;
- “**timber**” includes the trunks and branches of trees, whether standing or not, and all wood, whether or not the same is cut up, sawn, hewn, split or otherwise fashioned;
- “**trees**” includes not only timber trees, but trees, shrubs and bushes, seedlings, saplings and re-shoots of every description.
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PART 2

PRIVATE FORESTS TASMANIA

Private Forests Tasmania

- 4—(1) Private Forests Tasmania is established.
- (2) Private Forests Tasmania—
- (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.

Objectives of the Authority

5—The objectives of the Authority are specified in Schedule 1.

Functions of Authority

- 6—(1) The functions of the Authority are as follows:—
- (a) to advise the Minister on all matters relating to private forestry;
 - (b) to provide assistance and advice on forest management for commercial purposes and on the use of trees for sustainable land management;

- (c) to process applications for private timber reserves under the *Forest Practices Act 1985* pursuant to a delegation from the Forest Practices Board under that Act;
- (d) to promote opportunities for more competitive markets for private forest owners;
- (e) to advise, assist and facilitate the private forest sector in the development of commercial infrastructure;
- (f) to maintain and update an inventory of private forests, prepare five-yearly reviews of private forests and report on compliance with export and other licence conditions as required by any agreement entered into between the State and the Commonwealth;
- (g) to provide advice and assistance to the Forest Practices Board, established under the *Forest Practices Act 1985*, for implementation of that Act on private forest lands;
- (h) to provide co-ordinated input on behalf of private forest growers on land use issues;
- (i) to promote private forestry research and education;
- (j) to examine matters relating to the conservation of flora, fauna, land forms, cultural heritage and care of the environment on private forest lands;
- (k) to encourage non-commercial forestry on private land including strategic planning and appropriate technical and policy development;
- (l) to develop plans to deliver funding for private forestry programmes from private forest owners;
- (m) to perform such other functions as are imposed on it by this or any other Act.

(2) The costs and expenses incurred by the Authority in performing the functions specified in paragraphs (a), (g), (h), (i), (j) and (k) of subsection (1) are to be paid out of money provided by Parliament for the purpose.

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

Powers of Authority

7—In addition to such other powers as are conferred on it by this or any other Act, the Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions including acquiring, holding, disposing of and otherwise dealing with property.

PART 3

BOARD OF DIRECTORS

Division 1—Board

Board

8—(1) The Authority has a Board of Directors consisting of—

- (a) a person with practical knowledge of, and experience in, industry, commerce or economic development; and
- (b) three persons representing private forest growers of whom—
 - (i) one represents industrial private forest growers; and
 - (ii) two represent non-industrial private forest growers; and
- (c) a person with expertise in forest or related sciences; and
- (d) the chief executive officer.

(2) The directors referred to in subsection (1) (a), (b) and (c) are to be appointed by the Minister after the Minister has consulted such organizations as the Minister is satisfied can properly be regarded as associations of owners of private commercial forests carried on wholly or partly for the purpose of marketing the timber obtained from those forests.

(3) The Minister is to appoint a director referred to in subsection (1) (a), (b) or (c) to be the chairperson of the Board.

(4) The Board may, at its first meeting, elect one of its members to be deputy chairperson of the Board.

(5) Schedule 2 has effect with respect to the directors.

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

Role of Board

9—The role of the Board is—

- (a) to manage and conduct the business and affairs of the Authority in a manner that is in accordance with sound commercial practice; and
- (b) to determine the strategies and policies of the Authority; and
- (c) to perform such other functions as are imposed on it by this Act or as are prescribed.

Powers of Board

10—The Board has power to do all things necessary or convenient to be done in connection with the performance of its functions under this or any other Act.

Delegation

11—The Board may, in writing, delegate any of its functions or powers other than this power of delegation.

Committees

12—(1) The Board—

- (a) must establish an audit committee; and
- (b) may establish such other committees as it considers appropriate.

(2) A committee—

- (a) must provide the Board with advice on any matter referred to it by the Board; and
- (b) must perform any functions, and may exercise any powers, delegated to it by the Board.

(3) In addition to its functions under subsection (2), the audit committee must provide the Board with advice on—

- (a) the internal audit charter of the Authority; and
- (b) monitoring the Authority's systems of financial reporting and internal control; and
- (c) the resources necessary for the performance of the internal audit function of the Authority.

(4) Schedule 4 has effect with respect to—

- (a) the members of a committee; and
- (b) the meetings of a committee.

*Division 2—Directors generally***Duties of directors**

13—(1) A director must act honestly, exercise reasonable care and be diligent in the performance of the functions, and the exercise of the powers, of a director.

Penalty: Fine not exceeding 50 penalty units.

(2) A director must not improperly use information acquired as a director—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Authority.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

(3) A director must not improperly use his or her position as a director—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Authority.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

Repayment by director of improper profit, &c.

14—If a director is found guilty of an offence under section 13, the Authority may recover in a court of competent jurisdiction as a debt due to it—

- (a) any profit made by the director or another person as a result of the committing of the offence; and
- (b) an amount equal to any loss and damage the Authority suffered as a result of the committing of the offence.

Acting directors

15—(1) In this section, “absent”, in relation to a director referred to in section 8 (1) (a), (b) or (c), means—

- (a) absent from duty; or
- (b) absent from Australia; or
- (c) otherwise unable to perform the functions of the office of director.

(2) The Minister may appoint a person to act as a director referred to in section 8 (1) (a), (b) or (c) if the director referred to in section 8 (1) (a), (b) or (c) is absent.

(3) While a person appointed under subsection (2) is acting as a director—

- (a) that person is taken to be a director; and
- (b) this Act applies to that person as if he or she were a director.

(4) The appointment of a person to act as a director terminates when the absent director resumes the performance of his or her functions as director.

PART 4

STAFF

Division 1—Chief executive officer

Chief executive officer

16—(1) The office of chief executive officer is a prescribed office for the purposes of the *Tasmanian State Service Act 1984*.

(2) The Board is to recommend to the Minister administering Part V of the *Tasmanian State Service Act 1984* a person suitable to be appointed as chief executive officer of the Authority.

(3) A person is not to be recommended by the Minister to the Governor for appointment as chief executive officer except with the agreement of the Board.

(4) A person is not to be appointed as chief executive officer unless that person possesses administrative, commercial and marketing skills.

Role of chief executive officer

17—(1) The chief executive officer is responsible to the Board for the general administration and management of the Authority in accordance with the *Tasmanian State Service Act 1984* and the *State Authorities Financial Management Act 1990*.

(2) The chief executive officer—

- (a) must perform any functions, and may exercise any powers, delegated to the chief executive officer by the Board; and
- (b) must perform any other functions imposed on, and may exercise any other powers granted to, the chief executive officer by this or any other Act.

Disclosure of interests

18—The chief executive officer must inform the chairperson, in writing, of any direct or indirect pecuniary interest that the chief executive officer has in any business or body corporate that carries on a business as soon as practicable after the chief executive officer acquires or becomes aware of that interest.

Division 2—Other staff

Staff

19—Subject to and in accordance with the *Tasmanian State Service Act 1984*, such persons as the Authority considers necessary may be appointed or employed for the purposes of enabling it to perform its functions or exercise its powers.

PART 5

FINANCIAL

Division 1—Finances of Authority

Funds of Authority

20—(1) The funds of the Authority consist of—

- (a) all money received by it in the course of performing its functions or exercising its powers; and

- (b) money provided by Parliament for the purposes of this Act; and
 - (c) all other money received by it from any other source.
- (2) The funds of the Authority are to be applied—
- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and the exercise of its powers; and
 - (b) in payment of the remuneration of its directors; and
 - (c) in any other manner authorized or required under this or any other Act.

Bank accounts

21—(1) The Authority may open and maintain such bank accounts as it considers necessary.

(2) Any money received by the Authority is to be paid into a bank account established under subsection (1).

Temporary investment of funds

22—The Authority may invest any money that it is holding and for which it has no immediate use in any manner in which trustees are authorized to invest trust funds under the *Trustee Act 1898*.

Reserves

23—The Authority may establish and maintain reserves.

Borrowing from Treasurer

24—(1) The Treasurer may lend to the Authority, out of money provided by Parliament for the purpose, such money as the Treasurer considers appropriate.

(2) A loan is subject to conditions determined by the Treasurer.

(3) An amount lent under subsection (1) and any interest or other charge payable in respect of the loan is a debt repayable by the Authority into the Consolidated Fund.

Borrowing from person other than Treasurer

25—(1) The Authority may borrow money from a person or body other than the Treasurer for the purposes of performing its functions and achieving its objectives.

(2) The total of all amounts of money borrowed under this section during a financial year must not exceed the maximum amount determined by the Treasurer, in writing, in respect of that financial year.

(3) The Authority may use all or part of its assets as security for money borrowed by it under subsection (1) and any interest or charges payable in respect of that borrowing.

(4) If requested to do so by the Authority, the Treasurer may guarantee the payment or repayment to a person or body from which the Authority borrows money under subsection (1) of any or all of the following:—

(a) the amount borrowed;

(b) any interest payable in respect of the amount borrowed;

(c) any charges relating to the borrowing;

(d) any expenses of that person or body incurred in relation to the borrowing and which are payable by the Authority.

(5) A guarantee is subject to the conditions determined by the Treasurer.

(6) A payment or repayment which is required under a guarantee is payable out of the Consolidated Fund without further appropriation than this section.

(7) If the Treasurer makes any payment or repayment under a guarantee, an amount equal to the amount so paid or repaid, and any interest payable by the Authority in accordance with the conditions to which the guarantee is subject, is a debt repayable by the Authority into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.

Division 2—Financial assistance provided by Authority for private commercial forestry

Financial assistance by Authority for private commercial forestry

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

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

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

Special provisions as to assistance by way of loan

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

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

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

(4) Where a loan under this Division is secured by a mortgage of land, nothing in Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* prevents the subdivision of a block in the exercise of any power of sale or other right arising under the mortgage.

Special provisions as to guarantees of loans

28—(1) Without prejudice to the generality of sections 26 and 27, the giving of a guarantee for the repayment of a loan or for the payment of interest or other charges in respect of a loan is deemed to be the giving of financial assistance to the person liable to repay the loan or to pay that interest or those charges, and any such guarantee given under this section is in this section referred to as a “forestry loan guarantee”.

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

(3) Where in consequence of giving a forestry loan guarantee in respect of a loan the Authority is required to make a payment to the person to whom the money is required to be repaid, that payment is payable out of the Consolidated Fund without further appropriation than this section.

(4) A forestry loan guarantee in respect of a loan is to require the person liable to repay the loan to pay to the Authority, on its demand, sums equal to the sums paid out of the Consolidated Fund under subsection (3) in pursuance of the guarantee together with interest on those sums at the same rate as that payable in respect of the principal money lent under the loan.

(5) Any money paid to the Authority in pursuance of a requirement under subsection (4) is to be paid into the Consolidated Fund.

Limit on loans and loan guarantees

29—A loan is not to be made to any person under this Division and a guarantee is not to be given under this Division in respect of a loan made to any person if the effect of making the loan or giving the guarantee would result in the aggregate of the amount of any sums required to be repaid by that person under loans made to the person under this Division, or under loans in respect of which guarantees have been given under this Division, exceeding \$300 000.

Joint ventures

30—(1) The Authority may, by agreement in writing, enter into an arrangement with another person, or other persons, for and in relation to the carrying out on any land of a joint venture for the exploitation of that land as a source of forest produce.

(2) An arrangement under subsection (1) continues for such term as is specified in the agreement, and may be extended for such further period or periods as may be agreed upon between the parties to the arrangement.

(3) Without limiting the generality of subsection (1), an agreement under that subsection may—

- (a) make provision for the carrying out by the several parties to the arrangement of specified operations, including, in particular—
- (i) the planting, tending and harvesting of trees; and
 - (ii) the construction and maintenance of fences, roads, bridges and other facilities; and
 - (iii) the payments (if any) to be made by the several parties to the arrangement to other such parties; and
 - (iv) the apportioning among those parties of the expenses and proceeds (if any) of the joint venture and of any royalties, or the liability to pay any royalties, relating to forest produce resulting from the undertaking of the joint venture; and
 - (v) the disposal of that forest produce; and

- (b) include terms and conditions relating to—
- (i) the obtaining, cutting and conversion of the forest produce resulting from the undertaking of the joint venture; and
 - (ii) the marking of that forest produce, its removal from the land from which it has been obtained and the protection and preservation of timber and other growth on that land; and
 - (iii) the cancellation of the arrangement by the Authority for default by any other party to the arrangement in the performance of its obligations under the agreement or on such other grounds as are specified in the agreement or the regulations; and
 - (iv) the suspension of any of the terms and conditions or any obligations of the agreement.

Division 3—Financial assistance provided by Authority for purposes other than private commercial forestry

Imposition of charges for advice rendered by Authority

31—Where the Authority renders any advice or assistance to any person, it may impose such charges for the rendering of that advice or assistance as may be agreed between the Authority and the person to whom that advice or assistance is rendered.

Financial assistance

32—(1) The Authority, with the approval of the Treasurer, may enter into and carry into effect agreements for rendering financial assistance for the purpose of sustainable land management, other than private commercial forestry.

(2) Financial assistance under this section is to be rendered on such terms and conditions as are determined by the Authority.

PART 6**MISCELLANEOUS****Forestry dedication covenants**

33—(1) An agreement under Division 2 of Part 5 may contain a covenant to the effect that the land to which the covenant relates is not, except with the previous consent in writing of the Authority or in such other circumstances as may be specified in the agreement, to be used otherwise than for the growing of timber or other forest products in accordance with the rules or practice of good forestry or for purposes connected with the growing of timber or other forest products.

(2) A covenant referred to in subsection (1) is a covenant in gross, within the meaning of the *Conveyancing and Law of Property Act 1884*.

Protection from liability

34—(1) A director does not incur any personal liability in respect of any act done or omitted to be done by the director in good faith in the performance or exercise, or purported performance or exercise, of any function or power under this Act or in the administration or execution, or purported administration or execution, of this Act.

(2) Subsection (1) does not preclude the Crown or the Authority from incurring liability that a director would, but for subsection (1), incur.

Seal of Authority

35—(1) The seal of the Authority is to be kept and used as authorized by the Board.

(2) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Authority.

Judicial notice of certain signatures

36—All courts and persons acting judicially must take judicial notice of—

- (a) the official signature of a person who is or has been the chairperson, a director or the chief executive officer; and
- (b) the fact that the person holds or has held the office concerned.

Presumptions

37—In any proceedings by or against the Authority, 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 appointment of any director; or
- (d) the presence of a quorum at any meeting of the Board; or
- (e) the appointment of the chief executive officer, a member of a committee or an employee.

Regulations

38—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 0·5 penalty units for each day during which the offence continues.

(4) The regulations may authorize any matter to be from time to time determined, applied or regulated by the Board or chief executive officer.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

***Conveyancing and Law of Property Act 1884* amended**

39—The *Conveyancing and Law of Property Act 1884** is amended as follows:—

- (a) by inserting in section 2 the following definition after the definition of “Court”:

“**covenant in gross**” means a covenant created under section 90AB;

- (b) by inserting after section 90A the following section:—

Covenants in gross

90AB—(1) Notwithstanding any law or rule of law to the contrary, on and after the commencement of this section a covenant without a dominant tenement may be created in favour of the Crown or of any public authority or local authority constituted by or under any Act.

(2) A covenant in gross is enforceable between the parties to it, and any person deriving title under any such party, as if the covenant were entered into by a fee simple owner of land for the benefit of adjacent land, held in fee simple by the Crown or any public authority or local authority constituted by or under any Act, that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Crown, public authority or local authority.

* 47 Vict. No. 19. For this Act, as amended to 1 September 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, Nos. 9, 23 and 99 of 1982, Nos. 51 and 78 of 1985, No. 27 of 1988, No. 23 of 1992 and No. 68 of 1993.

(3) A covenant entered into by a leaseholder under this section (unless the instrument creating it contains a provision to the contrary) remains in force so long as the covenantor or any person deriving title under the covenantor, other than a bona fide purchaser for value of the legal estate without notice of the covenant, remains in possession of the land to which the covenant relates.

(4) This section applies to and in relation to land that is subject to the *Land Titles Act 1980* notwithstanding anything contained in that Act.

(5) If a covenant under this section is lodged under the *Registration of Deeds Act 1935*, it must be accompanied by an application under section 11 of the *Land Titles Act 1980*.

(6) In this section—

“lease” includes an agreement for a lease;

“leaseholder” includes a tenant under an agreement for a lease.

Land Titles Act 1980 amended

40—Section 102 (2) of the *Land Titles Act 1980** is amended as follows:—

- (a) by omitting “1886; or” from paragraph (c) and substituting “1886;”;
- (b) by omitting “(8).” from paragraph (d) and substituting “(8); or”;
- (c) by inserting after paragraph (d) the following paragraph:—

(e) the covenant is a covenant in gross, within the meaning of the *Conveyancing and Law of Property Act 1884*.

* No. 19 of 1980. Amended by No. 46 of 1981, Nos. 9, 51 and 99 of 1982, No. 29 of 1984, No. 51 of 1985, No. 98 of 1986, No. 2 of 1987, Nos. 5, 11 and 48 of 1990, Nos. 43 and 46 of 1991, No. 26 of 1992 and Nos. 24, 73 and 100 of 1993.

***State Authorities Financial Management Act 1990* amended**

41—Schedule 1 to the *State Authorities Financial Management Act 1990*[†] is amended by inserting in the list of State Authorities “Private Forests Tasmania” after “Port Arthur Historic Site Management Authority”.

***Tasmanian State Service Act 1984* amended**

42—Schedule 1 to the *Tasmanian State Service Act 1984*[‡] is amended as follows:—

- (a) by inserting in Column 1 of Part II after the item “Motor Accidents Insurance Board” the item “Private Forests Tasmania”;
- (b) by inserting in Column 2 of Part II after the item “Chairman of the Motor Accidents Insurance Board” the item “Chief Executive Officer of Private Forests Tasmania”.

Savings and transitional provisions

43—The savings and transitional provisions set out in Schedule 5 have effect.

Administration of Act

44—(1) Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Forests; and

[†] No. 45 of 1990. Amended by Nos. 2 and 4 of 1991, Nos. 27, 36 and 39 of 1993, Nos. 1 and 25 of 1994 and S.R. 1991, Nos. 125, 218 and 219 and S.R. 1992, No. 108.

[‡] No. 25 of 1984. For this Act, as amended to 30 November 1990, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1991, No. 59 of 1992, Nos. 49 and 60 of 1993, No. 25 of 1994 and by S.R. 1991, Nos. 109 and 143, S.R. 1992, Nos. 22, 113 and 175, S.R. 1993, Nos. 7 and 34 and S.R. 1994, No. 30.

- (b) the Department responsible to the Minister for Forests in relation to the administration of this Act—
 - (i) before the commencement day is the Department of Forestry; and
 - (ii) on and after the commencement day is Private Forests Tasmania.
- (2) In subsection (1), “**commencement day**” means the day on which section 2 (1) of this Act commences.
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SCHEDULE 1

Section 5

OBJECTIVES OF AUTHORITY

1. The objective of the Authority is to facilitate and expand the development of the private forest resource in Tasmania in a manner which is consistent with sound forest land management practice.

2. Without limiting clause 1, the objectives of the Authority include the following:—

- (a) to promote the development of private forestry in Tasmania;
 - (b) to foster competitive markets for private forest growers;
 - (c) to provide strategic planning and policy direction for private forestry in Tasmania;
 - (d) to foster progressive and incremental funding from all private forest growers to fund the Authority;
 - (e) to foster commercial wood production forestry on private land in Tasmania;
 - (f) to foster the use and values of trees in sustainable land management.
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SCHEDULE 2

Section 8

DIRECTORS

Term of office

1—(1) A director, other than the chief executive officer, holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment.

(2) A person is not eligible to be appointed as a director, other than as the chief executive officer, if—

(a) the person has served 3 consecutive terms of office as a director; or

(b) the person has attained the age of 72 years.

(3) For the purpose of subclause (2), an appointment to a vacant office under clause 8 (2) is not a term of office as a director.

Conditions of appointment

2—(1) Subject to subclause (2), a director, other than the chief executive officer, is entitled to be paid the remuneration and allowances determined by the Minister from time to time.

(2) A director 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.

(3) A director, other than the chief executive officer, holds office on such conditions in relation to matters not provided for by this Act as are specified in the instrument of appointment.

(4) In subclause (3), “**matters**” includes superannuation.

Devotion of whole time to duties

3—(1) Where the holder of an office under an Act is required, by or under any Act, to devote the whole of his or her time to the duties of that office, that requirement does not operate to disqualify the holder from holding that office in conjunction with the office of a director who is not the chief executive officer.

(2) A director, other than the chief executive officer, may hold the office of director in conjunction with a position or office held under the *Tasmanian State Service Act 1984*.

Application of *Tasmanian State Service Act 1984*

4—(1) The chief executive officer is, in the capacity as Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, subject to the provisions of that Act.

(2) Except as provided in subclause (1), the directors are not, as such, subject to the provisions of the *Tasmanian State Service Act 1984*.

Leave of absence

5—The Board may grant leave of absence to a director, other than the chief executive officer, on such conditions as the Board considers appropriate.

Resignation

6—A director, other than the chief executive officer, may resign by signed notice given to the Minister.

Removal of director

7—The Minister may remove a director, other than the chief executive officer, from office if—

- (a) the director has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Authority, other than a contract for a service ordinarily supplied by the Authority and on the same terms as that service is ordinarily supplied to other persons in the same situation; or
- (b) the director fails to disclose a pecuniary interest as required under clause 7 of Schedule 3; or
- (c) the director has been convicted of an offence under this Act; or

- (d) the director has been convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 12 months or longer; or
- (e) the Minister considers that the director is physically or mentally incapable of continuing as a director; or
- (f) the Minister considers that the director is unable to perform adequately or competently the functions of the director's office; or
- (g) the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his or her remuneration or estate for their benefit; or
- (h) the director is absent from 4 consecutive meetings of the Board without leave of absence; or
- (i) the director attains the age of 72 years.

Filling of vacancy

8—(1) A director, other than the chief executive officer, vacates office if he or she—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under clause 7.

(2) The Minister may appoint a person to a vacant office of director for the residue of the predecessor's term of office.

Defect does not invalidate appointment

9—An appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

SCHEDULE 3
MEETINGS OF THE BOARD

Section 8

Convening of meetings

1—(1) Subject to subclause (2), meetings of the Board are to be held at the times and places determined by the Board.

(2) The chairperson—

(a) may convene a meeting at any time; and

(b) must convene a meeting when requested to do so by 2 other directors.

Presiding at meetings

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

(2) If the chairperson is not present at a meeting, the deputy chairperson must preside.

(3) If the chairperson or deputy chairperson is not present at a meeting, a director chosen by the directors present at the meeting must preside.

Quorum and voting at meetings

3—(1) Four directors constitute a quorum at any meeting of the Board.

(2) A question arising at a meeting of the Board is to be decided by a majority of votes of the directors present and voting.

(3) At a meeting of the Board where a director has an interest in a matter being considered and is excluded from being present and taking part in the consideration and decision of the Board in relation to the matter, 3 directors may constitute a quorum for the purposes of considering and making a decision in relation to that matter.

(4) At a meeting of the Board, if there is an equality of the votes of the directors present and voting on a question, the question is deferred to the next meeting of the Board.

(5) At a meeting of the Board, if there is an equality of the votes of the directors present and voting on a question that had been deferred under subclause (4) at a previous meeting of the Board, the chairperson or director presiding has a casting vote.

Conduct of meetings

4—(1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Board may permit directors to participate in a particular meeting or all meetings by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A director who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

(4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

5—(1) If at least 4 directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the directors signs the document.

(2) If a resolution is taken to have been passed under subclause (1), each director is to be—

- (a) advised immediately of the matter; and
- (b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

Minutes

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

Disclosure of interests

7—(1) If—

- (a) a director or the spouse of a director 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 director's duties in relation to consideration of the matter—

the director must, as soon as practicable after the relevant facts come to the director's knowledge, 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 director 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 director who has made a disclosure under subclause (1), a director 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 the making by the Board of the determination.

Validity of proceedings, &c.

8—(1) An act or proceeding of the Board or of any person acting pursuant to any direction of the Board is not invalidated or prejudiced by reason only of the fact 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) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of a director or that any person was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act, or capable of being, a director and as if the Board had been fully constituted.

SCHEDULE 4

Section 12

COMMITTEES

Membership of committees

1—(1) A committee consists of such number of persons as the Board determines.

(2) The chief executive officer may not be a member of the audit committee.

(3) The chairperson of the audit committee is to be a director.

Conditions of appointment

2—(1) A member of a committee, other than a person employed under the *Tasmanian State Service Act 1984*, is entitled to be paid such remuneration and allowances as are determined by the Board.

(2) A member of a committee holds that office for the term, and on the conditions, determined by the Board.

Meetings

3—(1) Meetings of a committee are to be held in accordance with any directions given by the Board.

(2) A committee may obtain assistance, information and advice from any person.

(3) Except as provided by this Schedule, a committee may regulate the calling of, and the conduct of business at, its meetings.

Disclosure of interests**4—(1) If—**

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

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

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

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

(3) For the purpose of making a determination under subclause (2) in relation to a member of a committee who has made a disclosure under subclause (1), a member of a committee 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 committee for the purpose of making the determination; or
 - (b) take part in making the determination.
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SCHEDULE 5

Section 43

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1—In this Schedule—

“**Commission**” means the Forestry Commission in existence immediately before the commencement of the *Forestry Amendment (Forestry Corporation) Act 1994*;

“**Council**” means the Private Forestry Council in existence immediately before the commencement day;

“**commencement day**” means the day on which section 2 (1) of this Act commences;

“**Forestry Act**” means the *Forestry Act 1920* as in force immediately before the commencement of the *Forestry Amendment (Forestry Corporation) Act 1994*.

Property and rights

2—On the commencement day the property and rights of the Council vest in the Authority and the liabilities of the Council become the liabilities of the Authority.

Contracts and agreements, &c.

3—On and after the commencement day—

(a) any contract or agreement entered into by the Council and in force immediately before that day is taken to be a contract or agreement entered into by the Authority; and

(b) any agreement entered into by the Commission under Division II of Part IIA or under Part IIB of the Forestry Act and in force immediately before that day is taken to be an agreement entered into by the Authority; and

(c) the Authority may exercise any power that the Commission could have exercised in relation to an agreement referred to in paragraph (b) as if Parts IIA and IIB of the Forestry Act had not been repealed; and

- (d) a forestry loan guarantee given by the Commission under Division II of Part IIA of the Forestry Act and in force immediately before that day is taken to have been given by the Authority; and
- (e) a covenant entered into under Division II of Part IIA of the Forestry Act and in force immediately before that day is enforceable by the Authority in the same manner as it would have been enforceable by the Commission if that Part had not been repealed; and
- (f) any money that, immediately before that day, was payable to the Commission in respect of advice or assistance rendered by the Commission to any person under section 12Q of the Forestry Act is taken to be money payable to the Authority.

Legal proceedings

4—(1) On and after the commencement day, legal proceedings instituted by or against the Commission in respect of any matter arising under Part IIA or IIB of the Forestry Act before, and pending on, the commencement day may be continued by or against the Authority.

(2) Any legal or other proceedings which may, before the commencement day, have been instituted or continued by or against the Commission in respect of any matter arising under Part IIA or IIB of the Forestry Act may, on and after that day, be instituted or continued by or against the Authority.

(3) On and after the commencement day, a judgment or order of a court obtained in legal proceedings by or against the Commission in respect of any matter arising under Part IIA or IIB of the Forestry Act may be enforced by or against the Authority.

References to Council, &c.

5—On and after the commencement day—

- (a) a reference to the Council in any law or in any contract, award or other instrument in force immediately before that day and to which the Council was a party is taken to be a reference to the Authority; and

(b) a document addressed to and purporting to be served on the Council is taken to be served on the Authority.

Accounts

6—An account maintained by or in the name of the Commission immediately before the commencement day that relates to any matter arising under Part IIA or IIB of the Forestry Act is, on and after that day, taken to be maintained by or in the name of the Authority.

Acts, &c., done by or to Council

7—All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Council or to the Commission in respect of any matter arising under Part IIA or IIB of the Forestry Act before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Authority.

*[Second reading presentation speech made in:—
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