



**Submission to:  
Tasmanian Legislative Council Select Committee**

# **Inquiry into the Tasmanian Forests Agreement Bill 2012**

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## **1. BACKGROUND**

### **1.1 *About the TFGA***

The TFGA is the peak body representing farmers and, more broadly, agriculture across Tasmania. It is one of the state's foremost and respected lobbying and advocacy organisations. TFGA members are responsible for generating approximately 80% of the value created by the Tasmanian agricultural sector. The TFGA also takes a keen interest in the well-being of the rural communities within which members live and work, as well as member enterprises themselves.

Operationally, the TFGA is divided into separate councils that deal with each of the major commodity areas. As well, we have a number of standing committees that deal with cross-commodity issues such as climate change, biosecurity, forestry, water and weeds. This structure ensures that we are constantly in contact with farmers and other related service providers across the state. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

TFGA is dedicated to proactively generating greater understanding and better-informed awareness of farming's modern role, contribution and value to the entire community. The keys to our success have been our commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Tasmania's vital agricultural production base.

### **1.2 *Value of Agriculture, Fishing and Forestry in Tasmania***

The most recent departmental figures documenting the value of agriculture, forestry and fishing in Tasmania refer to financial year 2009/10. This data showed the farm gate gross value of production (GVP) for agriculture as \$1.079 billion; seafood as \$563.8 million; and forestry as c\$400 million. This makes the sector valued at a total \$2.042 billion.

TFGA represents the land based agriculture sector and our activities are directed in this area. Animal industries in Tasmania are dominated by dairy, beef cattle, sheep and lamb production, with lesser industries in pigs, poultry, horses, deer, goats, alpacas and bees. The plant industries are dominated by vegetables, cereals, pasture, poppies, pyrethrum, vineyards, pome and stone fruit and small fruits. Forestry, of course, is one of the key plant industries.

More than seventeen thousand people are directly employed in farm related activities. Taking into account basic multiplier factors, this meant the farm dependent economy contributed c\$5 billion (18%) to gross state product and 1 in 6 jobs. Not only that, the sector is one of very few in the state that has continued to deliver improved performance in the long term. Over the past 25 years, the average annual rate of increase in farm gate GVP has been 2.8%. Over the five year period from 2005/2006 to 2009/2010, the actual increase in Tasmania was a massive 42% - from \$1.35 billion to \$1.643 billion.

Furthermore, the inclusion of forestry as a long cycle crop enterprise in farming businesses in the state means that the overall economic contribution must include these figures too. Our best estimate is that in 2009/10 this added a further \$400 million to farm gate income.

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Clearly, as a result of the uncertainty currently evident in this sector, that figure has fallen significantly since then. Nonetheless, on a long term outlook, forestry remains an integral part of a diversified farm business.

The total Tasmania gross state product (GSP) was \$23.9 billion as at March 2012. The GVP of agriculture, forestry and fishing collectively exceeded 11% of this total – before input supply services and value-adding, which is well above that for the nation as a whole.

In 2011/2012, total exports from Tasmania were valued at \$3.195.56 billion. Agricultural products represented some 30% of that total – approximately \$1 billion. Almost 25% of total exports (\$502.25 million) were destined for ASEAN countries. Agricultural products valued at approximately \$121 million represented 25% of that total. ASEAN countries have become increasingly important destinations too, with overall exports increasing marginally over the past three years; and food exports alone increasing significantly from \$71.16 million to \$95.62 million over the period 2009/2010 through 2011/2012. Major products exported to ASEAN countries included dairy (\$42.28 million); seafood (\$31.63 million) and wood products (\$19.5 million estimated from private forestry sector). Key destinations included Japan (35%), China (21%), and Hong Kong (21%).

The contribution of private forests to Tasmania's economy is not clearly understood. Private forest owners have carefully managed forests, often for generations. These management regimes have resulted in maintenance of biodiversity and non-forest values while still generating an income for families. In many cases, the returns from these investments have been used to enhance and improve both the environmental and economic aspects of the resource.

Private forests make a larger contribution to Tasmania's gross state product (GSP) than either mining or the hospitality and tourism sector. A November 2008 IMC report, titled *Measuring the Economic Value of Private Forests to the Tasmanian Economy*, found that 26 per cent of Tasmania's forest cover is privately-owned. These private forests contribute \$450 - \$650 million annually to GSP, or 3.2 per cent of the State's economy. Mining directly contributes 2.6 per cent and hospitality and tourism 2.2 per cent.

These figures clearly demonstrate the importance of the sector as an economic driver for the state's economy – and also that agriculture is a more significant contributor to the Tasmanian economy than it is in any other state. With this in mind, it is evident that Tasmania needs to ensure that the agricultural base of the state remains competitive and profitable. One of the pivotal factors in achieving this goal is the maintenance of a rigorous and robust private forest industry.

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## 2. OVERVIEW

The TFGA has serious concerns with the *Tasmanian Forests Agreement Bill 2012* (the **Bill**) because, if enacted, it will seriously adversely impact both on our members and the communities they live in.

The explicit purpose of the Bill is to provide statutory backup for provisions of the Tasmanian Forests Agreement (TFA), an essentially private agreement recently negotiated between some parts of Tasmania's Forest Industry (the Forest Industry) and some Environmental Non-Government Organisations (ENGOS). Neither the TFGA, the private forestry sector nor private landowners more generally were party to negotiation of the TFA, and their views have not been seriously sought by those organisations that were involved or by the Tasmanian Government, during the negotiation process or subsequently.

The TFGA appreciates the fact that forestry is a contentious land use in Tasmania and that the Forest Industry is looking for both resource security and for respite from decades of activism by environmental groups in political and market arenas. We also appreciate the fact that both the TFA and the Bill focus on State Forest and Crown Land, rather than private land. However, Tasmania's Forest Industry is an integrated industry based on both crown and private resource, and private farm land is closely intermixed with State Forest and Crown Land in the field. It is not possible to conclude the kind of arrangement set out in the TFA without impacting on private forestry, farmland more generally and rural communities generally.

It is not acceptable for Government to seek to underwrite with legislation a privately negotiated agreement relating to use of an important public resource, without the fullest regard for the interests of other land users and industries, and the community in general. This means rigorous assessment of potential impact on their interests and opportunity for their full involvement in that process. In particular, this is the case when neither the agreement nor the legislation will deliver either the sought for respite for the forest based industry or the best conservation outcomes for the forests it proposes to reserve, as is the case here.

***The TFGA congratulates the Legislative Council on the establishment of the Select Committee as an approach to investigating in detail what are clearly widespread concerns about the Bill, and welcomes the opportunity to place a submission before the Committee and to appear before it, to express our concerns.***

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### **3. CONTEXT**

#### **3.1 Basis of the Tasmanian Forests Agreement 2012**

The Tasmanian Forests Agreement 2012 is the culmination of a process that has been underway for almost three years.

The first formal step along this path was the Statement of Principles (SOP) which was released in December 2010. The SOP was designed to 'resolve the conflict over forests in Tasmania, protect native forests, and develop a strong sustainable forests industry'. The document identified the parties to the negotiations which had commenced earlier that year. It also set out the basis on which an agreement might be reached.

The SOP was followed in August 2011 by the Intergovernmental Agreement (IGA), signed by both the Australian and Tasmanian governments. The IGA was supposed to deliver an agreement which reflected the principles outlined in the SOP. The IGA committed the governments 'to work together to support the forest industry to progressively transition to a more sustainable and diversified footing and to build regional economic diversity and community resilience'.

This was followed by the Tasmanian Forests Agreement Bill (TFA Bill), which was tabled in the Tasmanian House of Assembly in November 2012. The TFA Bill is notionally designed to set in legislation the agreements outlined in both the SOP and the IGA.

However, the IGA did not accurately reflect the terms of the SOP; and the TFA Bill does not reflect either of the previous two documents. In other words, this agreement has been a constantly moving set of targets. This does not instil confidence for the longevity of any agreement for the forests industry.

#### **3.2 Legal Concerns**

In support of the original Statement of Principles, the Australian Government has agreed to a variety of funding initiatives with the Tasmanian government. Those initiatives are detailed in the IGA. We understand that much of the allocated funding has already been provided.

The IGA is expressed as being not intended to create legally enforceable rights and obligations (clause 43). Curiously, clause 43 envisages the possibility that the obligations created under the agreement may exceed the power of either the Australian government or the Tasmanian Government.

There appears to be no legislative basis for the provision of funding under the IGA to the Tasmanian government, and entry into the agreement itself and the authorisation for the payments under the agreement, appear to be an exercise of the executive power of the Australian Government. The ability of the Australian Government to enter into agreements and provide funding, absent legislative authority, has been brought into significant question following the judgment of the High Court of Australia in *Williams v Australian* (2012) 86 ALJR 713; cf *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1.

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It is conceivable that the funding packages intended under the IGA exceed the executive power of the Australian government if challenged in the High Court of Australia. If that were the case Tasmania could be left in a situation where certainty of funding is dependent on the ability of the Australian Government to pass appropriate legislation through the Australian Parliament to authorise the funding.

In short, whilst we can only assume that proper consideration has been given to the issue, at the moment there appears to be significant potential uncertainty as to the ability of the Australian government to deliver the funding promised under the IGA.

Most of the funding provided for in the IGA is tied in the sense that it is specific purpose funding, as opposed to the provision of funds to the Tasmanian government to spend as it wishes. For example, clause 35 provides that the Australian government will provide \$7 million per year to be used towards the management of the proposed new reserves.

An important aspect of the funding regime established under the IGA that needs to be carefully considered is the payment timeframes. A significant part of the funding packages is funding of \$120 million provided for in clause 41 of the IGA. That clause relates to funding for regional development projects commencing upon legislative protection of the proposed new reserves, which total some 504,000 hectares. That funding is payable as an initial payment of \$20 million and the remainder is payable over 15 years. That is less than \$7 million per year for regional development projects which on the face of it will not in reality fund very much at all.

Further, if the payments are based on the use of the executive power, and the IGA itself is expressed as not creating any legally enforceable rights or obligations between the Australian Government and the Tasmanian Government, Tasmania is exposed to the risk that the Australian Government simply ceases the provision of funding at some point in the future. There are innumerable possible reasons for the Australian no longer wishing to provide such funding that could arise over the next 15 years.

In summary:

- the funding packages provided for in the IGA may exceed the executive power of the Australian Government; and
- there is ongoing sovereign risk to Tasmania given the funding packages are payable over a period of 15 years.

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## **4. THE TASMANIAN FOREST AGREEMENT (TFA)**

### **4.1 Process**

The TFA is essentially a private agreement between parts of the forest industry and some ENGOs.

It is very clear that the objective of the TFA as seen by its signatory organisations, is on the one hand to provide resource security in terms of crown native forest sawlog harvest and acceptance by signatory ENGOs of related forest management methods, together with ENGO support for related manufactured product in wood product markets, in return on the other hand for the reservation of an additional 504,000 ha of crown native forest.

The TFA was negotiated by a small number of organisations in what might be termed the forest industry sphere (both Tasmanian and national) and a very small number of ENGOs (also both Tasmanian and national).

The private forestry sector is an important element of the forest industry, but it was not invited to be at the table. Equally important is the fact that many ENGOs with avowed interests in forestry were also not at the table, and are therefore not bound, morally or otherwise, by the terms of the agreement. Nor was Forestry Tasmania, the manager of State Forests in Tasmania, at the table, although it did provide technical information and commentary to those in the discussions.

It is notable that a number of national bodies are signatories. The reasons for this are not clear, given that the issues are Tasmanian in nature.

The negotiation process was encouraged by the Tasmanian Government and the Australian Government, although neither appears to have been directly involved.

The process extended over some three years.

### **4.2 Content**

Key points in the TFA are as follows:

- The crown sawmilling sector (that part of the sector that takes sawlogs from Crown Land, including State Forest) will be given secure, albeit reduced, access to sawlog resource from State Forest and the forests from which those logs are drawn will be managed to maintain that supply in perpetuity, including provision for use of arisings resulting from sawlog harvest (ie. pulpwood and other log product).
- In return for this, there will be reservation of an identified further 500,004 ha of what is currently wood production forest on Crown Land.
- ENGOs which are signatories to the TFA will undertake not to seek yet further reservation of wood production forest or work in any way to undermine the forest industry (operations or markets). Whether this is an undertaking for a determinate period of time or an ongoing commitment is unclear.
- Final declaration of the new reserves will be subject to evidence that the TFA is being adhered to by signatory ENGOs – referred to as the 'durability report'.

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- The TFA relates explicitly to Crown Land and is silent on the subject of production forest on private land.

Clearly, an extremely important issue for the forest industry is the “durability” of the TFA, that is, just how well ENGO signatories honour their commitment regarding forestry operations and markets, once reserves have been declared.

Having said that, even if the signatory ENGOs do honour the agreement, there is absolutely no indication that other ENGOs will pay it the slightest heed. Critically important here is the fact that key opponents of the forest industry among ENGOs and the political Greens Party at both Tasmanian and Australian level are not signatories of the TFA. Signatories are quite able to “outsource” sabotage of the Forest Industry to these individuals and groups should they wish to, whatever the personal wishes of the people that actually signed the paper.

### **4.3 The Bill**

The objective of the Bill is quite explicitly to provide legislative backup for provisions in the TFA, in particular provisions relating to the establishment of maximum allowable sawlog take from State Forest, and for land identified by signatories to the TFA to be reserved.

The Bill focuses on key aspects of the TFA as follows.

- Definition of sawlog volume to be supplied and production zones from which this is to be harvested.
- Process leading to declaration of new reserves, allowing for checks that obligations under the TFA are being adhered to.
- Establishment of a Special Council, comprising representatives of groups signatory to the TFA, to advise the Minister (for Forests) on various implementation issues, including how “durable” the agreement is proving (ie whether obligations under the TFA are being adhered to).
- Compensation of forest industry entities in the event agreed sawlog volumes are not provided in future.
- The Bill also provides for recognition of “greenhouse gases” stored in reserved forest, an issue not mentioned in the TFA but of significance for the Tasmanian Government in the context of Australian Government Greenhouse Gas Policy.

The following summarises content of the Parts of the Bill:

#### *Part 1 – Preliminary*

- Standard topics including: Short Title, Commencement, Definitions, and priority relative to other legislation (as an Act this piece of legislation would take primacy over a range of other Acts wherever there is inconsistency).

#### *Part 2 – Continuing Wood Supply (Production Policy)*

- Amendments to the *Forestry Act 1920* to specify that an annual volume of 137,000 cubic metres of sawlog and veneer log (down from current 300,000 cubic metres) is to be produced from “multiple use forest”, or variation of this volume as may be “prescribed” (significance unclear).



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- Provides for this volume to revert to 300,000 cubic metres per year in the event certain reservation actions do not eventuate (specific criteria unclear).

#### *Part 3 – Wood Supply (Amendments to Forestry Act 1920)*

- Amendments to the *Forestry Act 1920* (essentially terminological, or relating to forest management instruments applied by the “Forestry Corporation”).

#### *Part 4 – Special Council*

- Provides for establishment of a “Special Council” comprising representatives of ten organisations signatory to the TFA (various Forest Industry organisations and ENGOs) appointed by the Minister, and “any other person the Minister wishes to nominate”, to prepare “durability” reports, promote the “vision” referred to in Schedule 1 of the Bill, advise the Minister on implementation of the TFA, advise the Minister on administration of the Act (from this Bill) and “such other matters as the Minister may wish to add”.
- Also provides for resourcing and a modus operandi for the Special Council.

#### *Part 5 – Making of Proposed Reserves*

- Provides for the making of “protection orders” (preliminary stage in reservation process) by the Minister (for Forests), relating to specified areas of Crown Land (including State Forest).
- Land subject to a “protection order” to be known as “future reserved land”.
- Minister to receive a “durability report” from the Special Council (what “durability report” means, other than that it is a report “prepared by the Special Council”, is not spelt out anywhere in the Bill) before making a “protection order”.
- Wood production activity on land subject to a “protection order” is to cease forthwith, with no compensation payable to “any person in relation to any (consequent) loss”.
- Subject to acceptance of a “protection order” by both houses of parliament, the Minister may declare the land in question a “proposed reserve”.
- Before making a “proposed reserve” order the Minister must receive a further “durability report” from the Special Council.
- The “proposed reserve” order must be accepted by both houses of parliament before it can take effect.
- The Minister must observe specific timelines in point of process for valid declaration of “protection orders” and “proposed reserve orders”.

#### *Part 6 – Making of Reserves*

- On acceptance of a “proposed reserve order” by parliament the Nature Conservation Minister is required to determine final boundaries, values and purpose for proposed reserves, including whether greenhouse gas storage is to be one such value.
- So long as final boundaries do not vary “substantially” from those relating to the area as a “proposed reserve”, the Nature Conservation Minister may declare the area a “reserve”.
- If there is a “substantial” (term not defined anywhere in the Bill) variation the Nature Conservation Minister must submit the newly defined area to both houses of parliament for ratification.
- Also provides for circumstances in which certain affected parties can claim compensation for rights that have been curtailed as a result of declaration of a reserve.

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*Part 7 – Amendments to Nature Conservation Act 2002*

- Amendment to *Nature Conservation Act 2002* to accommodate provisions in Part 6.

*Part 8 – Miscellaneous*

- A number of consequential matters including the making of Regulations, rights to information and amendment of other legislation.

*Schedule 1 – Vision for Tasmania’s Forests*

- Presents a “vision”, in very general terms, of Tasmanian forest use and management, including related “(Forest) Industry” and “Conservation” benefits. The “vision” would appear to have been developed as a statement of aspiration agreed as a “common ground” basis for negotiation in the FPA. Notable is the fact that the “vision” is the only part of the Bill where there is any mention of private forestry, and that is no more than a mention in passing.

*Schedule 2 – Savings and Transitional Provisions*

- Measures relating to forest industry transition from current to proposed status.

*Schedule 3 – Consequential Amendments*

- Consequential amendments required in a range of legislation other than the *Forestry Act 1920* and the *Nature Conservation Act 2002*.

### **4.3 Comments on the Bill**

These comments refer to the Bill, including the proposed amendments tabled by the Government in January 2013.

*Process of reservation*

The amendments proposed to the Bill by the Tasmanian government alter the process of reservation such that the specific areas of land to be set aside as “future reserved land” are clearly identified together with the purpose for reservation and the values attributable to the land.

The amendments do not, however, identify the proposed classification for the land. The classification of reserved land is important because it impacts on the way that the land can be used in the future, particularly if classified as a national park. The classification that is ultimately determined may have a direct impact on private wood growers depending on the activities, if any, that are presently undertaken on proposed “future reserved land”.

The process that the Bill establishes leaves the determination of the appropriate classification of land subject to a proposed reserves order (including land included in the initial proposed reserves order) to the discretion of the Nature Conservation Minister without parliamentary oversight. In essence, the proposed amendments would create a situation whereby Parliament can decide whether or not land should be reserved, but cannot determine the classification of that land.

*Durability*

While it is clearly the intention of the Bill is to ensure that the reservation of land should not occur before the TFA has been proved “durable”, it fails totally in that regard.

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For example, it does not specify what happens if the Special Council does not provide a unanimous opinion on whether signatory ENGOs have indeed abided by their obligations under the TFA. Nor does it apply any sanctions to those ENGOs if they breach those obligations after reservation has been completed (only a few years after declaration of the Bill as an Act).

Nor does the Bill provide in any way for certainty for the forest industry in the face of ongoing disruption and sabotage by non-signatory ENGOs, the Greens Party at both Tasmanian and Australian levels, and high profile individuals such as (recent Senator and Leader of the Australian Greens) Bob Brown and (ex-Leader of the Tasmanian Greens) Peg Putt.

In fact, the Bill provides no certainty for the forest industry once land earmarked for reservation has in fact been reserved – a matter of a very few years – with regard to signatory ENGOs, and no certainty at all from numerous and active non-signatory ENGOs and individuals.

### *Sovereign Risk*

As currently drafted, the Bill does not provide any certainty in respect of guaranteed wood supply contracts, or wood supply generally. To that extent, forestry industry participants remain susceptible to government decision-making and potential future changes of policy. The Bill does not make provision for the protection of forestry industry participants from sovereign risk.

The Tasmanian Government's recent submission to the Legislative Council select committee refers to a possible amendment to the Bill being moved by the Member for Murchison that addresses the issue of sovereign risk. Our reading of the Tasmanian government submission is that the amendment relates to the sovereign risk to the timber industry arising from government decisions to reduce wood supply volumes.

Whilst the Tasmanian government has indicated that it has decided to support the amendment, if moved, it does not appear to be publicly available and as such we are unable to comment on whether this would provide any comfort to private wood growers or, indeed, anyone else.

In our view, the issue of sovereign risk is of such importance that the Government must make a commitment itself to addressing this issue in the Bill itself. It is not acceptable to hand-pass this to a possible amendment made by an independent member of the Legislative Council.

### *Carbon Credits*

Unlike the IGA, the Bill has a heavy focus on carbon credits under the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)*.

The Bill requires the Minister to obtain advice from the Commonwealth Minister as to whether the proposed reserves would qualify under s41 of that Act. The Bill also amends s11(2) of the *Nature Conservation Act* to include 11(2)(c) which would allow the Governor to declare by proclamation that a purpose of the reservation is for avoiding carbon emissions or sequestering carbon.

The purpose of these provisions is unclear. Likewise who benefits from obtaining carbon credits is similarly unclear as is the potential value of those credits.

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The Bill's clause notes, fact sheet and the Minister's second reading speech do not shed much light on this issue. The clause notes and fact sheet suggest that the purpose of requiring the Minister to obtain advice from the Commonwealth Minister is to identify whether reserving particular land will exclude the reserve from projects being considered for a carbon farming project under the *Carbon Credits (Carbon Farming Initiative) Act*. The Minister's second reading speech stated that 'it is expected that carbon sequestration and reduced greenhouse gas emissions will be an important purpose of any reserve established under this Bill'.

How that is to operate in practical terms is not explained.

### *Compensation*

When making the protection order the Minister must include the activities that will be prohibited as a consequence of making the order (s10(4)(e)). Section 10(9)(b) then provides that 'no activities referred to in subsection (4)(e) can be authorised, approved or permitted by any person, pursuant to the performance or exercise of functions or powers under any written law, on the land specified in the protection order'.

Logically, forestry operations would be prohibited by the protection order. To do otherwise would defeat the purpose of the protection order, which is clearly to protect the identified land pending finalisation of the reserves and indeed that is made clear by s10(9)(c) which revokes certified forest practices plans that are identified in the protection order.

The potential problem private forest growers is that, although forestry operations will be prohibited under s11, no compensation is payable as a consequence of the making of the protection order. Some people may be greatly affected by and immediately upon the making of the protection order, but will not be entitled to any compensation until, and if, they become eligible for compensation under s18.

Section 10(10) provides that s10(9) (other than in respect of the revocation of certified forest practices plans) does not extinguish or otherwise affect the right to commence or carry on any activity on the land specified in the protection order authorised, approved or permitted before the commencement of the protection order. We interpret that subsection to mean that forestry operations will be immediately prohibited (to the extent that the certified forest practices plans are identified in the protection order), but that all other appropriately authorised, permitted or approved pre-existing activities will be permitted to continue. Presumably that would include activities such as grazing rights etc.

The only people who are entitled to compensation under s18 are people affected by:

- the extinguishment of a contract for the sale of land (this would rarely arise because the Act does not apply to private land, so would only arise in circumstances of a contract for the sale of Crown land, State forest or land owned by Forestry Tasmania or another state-owned company for government business enterprise having been extinguished upon proclamation of the reserves);
- the extinguishment of a forestry covenant; or
- the extinguishment of a forestry right.

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Whilst a forestry covenant or forestry right does not have to be registered under the *Forestry Rights Registration Act 1990*, it is unclear whether unregistered forestry covenants or forestry rights would be sufficient to entitle a person to compensation under s18.

Probably of greater concern, however, is that there are potentially many classes of people who will be greatly affected by the making of the reserves who will not be entitled to any form of compensation. For example, a forest contractor may not have a forestry right, yet may suffer considerable loss upon the making of the protection order as a result of the inability to fulfil contracts etc. In addition, there is no entitlement to compensation for those people affected by the flow on consequences of the making of the reserves.

Section 18 provides for compensation to be payable upon the finalisation of the reservation process. So even those people who do become entitled to compensation will have to wait a relatively long time for settlement of their claims. This may be of great concern where economic loss may be significant and felt immediately.

Current experience with compensation payments under the Forest Practices Act does not instil confidence that the process will be straightforward, timely or fair.

#### *Special Council*

The Bill makes provision for the establishment of a Special Council to oversee implementation of the Bill following its enactment.

Membership of this Council will be limited to representatives of the signatory groups, even though the issues under consideration will have implications across the whole Tasmanian. In our view, this is not an appropriate mechanism. If there is to be an oversight body, TFGA believes membership should be much wider. At the very least, private forest growers should be represented on any such Council.

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## 5. GENERAL COMMENTS

### 5.1 *The “durability” myth*

In spite of the attempt in the Bill to link the creation of reserves to signatory ENGOs honouring their undertakings in the TFA, there is absolutely nothing in the Bill to ensure that they do so once reserves have been created. Resource security for the Forest Industry means nothing if it is simply for a period of a few years; investment in mills and markets is for decades.

Moreover, the Bill does nothing to define the term “durability” or the process by which the Special Council will come to a decision in its “durability” reports on whether signatory organisations are in fact honouring their obligations (consensus? majority? unanimity?). Nor does the composition of the Special Council help in that regard. There will clearly be a majority of non-ENGO members in the Special Council. The history of the forestry debate suggests that this will be a point of instability rather than stability in this process.

However, the single most important fact with regard to the “durability” or otherwise of the arrangement set out in the TFA, is the complete absence of any provision in the Bill to deal with anti-forest industry action by ENGOs who are not signatory to the TFA, or by individuals.

We have already seen (ex Senator and Leader of the Australian Greens) Bob Brown and (ex Leader of the Tasmanian Greens) Peg Putt, together with a number of non-signatory ENGOs, strongly criticising ENGO signatories who have indicated that they will be travelling to forest industry markets to assure those markets of their support for product placed in those markets.

In short, the Bill does absolutely nothing to underwrite the “durability” of the TFA in any more than the most superficial way.

### 5.2 *The conservation myth*

There has been a prevailing belief in ENGO (and other) circles that the best way to protect natural values in native forest in Tasmania is to simply lock it up in reserves (of course, in the next breath reserve proponents start making convenient exceptions to the rule with such things as bushwalking, “eco-tourism”, craftwood collection, selective harvest of single trees, bee keeping and the like).

There is always also the perceived need to protect so-called “natural” reserves from wildfire. Not many ENGOs are in favour of encouraging fires in reserves, or leaving them to burn unchecked when they start in or threaten reserves, albeit fire has always been a natural factor in Tasmanian landscapes.

Many natural values are indeed well protected in reserves, but others are not. Perhaps the outstanding example of those which are not are the very tall eucalyptus trees in the mixed forest which is the target of most of the reserve demands by ENGOs. Mixed forest carries a “mixture” of eucalyptus and rainforest species, with an overstorey of eucalyptus and an understorey of rainforest species. The eucalypts are a pioneer species in mixed forest sites, taking over newly cleared ground (where clearance has been, for example, by wildfire or regeneration burn) rapidly and thoroughly, but will not regenerate in the shade of other plants.

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Eucalyptus overstoreys in mixed forest are therefore almost invariably of a single age (on some occasions two ages), reflecting regeneration after a specific catastrophic event in the past. Rainforest species, in contrast, thrive in shade.

If mixed forest is reserved and protected from wildfire, it will over time lose its eucalyptus overstorey, as this reaches its natural lifespan (perhaps 400 years) and dies, and become pure rainforest. Total reservation will thus condemn mixed forest to the loss of the very tall eucalypts which are its dominant feature and its key attraction for ENGOs, not protect that feature.

There is certainly a place, and a very important place, for the creation of reserves as part of a scientific conservation program, However, let there be no doubt about the fact that the reservation objectives of ENGOs signatory to the TFA are not based on any reputable science but are essentially purely emotional. Current reserves satisfy the scientific case for reservation.

There has been no scientific case put for the reservation of those areas agreed as requiring reservation in the TFA. Indeed reservation will work against the conservation of current values in many instances. Rather, reservation as proposed here is really based on no more than emotional constructs.

### **5.3     *Impacts on private wood growers***

The single biggest impact of the Bill on the forest industry will be the decimation of Tasmania's high quality sawlog resource and related arisings (other elements of an integrated forest harvest such as peeler and pulp logs) and therefore resulting reduced opportunities to add value to the state's wood resource as a whole, now and in future. This has a direct relevance to the wood resource on private land.

Capacity to add value to a wood resource is a direct function of investment in necessary equipment, technology and skills to allow the necessary sophisticated modification of logs.

This holds true regardless of whether the object is to produce sawn timber, reconstituted wood products, veneer, or pulp and paper. Justification of that investment is in turn a direct function of sustainable resource volume (ie. scale). The greater the sustainable volume of resource, the greater the opportunities to add value, and the more likely that necessary investment in manufacturing and marketing will be forthcoming.

In this context, the wood resource on State Forest and Crown Land cannot be separated from that on private land. To the extent that the sustainable volume of wood harvest from State Forest is reduced, the potential to add value to and to market the private forest resource will also be reduced. Any reduction in the sustainable wood resource from State Forest and other Crown Land will have an immediate and adverse impact on opportunities for private land owners to add value to their own wood, because value adding opportunities are directly related to the scale of overall sustainable wood volumes.

Nor is this simply related to current technology and products. Opportunities for the development of new products in future, including reconstituted wood products, pulp and paper, and biofuels will depend directly on sustainable resource volume availability.

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The reduction of sustainable native forest wood supply, both sawlog and related arisings, from State Forest and other Crown Land, will directly reduce opportunities for private land owners to sell their wood into value adding markets, because it reduces overall resource volume available to the forest industry and therefore the feasibility of value adding investment by the industry.

Finally, it is simplistic in the extreme to believe that private wood growers can (or would) simply expand production of the private resource to compensate for a reduction in State Forest wood supply. Quite apart from the financial investment required for plantation establishment and management, plantations compete directly with other crop options on farms, whereas native forest allows productive use of land which is not allowed to be cleared of native vegetation or is otherwise unusable (eg uncultivable).

Apart from the current market situation, the legislated conversion ban coming into place in 2015 poses significant disincentive for private forest growers. There would be no attraction for a farmer to turn productive agricultural land over to long cycle forest crops when there is no certainty in either market or production environments.

#### **5.4 Fire**

There can be no doubt that the creation of some 500,000 ha of additional reserves in Tasmania, all of it inevitably adjoining ongoing wood production State Forest or private land, will massively exacerbate wildfire control problems in the state in future.

The massive reduction in Tasmania's forest industry which will result with passage of the Bill, will in turn massively reduce the capacity of the state's fire fighting resources.

Downsizing of Forestry Tasmania and forestry companies, the departure of many logging contractors and the loss of logging equipment means that most responsibility for fighting forest fires in the state in future will fall on an increasingly under-resourced Parks and Wildlife Service.

The loss of skills and heavy equipment in particular will mean a serious and permanent reduction in forest fire fighting capacity.

Equally serious will be the additional financial burden that will fall on tax payers – in a state that has massive budgetary problems now and an economy which is in a dreadful state. Much of the cost of fire fighting till now has been absorbed by Forestry Tasmania and the Forest Industry from their own resources – in other words, paid for from the businesses they operate.

With a reduced capacity to fund fire fighting and a reduction of the area they need to fight fires in, a far greater forest fire fighting burden will fall on an under resourced Parks and Wildlife Service and volunteer Country Fire Brigades.

The Bill does not consider the consequences of a diminished forest industry and an increased reservation estate, for Tasmania's forest fire fighting capacity.



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## **5.5 Community impacts**

Decimation of Tasmania's forest industry and decimation of its potential to grow in future in product areas of natural advantage, will seriously impact on the health and vitality of the state's rural communities. The down turn in the health of the forest industry in recent years, which has occurred for a variety of market and other reasons, has left individual communities struggling. Withdrawal of resource on the scale envisaged by the TFA and the Bill will simply cement what is largely a cyclical reduction in place permanently.

Tasmania's rural communities do not in general rely specifically on individual industries for their health. The nature of the state is such that most regions support a variety of industries, and the permanent downsizing of any of these will necessarily reduce employment opportunities, regional income, and ability to sustain the supplier and service businesses they do now.

Implementation of the TFA and Bill will see permanent damage to many of the rural communities around Tasmania, which rely on a healthy mix of industries to support their current economies.

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## 6. WHAT NOW?

### 6.1 *Fundamental flaws in the process to date*

As noted, the Bill will have a significant impact on private wood growers, private land owners more generally and rural communities. Of particular note for private land owners and rural communities is what will undoubtedly be a decline in community health and a seriously increased risk of exposure to wild fires. If the Bill is enacted, Tasmanians can expect to see a significant increase in the sort of wild fire events that we have seen in January of 2012 – not because of an increased incidence of fires but because of a seriously reduced capacity to fight fires. We have arrived in this situation because the Government has made no discernible effort to investigate important assumptions that underlie the TFA before drafting the Bill.

Specifically, no consideration has been given as to whether:

- it will in fact deliver the resource certainty the forest industry is seeking;
- further reservation will deliver the conservation benefits that are clearly anticipated; and
- there will be adverse impacts on other industries and the community generally.

The TFA is essentially a private agreement negotiated by a very limited number of organisations, focussing on a very narrow range of issues in a very opaque process. The outcome has not been subjected to any independent assessment of wider economic, social or environmental impacts. Doing so may not have been incumbent on TFA signatories but it is certainly incumbent on the Government.

It is a lack of due process on the part of the Government that has brought the Bill to a situation where it has quite rightly been put on hold by the Legislative Council, while the Legislative Council puts it under scrutiny.

### 6.2 *Appropriate Action by the Legislative Council*

There is no way that the Tasmanian Parliament can responsibly pass the Bill in its present form. Nor do the voluminous amendments proposed by the Government in early January 2012 address any of the fundamental flaws in the Bill.

The appropriate course of action for the Legislative Council, as a house of review, in the circumstances, is to send the Bill back to the House of Assembly and ask the Government to commission the rigorous and independent economic, social and environmental assessments of the wider implications of the TFA that good legislative process demands, and to consider any subsequent legislation proposed by the Government in light of that scrutiny.

The TFGA, as the peak representative organisation for the vast majority of private wood producers and rural primary producers in Tasmania, and an important voice for rural communities, we call very loudly for Parliament to insist that the Government apply due process before providing legislative backup for a private agreement on land use in the Crown estate. In our view, the Legislative Council should return the Bill to the House of Assembly with a requirement that it be subjected to rigorous and independent economic, social and environmental assessment before it will re-consider it.

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## 7 CONCLUSION

The *Tasmanian Forests Agreement Bill 2012* is seriously flawed in a number of ways. It does essentially nothing to secure the “durability” that signatories of the *Tasmanian Forests Agreement*, for which it seeks to provide legislative support, are seeking for that agreement. Nor has any scientific case been made that more reserves are required to protect natural values in Tasmanian native forests. Finally, it will effectively legislate against the interests of private wood growers, rural land owners generally and rural communities.

The *Tasmanian Forests Agreement Bill 2012* will not deliver the benefits for the forest industry or nature conservation that it is premised on. It will seriously impact on farmers and rural communities. Most importantly, it will restrict possible avenues of economic growth that are essential for the State’s future.

On the other hand it makes massive, long term decisions with regard to an important public resource, which would have substantial adverse effects on other industries, private land owners and on regional communities generally. The only way in which the weaknesses in the Bill can be fixed is to institute the studies which should have gone into it in the first place and reconsider it in light of the outcomes of those.

All of these problems fundamentally derive from the fact that the Bill is inherently and irrevocably flawed. It is based on a very narrow agreement negotiated between a very small group of proponents with very specific objectives; and because it seeks to provide legislative backup for what is essentially a private agreement on a very narrow topic, without any assessment of the wider consequences of that agreement.

While a private agreement is something for the signatories, restrictions on the use of public land and legislative backup for that agreement are a matter for all Tasmanians.

A decision such as this is simply not acceptable in the absence of rigorous economic, social and environmental assessment to demonstrate that outcomes are in fact the best way to achieve universally agreed objectives. Furthermore, there is a need for wide community consultation before any further alienation of publicly owned lands is even considered.

***The TFGA strongly recommends to the Legislative Council that it send the Tasmanian Forests Agreement Bill 2012 back to the Legislative Assembly requesting rigorous and independent economic, social and environmental assessments of the measures that the Government is seeking to secure through the Bill, for its consideration.***