

Tasmanian Forests Agreement Bill 2012

CLAUSE NOTES

PART I – Preliminary

Clause 1 - Short title

This clause provides the short title to be used when citing the Act for any legal purpose.

Clause 2 - Commencement

The Bill will commence on the day or days on which it is proclaimed.

Part 3 of the Bill (WOOD SUPPLY (AMENDMENTS TO THE *FORESTRY ACT 1920*)) cannot be proclaimed until such time as the Minister administering the Act (the Minister) has published a notice in the *Gazette*, notifying that both Houses of Parliament have accepted a proposed reserve order, made under clause 10(1)(e), clause 13 or clause 14 of the Bill (Making of protection order).

Clause 3 - Interpretation

Key terms used in the Bill are defined in this clause.

Clause 4 – Act binds the Crown

The Bill, when passed, will bind the Crown in right of the State of Tasmania.

Clause 5 – Inconsistency with other Acts

This clause provides that the provisions of this Bill, when passed, will override the provisions of the Acts listed in this clause, to the extent that there is an inconsistency between a provision of the Bill and a provision of those Acts.

PART 2 – CONTINUING WOOD SUPPLY (PRODUCTION POLICY)

Clause 6 – Continuing wood supply

This clause lowers the minimum aggregate quantity of eucalypt veneer logs and eucalypt sawlogs that must be made available by Forestry Tasmania from multiple use forest for the veneer and sawmilling industries (the minimum aggregate quantity) from 300 000 cubic metres to 155 000 cubic metres, by amending S.22AA of the *Forestry Act 1920*.

The clause provides that, if the protection order is not made by the Minister, is not accepted by Parliament or is revoked by operation of the Bill, the minimum aggregate quantity will automatically revert to 300 000 cubic metres on 30 June of the year in which the order is not made, not accepted or is revoked.

The *Forestry Act* is further amended by this clause to allow for regulations to be made that require Forestry Tasmania to make available other quantities of other timber of another specification.

PART 3 – WOOD SUPPLY (AMENDMENTS TO FORESTRY ACT 1920)

Clause 7 – Amendments to *Forestry Act 1920*

This clause amends the *Forestry Act* to change the name of “multiple use forest land” and “Register of Multiple Use Forest Land” to “permanent timber production zone land” and “Register of Permanent Timber Production Zone Land”, respectively.

By virtue of the operation of clause 2, Part 3 cannot be proclaimed until after such time as a proposed reserve order is accepted by Parliament under clause 10(1)(e), clause 13 or clause 14 and its acceptance is notified by the Minister in the *Gazette*.

PART 5 – SPECIAL ADVISORY COMMITTEE

Clause 8 – Special Advisory Committee

This clause provides the Minister with the power to establish a special advisory committee (the committee) for the purposes of advising the Minister, the Minister administering the *Nature Conservation Act 2002* (the Nature Conservation Minister) or the Minister administering the *National Parks and Reserves Management Act 2002* (the Reserves Management Minister) on any matters relating to the administration of the Bill.

The role and membership of the committee is determined by an order made by the Minister after consultation with the Nature Conservation Minister and the National Parks and Reserves Management Minister.

The clause sets out requirements in relation to the operation of the committee, including appointment of members, appointment of the

chairperson, voting, quorums and the provision of assistance and allowances to the committee and its members.

PART 6 – MAKING OF PROPOSED RESERVES

Clause 9 – Making of protection order

This clause establishes the process for the making of an order for the purposes of setting aside land that can be proposed as reserves under this Bill (the protection order).

“Land” is land that is owned by Forestry Tasmania (and may include State forest, within the meaning of the *Forestry Act*), land owned by a Government Business Enterprise or State-owned company, or Crown land, within the meaning of the *Crown Lands Act 1976*.

The clause specifies the information that the protection order is to contain in relation to each parcel of land, including: its area and boundaries; purpose and values; activities that are to be prohibited on it (a prohibited activity); the certified forest practices plans issued under the *Forest Practices Act 1985* that are to be extinguished; the forestry rights and forestry covenants under the *Forestry Rights Registration Act 1990* relating to the land that are to be suspended; and the date by which each parcel of land in the order may be proposed as a reserve for the purposes of this Bill.

The protection order may also identify land that can be proposed as reserves immediately upon acceptance of the order by both Houses of Parliament. The clause requires that, where the Minister intends including such land in the protection order, he or she must obtain advice from the Commonwealth Minister administering the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) as to whether or not proceeding to reserve the land under the Bill will exclude the reserve, when made, from projects being considered for a carbon farming project under that Act in the future.

A protection order must be made by the Minister by order published in the *Gazette*. The order and the advice from the Commonwealth regarding carbon must be tabled in both Houses of Parliament.

The order is of no effect until it has been accepted by both Houses of Parliament.

The clause requires that, within 10 days of the protection order being accepted by both Houses of Parliament the Minister must publish a notice in the *Gazette* advising of the acceptance.

Clause 10 – Effect of protection order

This clause sets out the effect of a protection order being accepted by both Houses of Parliament.

On acceptance of an order: the land in the order becomes known as “protection order land”; a Regulator operating under any other Act may not authorise, approve or permit a person to undertake a “prohibited activity” on the land for the duration of the order; certified forest practices plans, identified in the order, are extinguished; and forestry covenants and rights identified are suspended for the duration of the order.

The owner or land manager of the land (the managing entity) continues to be responsible for land included in a protection order and may continue to manage the land as it would have, had the protection order not been in place, except that the managing entity cannot grant a right or interest over that land for a period exceeding 12 months without the written permission of the Nature Conservation Minister, and is prohibited from selling the land.

Where a protection order identifies land that can be proposed as reserves immediately, that land may commence being processed as a reserve on acceptance of the protection order.

Clause 11 – No compensation payable

This clause provides that should any person incur a loss as a result of the making of a protection order, no compensation is payable.

Clause 12 – Non-acceptance of protection order

The protection order is revoked (and the land reservation process established by the Bill ceases) if either House of Parliament does not accept the protection order.

Clause 13 – Making of proposed reserve order

This clause provides the process by which land set aside in the protection order can be proposed as a reserve. This process does not apply to land that the protection order identifies can be proposed as a reserve immediately.

On or before the date specified in relation to each parcel of land in the protection order, the Minister, by order published in the *Gazette* (a proposed reserve order), may declare land in the protection order to be set aside as a proposed reserve. The clause sets out the information that must be contained in the proposed reserve order, including the values, boundaries and purpose, as originally cited in the protection order.

If the Minister fails to make a proposed reserve order by the date specified, the protection order is revoked and the process ends.

Before making a proposed reserve order, the Minister must prepare a durability report and obtain advice from the Commonwealth Minister administering the *Carbon Credits (Carbon Farming Initiative) Act* as to whether or not proceeding to reserve the land will exclude the reserve, when made, from projects being considered for a carbon farming project under that Act in the future.

The Minister must table the proposed reserve order, the durability report and the advice from the Commonwealth Minister in both Houses of Parliament with the proposed reserve order. A proposed reserve order is of no effect until it has been accepted by both Houses of Parliament.

The clause requires that, within 10 days of a proposed reserve order being accepted by both Houses of Parliament, or rejected by either House of Parliament, the Minister must publish a notice in the *Gazette* advising of that fact.

Clause 14 – Non-acceptance of proposed reserve order

This clause provides the process to be followed where a proposed reserve order is rejected by either House of Parliament. It provides the Minister with the power to table a proposed reserve order on one further occasion within 12 months, or such other period prescribed by regulation, from it being rejected.

Before tabling a proposed reserve order for a second time, the Minister must prepare a new durability report.

The proposed reserve order and the new durability report must be tabled in both Houses of Parliament.

The proposed reserve order is of no effect until it has been accepted by both Houses of Parliament. If either House of Parliament rejects the proposed reserve order on a second occasion, the proposed reserve order and

protection order are both revoked and the land reservation process established by this Bill ends.

Clause 15 – Nature Conservation Minister to be advised of proposed reserve order

Where land is accepted by each House of Parliament for processing as reserves, either as part of a protection order (where land has been identified as land that can be proposed as reserves immediately) or on the first or second tabling of the proposed reserve order, this clause requires that the Minister advise the Nature Conservation Minister of its acceptance.

PART 6 – MAKING OF RESERVES

Clause 16 – Making of reserves

This clause sets out the process by which the proposed reserves, identified in the proposed reserve order, are made reserves under the *Nature Conservation Act*.

On receiving advice from the Minister that both Houses of Parliament have accepted land to be proposed reserves, the Nature Conservation Minister must make a determination as to the final boundaries values and purpose of the proposed reserves specified in the proposed reserve order.

The Nature Conservation Minister must then make a further determination as to whether the final boundaries values and purpose are substantially the same as the boundaries, values and purpose accepted by Parliament in the proposed reserve order.

Where the Nature Conservation Minister determines that the boundaries values and/or purpose are not substantially the same as those accepted by Parliament, this clause requires that the Nature Conservation Minister table the revised boundaries, values and/or purpose and the reason for the change in both Houses of Parliament.

The changed boundaries values and/or purpose are of no effect unless they have been accepted by both Houses of Parliament.

If both Houses of Parliament accept the changed boundaries values and/or purpose then they become the final boundaries, values and/or purpose for the proposed reserve. If either House of Parliament rejects the changed boundaries values and/or purpose, then the land to which the boundaries, values and/or purpose relate is no longer subject to the provisions of the Bill.

Where the Nature Conservation Minister either: makes a determination that the final boundaries, values and purpose are substantially the same as those accepted by Parliament in the proposed reserve order; or Parliament has accepted the changed boundaries, values and/or purpose, the Nature Conservation Minister must make a recommendation to the Governor that the Governor declare the proposed reserve to be a class of reserve under the *Nature Conservation Act*.

On receipt of a recommendation from the Nature Conservation Minister, the Governor may make a proclamation declaring the proposed reserve to be a class of reserve under the *Nature Conservation Act* and give a name to that reserve.

The clause requires that to be declared a class of reserve under the *Nature Conservation Act*, the values, boundaries and purpose of the land must satisfy the criteria set out in S.16 of that Act in relation to that class.

In making the proclamation, the Governor may also declare that the land is being reserved for the additional purpose of carbon sequestration and avoiding greenhouse emissions.

Clause 17 – Effect of proclamation

This clause sets out the effect of the proclamation made by the Governor under clause 16.

On the making of the proclamation: any contract for sale over the land described in the proclamation, or forestry rights or covenants attached to it, are extinguished; any part of the land included in the Register of Multiple Use Forest Land is removed from the Register; any land dedicated as State forest has that status revoked; all land becomes Crown land; the land is taken to have been declared a reserve by the Governor under the *Nature Conservation Act*; and clause 10 (Effect of protection order) ceases to apply.

Clause 18 – Entitlement to compensation

This clause establishes an entitlement to, and process for assessing, compensation in relation to the contracts for sale, and forestry rights and covenants, that have been extinguished by virtue of the effect of clause 17 (Effect of proclamation).

Clause 19 – Continuation of leases, licences, &c.

This clause provides that, apart from a lease or licence issued under the *Mineral Resources and Development Act 1995*, any lease, licence, temporary

licence, occupation permit or burdening easement in force in respect of land declared to be reserved land pursuant to a proclamation made under clause 16 (Making of reserves) remains in place, with the Reserves Management Minister being substituted as the grantor.

The clause further provides the Reserves Management Minister with the powers and functions of the grantor in relation to that lease, licence, temporary licence, occupation permit or burdening easement.

A lease or licence issued under the *Mineral Resources and Development Act* and that remains in place, will continue to be administered under that Act.

Clause 20 – Vesting of land held under the *Land Titles Act 1980*

This clause establishes a process for updating the Register, referred to in S.33 of the *Land Titles Act 1980*, in relation to land that has become vested in the Crown by virtue of the operation of clause 17 (Effect of proclamation).

Clause 20 – State tax not payable

This clause provides that State taxes and duties are not payable as a result of anything arising from, or done, as a result of this Bill.

PART 6 – AMENDMENTS TO NATURE CONSERVATION ACT 2002

Clause 22 – Amendments to *Nature Conservation Act 2002*

This clause amends the *Nature Conservation Act* to provide the Governor with the ability to declare that land reserved under that Act is being reserved for the additional purpose of carbon sequestration and avoiding greenhouse emissions.

PART 7 - MISCELLANEOUS

Clause 23 – Right to request information

This clause provides the Minister, the Nature Conservation Minister and the Reserves Management Minister with the power to request that a State-owned company or Government Business Enterprise provide any information necessary for those Ministers to perform their functions or exercise their powers under the Bill.

The clause provides certain protections to a State-owned company or Government Business Enterprise that complies with such a request.

Clause 24 - Regulations

This clause provides the Governor with the power to make regulations for the purposes of the Bill.

The clause provides specific regulation making powers in relation to the preparation of a durability report under clauses 13 (Making of proposed reserve order) and 14 (Non acceptance of proposed reserve order) of this Bill.

Clause 25 – Savings and transitional provisions

This clause gives effect to the savings and transitional provisions in Schedule 1 of the Bill.

Clause 26 – Administration of Act

This clause assigns the administration of the Bill to the Minister for Energy and Resources and nominates the Department of Infrastructure, Energy and Resources as the responsible agency, until such time as provision is made by an order under the *Administrative Arrangements Act 1990*.

Clause 27 – Consequential amendments

This clause specifies that the legislation specified in Schedule 2 of this Bill is amended as set out in that Schedule. This section commences at the same time at Part 3 of the Bill (WOOD SUPPLY – (AMENDMENTS TO THE *FORESTRY ACT 1920*).

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 1 provides for the transfer of assets, contracts and liabilities in connection with land proclaimed to be a reserve by virtue of clause 16 (Making of reserves) from a Government Business Enterprise or State-owned company to the Crown and from the Crown to a Government Business Enterprise or State-owned company.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Schedule 2 specifies the consequential amendments to other Acts as a result of this Bill.