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Private Forests Act 1994

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Private Forests Act 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

1. Short title

This Act may be cited as the Private Forests Act 1994 .

2. Commencement

(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.

3. Interpretation

*[Section 3 Amended by No. 20 of 1995, s. 3 and Sched. 1]*In this Act, unless the contrary intention appears –

annual report means the annual report for the Authority prepared under section 32E ;

Australian Accounting Standards means Statements of Accounting Standards issued jointly by the National Councils of the Australian Society of Certified Practising Accountants and The Institute of Chartered Accountants in Australia or their successors;

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 ;

corporate plan means the corporate plan approved under section 19D ;

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 ;

financial statements means the financial statements prepared under section 32B ;

[Section 3 Amended by No. 116 of 2001, s. 4, Applied:24 Aug 2001] **forest owners organisations** means such organisations as the Minister is satisfied can properly be regarded as associations of owners of private commercial forests carried on wholly or partly for the purposes of marketing the timber obtained from those forests;

[Section 3 Amended by No. 116 of 2001, s. 4, Applied:24 Aug 2001] *[Section 3 Amended by No. 56 of 2004, Sched. 2, Applied:01 Jul 2005]*

[Section 3 Amended by No. 56 of 2004, Sched. 2, Applied:01 Jul 2005] **Forest Practices Authority** means the body referred to in section 4AA of the Forest Practices Act 1985 ;

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

forestry dedication covenant means a covenant referred to in section 33 ;

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);

ministerial charter means the charter provided under section 19A ;

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

[Section 3 Amended by No. 45 of 2003, Sched. 1, Applied:01 Jan 2004] **partner** means the person with whom a person is in a personal relationship, within the meaning of the Relationships Act 2003 ;

[Section 3 Amended by No. 116 of 2001, s. 4, Applied:24 Aug 2001] [Section 3 Amended by No. 50 of 2013, Sched. 1, Applied:11 Dec 2013] **private commercial forest** means any land (not being Crown land or land owned by the Forestry corporation, continued by section 6 of the Forest Management Act 2013 , that supports a merchantable stand of timber or that is being managed with a view to producing timber of merchantable quality (including firewood);

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;

[Section 3 Amended by No. 45 of 2003, Sched. 1, Applied:01 Jan 2004]

Stakeholder Minister has the same meaning as in the Government Business Enterprises Act 1995 ;

statement of corporate intent has the meaning given by section 19F ;

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;

Treasurer's Instructions has the same meaning as in the Government Business Enterprises Act 1995 ;

trees includes not only timber trees, but trees, shrubs and bushes, seedlings, saplings and re-shoots of every description.

PART 2 - Private Forests Tasmania

4. Private Forests Tasmania

- (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.

5. Objectives of the Authority

The objectives of the Authority are specified in Schedule 1 .

6. Functions of Authority

- (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) *[Section 6 Subsection (1) amended by No. 56 of 2004, Sched. 2, Applied:01 Jul 2005]* to process applications for private timber reserves under the Forest Practices Act 1985 pursuant to a delegation from the Forest Practices Authority 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) *[Section 6 Subsection (1) amended by No. 116 of 2001, s. 5, Applied:24 Aug 2001]* *[Section 6 Subsection (1) amended by No. 56 of 2004, Sched. 2, Applied:01 Jul 2005]* to provide advice and assistance to the Forest Practices Authority for implementation of the Forest Practices Act 1985 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.

7. Powers of Authority

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

8. Board

- (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) *[Section 8 Subsection (2) amended by No. 116 of 2001, s. 6, Applied:24 Aug 2001]* The directors referred to in subsection (1) (a) , (b) and (c) are to be appointed by the Minister after the Minister has consulted the forest owners organisations.
- (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.

9. Role of Board

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.

10. Powers of Board

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.

11. Delegation

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

12. Committees

- (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

13. Duties of directors

(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.

14. Repayment by director of improper profit, &c.

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.

15. Acting directors

(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

16. Chief executive officer

- (1) *[Section 16 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* The office of chief executive officer is a prescribed office for the purposes of the State Service Act 2000 .
- (2) *[Section 16 Subsection (2) omitted by No. 86 of 2000, Sched. 1, Applied:01 May 2001]*
- (3) *[Section 16 Subsection (3) omitted by No. 86 of 2000, Sched. 1, Applied:01 May 2001]*
- (4) *[Section 16 Subsection (4) omitted by No. 86 of 2000, Sched. 1, Applied:01 May 2001]*

17. Role of chief executive officer

- (1) *[Section 17 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* The chief executive officer is responsible to the Board for the general administration and management of the Authority in accordance with the State Service Act 2000 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.

18. Disclosure of interests

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

19. Staff

[Section 19 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] Subject to and in accordance with the State Service Act 2000 , 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 4A - Charters and Plans

[Part 4A Inserted by No. 20 of 1995, s. 3 and Sched. 1]

Division 1 - Ministerial charter

19A. Ministerial charter

[Section 19A Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) By 31 December 1995, the Minister must provide the Authority with a ministerial charter.
- (2) The Minister may at any time at his or her own discretion or on receipt of the application of the Authority –
 - (a) amend a ministerial charter; or
 - (b) revoke a ministerial charter and substitute another ministerial charter.
- (3) Before or while preparing a ministerial charter or an amendment to a ministerial charter, the Minister must consult with the Stakeholder Minister and the Authority.
- (4) A ministerial charter and any amendment to a ministerial charter is to be in writing and signed by the Minister.
- (5) The Minister is to provide a copy of the ministerial charter and any amendment to it to the Stakeholder Minister.
- (6) A ministerial charter or any amendment to a ministerial charter takes effect on a day specified in it, being a day not earlier than the day on which it is provided to the Authority.

19B. Contents of ministerial charter

[Section 19B Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) A ministerial charter is to specify the broad policy expectations of the Minister for the Authority.
- (2) A ministerial charter may limit the functions and powers of the Authority and the performance and exercise of those functions and powers, but –
 - (a) may not prevent the Authority from performing a function it is required to perform or otherwise complying with this or any Act; and
 - (b) may not extend the functions and powers of the Authority.

19C. Compliance with ministerial charter

[Section 19C Inserted by No. 20 of 1995, s. 3 and Sched. 1] The Board must ensure that the business and affairs of the Authority are conducted in a manner that is consistent with the ministerial charter.

Division 2 - Plans of Authority

19D. Corporate plan

[Section 19D Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) In each financial year, the Board must prepare a corporate plan for the Authority.
- (2) The corporate plan –
 - (a) is to cover a period of not less than 3 financial years commencing on the day it takes effect; and
 - (b) is to contain a summary of the projected financial results of the Authority in respect of the current financial year and each financial year covered by the plan; and
 - (c) is to contain a summary of the financial results of the Authority in respect of the financial year immediately preceding the current financial year; and

- (d) is to contain the statement of corporate intent; and
- (e) is to be in a form and contain the information specified by the Minister; and
- (f) is to be consistent with the ministerial charter.

(3) The Board must provide a draft of the corporate plan to the Minister, Stakeholder Minister and Treasurer not later than 90 days before the day on which the corporate plan will take effect.

(4) When a draft corporate plan is approved by the Minister it becomes the corporate plan of the Authority.

(5) The Minister must approve a corporate plan, prepared in accordance with this section and section 19E , by not later than 30 days before the day on which the corporate plan will take effect.

(6) A corporate plan takes effect on the first day of the financial year next commencing after its approval by the Minister.

(7) A Board may prepare an amendment of its corporate plan at any time.

(8) An amendment of a corporate plan takes effect when it is approved by the Minister.

(9) The Board must provide a copy of its corporate plan and an amended corporate plan to the Stakeholder Minister and Treasurer within 14 days after the Board has been notified of its approval by the Minister.

(10) Except where the Minister otherwise approves, the Authority must act in accordance with its corporate plan or amended corporate plan.

19E. Consultation with Portfolio Minister and Stakeholder Minister

[Section 19E Inserted by No. 20 of 1995, s. 3 and Sched. 1]

(1) In the course of preparing the draft corporate plan the Board must consult –

- (a) in relation to the interests of the State as a whole and the long term objectives of the Authority, with the Minister; and
- (b) in relation to the financial performance objectives of the Authority, jointly with the Minister and the Stakeholder Minister.

(2) The Minister may give a direction to the Board –

- (a) in relation to a long term objective of the Authority; or
- (b) if the Minister considers the draft corporate plan to be inconsistent with the ministerial charter, in relation to that inconsistency.

(3) The Minister and the Stakeholder Minister jointly may give a direction to the Board in relation to the financial performance objectives of the Authority.

(4) Subject to subsection (5) , the Board must comply with a direction if it is in writing and –

- (a) in the case of a direction referred to in subsection (2) , is signed by the Minister; or
- (b) in the case of a direction referred to in subsection (3) , is signed by both the Minister and Stakeholder Minister.

(5) A direction has no effect in respect of a contract entered into by the Authority before the direction was given if compliance with the direction would result in the Authority failing to perform the contract.

19F. Statement of corporate intent

[Section 19F Inserted by No. 20 of 1995, s. 3 and Sched. 1]

(1) The statement of corporate intent of the Authority is a summary of its corporate plan.

(2) The statement of corporate intent of the Authority must not disclose any information which the Minister considers may, if disclosed –

- (a) disadvantage or cause damage to the Authority, directly or indirectly; or

(b) enable another person, directly or indirectly, to gain an advantage.

(3) The statement of corporate intent is to be in a form, and contain the information, specified by the Minister.

19G. Strategic and operating plans

[Section 19G Inserted by No. 20 of 1995, s. 3 and Sched. 1]

(1) The strategic plan of the Authority in force immediately before 1 July 1995 together with its operating plan in force immediately before that day is taken to be a corporate plan that takes effect on that day.

(2) The Authority must prepare a statement of corporate intent in respect of the corporate plan referred to in subsection (1) in sufficient time to enable it to be included in the annual report in respect of the financial year ending on 30 June 1995.

(3) In subsection (1) , *operating plan* and *strategic plan* have the same meanings as in the State Authorities Financial Management Act 1990 as in force immediately before 1 July 1995.

19H. Validity of actions, &c.

*[Section 19H Inserted by No. 20 of 1995, s. 3 and Sched. 1]*Anything done by or in relation to the Authority is not void or unenforceable only because the Authority has contravened this Part.

PART 5 - Financial

Division 1 - Finances of Authority

20. Funds of Authority

- (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.

21. Authorised deposit-taking institution accounts

[Section 21 Subsection (1) amended by No. 62 of 1996, s. 3 and Sched. 1] [Section 21 Substituted by No. 74 of 1999, Sched. 2, Applied: 01 Jan 2000]

- (1) The Authority may open and maintain such authorised deposit-taking institution accounts as it considers necessary.
- (2) Any money received by the Authority is to be paid into an account established under subsection (1) .

22. Temporary investment of funds

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 .

23. Reserves

The Authority may establish and maintain reserves.

24. Borrowing from Treasurer

- (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.

25. Borrowing from person other than Treasurer

- (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.

25A. Effect of Financial Agreement Act 1994

[Section 25A Inserted by No. 20 of 1995, s. 3 and Sched. 1] Where the Treasurer, under section 5 (1) of the Financial Agreement Act 1994, requires the Authority to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Authority must comply with that requirement.

Division 1A - Private forest service levy

25B. Interpretation of Division

[Section 25B of Part 5 Inserted by No. 116 of 2001, s. 7, Applied: 24 Aug 2001]

(1) In this Division, unless the contrary intention appears –

certified, in respect of a forest practices plan, means certified under section 19 of the Forest Practices Act 1985 ;

certified forest practices plan has the same meaning as in the Forest Practices Act 1985 ;

Crown land has the same meaning as in the Crown Lands Act 1976 ;

due date means –

(a) in relation to a levy payable in respect of a forest practices plan which was certified during the transitional period, the day on which the period of 6 months commencing on the Royal Assent date ends; and

(b) in relation to a levy payable in respect of a forest practices plan which was certified on or after the Royal Assent date, the day by which a levy must be paid under section 25F ;

forest practices plan has the same meaning as in the Forest Practices Act 1985 ;

levy means the private forest service levy or further private forest service levy payable under section 25C ;

levy rate means the levy rate determined or specified under section 25I that has effect in the financial year in which liability to pay the levy arises;

[Section 25B Subsection (1) amended by No. 50 of 2013, Sched. 1, Applied: 11 Dec 2013] ***nett area of forest operation*** is the total of all areas of land that are shown on a prescribed certified forest practices plan as –

(a) native forest to be harvested as private commercial forest; or

(b) plantations to be harvested as private commercial forest; or

(c) non-forested areas to be planted for harvesting as private commercial forest –

less any areas of land within the areas referred to in paragraphs (a) , (b) and (c) that are owned by the Forestry corporation continued by section 6 of the Forest Management Act 2013 , are Crown land or are prescribed areas of land;

owner of any land has the same meaning as "owner of land" has in the Forest Practices Act 1985 ;

prescribed certified forest practices plan means a certified forest practices plan that was not prepared and certified under the Forest Practices Act 1985 solely for one or more of the following purposes:

- (a) the construction of a road;
- (b) the operation of a quarry;
- (c) the thinning of plantation forests;
- (d) a purpose prescribed by the regulations for the purposes of this definition;

responsible person, in relation to land, has the same meaning as in section 17 of the Forest Practices Act 1985 ;

Royal Assent date means the day on which the Private Forests Amendment Act 2001 receives the Royal Assent;

transitional period means the period commencing on 24 August 2001 and ending on the commencement of the Royal Assent date.

(2) A forest practices plan that is certified during the transitional period is taken to have been certified on the Royal Assent date for the purposes of this Division.

25C. Liability to pay private forest service levy

[Section 25C of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

(1) On the certification of a forest practices plan under the Forest Practices Act 1985 , the owner of the nett area of forest operation must pay a private forest service levy if that plan is a prescribed certified forest practices plan.

(2) On the variation of a prescribed certified forest practices plan under the Forest Practices Act 1985 that, in the opinion of the Authority, significantly increases the nett area of forest operation, the owner of the nett area of forest operation must pay a further private forest service levy in respect of the difference between –

- (a) the nett area of forest operation shown on the prescribed certified forest practices plan before it is so varied and in respect of which a levy has been paid; and
- (b) the nett area of forest operation shown on the prescribed certified forest practices plan as so varied.

25D. Amount of levy

[Section 25D of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001] The amount of the levy payable is the levy rate multiplied by the number of hectares of nett area of forest operation.

25E. Notification of requirement to pay levy

[Section 25E of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001] Within 30 days after –

- (a) becoming aware of the certification of a forest practices plan that, on that certification, becomes a prescribed certified forest practices plan; or
- (b) becoming aware of the variation of a prescribed certified forest practices plan that, in the opinion of the Authority, substantially increases the nett area of forest operation –

the Authority is to notify the owner of the nett area of forest operation, in writing, of the amount of the levy payable.

25F. Payment of private forest service levy

[Section 25F of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

- (1) The levy is payable to the Authority.
- (2) An owner of a nett area of forest operation is to pay the levy within 6 months after the day on which the prescribed certified forest practices plan giving rise to the liability to pay the levy is certified.
- (3) If the whole or any part of the levy payable is not paid by the due date, the Authority may recover in a court of competent jurisdiction as a debt due to it that unpaid amount and any further amount payable as a penalty under section 25G .

25G. Penalty for late payment

[Section 25G of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

- (1) If the whole or any part of the levy payable is not paid by the due date, the owner of the nett area of forest operation is liable to a penalty calculated at the rate of 20% a year of the amount unpaid as from that due date.
- (2) The Authority, by notice in writing, may exempt the owner from payment of all or part of a penalty payable under subsection (1) if satisfied that –
 - (a) notice of the amount of the levy, that the Authority was required to provide to the owner under section 25E , was not provided; or
 - (b) notice of the amount of the levy, that the Authority was required to provide to the owner under section 25E , was not provided within the time specified in that section and it would be unjust not to grant the exemption; or
 - (c) the payment would cause the owner undue hardship.

25H. Variation of levy

[Section 25H of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

- (1) In this section,

relevant time, in relation to a nett area of forest operation, means the time at which the prescribed certified forest practices plan identifying that area was lodged for certification under the Forest Practices Act 1985 .
- (2) The Authority, by notice provided to the owner of a nett area of forest operation, may vary the amount of the levy payable if the nett area of forest operation is varied –
 - (a) for the purposes of complying with any law which, at the relevant time –
 - (i) did not affect the nett area of forest operation; or
 - (ii) the person lodging the plan reasonably had not identified as affecting or likely to affect the nett area of forest operation; or
 - (b) for the purposes of the public interest and the Minister has approved the variation of the area of the nett area of forest operation; or
 - (c) for a prescribed purpose.
- (3) If –
 - (a) an owner of a nett area of forest operation has paid the whole or any part of a levy in respect of the nett area of forest operation; and
 - (b) that levy is varied under subsection (2) ; and
 - (c) the amount so paid is greater than the amount of the levy as varied –the Authority must refund to the owner the amount paid that is in excess of the varied levy.

25I. Levy rate

[Section 25I of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

- (1) By 30 June in each calendar year, the Minister must –

- (a) consult with the forest owners organisations in relation to the appropriate levy rate for the financial year commencing on 1 July in that calendar year; and
 - (b) after so consulting with the forest owners organisations, determine the levy rate for that financial year.
- (2) The Minister is to determine the levy rate by notice in the *Gazette*.
- (3) A notice under subsection (2) –
- (a) takes effect on 1 July in the financial year in respect of which it is determined and ceases to have effect at the end of that financial year; and
 - (b) is not a statutory rule for the purposes of the Rules Publication Act 1953 .
- (4) The levy rate for the financial year beginning on 1 July 2001 is \$14.

25J. Cancellation of liability to pay levy

[Section 25J of Part 5 Inserted by No. 116 of 2001, s. 7, Applied:24 Aug 2001]

- (1) The owner of the nett area of forest operation shown on a forest practices plan that is a prescribed certified forest practices plan is not liable to pay a levy in respect of that nett area of forest operation if –
- (a) that plan is revoked or cancelled within 6 months after its certification; and
 - (b) no activity of a kind for which a forest practices plan is required under the Forest Practices Act 1985 has been carried out or commenced before that revocation or cancellation.
- (2) The Authority must refund to the owner of a nett area of forest operation the whole or any part of a levy paid in respect of the nett area of forest operation if the owner is not liable to pay that levy because of subsection (1) .

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

26. Financial assistance by Authority for private commercial forestry

- (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.

27. Special provisions as to assistance by way of loan

- (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) *[Section 27 Subsection (2) amended by No. 20 of 1995, s. 3 and Sched. 1][Section 27 Subsection (2) omitted by No. 10 of 2010, Sched. 1, Applied:27 Jul 2010]*
- (2A)
- (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.

28. Special provisions as to guarantees of loans

(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.

29. Limit on loans and loan guarantees

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.

30. Joint ventures

(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

31. Imposition of charges for advice rendered by Authority

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.

32. Financial assistance

(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.

[Section 27 Subsection (2A) omitted by No. 61 of 1996, s. 10]

PART 5A - Accounting Records, Financial Statements and Reports

[Part 5A Inserted by No. 20 of 1995, s. 3 and Sched. 1]

32A. Accounting records

*[Section 32A Inserted by No. 20 of 1995, s. 3 and Sched. 1]*The Authority must –

- (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
 - (i) allows true and fair accounts of the Authority to be prepared from time to time; and
 - (ii) allows its accounts to be conveniently and properly audited or reviewed; and
 - (iii) *[Section 32A Amended by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010]* subject to any contrary written direction given by the Treasurer to the Authority, complies with Australian Accounting Standards; and
 - (iv) *[Section 32A Amended by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010]* complies with any written directions given by the Treasurer to the Authority.

32B. Financial statements

[Section 32B Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) *[Section 32B Subsection (1) amended by No. 42 of 2003, Sched. 1, Applied:04 Jul 2003] [Section 32B Subsection (1) substituted by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010]* The Board is to prepare and forward to the Auditor-General a copy of its financial statements for each financial year in accordance with the Audit Act 2008 .
- (2) *[Section 32B Subsection (2) substituted by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010]* Financial statements in respect of a financial year are to include any financial information required to be included by a direction given under subsection (4) .
- (3) The financial statements must –
 - (a) comply with any directions given under subsection (4) ; and
 - (b) subject to such a direction, comply with Australian Accounting Standards; and
 - (c) be signed or certified as specified in such a direction.
- (4) *[Section 32B Subsection (4) amended by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010]* The Treasurer may give written directions to the Board in respect to the form and contents of the financial statements as he or she considers appropriate.

32C.

[Section 32C Inserted by No. 20 of 1995, s. 3 and Sched. 1] [Section 32C Repealed by No. 42 of 2003, Sched. 1, Applied:04 Jul 2003]

32D.

[Section 32D Inserted by No. 20 of 1995, s. 3 and Sched. 1] [Section 32D Amended by No. 50 of 2008, Sched. 1, Applied:01 Mar 2009]

32E. Annual report

[Section 32E Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) The Board must prepare for the Authority an annual report for each financial year.
- (2) The annual report is to include the following information and documents:

- (a) the statement of corporate intent which relates to the corporate plan that takes effect at the beginning of the next financial year;
- (b) the financial statements of the Authority for the financial year to which the annual report relates;
- (c) [Section 32E Subsection (2) amended by No. 50 of 2008, Sched. 2, Applied:01 Jul 2010] a copy of the opinion of the Auditor-General in respect of the financial statements received under section 19 of the Audit Act 2008 ;
- (d) a report on the performance of the Authority during that financial year compared with the performance indicators specified in the corporate plan;
- (e) a report on the operations of the Authority during that financial year;
- (f) [Section 32E Subsection (2) amended by No. 42 of 2003, Sched. 1, Applied:04 Jul 2003]
- (g) the details of any direction given under section 19E ;
- (h) any information relating to the directors, chief executive officer and employees required by the Minister by written notice provided to the Board to be included;
- (i) any other information that the Minister by written notice provided to the Board requires to be included;
- (j) any other information that the Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of the Authority during that financial year.

(3) For the purposes of subsection (2) (a) ,

next financial year means the financial year immediately following the financial year in respect of which the annual report is prepared.

(4) The Board must provide the annual report to the Minister, the Stakeholder Minister and the Auditor-General.

(5) [Section 32E Subsection (5) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] section 36 of the State Service Act 2000 does not apply in respect of the Authority.

32F. Tabling of annual report

[Section 32F Inserted by No. 20 of 1995, s. 3 and Sched. 1]

(1) [Section 32F Subsection (1) amended by No. 42 of 2003, Sched. 1, Applied:04 Jul 2003] The Minister must lay a copy of the annual report before each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(2) Where the Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, he or she must, before the expiration of that period, lay before each House of Parliament a statement specifying the reasons for the failure to comply with that subsection and an estimate of the day by which a copy of the annual report will be ready to lay before each House of Parliament.

(3) Where the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (1) or by the day specified in a statement referred to in subsection (2) because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister must –

- (a) immediately after the expiration of that period or that day, forward a copy of the annual report to the Clerk of that House of Parliament; and

- (b) within the next 7 sitting days of that House, lay a copy of the annual report before that House.

32G. Quarterly reports

[Section 32G Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) The Board must prepare a report on the operations of the Authority for each of the first 3 quarters of a financial year.
- (2) A quarterly report must be provided to the Minister and Stakeholder Minister –
 - (a) within 30 days after the end of the quarter; or
 - (b) if another period after the end of the quarter is agreed between the Board, Minister and Stakeholder Minister, within the agreed period.
- (3) A quarterly report must include the information required to be given in the report by the Minister by written notice provided to the Board.

32H. Minister may require information

[Section 32H Inserted by No. 20 of 1995, s. 3 and Sched. 1]

- (1) The Minister, at his or her discretion or on the request of the Treasurer or the Stakeholder Minister, may require the Authority to provide to the Minister specified in the requirement, information relating to the affairs, or the performance and exercise of the functions and powers, of the Authority.
- (2) The Authority must comply with a requirement made under subsection (1) .

PART 6 - Miscellaneous

33. Forestry dedication covenants

(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 .

33A. Directions, &c., given by Minister

[Section 33A Inserted by No. 20 of 1995, s. 3 and Sched. 1]

(1) A direction, notice or requirement given or made by the Minister under Part 4A or 5A may adopt either wholly or partly and with or without modification, and either specifically or by reference, any Treasurer's Instructions, within the meaning of the Government Business Enterprises Act 1995 , whenever issued.

(2) The Authority or Board must comply with a direction, notice or requirement given to, or made in respect of, it by the Minister under Part 4A or 5A .

34. Protection from liability

(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.

35. Seal of Authority

(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.

36. Judicial notice of certain signatures

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.

37. Presumptions

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.

37A. Act not Land Tax Rating Act

[Section 37A Inserted by No. 116 of 2001, s. 8, Applied: 24 Aug 2001] This Act is not a Land Tax Rating Act for the purposes of Part IV of the Constitution Act 1934 .

38. Regulations

- (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.

39.

The amendments effected by these sections have been incorporated into the authorised versions of the following Acts:

- (a) Conveyancing and Law of Property Act 1884 ;*
- (b) Land Titles Act 1980 ;*
- (c) State Authorities Financial Management Act 1990 ;*
- (d) Tasmanian State Service Act 1984 .*

40.

41.

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43. Savings and transitional provisions

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

44. Administration of Act

- (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
 - (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.

SCHEDULE 1 - Objectives of Authority

Section 5

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.

SCHEDULE 2 - Directors

1. Term of office

(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) *[Schedule 2 Amended by No. 17 of 2005, Sched. 1, Applied:10 Jun 2005]* A person is not eligible to be appointed as a director, other than as the chief executive officer, if the person has served 3 consecutive terms of office as a director.

(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.

2. Conditions of appointment

(1) *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* *[Schedule 2 Amended by No. 65 of 2005, Sched. 1, Applied:15 Dec 2005]* *[Schedule 2 Amended by No. 54 of 2016, s. 86, Applied:31 Mar 2017]*
.

(1A) *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* 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) *[Schedule 2 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* A director who is a State Service officer or State Service employee is not entitled to remuneration under subclause (1A) except with the approval of the Minister administering the State Service Act 2000 .

(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) *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* *[Schedule 2 Amended by No. 54 of 2016, s. 86, Applied:31 Mar 2017]*

(5) *[Schedule 2 Amended by No. 65 of 2005, Sched. 1, Applied:15 Dec 2005]* *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* *[Schedule 2 Amended by No. 54 of 2016, s. 86, Applied:31 Mar 2017]*
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(5A) *[Schedule 2 Amended by No. 65 of 2005, Sched. 1, Applied:15 Dec 2005]* *[Schedule 2 Amended by No. 54 of 2016, s. 86, Applied:31 Mar 2017]*

(6) *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* *[Schedule 2 Amended by No. 54 of 2016, s. 86, Applied:31 Mar 2017]*

(7) *[Schedule 2 Amended by No. 103 of 2000, Sched. 1, Applied:13 Dec 2000]* *[Schedule 2 Amended by No. 65 of 2005, Sched. 1, Applied:15 Dec 2005]*

3. Devotion of whole time to duties

(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) *[Schedule 2 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A director, other than the chief executive officer, may hold the office of director in conjunction with State Service employment.

4. State Service Act 2000 not to apply

[Schedule 2 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] The directors are not, in their capacity as directors, subject to the provisions of the State Service Act 2000 .

5. Leave of absence

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

6. Resignation

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

7. Removal of director

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) *[Schedule 2 Amended by No. 17 of 2005, Sched. 1, Applied:10 Jun 2005]* the director is absent from 4 consecutive meetings of the Board without leave of absence.
- (i) *[Schedule 2 Amended by No. 17 of 2005, Sched. 1, Applied:10 Jun 2005]*

8. Filling of vacancy

(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.

9. Defect does not invalidate appointment

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

1. Convening of meetings

- (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.

2. Presiding at meetings

- (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.

3. Quorum and voting at meetings

- (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.

4. Conduct of meetings

- (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.

5. Resolutions without meetings

- (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.

6. Minutes

The Board is to keep minutes of its proceedings.

7. Disclosure of interests

(1) If –

- (a) [*Schedule 3 Amended by No. 45 of 2003, Sched. 1, Applied:01 Jan 2004*] a director or the spouse or partner 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.

8. Validity of proceedings, &c.

(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 - Committees

Section 12

1. Membership of committees

- (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.

2. Conditions of appointment

- (1) *[Schedule 4 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A member of a committee, other than a State Service officer or State Service employee, 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.

3. Meetings

- (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.

4. Disclosure of interests

- (1) If –
 - (a) *[Schedule 4 Amended by No. 45 of 2003, Sched. 1, Applied:01 Jan 2004]* a member of a committee or the spouse or partner 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.

SCHEDULE 5 - Savings and transitional provisions

Section 43

1. Interpretation

In this Schedule –

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

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;

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

2. Property and rights

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.

3. Contracts and agreements, &c.

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.

4. Legal proceedings

(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.

5. References to Council, &c.

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.

6. Accounts

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.

7. Acts, &c., done by or to Council

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.