

FORESTRY (REBUILDING THE FOREST INDUSTRY) BILL

CLAUSE NOTES

PART 1 – 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.

Clause 3 - Interpretation

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

PART 2 – FUTURE POTENTIAL PRODUCTION FOREST LAND

Clause 4 - Future Potential Production Forest land

Subclause (1) describes the land that is to become future potential production forest land.

Subclause (2) sets out the provisions that apply to future potential production forest land. No native forest harvesting can be undertaken on future potential production forest land.

Subclause (3) provides that no land that is defined as statutory land, that was not already Crown land at the commencement of the section, can become Crown land under clause 4.

Subclause (4) provides that native forest harvesting can be undertaken on the forestry coupes specified in Schedule 2, even though they are within the future potential production forest land.

Subclause (5) provides that, other than as provided under subsection (1) and (2), the right to undertake activities on future potential production forest land authorised, approved or permitted before the commencement of this clause are not extinguished or affected.

Subclause (6) provides that the managing entity for this land can, other than for the requirements of subsection (2), continue to perform or exercise its functions or powers, or discharge its obligations in relation to that land.

Subclause (7) provides that, where the Crown Lands Minister is the managing entity, the Minister must have regard to the management objectives for future potential production forest land, as specified in Schedule 3 of this Bill, in performing or exercising his or her functions or powers, or discharging his or her obligations in relation to that land.

Subclause (8) provides that the managing entity cannot sell, transfer or convey future potential production forest land to any other person.

Subclause (9) provides that the prohibition on selling, transferring or conveying future potential production forest land to another person does not apply to land that is the subject of an exchange referred to in clause 6 of this Bill.

Subclause (10) provides that the prohibition on the sale, transfer or conveying of the future potential production forest land does not apply to land used for certain infrastructure.

Subclause (11) provides that the prohibition on the sale, transfer or conveying of the future potential production forest land ceases, with respect to statutory land, on and from 8 April 2020.

Clause 5 – No compensation payable

This clause provides that should any person incur a loss as a result of the land becoming future potential production forest land, no compensation is payable.

Clause 6- Exchange of land

This clause provides a process for the exchange of future potential production forest land in return for permanent timber production zone land.

Subclause (1) provides that the Minister administering the *Forest Management Act 2013* commences the exchange process, by requesting the Crown Lands Minister to consider the exchange of future potential production forest land in return for permanent timber production zone land.

Subclause (2) requires that, before making a request, the Minister administering the *Forest Management Act 2013* must obtain and have regard to certain information with regard to the proposed exchange. This information must include:

- (a) reasons for the request, including whether the land is required to meet the statutory required minimum volume supply of forest products by Forestry Tasmania;
- (b) the impact of the land ceasing to be permanent timber production zone land on the capacity of the Forest Manager to meet the annual supply of sawlogs and veneers logs, or to supply sawlogs to the holder of a forestry compensation certificate;
- (c) the size, location, valuation and conservation values of the future potential production forest land and the permanent timber production zone land; and
- (d) the implications of the exchange for any third party certification held by Forestry Tasmania at the time the request is made.

Subclause (3) provides that, in making a request under subsection (1), the Minister administering the *Forest Management Act 2013* must provide the Crown Lands Minister with the information obtained under subclause (2).

Subclause (4) provides that, in making a determination in relation to a request, the Crown Lands Minister must have regard to the information provided by Minister administering the *Forest Management Act 2013* under subclause (3) and the impact of the exchange on the management objectives for the future potential production forest land, which are specified in Schedule 3.

Subclause (5) provides that the Crown Lands Minister may approve an exchange.

Subclause (6) requires that, if an exchange is approved, the Crown Lands Minister must provide advice the Minister administering the *Forest Management Act 2013* of that approval.

Under subclause (7), the Minister administering the *Forest Management Act 2013* must give effect to exchange by making an Order for the under section 11A of the *Forest Management Act 2013*.

Clause 7- Conversion of future potential production forest land and permanent timber production zone land

This clause provides for the potential conversion of land from Future Potential Production Forest Land to Permanent Timber Production Zone Land, no earlier than 8 April 2020.

Subclause (1) provides that, no earlier than 8 April 2020, the Minister administering the *Forest Management Act 2013* may request the Crown Lands Minister to consider the conversion of Future Potential Production Forest Land to Permanent Timber Production Zone Land

Subclause (2) requires that, before making a request under subclause (1), the Minister administering the *Forest Management Act 2013*, must request and have regard to information relating to:

- (a) the reasons for the request;
- (b) the size, location, valuation and conservation values of the land proposed to be converted to permanent timber production zone land;
- (c) a resource and demand assessment in support of the conversion and an evaluation of social and economic impacts of the conversion of the Future Potential Production Forest Land to Permanent Timber Production Zone Land;
- (d) Forestry Tasmania's intention to harvest the land, consistent with the forest management certification it holds at the time the request is made;
- (e) the implications of the conversion of land for any forest management certification held by Forestry Tasmania at the time the request is made.

Subclause (3) provides that, in making a request under subsection (1), the Minister administering the *Forest Management Act 2013* must provide the Crown Lands Minister with the information obtained under subclause (2).

Subclause (4) requires the Crown Lands Minister to have regard to the information provided by the Minister administering the *Forest Management Act 2013* under subclause (3).

Subclause (5) provides the authority for the Crown Lands Minister to approve the conversion of Future Potential Production Forest Land to Permanent Timber Production Zone Land.

Subclause (6) requires the Crown Lands Minister to provide advice in writing of a decision under subclause (5) to approve the conversion of land to the Minister administering the *Forest Management Act 2013*.

Subclause (7) requires the Minister administering the *Forest Management Act 2013* to give effect to the decision of the Crown Lands Minister under subclause (4), by making a relevant order under section 11B of the *Forest Management Act 2013*.

Subclause (8) prevents Forestry Tasmania from undertaking native forest harvesting on future potential production forest land that is converted to permanent timber production zone land, unless that harvesting can be undertaken consistent with its forest management certification.

Clause 8- Conversion of reserved land to future potential production forest land

This clause provides for the transfer of land reserved under the *Nature Conservation Act 2002* to future potential production forest land, if that land was specified in the proclamation made on 16 December 2013 (Statutory Rules 2013, No 111) and is subsequently excluded from the World Heritage List.

The clause empowers the Crown Lands Minister to convert, by Order, that land excluded from the World Heritage List to future potential production forest land.

This particular Order is not to be subject to the approval of both Houses of Parliament.

Clause 9 - Continuation of leases, licences, &c

This clause provides for the continuation of any lease, licence, temporary licence, occupation permit or burdening easement in force in respect of future production forest land that is not statutory land, with the Crown Lands Minister being substituted as the grantor.

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

Nothing in clause 9 makes the Crown Lands Minister liable for any breach of a lease, licence, temporary licence, occupation permit or burdening easement that occurred before the commencement of clause 4(2).

The clause does not apply to a lease or licence issued under the *Mineral Resources and Development Act 1995*. These remain unaffected by the Bill, and will continue to be administered under that Act.

Clause 10 - Vesting of land held under *Land Titles Act 1980*

This clause provides that when land becomes vested to the Crown under the provisions of clause 4(2)(a) the Crown Lands Minister is to lodge with the Recorder

of Titles both an application by the Crown to be the registered proprietor of the vested land and a plan prepared by a registered surveyor that identifies the non-vested land and the vested land.

PART 3 – Consent for Special Species Timber Harvesting

Clause 11 – Application for approval to undertake special species timber harvesting in future potential production forest land

This clause establishes a process through which special species timber harvesting may be approved on future potential production forest land.

Subclause (1) provides that a person, other than Forestry Tasmania, may apply to the Crown Lands Minister for approval to undertake special species timber harvesting in the future potential production forest land.

Before applying for approval of the Crown Lands Minister, the person must have already obtained a forest practices plan certified by the Forest Practices Authority under section 17 of the *Forest Practices Act 1985*.

Under subclause (2), a person is required to provide the certified forest practices plan as part of their application and to address in their application any other matters that may be provided for by the regulations.

Subclause (3) requires the Crown Lands Minister to seek advice from the Minister administering the *Forest Management Act 2013* with regard to the application. This includes seeking advice that the harvesting, as proposed in the application, will be undertaken consistent with the standards applicable to the forest management certification held by Forestry Tasmania at the time of the application.

Subclause (4) requires the Crown Lands Minister, in making a determination whether to approve the special species timber harvesting or not, to have regard to the application, advice from the Minister administering the *Forest Management Act 2013* and the objectives for management of future potential production forest land specified in Schedule 3.

Subclause (4) authorises the Minister to approve an application made under subclause (1) subject to such conditions as the Minister determines should be specified in the approval. The Minister may also refuse to approve an application.

Subclause (6) provides the authority for the Crown Lands Minister to require a person whose application for special species timber harvesting has been granted, to pay such amounts as prescribed by the regulations in relation to the harvesting of special species timber.

Subclause (7) enables there to be a range of amounts fixed, to enable different harvesting scenarios to be reflected in the regulations.

Part 4- FOREST MANAGEMENT ACT 2013 AMENDED

Clause 12 - Principal Act

This clause sets out that the *Forest Management Act 2013* is referred to as the Principal Act in this Part of the Bill.

Clause 13 - Section 3 amended (Interpretation)

This clause amends section 3 of the *Forest Management Act 2013* to insert the definition of “future potential production forest land” into that Act.

Clause 14- Section 5 repealed

This clause repeals section 5 of the *Forest Management Act 2013*, which references the *Tasmanian Forest Agreement Act 2013*.

Clause 15 - Section 10 amended (Reservation of Crown land as permanent timber production zone land)

This clause amends section 10 of the *Forest Management Act 2013* by inserting a new subsection after subsection (1) that provides that the process for reservation of Crown land as permanent timber production zone land under clause 10 does not apply to Crown land that is future potential production forest land.

Clause 16 – Section 11 amended (Revocation of permanent timber production zone land)

This clause amends section 11 of the *Forest Management Act 2013*.

The new subsection provides that the process for revoking permanent timber production zone land provided for under section 11 of the *Forest Management Act 2013* does not apply to land that is subject to an exchange under clause 6(6) of this Bill.

Clause 17- Sections 11A and 11B inserted

This clause provides that two new sections, sections 11A and 11B, are to be inserted into the *Forest Management Act 2013*.

The two new sections are to give effect to decisions under clauses 6 and 7 of this Bill.

Clause 11A- Exchange of land

The new clause 11A provides for the Minister administering the *Forest Management Act 2013* to give effect to a decision of the Crown Lands Minister under clause 6 to approve the exchange of future potential production forest land and permanent timber production zone land, by a land exchange order published in the Gazette.

An Order made under subclause 11A(1) is of no effect unless it has been accepted by both Houses of Parliament. An Order is taken to have been accepted by a House of Parliament if, the order has been laid on the table of that House and –

- (a) it is accepted by that House; or
- (b) at the expiration of 5 sitting days, if no notice of motion to disallow is in effect; or
- (c) if any notice of motion is given during the 5 sitting days, the notice is withdrawn or the motion is negatived after the expiration of the 5 sitting day period.

If the proposed land exchange order is accepted by both Houses of Parliament-

- (a) The previous future potential production forest land listed in the order becomes permanent timber production zone land; and
- (b) The previous permanent timber production zone land becomes Crown land and future potential production forest land.

Clause 11B- Conversion of future potential production forest land to permanent timber production zone land

The new clause 11B provides for the Minister administering the *Forest Management Act 2013* to give effect to a decision of the Crown Lands Minister under clause 7 for the conversion of future potential production forest land to permanent timber production zone land by publishing a land conversion order in the Gazette.

An Order made under subclause 11B(1) is of no effect unless it has been accepted by both Houses of Parliament. An Order is taken to have been accepted by a House of Parliament if, the order has been laid on the table of that House and –

- (a) It is accepted by that House; or
- (b) At the expiration of 5 sitting days, if no notice of motion to disallow is in effect; or
- (c) If any notice of motion is given during the 5 sitting days, the notice is withdrawn or the motion is negatived after the expiration of the 5 sitting day period.

If the proposed conversion order is accepted by both Houses of Parliament, the future potential production forest land listed in the order to be permanent timber production zone land becomes permanent timber production zone land.

Clause 18- Section 12A inserted

This clause provides that a new section 12A of the *Forest Management Act 2013* is to be inserted into that Act, which prohibits the Forestry Corporation from purchasing or otherwise acquiring the future potential production forest land.

Clause 19- Section 16 amended (Wood production supply)

This clause amends section 16(1)(b) of the *Forest Management Act 2013* by omitting a reference to the *Tasmanian Forest Agreement 2013*.

There will still be a requirement for the Forest Manager under the *Forest Management Act 2013* to supply prescribed timber to a prescribed industry including the special species timber industry

This amendment simply ensures that the definition of special species timber is consistent with the definition as provided in clause 3 of this Bill given that the *Tasmanian Forests Agreement Act 2013* is to be repealed.

Clause 20 - Part 5A inserted

This clause provides that a new part, Part 5A, is to be inserted into the *Forest Management Act 2013*.

PART 5A – COMPENSATION ARRANGEMENTS

Clause 16A - Interpretation of Part

This clause defines certain terms for the interpretation of this new Part 5A.

Clause 16B – Forestry Compensation Certificate

This clause provides for the Minister to issue a compensation certificate for a wood supply contract, when requested by either the Forestry Corporation or the purchaser.

The Minister has to be satisfied that there is an enforceable wood supply contract and that the Forestry Corporation can supply the wood to the purchaser. The Minister must also be satisfied that any economic or environmental requirement concerning the logs, their source or their processing, which might be established in regulation have also been met.

Clause 16C – Contents of forestry compensation certificate

This clause specifies the matters that need to be contained within a forestry compensation certificate.

Clause 16D - Transfer or assignment of forestry compensation certificate

This clause provides that a person issued with a forestry compensation certificate may transfer or assign the rights and entitlements of that certificate to another person to whom the purchaser's rights and obligations under the wood supply agreement have been assigned.

The clause sets out the matters that the original person to whom the compensation certificate was issued must undertake, which include notifying the Minister in writing of the assignment, delivering the forestry compensation certificate to the Minister and delivering a copy of the contract by which the rights and obligations under the wood supply contract to which the forestry compensation certificate relates are assigned.

On receipt of the notification, forestry compensation certificate and contract, the Minister is to issue a new certificate to the persons affected by the assignment to reflect the details of the assignment.

When the new certificate is issued the previous certificate is cancelled. That cancellation does not affect any claim to compensation accrued before the certificate was cancelled.

Clause 16E – Effect of forestry compensation certificate

This clause provides the circumstances when a holder of a forestry compensation certificate is entitled to receive compensation.

The Forestry Corporation needs to certify to the Minister that they have been asked by the Purchaser to supply veneer logs or sawlogs under the terms specified in a wood supply contract and the Forestry Corporation is unable to do so because of either:

- (a) a change of the law of the State; or
- (b) a change of policy in relation to forest practices, within the meaning of the *Forest Practices Act 1985*,

that has the effect of reducing the quantity of veneer logs or sawlogs available such that the Forestry Corporation can't meet the Purchaser's supply.

Subclause (4) outlines the matters to be included in a certificate provided by the Forestry Corporation under subclause (3).

Subclause (5) provides that where the holder of a certificate has received veneer logs or sawlogs under any other wood supply agreement not covered by a forestry

compensation certificate, then those volumes are to be included in the calculation of the annual supply made available by the Forestry Corporation under Section (3).

Clause 16F - Entitlement to compensation

This clause makes the Minister liable to pay compensation to the holder of a forestry compensation certificate on receipt of the Forestry Corporation's certification under clause 16E.

Subclause (2) defines the amount of compensation referred to in subclause (1).

Subclause (3) provides that compensation only applies to the extent that the non-supply arises as a result of the matters set out in (a) or (b) of section 16E(2).

Subclause (4) sets out matters that are to be disregarded when calculating compensation.

Subclause (5) requires a holder of a forestry compensation certificate that is entitled to compensation to take all reasonable steps to minimise the loss or damage referred to in subclause (2).

Clause 16G - Determination of compensation

This clause sets out the process for how compensation is to be determined.

Subclause (1) defines an affected person as a person who is entitled to compensation in accordance with this Part.

Subclause (2) requires the Minister to obtain the approval of the Solicitor-General to the amount of compensation prior to agreeing the amount of compensation.

Subclause (3) provides that the agreed amount of compensation is the amount agreed in writing between the Minister and the affected person.

Subclause (4) provides that where the affected person and the Minister cannot agree the amount of compensation, the amount will be resolved through the established processes for settling compensation under the *Land Acquisition Act 1993*.

Subclause (5) removes any doubt that, by payment of compensation, any claim that the affected person would otherwise have against the Forestry Corporation in respect to the matters to which the compensation relates is extinguished.

Subclause (6) provides that the obligations of an affected person and the Forestry Corporation under a wood supply contract are taken as being discharged when the non-performance of those obligations is taken into account in agreeing or determining compensation.

Clause 16H - Amendment of forestry compensation certificate

This clause sets out the process and timeframes when a forestry compensation certificate can be amended.

Part 5 – FOREST PRACTICES ACT 1985 AMENDED

Clause 21 – Principal Act

This clause provides that the *Forest Practices Act 1985* is the Principal Act for this Part.

Clause 22 – Schedule 7 amended (Objective of the Forest Practices System of Tasmania)

This clause amends Schedule 7 of the *Forest Practices Act 1985*, Objectives of the Forest Practices System of Tasmania, by deleting as an objective outcomes consistent with the intent of the *Tasmanian Forests Agreement Act 2013*.

PART 6 – FOREST PRACTICES REGULATIONS 2007 AMENDED.

Clause 23 – Principal Regulations

This clause provides that the *Forest Practices Regulations 2007* are the Principal Regulations for this Part.

Clause 24 – Regulation 4A inserted

This clause inserts a new regulation 4A into the *Forest Practices Regulations 2007*, to ensure that all special species timber harvesting on future potential production forest land requires a certified forest practices plan, regardless of the area or volume of timber harvested.

**Part 7- NATIONAL PARKS AND RESERVES MANAGEMENT ACT 2002
AMENDED**

Clause 25 – Principal Act

This clause provides that the *National Parks and Reserves Management Act 2002* is the Principal Act for this Part.

Clause 26 – Section 3 amended

This clause amends the interpretation section of the *National Parks and Reserves Management Act 2002* by inserting a definition of 'special species timber harvesting'.

Clause 27 - Schedule 1 amended (Objectives for management of reserved land)

This clause amends Schedule 1 of the *National Parks and Reserves Management Act 2002* to inset a new sub section (e) to that Schedule that provides the harvesting of special species timbers is included as a controlled use of natural resources for the purposes of that Schedule.

PART 8 – NATURE CONSERVATION ACT 2002 AMENDED

Clause 28 - Principal Act

This clause provides that the *Nature Conservation Act 2002* is the Principal Act for this Part.

Clause 29– Section 3 amended

This clause amends the interpretation section of the *Nature Conservation Act 2002* by inserting definitions of “future potential production forest land”, “permanent timber production zone land” and “special species timber harvesting”.

Clause 30 amended (Parliamentary approval required for certain draft proclamations)

This clause amends section 18 of the *Nature Conservation Act 2002* by inserting new subclauses requiring the approval of a two-thirds majority of each House of Parliament before a proclamation declaring permanent timber production zone land or future potential production forest land to be any class of reserved land can be made.

Section 31 – Schedule 1 amended (Determination of class of reserved land)

This clause amends Schedule 1 of the *Nature Conservation Act 2002* to insert a new item 5, to provide special species timbers harvesting is included as a sustainable use of natural resources in a Conservation Area, and a new item 7, to provide special species timbers harvesting is included as a controlled use of natural resources in a Regional Reserve, for the purposes of that Schedule.

PART 10 – LEGISLATION REPEALED

Clause 32 – Legislation repealed

This clause sets out that the legislation detailed in Schedule 6 is repealed.

PART 11 – MISCELLANEOUS

Clause 33 – Further amendment of regulations not prevented

This clause provides that even though regulations are amended by the Bill, this does not prevent future amendment or recession of a provision of those regulations by a later regulation.

Clause 34 – Continuation of certain proclamation

This clause provides that the proclamation of reserves made under the *Tasmanian Forests Agreement Act 2013* (Statutory Rule 2013, No. 111) remains in force under the Bill.

Clause 35- Regulations

This clause provides for the making of regulations under this Act.

Clause 36 - Savings and transitional provisions

This clause sets out that the savings and transitional provisions detailed in Schedule 3 have effect.

Clause 37 - Administration of Act

This clause sets out the administrative management arrangements for this Act.

SCHEDULE 1 – FUTURE POTENTIAL PRODUCTION FOREST LAND

Schedule1 details the land that is future potential production forest land.

SCHEDULE 2 – FORESTRY COUPES

Schedule1 details the forestry coupes within the future potential production forest land within which native forest harvesting is not prohibited.

SCHEDULE 3 - OBJECTIVES FOR MANAGEMENT OF FUTURE POTENTIAL PRODUCTION FOREST LAND

Schedule 3 sets out the objectives for the management of future potential production forest land.

SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 4 provides for the transfer of assets, contracts and liabilities in connection with land that is future potential production forest land by virtue of clause 4 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 5 – PLAN 9760

This Schedule sets out the plan of the future potential production forest land.

SCHEDULE 6 – LEGISLATION REPEALED

This Schedule sets out the legislation to be repealed by this Bill.