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Forest Practices Act 1985

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Forest Practices Act 1985

An Act to ensure that all forest practices are conducted in accordance with the Forest Practices Code, to provide for the issue of that Code, to provide for the creation of private timber reserves, to provide for the issue of codes of conduct for forest practices officers, and to provide for incidental and consequential matters

[Royal Assent 23 May 1985]

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

PART I - Preliminary

1. Short title

This Act may be cited as the Forest Practices Act 1985 .

2. Commencement

(1) Parts I and IV shall commence on the day on which this Act receives the Royal Assent.

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

3. Interpretation

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

Authority means the Forest Practices Authority;

Board means the Board of Directors of the Authority;

certified forest practices plan means a forest practices plan certified by the Authority and in force under this Act and includes a forest practices plan varied in accordance with Part III ;

chief forest practices officer means the chief forest practices officer appointed under section 4J ;

clearing of trees means the removal of trees by –

- (a) clearing, cutting, pushing or otherwise removing; or
- (b) destroying the trees in any way;

code of conduct means a code of conduct issued under section 40A(3) ;

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

director means a director of the Board;

discrete operational phase, of a forest practices plan, means a forest practice or a part of a forest practice that is specifically identified in the plan as constituting a discrete operational phase, stage or component of the plan;

exceptional circumstances, that may justify the clearance and conversion of a threatened native vegetation community, include the need to do one or more of the following:

- (a) ensure the physical safety of an owner of land or the owner's relatives or employees;
- (b) remove or reduce a bushfire risk;
- (c) respond to a threat to the State's biosecurity;
- (d) protect a rare, vulnerable or endangered species of flora or fauna;
- (e) discharge a statutory obligation or comply with an order of a court;

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

forest means an area containing trees;

forest practices means –

- (a) the processes involved in establishing forests, growing or harvesting timber, clearing trees or clearing and converting threatened native vegetation communities; and
- (b) works (including the construction of roads and the development and operation of quarries) connected with establishing forests, growing or harvesting timber or clearing trees;

Forest Practices Code means the Forest Practices Code issued by the Authority pursuant to section 30 and in force under this Act and includes any amendments that may from time to time be made to that Code;

forest practices officer means a forest practices officer referred to in section 39 ;

forest practices plan means a plan referred to in section 18 ;

Forestry corporation means the corporation of that name continued by section 6 of the Forest Management Act 2013 ;

forestry right means any forestry right continued under the Forest Management Act 2013 ;

harvest, used in relation to timber, means to cut and remove that timber from a forest;

native vegetation means vegetation of a species that existed in Tasmania, on land, before European settlement;

owner of land means –

(aa) in the case of Crown land that is permanent timber production zone land within the meaning of the Forest Management Act 2013 – the Forestry corporation;

(a) in the case of land held in fee simple– the person in whom the estate of fee simple is vested or, if the land is general law land subject to mortgage, the person having the equity of redemption in that land;

(b) in the case of land held under a tenancy for life – the person who is the life tenant;

(c) in the case of land held under a lease for a term of not less than 99 years – the person who is the lessee of the land; or

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

Private Forests Tasmania means the body of that name established under section 4 of the Private Forests Act 1994 ;

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

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

registrar means the Registrar, within the meaning of the Tasmanian Civil and Administrative Tribunal Act 2020 ;

rehabilitate, in relation to land to which a requirement, request or direction to rehabilitate the land relates, means to return the land, as far as reasonably practicable, to the condition that it was in before the occurrence of the damage, degradation, or alteration, to which the requirement, request or direction relates;

revegetate, in relation to land to which a requirement, request or direction to revegetate the land relates, means to sow seed, or plant seedlings, on the land so as to return the land to, as far as reasonably practicable, the state of vegetation on the land before the occurrence of the damage, degradation, or alteration, in relation to which the requirement, request or direction relates;

Secretary means the Secretary of the Department;

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

threatened native vegetation community has the same meaning as in the Nature Conservation Act 2002 ;

timber includes the trunk, branch and any other part of a tree or fallen tree, whether or not it is cut up, sawn, hewn, split or otherwise dealt with;

timber processor means a person who processes or harvests timber for the purpose of –

- (a) producing logs for export; or
- (b) producing for sale any one or more of the following products:
 - (i) fuel wood;
 - (ii) poles, piles or posts;
 - (iii) timber;
 - (iv) veneer;
 - (v) wood chips;
 - (vi) wood pulp;
 - (vii) tree ferns;

tree fern means a plant of the species *Dicksonia antarctica*;

trees means –

- (a) any woody plants with a height or potential height of 5 metres or more, whether or not living, dead, standing or fallen, that are –
 - (i) native to Tasmania; or
 - (ii) introduced into Tasmania and used for the processing or harvesting of timber; and
- (b) tree ferns;

Tribunal means the Tasmanian Civil and Administrative Tribunal.

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

3A. Meaning of "clearance and conversion"

(1) In this Act –

clearance and conversion, of a threatened native vegetation community, means the deliberate process of removing all or most of the threatened native vegetation community from an area of land and –

- (a) leaving the area of land, on a permanent or extended basis, in an unvegetated state; or
- (b) replacing the threatened native vegetation so removed, on a permanent or extended basis, with any, or any combination of, the following:
 - (i) another community of native vegetation;
 - (ii) non-native vegetation;
 - (iii) agricultural works;
 - (iv) residential, commercial or other non-agricultural development; or
- (c) doing a combination of any of the things referred to in paragraphs (a) and (b) .

(2) To avoid doubt, a management practice does not constitute the clearance and conversion of a threatened native vegetation community from any land unless the management practice is carried out to deliberately remove, or carried out as part of a process to deliberately remove, all or most of the threatened native vegetation community from the land on a permanent or extended basis.

(3) In this section –

agricultural works includes, but is not limited to, the following:

- (a) farm sheds and workshops;
- (b) farm dams and irrigation facilities;
- (c) farm storage and processing facilities;

(d) farm access roads and easements;

(e) farm fencing;

management practice means any of the following:

(a) applying fertilizer or changing the nature or scale of a fertilizer regime;

(b) burning off to reduce wildfire fuel;

(c) constructing fire-breaks;

(d) mowing, slashing or scything grasses or undergrowth;

(e) pruning, trimming or lopping vegetation for work safety purposes or to ensure the health of specific specimens of vegetation or vegetation communities;

(f) removing or controlling noxious weeds;

(g) grazing of livestock;

(h) harvesting of timber or other vegetation products;

remove means remove by any direct or indirect means or combination of means, including but not limited to the following:

(a) burning;

(b) clearfelling;

(c) cutting down;

(d) drowning;

(e) lopping;

(f) ploughing;

(g) poisoning;

(h) ringbarking;

(i) thinning;

(j) uprooting.

4. Act binds the Crown

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

PART 1A - Forest Practices Authority

4AA. Forest Practices Authority

(1) The body established under this section as in force immediately before the commencement of the Forest Practices Amendment (Administrative Reform) Act 2004 continues in existence, after that commencement, under the name "Forest Practices Authority".

(2) The Authority –

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

4A. Board of the Authority

(1) The Authority has a Board of Directors consisting of –

- (a) a person with expertise in public administration and in environmental or natural resource management and governance; and
- (b) a person with applied knowledge and expertise in environmental or natural resource management; and
- (c) a person with applied knowledge and expertise in sustainable forest management on private land; and
- (d) a person with applied knowledge and expertise in sustainable forest management on public land; and
- (e) a person with applied knowledge and expertise in community liaison and local government, from a municipal area in which forestry is a major land use; and
- (f) a person with expertise in biological science or nature conservation; and
- (g) the chief forest practices officer.

(2) The directors referred to in subsection (1)(a) , (b) , (c) , (d) , (e) and (f) are appointed by the Minister.

(3) The Minister is to ensure that one of the directors appointed under subsection (1)(c) and (d) has practical knowledge and experience in forest operations, including the harvesting and reforestation of forests.

(4) The director appointed under subsection (1)(a) is also, by virtue of that appointment, chairperson of the Board.

(5) The Board may elect a director referred to in subsection (1)(b) , (c) , (d) , (e) or (f) to be deputy chairperson of the Board.

(6) Schedule 3 has effect with respect to the directors.

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

4AB. Role of Board, &c.

(1) The Board is responsible for –

- (a) the exercise and performance of the powers and functions of the Authority under this Act, consistent with the Authority's objectives; and
- (b) ensuring that the financial affairs of the Authority are managed and conducted in accordance with sound business practice; and
- (c) the exercise and performance of such other powers and functions as may be conferred or imposed on the Authority or the Board under this or any other Act.

(2) The Board has power to do all things necessary or convenient to be done in connection with the discharge of its responsibilities.

(3) Where in this Act the exercise or performance of a power or function of the Authority in relation to any matter is expressed to be dependent on an opinion, belief or state of mind of the Authority, the Authority is taken to have that opinion, belief or state of mind in relation to that matter if the Board has that opinion, belief or state of mind in relation to that matter.

4B. Objective of Authority

- (1) The Authority is part of the State's forest practices system, the objective of which is set out in Schedule 7 .
- (2) The Authority is to act in all matters in a manner that—
 - (a) best advances the objective of the State's forest practices system; and
 - (b) fosters a co-operative approach towards policy development and management in forest practices matters; and
 - (c) takes into account social, economic and environmental outcomes of its decision-making processes.

4C. Functions of Authority

The Authority has the following functions:

- (a) to advise the Minister on forest practices policy in respect of both Crown land and private land;
- (b) to regularly advise and inform the Minister on its work and activities under this Act;
- (c) to advise the Minister on the operation and review of this Act;
- (d) to issue and maintain the Forest Practices Code;
- (da) to issue and maintain codes of conduct;
- (e) to oversee standards for forest practices plans;
- (f) to oversee the administration of private timber reserves by Private Forests Tasmania;
- (fa) to monitor and report to the Minister on harvesting, the clearing of trees and reforestation activity in relation to the maintenance of a permanent forest estate;
- (fb) to implement the Policy for Maintaining a Permanent Native Forest Estate, being the policy set out in the Regional Forest Agreement made between the State and the Commonwealth on 8 November 1997, as that Agreement is amended from time to time;
- (g) to oversee the training of forest practices officers;
- (h) to make a recommendation on the appointment of the chief forest practices officer and to appoint forest practices officers;
- (i) to perform such other functions as are imposed on it by or under this or any other Act;
- (j) to perform any prescribed functions.

4D. Powers of Authority

The Authority has the following powers:

- (a) to enter into contracts;
- (b) to appoint agents, attorneys and consultants;
- (c) to act as a consultant or agent;
- (d) to set charges and conditions relating to the performance and exercise of its functions and powers;
- (e) to make a recommendation on the appointment of the chief forest practices officer and to appoint forest practices officers;
- (f) to mediate between parties in respect of three-year plans;
- (g) to do all other things that it is authorised to do under this or any other Act;

(h) to do all things necessary or convenient to be done in connection with the performance and exercise of its functions and powers.

4DA. Matters to which the Authority is to have regard

In performing its functions and exercising its powers under this Act, the Authority is to have regard to the obligations of the Forestry corporation under section 16 of the Forest Management Act 2013 whilst not diminishing the ongoing application of the Forest Practices Code.

4E. Annual assessment of forest practices system

- (1) The Authority must, at least once in each financial year—
 - (a) assess the degree to which the forest practices system is self-funding and self-regulating; and
 - (b) assess the implementation and effectiveness of a representative sample of forest practices plans.
- (2) The Authority must, as soon as practicable after completing the assessment, prepare a report of its findings.
- (3) The report prepared under subsection (2) in respect of a financial year is to be included in the annual report of the Authority for the same financial year.

4F.

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4G. Monitoring and enforcement of Act and Forest Practices Code

- (1) The Authority is responsible for —
 - (a) monitoring the degree of compliance with this Act and the Forest Practices Code; and
 - (b) where it finds instances of non-compliance, causing appropriate enforcement action to be taken.
- (2) To discharge its responsibility under subsection (1)(b) , the Authority may do any of the following:
 - (a) through the chief forest practices officer and other persons who it authorizes for the purpose, cause complaints to be made in respect of offences under this Act;
 - (b) for the offences referred to in section 47B , exercise the Authority's powers under that section;
 - (c) have forest practices officers investigate instances of suspected non-compliance, with a view to having the officers exercise their powers under section 41 ;
 - (d) take, or cause to be taken, any other enforcement measures that may be authorized by this or any other Act.

4H. Committees

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

4J. Chief forest practices officer

- (1) The Minister, on the recommendation of the Authority, is to appoint a State Service officer or State Service employee to be chief forest practices officer and that officer or employee holds that office in conjunction with State Service employment.
- (2) A person appointed as chief forest practices officer must have —
 - (a) extensive expertise in forestry; and
 - (b) extensive experience in forest operations; and
 - (c) knowledge of the sustainable management of forests; and
 - (d) management skills.

(3) If a person who is appointed as chief forest practices officer was not a forest practices officer immediately before that appointment, he or she is, by virtue of that appointment and without further authorisation than this subsection, a forest practices officer for the purposes of this Act.

(4) The Authority may recommend to the Minister that the appointment of a person as chief forest practices officer should be terminated if the Authority is reasonably of the opinion that the person –

- (a) is not discharging the duties of that office efficiently or in the best interests of the State; or
- (b) is, except by reason of temporary illness, unfit to discharge or incapable of discharging the duties of the office.

(5) Subsection (4) does not limit or affect a power to terminate the appointment of a person as chief forest practices officer that is contained in any other enactment or in any contract of service relating to that office.

4K. Role of chief forest practices officer

The chief forest practices officer –

- (a) is responsible for overseeing the day-to-day administration of forest practices; and
- (b) must perform any functions, and may exercise any powers, delegated to the chief forest practices officer by the Authority; and
- (c) must perform any other functions imposed on, and may exercise any other powers granted to, the chief forest practices officer by this or any other Act.

4L. Staff

Subject to and in accordance with the State Service Act 2000 , persons may be appointed or employed for the purposes of enabling the Authority to perform its functions or exercise its powers.

PART 1B - Finances of Authority

4M. Funds of Authority

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) all money received by it as interest on amounts deposited with financial institutions or as profit in respect of investments; and
- (c) any money appropriated by Parliament for the purposes of the Authority; and
- (d) any money received by the Authority from any other source.

4N. Authorised deposit-taking institution accounts

The Authority may open and maintain such authorised deposit-taking institution accounts as it considers necessary.

4P. Investment

Subject to section 16 of the Tasmanian Public Finance Corporation Act 1985 , the Authority may invest any funds held by it and any interest accumulated in respect of those funds in any manner which is consistent with sound commercial practice.

4Q. Reserves

The Authority may establish and maintain reserves.

4R. 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 Public Account.

4S. 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 Public Account 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 Public Account on the conditions and in the manner determined by the Treasurer.

4T. Effect of Financial Agreement Act 1994

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.

PART 1C - Accounting records, financial statements and reports

4U. Accounting records

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) complies with Australian Accounting Standards; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate.

4V.

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4W.

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4X. Annual report

- (1) The Authority must prepare an annual report for each financial year.
- (2) The annual report is to include the following information and documents:
 - (a) the financial statements of the Authority for the financial year to which the annual report relates;
 - (b) a copy of the opinion of the Auditor-General in respect of the financial statements received under section 19 of the Audit Act 2008 ;
 - (c) a report on the operations and performance of the Authority during that financial year;
 - (d) the report required to be prepared under section 4E ;
 - (e) any information relating to the Authority required by the Minister by written notice to the Authority to be included;
 - (f) any other information that the Authority 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) The Authority must provide the annual report to the Minister and the Auditor-General.

4Y. Tabling of annual report

- (1) The Minister must lay a copy of the annual report before each House of Parliament within 5 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 be laid 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.

4Z. State of the forests report

- (1) The Authority must, not later than 30 November 2002 and not later than 30 November in each fifth year thereafter, give the Minister a written report on the state of Tasmania's public and private forests.
- (2) The Minister must cause a copy of each report prepared under subsection (1) to be laid on the table of each House of Parliament within 14 sitting days of that House after the report is received by the Minister.
- (3) The Authority is to prepare a report under subsection (1) in cooperation and consultation with the following bodies:
 - (a) the Forestry corporation;
 - (b) Private Forests Tasmania;
 - (c) the responsible Department in relation to the Nature Conservation Act 2002 ;
 - (d) such other State authorities and Government departments as have statutory responsibilities in relation to forests or forested land.
- (4) Consultations under subsection (3) are to be conducted with a view to the parties reaching agreement on the information that is to be included in the report and the arrangements for providing the Authority with that information.

4ZA. Forest practices report

- (1) The Authority must, not later than 30 November 2007 and not later than 30 November in each fifth year thereafter –
 - (a) review the operation of the State's forest practices system, including the provisions and operation of the Forest Practices Code; and
 - (b) give the Minister a written report on the outcome of the review.
- (2) The Minister must cause a copy of each report prepared under subsection (1) to be laid on the table of each House of Parliament within 14 sitting-days of that House after the report is received by the Minister.

PART II - Private timber reserves

5. Application to have land declared as private timber reserve

- (1) A person who wishes to have any land owned by the person declared as a private timber reserve may make application to the Authority.
- (2) An application referred to in subsection (1) shall –
 - (a) be in writing in a form approved by the Authority;
 - (b) contain a description of the area of land that the applicant seeks to have declared as a private timber reserve;
 - (c) contain a list of all persons (other than the applicant) who have a legal or equitable interest in the land, or in timber on the land, to which the application relates; and
 - (d) be accompanied by the fee (if any) prescribed in the regulations.
- (3) An applicant under this section shall, if required by the Authority to do so, provide such further particulars in relation to the application as the Authority requires.
- (4) An applicant under this section shall, as soon as is practicable after making his or her application, notify all persons referred to in subsection (2) (c) that he or she has made an application referred to in subsection (1) .

6. Notice of application, &c.

- (1) Where an application for the declaration of land as a private timber reserve has been made in accordance with section 5 , the Authority shall cause a notice containing the prescribed particulars to be published in the daily newspapers published in this State and a copy of the notice to be sent to the local authority exercising jurisdiction over the land and any local authority exercising jurisdiction over any land adjacent to that land.
- (2) For the purposes of subsection (1) , ***prescribed particulars*** means –
 - (a) a description of the area of land to which the application relates;
 - (b) a statement advising that objections to the declaration as a private timber reserve of the area of land described in the advertisement may be lodged with the Authority by the date specified in the notice, being a date not earlier than 28 days after the date on which the notice is published in the newspaper; and
 - (c) such other particulars of the application as the Authority considers necessary.
- (3) Any person may, on payment of the fee prescribed in the regulations, inspect an application made under section 5 at the office of Private Forests Tasmania.

7. Objections to declaration of land as private timber reserve

- (1) Any prescribed person who wishes to object to the granting of an application for the declaration of any land as a private timber reserve may, at any time before the expiration of the period referred to in the notice relating to the application published in accordance with section 6 , lodge with the Authority an objection in writing to the granting of the application on –
 - (a) in the case of a person referred to in paragraph (d) of the definition of ***prescribed person*** in subsection (4) , the ground specified in paragraph (f) of section 8(2) as it applies to that person; and
 - (b) in any other case, a ground specified in paragraph (a) , (b) , (c) , (d) or (e) of section 8(2) .
- (2) An objection lodged under subsection (1) may not be entertained by the Authority, unless–
 - (a) it specifies the ground for the objection;
 - (ab) in the case of an objection by a person referred to in paragraph (d) of the definition of ***prescribed person*** in subsection (4) , the ground for the objection is limited to the ground specified in paragraph (f) of section 8(2) as it applies to that person; and

(b) in any other case, the ground for the objection is a ground specified in paragraph (a) , (b) , (c) , (d) or (e) of section 8(2) ; and

(c) the objector has lodged the objection with the Authority and has served a copy of the objection on the applicant before the expiration of the period referred to in subsection (1) .

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

(4) For the purposes of this section –

prescribed person means –

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

(b) a State authority; or

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

(d) a person who is the owner of land that adjoins, or is within 100 metres of, the boundary of the proposed private timber reserve;

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

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

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

(a) the expiration of the period referred to in the notice relating to the application published in accordance with section 6 ; or

(b) if a hearing is required to be held in respect of the application as provided by subsection (3) , the conclusion of the hearing.

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

(a) the application has not been made in good faith and honestly;

(b) the land is not suitable for declaration as a private timber reserve;

(c) a person who has a legal or equitable interest in the land, or in timber on the land, would be disadvantaged if the application was granted;

(d) by virtue of the operation of any Act, the owner of the land is prohibited from establishing forests, or growing or harvesting timber, on the land; or

(e) it would not be in the public interest to grant the application; or

(f) an owner of land referred to in paragraph (d) of the definition of ***prescribed person*** in section 7(4) would be directly and materially disadvantaged if the application was granted.

(2A) For the purposes of subsection (2)(d) , where a planning scheme or special planning order within the meaning or for the purposes of the Land Use Planning and Approvals Act 1993 requires the owner of any land to obtain a permit or other form of approval from a municipal council in order to establish forests or grow or harvest timber on that land, neither that requirement nor any statutory provision that purports to enforce the observance of that requirement is taken to be a prohibition of those activities on that land.

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

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

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

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

9. Appeal in respect of application under section 5

(1) Where a person who made an application under section 5 is aggrieved by the refusal of the Authority to grant the person's application, he or she may appeal to the Tribunal.

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

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

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

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

- (a) serve a copy of the notice of appeal on each person who lodged an objection under section 7 in respect of the application; and
- (b) publish an advertisement containing a copy of the notice of appeal in a daily newspaper circulating in the area in which the land to which the application relates is located.

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

(6)

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

Where—

- (a) the Authority grants an application made under section 5 and no appeal is lodged in accordance with section 9 in respect of the granting of that application;
- (b) the Authority grants an application made under section 5, and an appeal is lodged in accordance with section 9 in respect of the granting of that application and the Tribunal dismisses the appeal; or
- (c) the Authority refuses to grant an application made under section 5, and an appeal is lodged in accordance with section 9 in respect of that refusal and the Tribunal, under the Tasmanian Civil and Administrative Tribunal Act 2020, quashes the decision of the Authority and directs the Authority to grant the application—

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

11. Declaration of land as private timber reserve

- (1) The Governor may, on the recommendation of the Authority made pursuant to section 10 , by notice published in the *Gazette*, declare any land specified in the notice as a private timber reserve.
- (2) The Authority shall cause a copy of a notice under subsection (1) to be sent to the local authority exercising jurisdiction over the land to which the notice relates and any local authority exercising jurisdiction over any land adjacent to that land.
- (3) A notice under subsection (1) is not a statutory rule within the meaning of the Rules Publication Act 1953 .

12. Effect of declaration of land as private timber reserve

- (1) Where land has been declared as a private timber reserve in accordance with section 11 (1) , it shall be used only for establishing forests, or growing or harvesting timber in accordance with the Forest Practices Code and such other activities which the Authority considers to be compatible with establishing forests, or growing or harvesting timber.
- (2) Where land has been declared as a private timber reserve in accordance with section 11 (1) , any Act prescribed in the regulations, and the prescribed provisions of any Act prescribed in the regulations shall not apply to the private timber reserve.

13. Revocation of private timber reserve at instigation of Authority

- (1) Where the Authority is satisfied that a private timber reserve or part of a private timber reserve is not being used for establishing forests, or growing or harvesting timber in accordance with the Forest Practices Code, or is not being used for activities which the Authority considers to be compatible with establishing forests, or growing or harvesting timber, it may, by notice in writing served on the owner of the reserve, inform him or her that it intends to recommend to the Governor that the reserve or part of the reserve, as the case may be, shall cease to be, or cease to form part of, a private timber reserve.
- (2) The owner of a private timber reserve referred to in subsection (1) may, if aggrieved by the intention of the Authority to make a recommendation referred to in that subsection, appeal to the Tribunal.
- (3) An appeal under subsection (2) shall be instituted by giving written notice to the registrar within a period of 14 days after the service of the notice referred to in subsection (1) .
- (4)
- (5) Where—
 - (a) no appeal is lodged under subsection (2) within the period specified in subsection (3) in respect of the Authority's intention to recommend to the Governor that the private timber reserve or part of the private timber reserve referred to in subsection (1) shall cease to be, or cease to form part of, a private timber reserve; or
 - (b) an appeal is lodged under subsection (2) within the period specified in subsection (3) and the Tribunal dismisses the appeal under the Tasmanian Civil and Administrative Tribunal Act 2020 –

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

- (6) The Governor may, on the recommendation of the Authority, by notice published in the *Gazette*, declare that the private timber reserve or part of the private timber reserve, as the case may be, specified in the notice shall cease to be, or cease to form part of, a private timber reserve.
- (7) The Authority shall cause a copy of a notice under subsection (6) to be sent to the local authority exercising jurisdiction over the land to which the notice relates and any local authority exercising jurisdiction over any land adjacent to that land.
- (8) A notice under subsection (6) is not a statutory rule within the meaning of the Rules Publication Act 1953 .

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

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

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

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

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

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

- (a) Private Forests Tasmania has rendered financial assistance to the applicant by way of a grant or loan under the Private Forests Act 1994, or any other person has rendered financial assistance to the applicant, for the development or maintenance of the private timber reserve to which the application relates; or
- (b) the private timber reserve to which the application relates has been recognized and treated as such for the purposes of any Act prescribed in the regulations, or the prescribed provisions of any Act prescribed in the regulations.

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

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

(7) Where a person who made an application under subsection (1) is aggrieved by the refusal of the Authority to grant the person's application, he or she may appeal to the Tribunal.

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

(9)

(10) Where–

- (a) the Authority grants an application under subsection (1); or
- (b) the Authority refuses to grant an application under subsection (1) and the applicant appeals to the Tribunal pursuant to subsection (7) within the period specified in subsection (8) in respect of the refusal of the Authority to grant the application and the Tribunal, under the Tasmanian Civil and Administrative Tribunal Act 2020, quashes the decision of the Authority and directs the Authority to grant the application–

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

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

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

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

15. Registration of notice relating to private timber reserve

- (1) Where a notice is published in the *Gazette* under section 11 declaring any land as a private timber reserve, the Authority shall forthwith cause the notice to be registered in respect of that land.
- (2) Where a notice is published in the *Gazette* under section 13 (6) or 14 (11) by which the whole or any part of a private timber reserve ceases to be, or ceases to form part of, a private timber reserve, the Authority shall forthwith cause the notice to be registered in respect of the land to which it relates.
- (3) The provisions of Schedule 1 have effect in relation to the registration of notices under this section.
- (4) Nothing in section 40 of the Land Titles Act 1980 shall be construed as affecting the validity of any notice referred to in this section or as prejudicing or affecting the registration of any such notice.

16. Compensation may be payable where application refused

(1) Subject to this section, where—

- (a) the Authority has refused to grant an application for a declaration of land as a private timber reserve only on the ground referred to in section 8 (2) (d) or (e) ;
- (b) the owner of the land has appealed to the Tribunal against the refusal to grant the application and the appeal has been dismissed under the Tasmanian Civil and Administrative Tribunal Act 2020 ; and
- (c) timber on the land is thereby made less valuable to the owner of the land by virtue of the fact that he or she is prevented from using the land for timber production—

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

(2) The entitlement does not arise unless —

- (a) an application for the compensation is received by the Authority within 30 days after the day on which the Tribunal dismissed the appeal under the Tasmanian Civil and Administrative Tribunal Act 2020 ; and
- (b) the Authority is satisfied that, for at least 2 years before making the section 5 application, the owner of the land was actively managing the land for the purpose of establishing forests or growing (with the intention of harvesting) timber; and
- (c) if the section 5 application was refused under section 8 (2) (d) —
 - (i) the prohibition referred to in that section was not a prohibition contained in a planning scheme or special planning order under the Land Use Planning and Approvals Act 1993 or in a statutory provision that purports to enforce the observance of a requirement of any such scheme or order; and
 - (ii) the prohibition was imposed only within the period of 3 months immediately before the owner of the land made the section 5 application; and
 - (iii) the Authority is satisfied that, during the period the land was being actively managed before the imposition of the prohibition, the owner of the land had an intention to apply for the declaration of the land as a private timber reserve.

(2A)

(3) If—

- (a) the section 5 application was refused on the ground referred to in section 8(2)(d) or (e) wholly or partly because the declaration would threaten natural or cultural values; and
- (b) although the Crown wishes to preserve those values it does not want to acquire the land —

the Authority must, if requested to do so by the Minister, require the owner of the land to enter into a conservation covenant with that Minister for the protection of those values under Division 3 of Part 5 of the Nature Conservation Act 2002 .

(4) If subsection (3) applies –

(a) compensation is not payable under this section unless the owner of the land and the Minister enter into the conservation covenant within 12 months after the day on which the owner of the land receives notification of the requirement; but

(b) if the conservation covenant is not entered into within that 12 month period, the owner of the land may apply to the Minister, in writing, for a certificate of release from the requirement.

(4A) On receipt of the application, the Minister must –

(a) issue the owner of the land with the certificate of release; or

(b) if the Minister is satisfied on reasonable grounds that the failure to enter into the conservation covenant within the required period is attributable to wilful obstruction, unreasonable delay or another unreasonable act or omission on the part of the owner of the land, refuse to issue the owner of the land with the certificate of release.

(4B) The certificate of release may be in such form as the Minister determines.

(4C) If the Minister does not take action under paragraph (a) or (b) of subsection (4A) within 30 days of receiving the application, the Minister is nevertheless taken to have issued the certificate of release at the expiration of that period.

(4D) If the application for the certificate of release is refused –

(a) the Minister must notify the owner of the land of the refusal, and the reasons for the refusal, as soon as practicable; and

(b) the owner of the land may apply to the Magistrates Court (Administrative Appeals Division) for a review of the refusal to issue the certificate of release.

(4E) The owner of the land may, if issued with the certificate of release, resubmit the application to have the land declared as a private timber reserve.

(4F) An application for the declaration of land as a private timber reserve resubmitted under subsection (4E) is not capable of being refused on the same or substantially the same grounds as the original application and, in that respect, the land may be declared as a private timber reserve notwithstanding –

(a) the operation of any Act that may prohibit the owner from establishing forests, or growing or harvesting timber on the land; or

(b) that it may not be in the public interest to grant the application because the declaration may threaten important natural or cultural values.

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

(6) Unless the Authority or the owner of the land disputes the amount of compensation determined by the Valuer-General, the owner of the land is to be paid the amount of compensation determined by the Valuer-General.

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

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

(9) Notwithstanding subsection (1) , a person's entitlement to compensation under this section in respect of any land lapses if, before the compensation or first instalment of the compensation is otherwise due to be paid –

(a) the Crown acquires that land or any part of that land; or

(b) the person otherwise ceases to be the owner of that land or any part of that land.

(10) If an application for the declaration of land as a private timber reserve is refused on the ground referred to in section 8(2)(d) , any entitlement to compensation arises under this section, not under the prohibition imposed under the Act referred to in that section or any other Act.

(11) In this section –

Minister means the Minister administering the Nature Conservation Act 2002 ;

natural or cultural values means natural or cultural values within the meaning of the Forest Practices Code.

PART III - Plans

Division 1 - Forest practices plans

17. Restrictions on harvesting timber, &c.

(1) For the purposes of this section, a person is taken to be a responsible person in relation to any land if that person –

- (a) is the owner of that land and has not assigned his or her responsibilities under this section to another person in accordance with subsection (2) ; or
- (b) is a person to whom the owner's responsibilities under this section have been assigned in accordance with subsection (2) ; or
- (c) is a timber processor having the immediate right, whether by virtue of a contract or otherwise, to process timber harvested on that land; or
- (d) carries out, or causes to be carried out, forest practices on that land.

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

(3)

(4) A person who is a responsible person in relation to any land must not carry out, or cause or allow the carrying out of, an activity of the following kind on that land unless a certified forest practices plan authorising the carrying out of the activity exists in respect of that land when that activity is being carried out:

- (a) the establishment of forests;
- (b) the harvesting of timber;
- (ba) the clearing of trees;
- (bb) the clearance and conversion of a threatened native vegetation community;
- (c) the construction of a road in connection with an activity referred to in paragraph (a) , (b) or (ba) ;
- (d) the operation of a quarry in connection with an activity referred to in paragraph (a) , (b) or (ba) .

Penalty: Fine not exceeding 1 000 penalty units.

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

Penalty: Fine not exceeding 1 000 penalty units.

(5A) A person must not harvest tree ferns unless –

- (a) the tree ferns are harvested in accordance with a forest practices plan that enables the harvesting of tree ferns; and
- (b) each tree fern has a tag referred to in section 18A affixed to its stem before removal from the harvesting area as identified in the forest practices plan.

Penalty: Fine not exceeding 1 000 penalty units.

(5B) A person must not purchase or acquire native vegetation that has been obtained through the clearance and conversion of a threatened native vegetation community on land in respect of which there is not in existence, at the beginning of that clearance and conversion process, a certified forest practices plan.

Penalty: Fine not exceeding 1 000 penalty units.

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

18. Application for certification of forest practices plan

(1) Any person may –

- (a) prepare, or cause to be prepared, a forest practices plan in relation to any land; and
- (b) make application to the Authority for certification of that plan.

(2) A forest practices plan is to–

- (a) contain specifications of the forest practices to be carried out on the land referred to in the plan in connection with the harvesting of timber or the clearing of trees or the clearance and conversion of a threatened native vegetation community;
- (b) contain, in the case of a private timber reserve, or where the owner of the land referred to in the plan wishes to restock the land with trees, specifications in connection with the restocking of the land with trees;
- (baa) identify, if applicable, the discrete operational phases of the plan for the purposes of section 25A ;
- (ba) contain, in the case of the harvesting of tree ferns, the following specifications:
 - (i) the name of the person intending to harvest the tree ferns;
 - (ii) the estimated number of tree ferns to be harvested;
 - (iii) an estimate of the period during which tree ferns are to be harvested;
- (bb) contain, if the plan involves the clearance and conversion of a threatened native vegetation community, the following specifications:
 - (i) the identity of the threatened native vegetation community and its range;
 - (ii) how much of the threatened native vegetation community would be cleared and converted under the plan;
 - (iii) the kind of vegetation, works or development that would replace the threatened native vegetation cleared and converted under the plan;
 - (iv) the intended method of removal;
- (c) provide an estimate of –
 - (i) the period during which the forest practices of the plan overall are to be carried out; and
 - (ii) if applicable, the period during which each discrete operational phase of the plan identified under paragraph (baa) is to be carried out; and
- (ca) specify the period for which the plan is to remain in force; and
- (d) specify, if applicable, the name of the timber processor by whom the timber harvested under the plan is intended or expected to be processed.

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

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

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

(4A) An applicant under this section must pay the prescribed application fee, if any.

(4B) The application fee is to be paid by a date, and in a manner, determined by the Authority.

(4C) If –

- (a) an applicant; or
- (b) where a person has been assigned in accordance with section 25D the applicant's responsibilities under this Division, that person –

fails to pay all of the application fee by the date, and in the manner, determined by the Authority for the purposes of subsection (4B) , so much of the application fee as has not been paid by that date and in that manner is a debt due and payable to the Authority by the applicant, or the person, as the case may be, and may be recovered by the Authority in a court of competent jurisdiction.

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

18A. Tags to be attached to tree ferns

The Authority is to issue a tag to a person in a form approved by the Authority –

- (a) if satisfied that a forest practices plan exists enabling that person to harvest tree ferns; and
- (b) on payment of the prescribed fee.

18B. Trading in tree ferns

(1) A person must not, without the written approval of the Authority, trade in tree ferns unless a tag issued by the Authority is affixed to the stem of each tree fern.

Penalty: Fine not exceeding 150 penalty units.

(2) A forest practices officer may, on production of his or her warrant of authorization, require a person who appears to the forest practices officer to be trading in tree ferns contrary to subsection (1) to state all or any of the following:

- (a) the person's name and address;
- (b) when, where and how the person obtained the untagged tree ferns;
- (c) whether the untagged tree ferns were obtained from another person and, if so, the name and address of that other person;
- (d) whether the tree ferns were tagged or untagged when the person obtained them.

(3) A person must comply with a requirement under subsection (2) .

Penalty: Fine not exceeding 10 penalty units.

(4) In this section –

sell means sell by wholesale or retail;

trade in tree ferns means to do one or more of the following:

- (a) collect, acquire or buy tree ferns;
- (b) barter or exchange tree ferns;
- (c) sell or agree to sell tree ferns;
- (d) offer, display or expose tree ferns for sale;
- (e) supply, send, forward, transport or deliver tree ferns for sale;
- (f) store or hold tree ferns;
- (g) authorise, direct, cause or permit a person to do a thing referred to in paragraph (a) , (b) , (c) , (d) , (e) or (f) .

19. Authority to certify or refuse to certify forest practices plan

(1) Where an application for the certification of a forest practices plan is made in accordance with section 18 , the Authority may –

- (a) certify the plan; or
- (b) refuse to certify the plan; or
- (c) amend the plan in such manner as it considers necessary and certify the plan as so amended.

(1AA) However, the Authority is not to certify a forest practices plan involving the clearance and conversion of a threatened native vegetation community unless the Authority is satisfied of one or more of the following:

- (a) the clearance and conversion is justified by exceptional circumstances;
- (b) the activities authorised by the forest practices plan are likely to have an overall environmental benefit;
- (c) the clearance and conversion is unlikely to detract substantially from the conservation of the threatened native vegetation community;
- (d) the clearance and conversion is unlikely to detract substantially from the conservation values in the vicinity of the threatened native vegetation community.

(1A) Without limiting the Authority's power under subsection (1)(c) , it may amend the plan by doing one or more of the following:

- (a) inserting conditions and restrictions to be complied with in the harvesting of timber, the clearing of trees or the carrying out of other forest practices covered by the plan;
- (b) inserting new specifications in the plan or amending or omitting specifications contained in the plan as submitted;
- (ba) amending the period for which the plan is to remain in force;
- (c) identifying, for the purposes of section 25A(1) , the discrete operational phases of the plan.

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

(3) Where the Authority certifies a forest practices plan, refuses to certify a forest practices plan or certifies a plan as amended in accordance with subsection (1) (c) , it shall, by notice in writing served on the person who applied under section 18 or, if a person has been assigned in accordance with section 25D the applicant's responsibilities under this Division, that person, for certification of the plan and the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, inform them of its decision.

(4) If the Authority itself certifies a forest practices plan it must immediately affix its seal to the plan and endorse it with the date of certification.

(5) If a person to whom the Authority has delegated the power to certify forest practices plans certifies such a plan, the person must immediately sign the plan and endorse it with the date of certification.

20. Authority of certified forest practices plan

A certified forest practices plan authorises forest practices and any operations associated with those forest practices to be carried out on the land specified in the plan in accordance with the provisions of that plan during the period specified in the plan.

21. Contravention, &c., of certified forest practices plan

(1) Where a forest practices plan has been certified by the Authority in respect of forest practices on any land and is in force under this Act—

- (a) any person who in carrying out any act, or in omitting to carry out any act, contravenes or fails to comply with the provisions of the plan; or
- (b) any timber processor who causes forest practices on that land or any operations associated with forest practices on that land to be carried out in contravention of the provisions of the plan; or

(ba) any person who harvests tree ferns under the plan without affixing a tag in accordance with section 17(5A)(b) ; or

(c) any person who is an owner of land, or who is a person to whom the owner's responsibilities under section 17 have been assigned under section 17(2) , and who causes forest practices on that land or any operations associated with forest practices on that land to be carried out in contravention of the provisions of the plan—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 1 000 penalty units or a daily fine not exceeding 50 penalty units.

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

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

(2) Where a daily fine is imposed under subsection (1) for a contravention of that subsection the total fine imposed is not to exceed 1 000 penalty units.

(3) Where a certified forest practices plan includes provisions relating to the restocking of the land to which the plan relates with trees, any person required in that plan to comply with any of those provisions who fails to comply with those provisions is guilty of an offence and is liable on summary conviction to a fine not exceeding 250 penalty units.

(4) It is a defence to a charge under subsection (3) if the defendant proves to the satisfaction of the court that he or she did not consent to the imposition on him or her in the certified forest practices plan of the requirement to comply with any of the provisions of that plan.

22. Variation of certified forest practices plan at instigation of Authority

(1) The Authority may, subject to subsection (2) , vary the provisions of a certified forest practices plan.

(2) The Authority shall not exercise its powers under subsection (1) unless it has first afforded the person who applied to it under section 18 for certification of the plan (or a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D) and the owner of the land referred to in the plan or, as the case may be, the holder of the forestry right conferred in respect of the land, an opportunity to make submissions to it in relation to the matter.

(3) Where the Authority varies the provisions of a certified forest practices plan, it shall, by notice in writing served on the person who applied to it under section 18 for certification of the plan (or a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D) and the owner of the land referred to in the plan, inform them of the variation, and the variation shall, subject to section 25 (3) , take effect on such date as the Authority specifies in the notices, being a date not earlier than 14 days after the service of the notice on the first-mentioned person.

23. Application for variation of certified forest practices plan

(1) A person who applied to the Authority under section 18 for the certification of a forest practices plan (or who is a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D) and who wishes to have the provisions of the plan varied after it has been certified by the Authority may make application to the Authority for a variation of the plan.

(2) An application under this section –

(a) shall be in writing in a form approved by the Authority;

(b) shall specify the manner in which the applicant under this section requires the provisions of the certified forest practices plan to be varied;

(c) shall be accompanied by a memorandum in writing signed by the owner of the land referred to in the plan or, as the case may be, the person to whom the owner's responsibilities under section 17 have been assigned under section 17(2) or the holder of the forestry right conferred in respect of the land, stating that he or she has given approval for the application to be made to the Authority; and

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

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

24. Grant or refusal of application for variation of certified forest practices plan

(1) Where an application is made in accordance with section 23, the Authority may grant the application and vary the provisions of the certified forest practices plan, or may refuse to grant the application.

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

24A. Revocation of certified forest practices plans

(1) Subject to this section, the Authority may revoke a certified forest practices plan for any reason it considers sufficient.

(2) The Authority must not exercise its power under subsection (1) without first giving the person who applied under section 18 for certification of the plan, or a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D, and, if that person on whom notice is served under subsection (3) is not the owner of the relevant land, the owner of the land an opportunity to make submissions to it in relation to the proposed revocation.

(3) If the Authority revokes a certified forest practices plan—

(a) it must serve written notice of the revocation on the person who applied under section 18 for certification of the plan, or a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D, and, if that person on whom notice is served is not the owner of the relevant land, the owner of the land; and

(b) the revocation takes effect on such date as the Authority specifies in the notice, being a date not earlier than 14 days after the service of the notice on the person who applied for certification of the plan or the person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D.

25. Appeal in respect of forest practices plan

(1) A person who applied to the Authority under section 18 for the certification of a forest practices plan (or who is a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D) and who is aggrieved by—

(a) the refusal of the Authority to certify the plan;

(b) the amendments made to the plan by the Authority pursuant to section 19 (1) (c);

(c) the variation of the provisions of the plan by the Authority pursuant to section 22; or

(d) the refusal of the Authority to grant the person's application for the variation of the provisions of the plan; or

(e) the revocation of the plan by the Authority pursuant to section 24A —

may appeal to the Tribunal.

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

- (a) the service of a notice on the appellant under section 19 (3) , in the case of an appeal against the refusal to certify a forest practices plan or the amendments made to the plan by the Authority;
- (b) the service of a notice on the appellant under section 22 (3) , in the case of an appeal against the variation of the provisions of a certified forest practices plan by the Authority; or
- (c) the service of a notice on the appellant under section 24 (2) , in the case of an appeal against the refusal of the Authority to grant an application for the variation of the provisions of a certified forest practices plan; or
- (d) the service of a notice on the appellant under section 24A (3) in the case of an appeal against the revocation by the Authority of a certified forest practices plan.

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

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

(4)

25A. Forest practices plan compliance reports

(1) The responsible person for a certified forest practices plan must lodge an interim compliance report with the Authority, in an approved form, within 30 days after the completion of each discrete operational phase of the forest practices authorised to be carried out under the plan stating –

- (a) whether or not the plan has been complied with in respect of that discrete operational phase; and
- (b) such other particulars regarding that discrete operational phase as the Authority considers appropriate.

Penalty: Fine not exceeding 10 penalty units.

(2) The responsible person for a certified forest practices plan must lodge a final compliance report with the Authority, in an approved form, within 30 days after the expiration of the period during which forest practices are authorised to be carried out under the plan stating –

- (a) whether or not the plan has been complied with; and
- (b) if the plan enables tree ferns to be harvested, the number of tree ferns harvested; and
- (c) such other particulars as the Authority considers appropriate.

Penalty: Fine not exceeding 10 penalty units.

(3) In this section –

approved form means a form approved by the Authority;

responsible person, for a certified forest practices plan, means the person who applied for the certification of the plan under section 18(1)(b) or who is a person to whom the applicant's responsibilities under this Division have been assigned in accordance with section 25D .

25B. Forest practices plan progress reports

(1) This section applies if the Authority considers on reasonable grounds that it should not rely solely on reports under section 25A to monitor compliance with a forest practices plan.

(2) The Authority, by notice in writing, may require the responsible person for the forest practices plan, within the meaning of section 25A , to give the Authority a progress report on the plan within such reasonable time, of not less than 21 days, as it specifies in the notice.

(3) The Authority's power under subsection (2) is exercisable at any time in the period during which forest practices are authorised to be carried out under the forest practices plan.

(4) The responsible person for the forest practices plan must comply with the notice under subsection (2) .
Penalty: Fine not exceeding 10 penalty units.

(5) The obligation referred to in subsection (4) is in addition to the reporting obligations referred to in section 25A .

(6) In this section –

progress report means a report, in a form approved by the Authority, specifying whether or not a forest practices plan has been complied with up to a date or during a period, or as regards a matter, nominated by the Authority.

25C. Appeal to Tribunal by person aggrieved by notice under section 25B

(1) The responsible person for a certified forest practices plan, within the meaning of section 25A , may appeal to the Tribunal if the person is aggrieved by a notice under section 25B(2) .

(2) The appeal is to be instituted by –

(a) giving written notice to the registrar within 14 days after the responsible person is served with the notice; or

(b) in such other manner as may be prescribed.

(3) At the hearing of the appeal, the Tribunal may confirm, modify or cancel the notice under section 25B(2) .

(4) Pending the outcome of the appeal, the notice under section 25B(2) is suspended in effect.

25D. Assignment of responsibility for forest practices plan

(1) An applicant under section 18 for certification of a forest practices plan may enter into an agreement in writing under seal with any person under which that person is assigned the applicant's responsibilities under this Division, apart from section 17 .

(2) An applicant under section 18 for certification of a forest practices plan who enters into an agreement under subsection (1) must, as soon as practicable, provide a copy of the agreement to –

(a) the Authority; and

(b) the owner of the land referred to in the plan or, if the land is subject to a forestry right, the holder of the right.

Penalty: Fine not exceeding 5 penalty units.

26. Non-application of other Acts to certified forest practices plan

Any Act prescribed in the regulations and the prescribed provisions of any Act prescribed in the regulations shall not apply to or affect anything contained in a certified forest practices plan in so far as that plan relates to a private timber reserve.

Division 2 - Three-year plans

27. Three-year plans

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

(1A) If the Authority is able to determine in advance that a person is likely to be subject to the requirements of subsection (1) , it may consult with and advise that person on the information to be included in the three-year

plan and on the presentation of that information having regard to the relevant land tenures and harvesting operations.

(2) A three-year plan is to contain information with respect to –

- (a) the location or locations of the land from which timber is intended to be harvested; and
- (b) the approximate volumes of timber intended to be harvested from each location; and
- (c) the routes by which it is proposed to transport the timber harvested out of each location; and
- (d) the reforestation measures that are proposed for the location or locations from which timber is intended to be harvested –

in each of the 3 years specified in the plan.

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

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

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

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

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

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

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

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

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

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

28. Power of Authority to call conference for purpose of varying three-year plan

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

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

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

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

(b) where that person has submitted a forest practices plan for certification pursuant to section 18 , refuse to consider that plan for certification—

until that person attends a conference arranged by it.

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

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

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

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

(b) where the person has submitted a forest practices plan for certification pursuant to section 18 , refuse to consider that plan for certification—

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

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

29. Aggrieved person may appeal to Tribunal

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

(a) the Authority's decision to request the person to vary the proposals in the three-year plan; or

(b) the Authority's decision to refuse to approve the variation of the three-year plan—

may appeal to the Tribunal.

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

(a) the Authority making the request, in the case of an appeal against the Authority's decision to make a request referred to in subsection (1) (a) ; or

(b) the Authority refusing to approve the variation, in the case of an appeal against the Authority's decision to refuse to approve the variation of a three-year plan.

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

(4) If the Tribunal, in determining under the Tasmanian Civil and Administrative Tribunal Act 2020 an appeal under this section, quashes the decision of the Authority, the action that the Tribunal may, under that Act, direct the Authority to take includes action to lift any sanction that may have been imposed under section 28 (6) .

PART IV - Forest Practices Code

30. Issue of Forest Practices Code

- (1) The Authority shall, after consulting with Private Forests Tasmania, issue a draft Code on the conduct of forest practices.
- (2) When the Authority issues the draft Code referred to in subsection (1) it shall cause a notice that the draft Code has been so issued to be published in the *Gazette* and in the daily newspapers published in this State.
- (3) A notice referred to in subsection (2) shall –
 - (a) specify the places where the draft Code may be purchased or inspected;
 - (b) invite submissions with respect to the draft Code from the public for consideration by the Authority; and
 - (c) specify that the submissions have to be received by the Authority within the period of 60 days after the publication of the notice in the newspaper.
- (4) Any person may, without payment of a fee, inspect the draft Code at the places specified in the notice referred to in subsection (2) .
- (5) The Authority shall, after consulting with Private Forests Tasmania and considering any public submissions received under this section with respect to the draft Code, issue a Code to be called the Forest Practices Code.
- (6) When the Authority issues the Code referred to in subsection (5) , it shall cause a notice that the Code has been so issued to be published in the *Gazette* and in the daily newspapers published in this State.
- (7) A notice referred to in subsection (6) –
 - (a) shall specify the date on which the Forest Practices Code shall take effect; and
 - (b) shall specify the places where the Forest Practices Code may be purchased or inspected.
- (8) Any person may, without payment of a fee, inspect the Forest Practices Code at the places specified in the notice referred to in subsection (6) .
- (9) The notices referred to in subsections (2) and (6) are not statutory rules within the meaning of the Rules Publication Act 1953 .

31. Purpose, &c., of Forest Practices Code

- (1) The Forest Practices Code shall prescribe the manner in which forest practices shall be conducted so as to provide reasonable protection to the environment.
- (2) Without limiting the generality of subsection (1) , the Forest Practices Code shall prescribe the manner in which the following forest practices shall be conducted:
 - (a) the establishment and maintenance of forests including standards to be complied with in the restocking of land with trees;
 - (b) the harvesting of timber or the clearing of trees;
 - (c) the construction of roads and other works connected with the establishment of forests, the clearing of trees or the growing or harvesting of timber.
- (3) Without limiting the generality of subsection (1) , the provision of reasonable protection to the environment includes landscape management and the control of soil erosion.
- (4) The Forest Practices Code may apply generally or in specified areas or may apply differently according to such factors as may be specified in the Code or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

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

32. Amendment, &c., of Forest Practices Code

- (1) The Authority, after consulting with Private Forests Tasmania, the Council and the Forestry corporation, may amend the Forest Practices Code or rescind the Forest Practices Code and issue a new Forest Practices Code in substitution for the rescinded Code.
- (2) A person may, in writing, request the Authority to amend the Forest Practices Code.
- (3) Where the Authority intends to amend the Forest Practices Code, it shall cause a notice containing the prescribed particulars to be published in the daily newspapers published in this State.
- (4) For the purposes of subsection (3), *prescribed particulars* means –
- (a) notification of the Authority's intention to amend the Forest Practices Code;
 - (b) a brief description of the effect of the proposed amendments;
 - (c) a statement to the effect that –
 - (i) the amendments to the Forest Practices Code proposed to be made by the Authority are set forth in a document kept at the office of the Authority and may be inspected at that office by any person without payment of a fee; and
 - (ii) objections to the amendments referred to in subparagraph (i) may be lodged with the Authority by the date specified in the notice, being a date not earlier than 60 days after the date on which the notice is published in the newspaper; and
 - (d) such other particulars as the Authority considers necessary.

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

- (1) Any person who wishes to object to the amendment of the Forest Practices Code which the Authority intends to make, may, at any time before the expiration of the period of 60 days after the notice referred to in section 32 is published in accordance with that section, lodge with the Authority an objection in writing to the amendments intended to be made by the Authority.
- (2) An objection lodged under subsection (1) may not be entertained by the Authority unless–
- (a) it specifies the ground of the objection; and
 - (b) it has been lodged with the Authority before the expiration of the period referred to in that subsection.
- (3) The Authority shall, after considering any objections that are lodged with it in accordance with subsection (1), publish a notice in the *Gazette* specifying the amendment to the Forest Practices Code.
- (4) A notice published in accordance with subsection (3) shall specify the date on which the amendment of the Forest Practices Code shall take effect.
- (5) A notice referred to in subsection (3) is not a statutory rule within the meaning of the Rules Publication Act 1953.

PART V - Proceedings of Tribunal

34. Procedure on receipt of appeal

(1) In this section –

President has the same meaning as in the Tasmanian Civil and Administrative Tribunal Act 2020 .

(2) If an appeal under this Act is received by the registrar –

(a) the registrar is to notify the President; and

(b) the President is to notify the registrar of the member or members of the Tribunal who the President proposes will constitute the Tribunal for the purpose of the appeal.

(3) The registrar must advise the parties to the appeal of the member or members of the Tribunal who the President has proposed under subsection (2)(b) will constitute the Tribunal for the purpose of the appeal.

(4) A party to an appeal, within 14 days after receiving under subsection (3) advice in relation to the appeal, may –

(a) by notice in writing served on the registrar; or

(b) by another manner, if any, that is prescribed –

object to one or more of the members of the Tribunal who are specified in a proposal under subsection (2)(b) in relation to the appeal.

(5) The registrar must forward to the President an objection received by the registrar under subsection (4) .

(6) The President –

(a) must consider an objection referred to in subsection (4) before making a determination under section 78 of the Tasmanian Civil and Administrative Tribunal Act 2020 in relation to the appeal; and

(b) must notify the registrar of the determination.

(7) The registrar must notify the parties to the appeal of the determination under the Tasmanian Civil and Administrative Tribunal Act 2020 in relation to the appeal.

35.

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36.

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37. Procedure, &c., of Tribunal

(1)

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(11)

(12) The Tribunal, in making a determination under this Act is to –

(a) have regard to the financial effect of its determination on the parties to the appeal; and

(b) have regard to the obligations of the Forestry corporation under section 16 of the Forest Management Act 2013 .

(13)

(14)

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

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

(17) The decision of the Tribunal in respect of an appeal under this Act is final and section 136 of the Tasmanian Civil and Administrative Tribunal Act 2020 does not apply.

PART VA - Forest Practices Advisory Council

37A. Forest Practices Advisory Council

- (1) A Forest Practices Advisory Council is established.
- (2) The Council consists of –
 - (a) a person with knowledge or expertise in sustainable forest management; and
 - (ab) a person with knowledge of the State's resource management and planning system in relation to municipal areas in which forestry is a major land use, nominated by the Local Government Association of Tasmania; and
 - (ac) a person with expertise in, and operational experience of, forest harvesting or forest contracting; and
 - (b) a person with knowledge of the State's resource management and planning system, nominated by the Secretary of the responsible Department in relation to the Environmental Management and Pollution Control Act 1994 ; and
 - (c) a person with knowledge of administration and legislation in relation to private forests, nominated by Private Forests Tasmania; and
 - (d) a person with knowledge of administration and legislation in relation to multiple use forests, nominated by the Forestry corporation; and
 - (e) a person with expertise in, and experience of, forest issues in relation to harvesting and processing, nominated by the Tasmanian Forest Products Association and the Tasmanian Sawmillers Association Limited (ACN 052 144 797); and
 - (f) a person with expertise in, and experience of, forest issues in relation to forest conservation; and
 - (fa) a person with knowledge and expertise in the administration of forest policy who is nominated by the Secretary of the Department; and
 - (fb) a person with knowledge and expertise in relation to natural heritage or cultural heritage who is nominated by the Secretary of the department that is responsible, for the administration of the Nature Conservation Act 2002 , to the Minister to whom that Act is assigned; and
 - (fc) a person, other than the chief forest practices officer, who is a forest practices officer; and
 - (g) a person with expertise in, and experience of, tree growing on private land, nominated by the Tasmanian Farmers and Graziers Association and the Tasmanian Forest Products Association.
- (3) The members are appointed by the Minister.
- (4) The person referred to in subsection (2) (a) is chairperson of the Council.
- (5) If a body that is responsible for making a membership nomination under subsection (2) changes its name, the Governor, by order, may amend that subsection by substituting the body's new name.
- (6) If a body that is responsible for making a membership nomination under subsection (2) ceases to exist, the Governor, by order, may amend that subsection by substituting the name of a body which the Governor is satisfied substantially represents the interests that were represented by the first-mentioned body.
- (7) If a body having sole responsibility for nominating a person for appointment to the Council under subsection (2) fails to discharge that responsibility within such reasonable period (of not less than 21 days) as the Minister allows when calling for the nomination, the Minister may make the appointment without further reference to that body.
- (8) If bodies having joint responsibility for nominating a person for appointment to the Council under subsection (2) fail to discharge that responsibility within such reasonable period (of not less than 28 days) as the Minister allows when calling for the nomination, the Minister may –

- (a) if the failure is collective, make the appointment without further reference to those bodies; or
- (b) if the failure is due to an act or omission of only one of those bodies, accept and act on a nomination from the other body.

(9)

(10)

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

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

37B. Objective of Council

- (1) The Council is part of the State's forest practices system, the objective of which is set out in Schedule 7 .
- (2) The Council is to act in all matters in a manner that best advances the objective of the State's forest practices system.

37C. Functions of Council

The Council has the following functions:

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

37CA. Matters to which the Council is to have regard

In performing its functions under this Act, the Council is to have regard to the obligations of the Forestry corporation under section 16 of the Forest Management Act 2013 .

37D. Committees

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

PART VI - Miscellaneous

Division 1 - Officers and forest practices officers

38. Appointment of officers for purposes of Act

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

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

(2A) However, the Authority may refuse to appoint a person nominated under subsection (2) as an officer for the purposes of this Act if the Authority, on reasonable grounds, is not satisfied that the nominee is a fit and proper person to be so appointed.

(2B) The matters that the Authority may have regard to for the purposes of subsection (2A) include the following:

(a) whether the nominee has been convicted of an offence against the Forest Management Act 2013 or this Act;

(b) whether the nominee has been convicted, in Tasmania or elsewhere, of an offence involving dishonesty;

(ba) whether the nominee has contravened a code of conduct; or

(bb) whether the nominee has contravened a direction given under this Act to the nominee by the chief forest practices officer; or

(c) whether the nominee is physically and mentally capable of performing the functions of an officer.

(2C) If subsection (2A) applies, the Authority is to request, and the body corporate concerned is to make, a fresh nomination.

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

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

(5) A person appointed under this section is not, by virtue of his or her appointment for the purposes of this Act, subject to the State Service Act 2000.

(6)

(7)

39. Forest practices officers

(1) Subject to this section, the Authority—

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

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

by warrant signed by the chairperson of the Board authorize the person to be a forest practices officer for the purposes of this Act.

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

(2A) The revocation of a warrant authorizing a person to be a forest practices officer for the purposes of this Act also revokes, in the case of a person referred to in subsection (1)(b), the person's appointment as an officer under section 38(2).

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

(a) has been negligent or not diligent in performing the duties and exercising the powers of a forest practices officer; or

(ab) has contravened a code of conduct; or

(ac) has contravened a direction given under this Act to the forest practices officer by the chief forest practices officer; or

(b) has been convicted of an offence against the Forest Management Act 2013 or this Act; or

(c) has been convicted, in Tasmania or elsewhere, of an offence involving dishonesty; or

(d) is physically or mentally incapable of adequately performing the duties or exercising the powers of a forest practices officer.

(3A)

(3B)

(3C)

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

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

39A.

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40. Powers, &c., of forest practices officers

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

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

(ab) on any land on which, in the reasonable opinion of the forest practices officer, forest practices appear to have been carried out, to determine whether those forest practices were in fact carried out and, if so, whether they were carried out in accordance with certified forest practices plans relating to that land or the provisions of this Act were complied with; or

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

(2) A forest practices officer, on production of his or her warrant of authorization, may at any reasonable time request any person associated with forest practices that are being (or in the officer's opinion appear to have been) carried out on any land referred to in subsection (1) to do one or more of the following:

(a) answer any question relating to those forest practices;

(b) produce any record or document relating to those forest practices;

(c) answer any question relating to any such record or document.

(3) Any person who –

(a) prevents or attempts to prevent a forest practices officer from exercising any power conferred on the forest practices officer by subsection (1) or (2) ;

(b) hinders or obstructs a forest practices officer in the exercise of any such power; or

(c) fails to comply with a request of a forest practices officer under subsection (2) –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months, or both.

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

(5) A person is not excused from answering any question if required to do so under subsection (2) on the ground that the answer might tend to incriminate the person or make him or her liable to a penalty, but, except in a case to which subsection (6) applies, the information provided by the person is not admissible against him or her in any proceedings, civil or criminal.

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

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

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

Division 2 - Code of conduct

40A. Code of conduct for forest practices officers

(1) The Board may prepare a code of conduct.

(2) The Board is, in preparing a code of conduct, to consult with the Forest Practices Advisory Council and forest practices officers.

(3) The Board may issue a code of conduct prepared under subsection (1) if –

(a) the Minister has laid a copy of the code of conduct before each House of Parliament; and

(b) the code of conduct has not been disallowed by a House of Parliament under subsection (4) .

(4) A House of Parliament may, within 5 sitting-days after a copy of the code of conduct has been laid before the House under subsection (3)(a) , disallow the code of conduct.

(5) The Board may revoke a code of conduct.

(6) As soon as practicable after the Board issues or revokes a code of conduct, the Board must cause notice of the issue or revocation to be published in the *Gazette* or in another manner that the Board considers appropriate.

40B. Contents of code of conduct

(1) A code of conduct is to specify the manner in which forest practices officers are to perform their functions, and exercise their powers, under this Act or any other Act.

(2) A code of conduct is to specify the procedures for the investigation and determination of whether a forest practices officer has contravened the code of conduct.

(3) The procedures referred to in subsection (2) –

(a) are to afford procedural fairness in the determination of whether a forest practices officer has contravened the code of conduct; and

(b) may vary according to the circumstances of the alleged contravention of the code of conduct.

- (4) A code of conduct may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the code.
- (5) A code of conduct may authorise a matter to be from time to time determined, applied or regulated by the Board.
- (6) A code of conduct is to be consistent with this Act.
- (7) If there is an inconsistency between a code of conduct and this Act, the code is invalid to the extent of the inconsistency.

40C. Code of conduct to be made available

- (1) As soon as practicable after the Board issues or revokes a code of conduct, the Board is to serve on each forest practices officer a copy of the code of conduct or the notice of revocation of the code of conduct.
- (2) The Authority must, at the request of a person, provide the person with an up-to-date copy of a code of conduct, or part of a code of conduct.
- (3) The Authority must allow a person to peruse a code of conduct, free of charge, at the office of the Authority, at any time within the hours during which that office is normally open.
- (4) The Authority must make available, in the manner that the Board considers appropriate, copies of a code of conduct.

Division 3 - Compliance with forest practices plans

41. Failure to comply with provisions of certified forest practices plan or Act

(1) Where in the opinion of a forest practices officer the provisions of a certified forest practices plan are not being complied with on any land to which the plan relates or the provisions of this Act have not been complied with, he or she may, either orally or in writing, request the person apparently in charge of the forest practices carried out on that land to do any one or more of the following:

(a) comply with the provisions of the certified forest practices plan or the provisions of this Act, as the case may be;

(b) take action, in accordance with the Forest Practices Code or as directed by the chief forest practices officer, so as to –

(i) repair or make good any damage to land, vegetation, or objects, that, in the reasonable opinion of the officer, has been caused by the forest practices specified in the request; or

(ii) rehabilitate or revegetate any land that, in the reasonable opinion of the officer, has been, or on which, in the reasonable opinion of the officer, the vegetation has been, damaged, degraded, or altered, by the forest practices specified in the request.

(1A) The request, if it is in respect of the provisions of a certified forest practices plan, may be made –

(a) at any time while the plan is in force; or

(b) at any time in the 12-month period immediately after the day on which the plan ceases to be in force.

(2) If the forest practices officer who makes the request, another forest practices officer, or the chief forest practices officer, later considers (whether from a further inspection of the relevant land or from other evidence) that the request has not been complied with within a reasonable time, he or she may, by notice served on the person apparently in charge of the forest practices carried out on that land, direct that person to do such one or more of the following as may be appropriate in the circumstances:

(a) cease the forest practices specified in the notice;

(b) where there is a certified forest practices plan in relation to the forest practices on the land and in the reasonable opinion of the officer it is practicable and economically feasible to do so –

(i) repair or make good, in the manner and within the period specified in the notice, any damage to land, vegetation, or objects, that, in the reasonable opinion of the officer, has been caused by the forest practices specified in the notice; or

(ii) rehabilitate or revegetate, in the manner and within the period specified in the notice, any land that has been, in the reasonable opinion of the officer, or on which the vegetation has been, in the reasonable opinion of the officer, damaged, degraded, or altered, by the forest practices specified in the notice;

(ba) if there is no certified forest practices plan in relation to the forest practices on the land and, in the reasonable opinion of the officer it is practicable and economically feasible to do so –

(i) within the period specified in the notice, repair or make good, in accordance with the Forest Practices Code or as directed by the chief forest practices officer, any damage to land, vegetation, or objects, caused, in the reasonable opinion of the officer, in contravention of this Act, by the forest practices specified in the notice; or

(ii) within the period specified in the notice, rehabilitate or revegetate, in accordance with the Forest Practices Code or as directed by the chief forest practices officer, any land that has been, in the reasonable opinion of the officer, or on which the vegetation has been, in the reasonable opinion of the officer, damaged, degraded, or altered, by the forest practices specified in the notice;

(c) carry out, within the period specified in the notice, such other work as may be specified in the notice;

(d) take, within the period specified in the notice, such actions as may be specified in the notice to ensure that the provisions of this Act are complied with.

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

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

(5) A person referred to in subsection (4) who fails to comply with the directions contained in a notice under subsection (2) in the manner and within the period specified in the notice is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

(5A)

(6) Where a person referred to in subsection (4) fails to comply with a notice under subsection (2) in the manner and within the period specified in the notice, the chief forest practices officer may request any person to do either or both of the following:

(a) repair or make good the damage referred to in subsection (2) (b) or rehabilitate or revegetate the land to which the notice relates;

(b) carry out the works or take the action specified in the notice.

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

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

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

- (1) A person who is aggrieved by a notice served on him or her under section 41 (2) may, within 2 days after the date of service of that notice on him or her, appeal to the Tribunal.
- (2) An appeal under subsection (1) shall be instituted by giving written notice to the registrar or in such other manner as may be prescribed.
- (3) Where an appeal is brought under this section in respect of a notice, the notice shall not take effect until the determination or abandonment of the appeal or until such other date as the Tribunal may determine.
- (4) At the hearing of an appeal under this section, the Tribunal may confirm, modify, or cancel the notice referred to in section 41 (2) .
- (5) A person referred to in subsection (1) who fails to comply with a notice as modified or confirmed by the Tribunal is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.
- (5A)
- (6) Where a person referred to in subsection (1) fails to comply with a notice under section 41 (2) , as modified or confirmed by the Tribunal, the chief forest practices officer may request any person to do either or both of the following:
 - (a) repair the damage referred to in section 41 (2) (b) ;
 - (b) carry out the works or take the action specified in the notice.
- (7) A person who complies with a request under subsection (6) may, for that purpose, enter and remain on the land to which the notice referred to in that subsection relates.
- (8) The costs and expenses incurred by a person in repairing any damage or carrying out any work or taking any action in compliance with a request made to that person by the chief forest practices officer under subsection (6) may be recovered in a court of competent jurisdiction as a debt due to that person from the person who failed to comply with the notice referred to in that subsection.

Division 4 - Other matters

43. Delegation by Authority

- (1) Subject to subsection (2) , the Authority may delegate any of its functions or powers other than this power of delegation.
- (2) The Authority shall, by instrument in writing, delegate to any person for the time being appointed as an officer under section 38 (2) , the performance or exercise of the Authority's functions and powers under Division 1 of Part III , and shall not revoke wholly or in part the delegation while he or she holds that appointment.
- (3) A delegation under subsection (1) or (2) may be unconditional or, if the instrument of delegation so provides, conditional.
- (4)
- (5)
- (6)
- (7)

43A. Directions by chief forest practices officers

- (1) The chief forest practices officer –
 - (a) may give a direction to a forest practices officer in relation to the exercise or performance of a function or power of the forest practices officer under this Act; and
 - (b) may give a direction to a forest practices officer, or other person, in relation to a function or power of the Authority that has been delegated to the forest practices officer or person under section 43 .

(2) A direction under subsection (1) –

(a) to a forest practices officer in relation to the performance or exercise of –

(i) a function or power of the forest practices officer; or

(ii) a function or power of the Authority that has been delegated to the forest practices officer under section 43 ; or

(b) to a person in relation to the performance or exercise by the person of a function or power of the Authority that has been delegated to the person under section 43 –

may be a direction as to a policy, or matters, to be considered by the forest practices officer, or the person, before performing or exercising the function or power, but must not require the forest practices officer or the person to make a particular decision in performing or exercising the function or power.

(3) Without limiting subsection (1) –

(a) a direction under that subsection to a forest practices officer may require the forest practices officer to seek the advice of the chief forest practices officer before performing or exercising –

(i) a function or power of the forest practices officer; or

(ii) a function or power of the Authority that has been delegated to the forest practices officer under section 43 ; and

(b) a direction under that subsection to a person may require the person to seek the advice of the chief forest practices officer before performing or exercising a function or power of the Authority that has been delegated to the person under section 43 .

(4) A direction under subsection (1) may specify a period, that is reasonable in all the circumstances, in which the direction is to be complied with.

44. Costs and expenses of Act

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

(a) the costs and expenses of carrying out an annual assessment and preparing a report under section 4E ;

(b) the costs and expenses of preparing an annual report under section 4X ;

(c) the costs and expenses of detecting and investigating contraventions of, or failures to comply with, this Act and the Forest Practices Code;

(d) the costs and expenses of making complaints and prosecuting offences under this Act;

(e) the amount of any compensation that is payable under section 16 (3) ;

(f) the remuneration, and any allowances or benefits, payable to the chief forest practices officer;

(g) the costs and expenses of administrative and other services and facilities that are necessary for the effective exercise of the powers, and the effective performance of the duties, of the chief forest practices officer;

(h) such other costs and expenses as are incurred in the exercise of the Authority's powers or the performance of the Authority's functions in respect of land other than Crown land.

(2) Notwithstanding subsection (1) , 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 or as permitted under section 47B(3A) .

45. False or misleading statements

(1) Subject to subsection (2) , a person who –

(a) makes an application under this Act;

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

that is or are false or misleading in a material respect is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

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

45A. Seal of Authority

- (1) The seal of the Authority is to be kept and used as authorised 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.

45B. Land Acquisition Act 1993 does not apply

The Authority is not a public authority for the purposes of the Land Acquisition Act 1993 .

46. Service of notices and other documents

- (1) A notice, application or other document is effectively served under this Act if—
 - (a) in the case of a natural person, it is —
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by this Act to serve the notice, application or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
 - (b) in the case of any other person, it is —
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.
- (2) A notice, application or other document required by this Act to be served on the Authority may be served on —
 - (a) the Authority; or
 - (b) the chief forest practices officer.

47. Proceedings and prosecutions

- (1) Notwithstanding anything in the Justices Act 1959 to the contrary, proceedings in respect of an offence against this Act may be commenced at any time within a period of 3 years after the time when the offence is alleged to have been committed.
- (2) A complaint in respect of an offence against this Act may be made by —
 - (a) the chief forest practices officer; or
 - (b) a police officer; or
 - (c) any other person who is authorized by the Authority, in writing, to make complaints under this Act.

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

47A. Recovery of costs for loss or damage

A court that convicts a person of an offence under section 17(4) , 17(5) , 18B , 21(1) , 21(3) , 41(5) or 42(5) may, in addition to any other penalty it may impose, order that person to pay to a person specified by the court—

- (a) the cost of making good any damage done or any loss incurred by reason of the convicted person's act; and
- (ab) costs incurred, by the person specified by the court, in repairing or making good any damage done, or in rehabilitating or revegetating any land that has been, or on which the vegetation has been, damaged, degraded, or altered, by reason of the convicted person's act; and
- (b) such other costs as the court considers appropriate.

47B. Alternative to prosecution

(1) If the Authority is satisfied that an offence under section 17(4) , (5) or (5B) , 18B , 21(1) , 21(3) , 41(5) or 42(5) has been committed, it may, on payment of a prescribed fine by the alleged offender –

- (a) cause any proceedings in respect of the alleged offence to be waived or discontinued; and
- (b) if the alleged offence involved the unlawful harvesting of timber or the unlawful clearance and conversion of a threatened native vegetation community, allow the alleged offender or another person specified by the Authority to retain the whole or any part of that timber or, as the case may be, the whole or any part of the threatened native vegetation from that community.

(2) For the purposes of this section, the Authority is to establish and maintain a fund.

(3) Prescribed fines are to be paid into the fund and are, for the purposes of section 44(2) , taken to be at the disposal of the Authority.

(3A) In addition to the purposes set out in section 44(1) for which, in accordance with section 44(2) as applied by subsection (3) of this section, prescribed fines may be disposed of by the Authority, the Authority may provide all or part of a prescribed fine to a person to recompense the person for any costs incurred in repairing or making good any damage done, or in rehabilitating or revegetating any land that has been, or on which the vegetation has been, damaged, degraded, or altered, by reason of the action, or failure to take an action, constituting all or part of the offence to which the fine relates.

(4) In this section –

prescribed fine means a fine of –

- (a) such amount as the Authority determines is equal, or approximately equal, to twice the amount required to make good the damage done or any loss incurred by the commission of the relevant offence; or
- (b) if the relevant offence is of a particularly serious kind or it will not be possible or practicable to make good the damage done or any loss incurred by the commission of the relevant offence, such amount as the Authority determines will constitute an appropriate sanction and deterrent in the circumstances.

47C. Vicarious liability

(1) If an offence is committed against section 17(4) , (5) or (5B) , 18B , 21 (1) , 21 (3) , 41 (5) or 42 (5) by a person acting as the agent or servant of another person, the other person is, without prejudice to the liability of the agent or servant, liable under that section in the same manner and to the same extent as if he or she had committed the offence personally.

(2) Notwithstanding subsection (1) , it is a defence for the other person referred to in that subsection to prove, on the balance of probabilities, that the offence was committed by the agent or servant without the person's

knowledge or consent and that the person took reasonable precautions and exercised due diligence to prevent the agent or servant committing the offence.

47D. Salvage of illegally harvested timber or native vegetation

(1) If a person is found guilty or convicted of an offence under section 17(4) , (5) or (5B) , section 18B , section 21(1) or section 41(5) in relation to any timber or threatened native vegetation, the Authority, notwithstanding that the timber or threatened native vegetation may have been harvested or cleared contrary to, or not in compliance with, the provisions of this Act or the Forest Practices Code, may allow another person to purchase or acquire that timber or threatened native vegetation.

(2) In determining whether or not to exercise its power under subsection (1) the Authority may have regard to such matters as it thinks fit in the circumstances, but it must have regard to the following considerations:

(a) if the offender is the owner of the timber or threatened native vegetation –

(i) the seriousness of the offence and the offender's record of compliance with the Act and the Forest Practices Code; and

(ii) the amount of any financial benefit likely to accrue to the offender if the Authority exercises the power;

(b) the amount of any financial loss likely to be suffered by an innocent party if the Authority does not exercise its power;

(c) the nature of the relationship between the offender, the owner of the land (if the owner is not the offender) and any timber processor or other person who has expressed an interest in buying or acquiring the timber or threatened native vegetation;

(d) the quantity and quality of the timber or threatened native vegetation;

(e) whether the timber or threatened native vegetation is likely to be wasted if it is not sold or acquired;

(f) the regeneration or reforestation requirements of the land on or from which the timber or threatened native vegetation was harvested or cleared.

(3) A timber processor or other person who purchases or acquires any timber or threatened native vegetation pursuant to the exercise by the Authority of its power under this section does not commit an offence against this Act or the Forest Practices Code by reason only of that purchase or acquisition.

(4) This section has effect notwithstanding any other provision of this Act.

(5) In this section –

threatened native vegetation means vegetation from a threatened native vegetation community.

48. Evidence

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

(a) a person specified in the certificate was or was not the chief forest practices officer; or

(b) a person specified in the certificate was or was not a forest practices officer; or

(c) a person specified in the certificate was or was not appointed under section 38 as an officer for the purposes of this Act; or

(d) a person specified in the certificate was authorized under this Act to take an action specified in the certificate; or

(e) there was or was not a certified forest practices plan in existence in respect of land described in the certificate; or

(f) land described in the certificate was a private timber reserve –

is evidence of the matter stated in the certificate.

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

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

49. Validation of delegations

(1) In this section –

commencement day means the day on which the *Forest Practices Amendment (Validation) Act 2022* commences.

(2) A delegation that, on a day (the *relevant day*), before the commencement day, was made, or purportedly made, by the Authority under section 43 , is taken to be, and to always have been, validly made on the relevant day.

50. Regulations

(1) The Governor, on the recommendation of the Authority, may make regulations for the purposes of this Act.

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

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

(4) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a fine not exceeding 5 penalty units and where the offence is a continuing one, a further fine not exceeding 0·5 penalty units for each day during which the offence continues.

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

SCHEDULE 1 - Registration of Notices

Section 15

1. Lodgement of notices

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

- (a) a copy of the notice; and
- (b) particulars of the title to the land to which the notice relates.

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

2. Requirement to bring land under Land Titles Act 1980

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

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

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

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

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

- (a) shall contain particulars of the title of the area of land ceasing to be, or to form part of, a private timber reserve by virtue of the notice; and
- (b) shall be so registered by lodging with the Recorder a copy of the notice.

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

4. Exemption from registration fees

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

5. Interpretation

In this Schedule –

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

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

SCHEDULE 2

SCHEDULE 3 - Provisions with Respect to Directors of Board

Section 4A (3)

1. Interpretation

In this Schedule –

appointed director means a director of the Board other than the chief forest practices officer;

director means a director of the Board and includes the chairperson.

1A. Term of appointment

An appointed director is to be appointed for such term, not exceeding 3 years, as is specified in the director's instrument of appointment and, if otherwise qualified, is eligible for reappointment.

2. Holding other office

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

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

2A. Termination of appointment

The Minister may terminate the appointment of an appointed director if the director –

- (a) is absent from 4 consecutive meetings of the Board without the permission of the Board; or
- (b) becomes mentally or physically incapable of performing the duties of a director; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the director's creditors or makes an assignment of the director's remuneration or estate for their benefit; or
- (d) is convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 2 years or longer; or
- (e) is convicted of an offence against this Act or the Forest Management Act 2013 ; or
- (f) fails, without reasonable excuse, to comply with the obligations referred to in clause 5 .

2B. Resignation

An appointed director may resign by signed notice given to the Minister.

3. Remuneration of directors

- (1) A director is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Minister determines.
- (2) A director of the Board who is a State Service officer or State Service employee is not entitled to remuneration under subclause (1) except with the approval of the Minister administering the State Service Act 2000 .

4. Validity of proceedings

- (1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.
- (2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if a person was disqualified from acting as, or incapable of being, a director.

5. Disclosure of interests

(1) If—

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

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the Board otherwise determines, the 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 making the determination.

(4) In this clause,

partner means the person with whom a person is in a personal relationship, within the meaning of the Relationships Act 2003 .

6. Presumptions

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

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

SCHEDULE 4 - Provisions with Respect to Meetings of Board

Section 4A (4)

1. Interpretation

In this Schedule –

director means a director of the Board and, unless the contrary intention is shown, includes the chairperson.

2. Meetings

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

3. Procedure at meetings

- (1) Four directors form a quorum at any duly convened meeting of the Board.
- (2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) Questions arising at a meeting of the Board are to be determined by a majority of votes of the directors present and voting.
- (4) In the event of an equality of votes on a question arising at a meeting of the Board the question stands adjourned until the next meeting.

4. Chairperson

- (1) The chairperson of the Board is to preside at all meetings of the Board at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Board the deputy chairperson or, if a deputy chairperson has not been elected or is not present, a director elected by the directors present is to preside at that meeting.

5. Minutes

The Board is to keep minutes of its proceedings.

6. General procedures

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

SCHEDULE 5 - Provisions with Respect to Membership of Council

Section 37A (11)

1. Interpretation

In this Schedule –

member means a member of the Council.

2. Term of appointment

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

3. Holding other office

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

4. Termination of appointment

The Minister may terminate the appointment of a member if the member–

- (a) is absent from 4 consecutive meetings of the Council without the permission of the Council; or
- (b) becomes mentally or physically incapable of performing the duties of a member; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for that benefit; or
- (d) is convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 2 years or longer; or
- (e) is convicted of an offence against this Act or the Forest Management Act 2013 .

5. Resignation

A member may resign by signed notice given to the Minister.

6. Validity of proceedings

- (1) An act or proceeding of the Council is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Council.
- (2) All acts and proceedings of the Council or of a person acting under a direction of the Council are, despite the subsequent discovery of a defect in the appointment of a member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Council had been fully constituted.

SCHEDULE 6 - Provisions with Respect to Meetings of Council

Section 37A (12)

1. Interpretation

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

2. Meetings

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

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

3. Procedure at meetings

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

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

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

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

4. Chairperson

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

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

5. Minutes

The Council is to keep minutes of its proceedings.

6. General procedures

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

SCHEDULE 7 - Objective of the Forest Practices System of Tasmania

Sections 4B and 37B

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

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