



Western Australia

## **Forest Products Act 2000**

Compare between:

[01 Oct 2010, 02-b0-01] and [05 Nov 2010, 02-c0-01]



Western Australia

## **Forest Products Act 2000**

**An Act to establish the Forest Products Commission and for related matters.**

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Forest Products Act 2000*<sup>1</sup>.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation<sup>1</sup>.

**3. Terms used**

In this Act, unless the contrary intention appears —

**Account** means the Forest Products Account referred to in section 42;

**CALM Act** means the *Conservation and Land Management Act 1984*;

**CALM Act CEO** has the meaning given to **CEO** by section 3 of the CALM Act;

**CALM Act Department** has the meaning given to **Department** by section 3 of the CALM Act;

**CALM Act Minister** means the Minister administering the CALM Act;

**CALM Act sharefarming agreement** means a timber sharefarming agreement referred to in section 34B of the CALM Act (not being a timber sharefarming agreement to which Schedule 1 clause 4 of the *Conservation and Land Management Amendment Act 2000* applies);

**Commission** means the Forest Products Commission established by section 5(1);

**Commission sharefarming agreement** means a timber sharefarming agreement under Part 7 or a timber sharefarming agreement to which Schedule 1 clause 4 of the *Conservation and Land Management Amendment Act 2000* applies;

**commissioner** means a person who is a commissioner under section 6(1);

**Conservation Commission** means the Conservation Commission of Western Australia established by the CALM Act;

**departmental land** means —

- (a) State forest and timber reserves within the meaning of the CALM Act;
- (b) land that is the subject of a declaration under section 87(2) of the CALM Act; or
- (c) land held by the CALM Act CEO under section 131 of the CALM Act;

**firewood** does not include firewood that, under the CALM Act —

- (a) may be removed by members of the public from an area set aside under that Act as a public firewood area; or
- (b) may be used on a campfire or barbecue in the immediate vicinity of a camping area or picnic area;

**forest products** has the meaning given by section 4;

**General Manager** means the person holding or acting in the office mentioned in section 38(1);

**harvesting** means —

- (a) felling or cutting forest products;
- (b) taking or removing forest products;
- (c) in the case of felled trees, or parts of felled trees, measuring them; and
- (d) delivering forest products to a buyer or transporting forest products to a place where they can be collected by a buyer;

**manage**, in relation to forest products, includes establish, regenerate, grow, tend (including thinning) and protect;

**production contract** has the meaning given by section 55;

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**profit**, in relation to the exploitation of forest products produced on public land, means an appropriate return to the State for that exploitation;

**public land** means —

- (a) Crown land as defined in section 87 of the CALM Act; or
- (b) departmental land;

**relevant management plan** has the meaning given by section 55;

**sharefarmed land** means land that is the subject of a Commission sharefarming agreement or a CALM Act sharefarming agreement;

**staff member** means a member of the Commission's staff other than the General Manager (including an officer or employee referred to in section 40(1));

**the commissioners** means the commissioners acting as the governing body of the Commission under section 6(4);

the terms **management plan**, **State forest**, **timber**, **timber reserve** and **tree** have the same meanings as they have in the CALM Act.

[Section 3 amended by No. 28 of 2006 s. 14.]

**4. Term used: forest products**

For the purposes of this Act —

**forest products** means —

- (a) trees or parts of trees;
- (b) timber, sawdust or chips;
- (c) charcoal, gum, kino, resin or sap; and
- (d) firewood,

located on public land or sharefarmed land.

## **Part 2 — Forest Products Commission**

### **5. Forest Products Commission established**

- (1) A body called the Forest Products Commission is established.
- (2) The Commission is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Commission in its corporate name.
- (4) The Commission is an agent of the Crown in right of the State and, except as provided in sections 9 and 43, enjoys the status, immunities and privileges of the Crown.

### **6. Commissioners**

- (1) The Commission is to have 7 commissioners appointed by the Governor on the nomination of the Minister as having such expertise in commercial activities, the plantation timber industry or labour relations as is relevant to the functions of the Commission.
- (2) The Governor is to appoint 2 of the commissioners to be the chairman of the Commission and the deputy chairman of the Commission respectively.
- (3) A person is ineligible to be appointed or hold office as a commissioner if the person is —
  - (a) the General Manager or a staff member;
  - (b) a member of the Conservation Commission or a member of its staff;
  - (c) the CALM Act CEO or an employee of the CALM Act Department;
  - (d) a person who has a material personal interest in a production contract or in a company or business that is a party to a production contract.
- (4) The commissioners are the governing body of the Commission.

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- (5) The commissioners, in the name of the Commission, are to perform the functions, determine the policies and control the affairs of the Commission.

*[Section 6 amended by No. 28 of 2006 s. 15 and 20.]*

**7. Constitution, proceedings etc.**

Schedule 1 has effect with respect to commissioners and meetings and proceedings of the commissioners.

**8. Remuneration of commissioners**

- (1) A commissioner is to be paid such remuneration and travelling and other allowances as are determined in the commissioner's case by the Minister on the recommendation of the Minister for Public Sector Management.
- (2) A commissioner who is an employee (as defined in the *Public Sector Management Act 1994*) is to be paid only such travelling and subsistence allowances as are determined in that commissioner's case by the Minister on the recommendation of the Minister for Public Sector Management.



## **Part 3 — Functions of Commission**

### **9. Compliance with written laws**

Subject to section 43, nothing in this Act is to be read as conferring on the Commission in the performance of its functions any immunity from the operation of any written law.

### **10. Functions of Commission**

- (1) It is a function of the Commission —
- (a) to advise the Minister on matters relating to the production and yield of forest products;
  - (b) to advise the Minister on the commercial value and prices of forest products;
  - (c) to sell forest products by way of contract;
  - (d) to promote and encourage the development of the forest production requirements of the State, and to undertake any project or operation for that purpose;
  - (e) to acquire rights and powers, and accept obligations —
    - (i) under Commission sharefarming agreements; or
    - (ii) through the agency of the CALM Act CEO under CALM Act sharefarming agreements;
  - (f) to enter into a contract with any person for the doing by that person of anything that the Commission is authorised or required to do under a Commission sharefarming agreement;
  - (g) to maintain, or establish and maintain —
    - (i) plantations of forest products;
    - (ii) plant nurseries for the production of forest products; or
    - (iii) seed or propagation orchards of forest products;
  - (h) to enter into contracts with any person for the management of forest products;

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- (i) to enter into contracts with any person for the harvesting of forest products;
- (j) to promote, and to advise the Minister in relation to, employment in, and development of, the forest products industry;
- (k) for the purpose of ensuring that any stockpile of forest products is kept to a minimum, to enter into arrangements with the CALM Act CEO in relation to —
  - (i) the amount of forest products that can be stockpiled; and
  - (ii) the circumstances in which forest products can be stockpiled;
- (l) to enter into a memorandum of understanding with the CALM Act CEO relating to the performance of the Commission's and that CEO's respective functions and any other matter prescribed under the CALM Act;
- (m) to monitor the cost of production of forest products, including the costs of services provided by the CALM Act CEO in respect of —
  - (i) the use, management and protection, for any purpose, of land on which forest products are located;
  - (ii) the management of forest products;
  - (iii) the harvesting of forest products;
  - (iv) the construction of roads or other infrastructure for the purposes of managing or harvesting forest products;
  - (v) silvicultural operations and other preparations before, and silvicultural operations after, the felling or cutting of forest products; and
  - (vi) regeneration of the forest products after felling or cutting;

- (n) to participate in the preparation of any management plan under Part V of the CALM Act in relation to land that is State forest or a timber reserve;
- (o) to provide the CALM Act CEO with records of the quantities and types of all forest products harvested on public land and, if applicable, the grade of forest products so harvested;
- (p) to advise the Minister as to the performance of the Minister's functions —
  - (i) under subsection (6a) of section 17 of the CALM Act in relation to a proposal under subsection (2) of that section to cancel or amend the purpose of a timber reserve or alter a boundary of a timber reserve; or
  - (ii) under section 62(1aa) of the CALM Act in relation to the classification, or changes to the classification, of areas within State forests and timber reserves as forest products temporary control areas;
- (q) to promote the sustainable use of indigenous forest products located on public land having regard to the provisions of relevant management plans;
- (r) to consult with, and provide advice to, the public and the forest products industry as to the policies and programmes of the Commission;
- (s) to carry out or cause to be carried out such study or research of or into a matter relating to a function of the Commission as the Minister may approve;
- (t) to develop and turn to account any technology, software or other intellectual property that relates to the function referred to in paragraph (s) and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;

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- (u) to provide services relating to the establishment, maintenance, management, harvesting and marketing of tree plantings, and products from tree plantings, on land that is not public land, and to charge fees for the provision of those services;
  - (v) to provide equipment, facilities and systems associated with the performance of a function referred to in paragraph (u), and to charge for that provision; and
  - (w) to promote and market the Commission and its activities.
- (2) It is not a function of the Commission —
- (a) to be vested under any Act with land;
  - (b) to have placed with it under the *Land Administration Act 1997* the care, control and management of land; or
  - (c) to manage land.
- (3) Nothing in subsection (2) prevents the Commission from —
- (a) acquiring and managing premises by way of purchase or lease for use by it —
    - (i) as office premises; or
    - (ii) in performing its functions under subsection (1)(s);
  - (b) controlling land to the extent required for managing forest products;
  - (c) controlling land to the extent required for the harvesting and sale of forest products;
  - (d) acquiring or holding interests in land, or managing land to the extent required for the purposes of Commission sharefarming agreements;
  - (e) acquiring or holding interests in land, or managing land, through the agency of the CALM Act CEO to the extent required for the purposes of CALM Act sharefarming agreements;

- (f) having land vested in it, or the care, control and management of land placed with it, for the purposes of subsection (1)(g); or
  - (g) leasing land for a purpose consistent with the Commission's functions.
- (4) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.
- (5) This Act does not limit or otherwise affect the operation of the *Wildlife Conservation Act 1950* in relation to the Commission or any other person.
- (6) Subsection (5) does not apply to anything done under a production contract relating to departmental land if it is done in accordance with the relevant management plan.
- (7) A copy of a memorandum of understanding made under subsection (1)(l) must be tabled in each House of Parliament not later than 14 sitting days of each House from the day on which that memorandum of understanding was executed.

*[Section 10 amended by No. 50 of 2004 s. 4; No. 28 of 2006 s. 16 and 20.]*

**11. Duty to act in accordance with policy instruments**

The Commission is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

**12. Principles on which Commission is to act**

- (1) The Commission in performing its functions must try to ensure that a profit that is consistent with the planned targets is made from the exploitation of forest products while ensuring —
- (a) the long-term viability of the forest products industry;
  - and

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- (b) the principles of ecologically sustainable forest management are applied in the management of indigenous forest products located on public land.
- (2) For the purposes of subsection (1)(b) the principles of ecologically sustainable forest management are —
- (a) that the decision-making process should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
  - (b) that if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
  - (c) that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
  - (d) that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making; and
  - (e) that improved valuation, pricing and incentive mechanisms should be promoted.
- (3) In subsection (1) —
- planned targets*** means the operational and performance targets set out in the Commission’s current strategic development plan and statement of corporate intent.
- (4) If there is any conflict or inconsistency between —
- (a) the duty imposed by subsection (1) and a direction given by the Minister under section 14; or
  - (b) the duty imposed by subsection (1) and the duty imposed by section 11,
- the direction given under section 14, or the duty imposed by section 11, prevails.

**13. Delegation**

- (1) The Commission may, by instrument, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
  - (a) a commissioner or commissioners;
  - (b) the General Manager;
  - (c) a staff member; or
  - (d) a committee established under Schedule 1 clause 16.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.
- (4) A function performed by a delegate of the Commission is to be taken to be performed by the Commission.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

## **Part 4 — Accountability**

### **Division 1 — Ministerial directions and provision of information**

#### **14. Minister may give directions**

- (1) The Minister may give written directions to the Commission with respect to the performance of its functions under this Act either generally or in relation to a particular matter but any such direction must not be inconsistent with the provisions of a relevant management plan.
- (2) The Commission must give effect to any such direction when it becomes effective under this section.
- (3) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 69 —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.
- (5) Subject to subsections (7) and (8), a direction under subsection (1) becomes effective on the expiry of 7 days after the commissioners receive it or of such longer period as the Minister may, at the request of the commissioners, determine.
- (6) If the commissioners ask the Minister to extend the 7 day period under subsection (5), the Minister must decide whether or not to



agree to the request and notify the commissioners of that decision before the 7 day period has expired.

- (7) If a direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (8).
- (8) Despite subsection (4) of section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, the Minister may, when confirming a direction under that section, extend the time for the direction to become effective and notify the commissioners of the extension.

*[Section 14 amended by No. 77 of 2006 Sch. 1 cl. 70(1).]*

**15. Minister to have access to information**

- (1) The Minister is entitled —
- (a) to have information in the possession of the Commission; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Commission to furnish information to the Minister;
  - (b) request the Commission to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the General Manager and staff members to obtain the information and furnish it to the Minister.
- (3) The Commission must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of subsection (2)(c).

- (4) In this section —

**document** includes any tape, disc or other device or medium on which information is recorded or stored;

**information** means information specified, or of a description specified, by the Minister that relates to the functions of the Commission.

**16. Consultation**

- (1) The commissioners and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operations of the Commission.
- (2) The commissioners must consult the Minister before the Commission enters upon a course of action that in the opinion of the Commission —
- (a) amounts to a major initiative; or
  - (b) is likely to be of significant public interest.

**17. Minister to be kept informed**

Without limiting section 15, the commissioners must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Commission, including the assets and liabilities, surpluses and deficits and prospects of the Commission;
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the opinion of the commissioners may prevent, or significantly affect, achievement of the Commission's —
  - (i) objectives outlined in its statement of corporate intent; or

(ii) targets under its strategic development plan, promptly inform the Minister of the matters and its opinion in relation to them.

**18. Notice of financial difficulty**

- (1) The commissioners must notify the Minister if the commissioners form the opinion that the Commission is unable to, or will be unlikely to be able to, satisfy any financial obligation of the Commission from the financial resources available or likely to be available to the Commission at the time the financial obligation is due.
- (2) Within 7 days of receipt of the notice, the Minister must —
  - (a) inform the Treasurer of the notice and provide any further information requested by the Treasurer;
  - (b) confer with the Treasurer and the commissioners for the purpose of determining what action is required to ensure that the Commission is able to satisfy the relevant financial obligation when it is due; and
  - (c) initiate such action as is required to ensure that the Commission is able to satisfy the relevant financial obligation when it is due.

**19. Half-yearly reports**

- (1) In addition to the reporting requirements referred to in section 50, the Commission must, for the first half of a financial year, give to the Minister a report on the operations of the Commission.
- (2) A half-yearly report must be given to the Minister —
  - (a) within 2 months after the end of the reporting period; or
  - (b) if another period after the end of the reporting period is agreed between the Minister and the commissioners, within the agreed period.

- (3) The Commission must give a copy of each half-yearly report to the Treasurer.
- (4) A half-yearly report must include the information required to be given in the report by a relevant statement of corporate intent under Division 2.
- (5) The Minister must within 14 days after given a half-yearly report cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

**Division 2 — Strategic development plans and statements of corporate intent**

**Subdivision 1 — Strategic development plans**

**20. Draft strategic development plan to be submitted to Minister**

- (1) The commissioners must in each year prepare, and submit to the Minister for his or her agreement, a draft strategic development plan for the Commission.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the commissioners —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 20 amended by No. 77 of 2006 s. 10.]*

**21. Period to which strategic development plan relates**

A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

**22. Matters to be included in strategic development plan**

- (1) The strategic development plan must set out the Commission's medium to long term objectives (including economic and financial objectives and objectives relating to the non-commercial functions of the Commission) and operational targets and how those objectives and targets will be achieved.
- (2) The matters which are to be considered in the preparation of the strategic development plan include —
  - (a) pricing principles in relation to the sale of forest products by the Commission having regard to the matters referred to in section 12(1);
  - (b) having regard to any relevant management plan —
    - (i) strategies for harvesting;
    - (ii) service efficiency and effectiveness; and
    - (iii) productivity levels;
  - (c) competitive strategies, sales and revenue projections, infrastructure maintenance, financial requirements, capital expenditure, customer service arrangements, relevant government policy and personnel requirements; and
  - (d) any other matters that the Minister and the commissioners agree should be considered.

**23. Strategic development plan to be agreed if possible**

The commissioners and the Minister must endeavour to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

**24. Minister's powers in relation to draft strategic development plan**

- (1) The Minister may return the draft strategic development plan to the commissioners and request them to —
  - (a) consider or further consider any matter and deal with the matter in the draft plan; and
  - (b) revise the draft plan in the light of its consideration or further consideration.
- (2) The commissioners must comply with the request as soon as is practicable.
- (3) If the commissioners and the Minister have not reached agreement on the draft strategic development plan by one month before the start of the next financial year, the Minister may, by written notice, direct the commissioners —
  - (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) The commissioners must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

**25. Strategic development plan pending agreement**

- (1) If the commissioners and the Minister have not reached agreement on the draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for the Commission until a draft strategic development plan is agreed to under section 26.
- (2) In subsection (1) —

***latest draft plan*** means the draft strategic development plan submitted, or last submitted, by the commissioners to the

Minister before the start of the financial year with any modifications made by the commissioners, whether before or after that time, at the direction of the Minister.

**26. Minister's agreement to draft strategic development plan**

When the commissioners and the Minister reach agreement on a draft strategic development plan, it becomes the strategic development plan for the relevant financial year or the remainder of the year, as the case may be.

**27. Modifications of strategic development plan**

- (1) A strategic development plan may be modified by the commissioners with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the commissioners to modify the strategic development plan and the commissioners must comply with any such direction.
- (3) Before giving a direction to the commissioners under subsection (2) the Minister must consult with the commissioners and take their views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

**28. Concurrence of Treasurer**

The Minister is not to —

- (a) agree to a draft strategic development plan under section 26; or
- (b) agree to or direct any modification of a strategic development plan under section 27,

except with the concurrence of the Treasurer.

**Subdivision 2 — Statement of corporate intent**

**29. Draft statement of corporate intent to be submitted to Minister**

- (1) The commissioners must in each year prepare, and submit to the Minister for his or her agreement, a draft statement of corporate intent for the Commission.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the commissioners —
  - (a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft statement of corporate intent is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 29 amended by No. 77 of 2006 s. 10.]*

**30. Period to which statement of corporate intent relates**

- (1) A statement of corporate intent is to cover a financial year.
- (2) The first statement of corporate intent of the Commission is to be in respect of the next full financial year after the commencement of this Part.

**31. Matters to be included in statement of corporate intent**

- (1) The statement of corporate intent must be consistent with the strategic development plan under Subdivision 1 for the Commission.



- (2) The statement of corporate intent for the Commission must specify —
- (a) an outline of objectives including —
    - (i) the long-term viability of the forest products industry; and
    - (ii) the application of the principles of ecologically sustainable forest management set out in section 12(2) in the management of indigenous forest products located on public land;
  - (b) the proposed arrangements to facilitate the objectives referred to in paragraph (a)(i) and (ii);
  - (c) an outline of major planned achievements;
  - (d) the performance targets and other measures by which performances may be judged and related to objectives;
  - (e) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year;
  - (f) an outline of the capital expenditure and borrowings to be undertaken or proposed to be undertaken;
  - (g) proposed pricing arrangements;
  - (h) accounting policies that apply to the preparation of accounts for the Commission's commercial and non-commercial functions;
  - (i) the type of information to be given to the Minister, including information to be given in half-yearly reports;
  - (j) the nature and extent of community service obligations that are to be performed;
  - (k) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations;
  - (l) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and

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- (m) such other matters as may be agreed by the Minister and the commissioners.
- (3) The Minister may exempt the Commission from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent and any such exemptions are to be noted in the Commission's statement of corporate intent.
- (4) A reference in subsection (2) to a community service obligation is a reference to a community service obligation that may affect the capacity of the Commission to comply with section 12 in respect of its functions under section 10(1)(c), (e) and (i).

**32. Statement of corporate intent to be agreed if possible**

The commissioners and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

**33. Minister's powers in relation to draft statement of corporate intent**

- (1) The Minister may return the draft statement of corporate intent to the commissioners and request them to —
  - (a) consider or further consider any matter and deal with the matter in the draft statement; and
  - (b) revise the draft statement in the light of its consideration or further consideration.
- (2) The commissioners must comply with a request under subsection (1) as soon as is practicable.
- (3) If the commissioners and the Minister have not reached agreement on a draft statement of corporate intent by one month before the start of the financial year, the Minister may, by written notice, direct the commissioners —
  - (a) to take specified steps in relation to the draft statement; or
  - (b) to make specified modifications to the draft statement.

- (4) The commissioners must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

**34. Statement of corporate intent pending agreement**

- (1) If the commissioners and the Minister have not reached agreement on a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the Commission until a draft statement of corporate intent is agreed to under section 35.

- (2) In subsection (1) —

*latest draft statement* means the draft statement of corporate intent submitted, or last submitted, by the commissioners to the Minister before the start of the financial year with any modifications made by the commissioners, whether before or after that time, at the direction of the Minister.

**35. Minister's agreement to draft statement of corporate intent**

- (1) When the commissioners and the Minister reach agreement on a draft statement of corporate intent, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.
- (2) The Minister must within 14 days after agreeing to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.
- (3) The commissioners may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

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- (4) Any copy of a statement of corporate intent to which subsection (3) applies must contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear and be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

**36. Modifications of statement of corporate intent**

- (1) A statement of corporate intent may be modified by the commissioners with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the commissioners to modify the statement of corporate intent, and the commissioners must comply with any such direction.
- (3) Before giving a direction under subsection (2), the Minister must consult with the commissioners and take their views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

**37. Concurrence of Treasurer**

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 35; or
- (b) agree to or direct any modification of a statement of corporate intent under section 36,

except with the concurrence of the Treasurer.

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## Part 5 — Staff

### 38. General Manager

- (1) The Commission is to have a chief employee to be known as the General Manager.
- (2) Schedule 2 has effect with respect to the General Manager.
- (3) Subject to the control of the commissioners, the General Manager is responsible for, and has the powers needed to administer the day to day operations of the Commission.

### 39. Other staff

- (1) The power to engage and manage the staff of the Commission is vested in the General Manager.
- (2) The power conferred by subsection (1) does not preclude the delegation of any matter under section 13.
- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
  - (a) an applicable industrial award, order or agreement; or
  - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in this section affects the operation of Part VID of the *Industrial Relations Act 1979* or section 100 of the *Public Sector Management Act 1994*.
- (5) Nothing in this Act or in the Commission's strategic development plan or statement of corporate intent affects the Commission's obligations to comply with whole of government policies relating to industrial relations and human resource management that apply generally to public sector bodies within the meaning of the *Public Sector Management Act 1994*.

*[Section 39 amended by No. 20 of 2002 s. 18; amended in Gazette 15 Aug 2003 p. 3692.]*

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**40. Use of other government staff etc.**

- (1) The Commission may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
  
- (2) The Commission may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
  
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

## **Part 6 — Financial provisions**

### **41. Funds of Commission**

The funds available for the purpose of enabling the Commission to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Commission in the performance of its functions;
- (c) moneys borrowed by the Commission under section 45 or 46; and
- (d) other moneys lawfully received by, made available to, or payable to, the Commission.

### **42. Forest Products Account**

- (1) An account called the Forest Products Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in section 41 are to be credited.

- (2) The Account is to be charged with —
  - (a) the remuneration and allowances payable under section 8 or 66(7);
  - (b) the salaries and allowances payable to the General Manager and the staff engaged under section 39;
  - (c) interest on and repayment of moneys borrowed by the Commission under section 45 or 46 and any other fees or charges payable in respect of any such borrowing;
  - (d) the payment of amounts to the CALM Act CEO in accordance with a memorandum of understanding entered into under section 10(1)(1); and

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- (e) all other expenditure lawfully incurred by the Commission in the performance of its functions.

*[Section 42 amended by No. 28 of 2006 s. 17; No. 77 of 2006 Sch. 1 cl. 70(2).]*

**43. Liability of Commission for duties, taxes, rates etc.**

- (1) Despite section 5(4) or any other written law —
  - (a) the Commission; and
  - (b) deeds or other instruments to which it is a party,are liable to and chargeable with duties, taxes or other imposts under any written law.
- (2) Despite subsection (1) and section 9, but subject to subsection (3), land held by the Commission is not rateable land for the purposes of the *Local Government Act 1995*.
- (3) If the Commission leases or lets land held by it, the land is, by reason of the lease or tenancy rateable land for the purposes of the *Local Government Act 1995* in the hands of the lessee or tenant.
- (4) The Commission is to pay to the Treasurer in respect of each financial year an amount equivalent to the sum of all local government rates and charges that, but for subsection (2) and section 6.26(2)(a)(i) of the *Local Government Act 1995*, the Commission would have been liable to pay in respect of that financial year.
- (5) Subsection (4) does not apply in relation to land that is rateable under subsection (3).
- (6) An amount payable under subsection (4) —
  - (a) is to be determined in accordance with such principles; and



- (b) is to be paid at such time or times,  
as the Treasurer may direct.
- (7) The first payment under subsection (4) is to be in respect of the next full financial year after the commencement of this Act.

**44. Dividends**

- (1) Any surplus remaining at the end of a financial year after the cost of the operations of the Commission and the amount of any interim dividend paid under subsection (7) during that financial year have been taken into account —
  - (a) may, in accordance with this section, be paid wholly or partly as a final dividend to the Consolidated Account; and
  - (b) to the extent that it is not so paid, is to be applied for the purposes of the Commission.
- (2) The commissioners, as soon as is practicable after the end of each financial year, are to make a recommendation to the Minister as to —
  - (a) whether a final dividend is to be paid; and
  - (b) if so, the amount to be paid.
- (3) The Minister, with the Treasurer's concurrence —
  - (a) may accept a recommendation under subsection (2); or
  - (b) after consultation with the commissioners, is to direct that the amount of the final dividend is to be some other amount.
- (4) The Commission is to pay the dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (3); and
  - (b) in any case not later than —
    - (i) 6 months after the end of the financial year to which the final dividend relates; or

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- (ii) such other time as may be agreed between the Treasurer and the commissioners.
- (5) If the commissioners consider that payment of an interim dividend to the Consolidated Account is justified during part of a financial year the commissioners may make a recommendation to the Minister as to the amount of the interim dividend that the commissioners recommend should be paid.
- (6) The Minister, with the Treasurer's concurrence —
  - (a) may accept a recommendation under subsection (5); or
  - (b) after consultation with the commissioners, is to direct that the amount of the interim dividend is to be some other amount.
- (7) The Commission is to pay the dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (6); and
  - (b) in any case not later than the end of the financial year to which the interim dividend relates.

*[Section 44 amended by No. 77 of 2006 s. 4.]*

**45. Borrowing from Treasurer**

- (1) The Commission may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.
- (2) By force of this subsection the Account and the assets of the Commission are charged with the due performance by the Commission of its obligations in respect of a loan under subsection (1).

**46. Other borrowing**

- (1) In addition to its powers under section 45, the Commission may with the prior written approval of the Treasurer and on such

terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.

- (2) Any moneys borrowed by the Commission under subsection (1) may be raised —
  - (a) as one loan or as several loans; and
  - (b) in such manner as the Treasurer approves.
- (3) The total amount of the moneys so borrowed in any one financial year is not to exceed such amount as the Treasurer approves.

**47. Guarantee by Treasurer**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Commission in respect of moneys borrowed by the Commission under section 46.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given, the Commission is to —
  - (a) give to the Treasurer such security as the Treasurer requires; and
  - (b) execute all instruments that are necessary for the purpose.
- (4) By force of this subsection the Fund and the assets of the Commission are charged with the due repayment of any payment made by the Treasurer under a guarantee and with the performance and observance by the Commission of any covenants and conditions that the Treasurer imposes as a term of the guarantee.

**48. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee under section 47 is guaranteed by the State.

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- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Account any amounts received or recovered from the Commission or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 47.

*[Section 48 amended by No. 77 of 2006 s. 4 and 5(1).]*

**49. Charges for guarantees**

- (1) The Treasurer may fix charges to be paid by the Commission to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 47.
- (2) Payment of any charges fixed under subsection (1) is to be made at such time or times as the Treasurer determines.

*[Section 49 amended by No. 77 of 2006 s. 4.]*

**50. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 50 amended by No. 77 of 2006 Sch. 1 cl. 70(3).]*

## **Part 7 — Timber sharefarming agreements**

**51. Term used: owner**

In this Part —

*owner* includes a lessee or licensee.

**52. Entry into timber sharefarming agreements**

- (1) The Commission may enter into, or enter into and carry out, whether as a principal or an agent, a timber sharefarming agreement in respect of any land with the owner of that land.
- (2) For the purposes of this Part a timber sharefarming agreement is an agreement —
  - (a) by which the right to establish, maintain and harvest, or the right to maintain and harvest, or the right to harvest, a crop of trees on land is acquired —
    - (i) by the Commission;
    - (ii) by another person through the Commission acting as an agent; or
    - (iii) by the Commission and by another person through the Commission acting as an agent;and
  - (b) which provides for rights, obligations and powers relating to —
    - (i) payment of money or the giving of other consideration by, or the division of the crop or the proceeds of the crop between, the parties to the agreement; and
    - (ii) access to the land and, where appropriate, the undertaking of work or the provision of facilities on it by those parties.
- (3) A timber sharefarming agreement may also contain other matters in addition to those referred to in subsection (2).

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- (4) The references in subsection (2)(a) to the harvesting of a crop of trees include reference to the harvesting of forest products from the crop, and the references in subsection (2)(b) to the crop include reference to forest products from the crop.

**53. Consent of owner and occupier required**

The Commission is not to enter into a timber sharefarming agreement with the lessee or licensee of any land unless the owner of the freehold, and any person occupying the land with the consent of the owner of the freehold, has given approval in writing to the agreement.

**54. Nature of rights created**

- (1) The right acquired as referred to in section 52(2)(a) is a *profit a prendre* and an interest in the land to which the right relates and, except as otherwise provided or permitted under this Act, has all the attributes of a *profit a prendre* including, but not limited to, assignability.
- (2) Subsection (1) has effect despite any rule of law or equity to the contrary and has effect even if the right acquired as referred to in section 52(2)(a) is accompanied by an obligation to exercise that right.
- (3) If the right acquired as referred to in section 52(2)(a) is assigned or otherwise disposed of —
- (a) the Commission or other person assigning or disposing of the right is no longer required to carry out obligations under the timber sharefarming agreement;
  - (b) the timber sharefarming agreement continues to be a timber sharefarming agreement for the purposes of this Part even if the person to whom the right passes is not the Commission and does not acquire the right through the Commission acting as an agent.

- (4) Without limiting subsection (1), a timber sharefarming agreement may be registered as a *profit a prendre* under the *Transfer of Land Act 1893*.
- (5) The obligations and restrictions that bind the owner of any land under a timber sharefarming agreement that is registered under the *Transfer of Land Act 1893* are binding also on the owner's heirs, executors, administrators and successors in title, except to the extent that the agreement otherwise provides.
- (6) Where a timber sharefarming agreement in respect of any land is registered under the *Transfer of Land Act 1893* and bears the written consent of a mortgagee or chargee of the land whose mortgage or charge was registered before the timber sharefarming agreement, the estate or interest of the owner of the land passing to and vesting in a purchaser on a sale by the mortgagee or chargee is subject to the timber sharefarming agreement.
- (7) A timber sharefarming agreement is not a lease or licence to which section 136 of the *Planning and Development Act 2005* applies.
- (8) The provisions of this section extend to a timber sharefarming agreement to which Schedule 1 clause 4 of the *Conservation and Land Management Amendment Act 2000* applies.

*[Section 54 amended by No. 38 of 2005 Sch. 2 cl. 24.]*

## **Part 8 — Contracts for the management, harvesting or sale of forest products**

### **55. Terms used**

In this Part, unless the contrary intention appears —

**plantation product** means a forest product from or comprising a plantation tree and includes —

- (a) the whole tree; or
- (b) a part of the tree or a thing produced by the tree, whether or not the part of the tree or the thing produced by the tree is above or below the ground or has become separated from the tree before being harvested;

**plantation product contract** means a production contract for the management, harvesting or sale of plantation products, and no other forest products, to which the Commission is a party but does not include such a contract entered into or to be entered into under a Government agreement within the meaning of the *Government Agreements Act 1979*;

**plantation tree** means a tree that —

- (a) is not indigenous to the State; and
- (b) is from a plantation maintained by the Commission on departmental land;

**production contract** means a contract for the management, harvesting or sale of forest products to which the Commission is a party;

**relevant management plan**, in relation to a production contract, means the management plan that —

- (a) relates to departmental land on which forest products that are to be managed, harvested or sold under the contract are located; and
- (b) has effect during the term of the contract;



**road contract** means a contract (other than a production contract) providing for the construction or maintenance of roads for the purposes of managing or harvesting forest products.

*[Section 55 amended by No. 50 of 2004 s. 5.]*

#### 56. **Contracts generally**

Without limiting section 10(4), the Commission may make any appropriate commercial arrangements, or do anything else that it considers appropriate, for the purposes of entering into production contracts and road contracts, including —

- (a) conducting negotiations by private treaty;
- (b) calling for expressions of interest;
- (c) calling tenders; and
- (d) arranging sales by auction.

#### 57. **Harvesting contracts and related arrangements**

- (1) A production contract with a person for the management or harvesting of forest products may provide for the person's obligations as to —
  - (a) the construction or maintenance of roads or other infrastructure for the purposes of managing or harvesting;
  - (b) silvicultural operations or other preparations before, and silvicultural operations after, the felling or cutting of forest products; and
  - (c) regeneration of forest products after felling or cutting.
- (2) If forest products to be managed or harvested under a production contract are located on departmental land —
  - (a) the Commission must enter into arrangements with the CALM Act CEO in relation to —
    - (i) the access of the contractor and the contractor's employees and agents to that land for the

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performance of the contractor's functions under the contract; and

- (ii) the performance of the CALM Act CEO's functions on that land under the CALM Act and under the relevant management plan;
- (b) provisions referred to in subsection (1) cannot be included in the contract without the consent of the CALM Act CEO; and
- (c) the inclusion of provisions referred to in subsection (1) in the contract does not affect the CALM Act CEO's functions referred to in paragraph (a)(ii).

*[Section 57 amended by No. 28 of 2006 s. 18 and 20.]*

**58. Production contracts subject to relevant management plan**

- (1) Before entering into a production contract relating to forest products located on departmental land the Commission is to ensure that —
  - (a) the quantities and kinds of forest products; and
  - (b) the location of the forest products proposed to be managed, harvested or sold under the contract,are in accordance with the provisions of the relevant management plan.
- (2) A production contract referred to in subsection (1) has no effect after the relevant management plan has expired.
- (3) This section does not apply to a plantation product contract.

*[Section 58 amended by No. 50 of 2004 s. 6.]*

**58A. Plantation product contracts**

- (1) Before entering into a plantation product contract, or a renewal or extension of a plantation product contract, the Commission is to ensure that —
  - (a) the quantities and kinds of plantation products; and

- (b) the location of the plantation products,  
proposed to be managed, harvested or sold under the plantation product contract entered into, renewed or extended, as the case may be, are in accordance with the provisions of the management plan as if the management plan were of effect for all of the term of the plantation product contract, or the renewed or extended term, as the case may be.
- (2) In subsection (1) —  
**management plan** means —
- (a) in relation to a plantation product contract proposed to be entered into or renewed, the management plan —
- (i) relating to departmental land on which the plantation products are located; and
  - (ii) of effect at the date on which the original plantation product contract is entered into;
- and
- (b) in relation to a plantation product contract proposed to be extended, the management plan —
- (i) relating to departmental land on which the plantation products are located; and
  - (ii) of effect at the date on which the plantation product contract is extended.
- (3) Except with the concurrence of the CALM Act Minister, the Commission cannot —
- (a) enter into a plantation product contract for a term exceeding 10 years; or
  - (b) grant a right to renew or extend, or renew or extend, the term of a plantation product contract beyond 10 years from the date of commencement of the original term.

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- (4) The Commission cannot —
- (a) enter into a plantation product contract for a term exceeding 25 years; or
  - (b) grant a right to renew or extend, or renew or extend, the term of a plantation product contract beyond 25 years from the date of commencement of the original term.
- (5) The Minister, within 28 days of —
- (a) entering into a plantation contract for a term exceeding 10 years; or
  - (b) granting a right to renew or extend, or renewing or extending, the term of a plantation contract beyond 10 years from the date of commencement of the original term,

is to cause a copy of the contract, grant, renewal or extension to be laid before each House of Parliament or dealt with in accordance with section 69.

*[Section 58A inserted by No. 50 of 2004 s. 7.]*

**59. Components of contract price**

- (1) When the Commission sets a price for the sale of forest products under a production contract it is to include —
- (a) a component for the costs of managing or harvesting the forest products (including costs relating to compliance with obligations referred to in section 57(1));
  - (b) an amount agreed under section 35 of the CALM Act by way of payment for advice provided, work performed or services or facilities supplied by the CALM Act CEO in relation to the forest products under an arrangement referred to in that section;
  - (c) in the case of a contract relating to forest products located on departmental land, a component for the purpose of enabling the full recovery of the costs (if any)

incurred by the CALM Act CEO under the CALM Act or the relevant management plan in —

- (i) managing the forest products; and
  - (ii) managing and protecting that departmental land;
- (d) in the case of a contract relating to forest products on land the subject of a CALM Act sharefarming agreement, a component for the purpose of enabling the full recovery of the costs incurred by the CALM Act CEO in establishing and maintaining, or maintaining, the crop of trees from which the forest products are derived;
- (e) in the case of a contract relating to forest products on land the subject of a Commission sharefarming agreement, a component for the purpose of enabling the full recovery of the costs incurred by the Commission in establishing and maintaining, or maintaining, the crop of trees from which the forest products are derived;
- (f) the Commission's operating costs in relation to the forest products; and
- (g) a component representing a profit from the exploitation of the forest products.
- (2) If the Commission and the CALM Act CEO cannot agree on the amount that is necessary to enable full recovery of costs as referred to in subsection (1)(c) or (d), the Treasurer is to determine the amount.

*[Section 59 amended by No. 28 of 2006 s. 19 and 20.]*

**60. Contractors' access to forest products on leases or other tenements**

- (1) The privileges conferred by a production contract extend to —
- (a) forest products on land which is subject to a pastoral or other lease, including a forest lease, which does not confer on the lessee the right to forest products; and

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(b) forest products on a mining tenement,

and a contractor, if so authorised by the contract, may enter the land comprised in such a lease or a mining tenement and manage forest products on it or take and remove forest products from it.

(2) In subsection (1) —

*mining tenement* has the same meaning as it has in the *Mining Act 1978*.

(3) Subsection (1) has effect subject to the regulations.

**61. Contracts subject to this Act and the CALM Act**

(1) A provision in, or condition of, a production contract or road contract that is inconsistent with —

(a) this Act; or

(b) in the case of a contract relating to forest products, other than a plantation product contract, located on departmental land —

(i) the CALM Act; or

(ii) the relevant management plan,

is of no effect, but without prejudice to other provisions or conditions of the contract.

(2) A provision in, or condition of, a plantation product contract that is inconsistent with —

(a) this Act;

(b) the CALM Act; or

(c) the management plan,

is of no effect, but without prejudice to other provisions or conditions of the contract.

(3) In subsection (2) —

***management plan*** means —

- (a) in relation to a plantation product contract other than a plantation product contract referred to in paragraph (b), the management plan —
  - (i) relating to departmental land on which plantation products that are to be managed, harvested or sold under the plantation product contract are located; and
  - (ii) of effect at the date on which the original plantation product contract was entered into;and
- (b) in relation to a plantation product contract that has been extended, on and from the time the contract is extended, the management plan —
  - (i) relating to departmental land on which plantation products that are to be managed, harvested or sold under the plantation product contract are located; and
  - (ii) of effect at the date on which the plantation product contract was extended.

*[Section 61 amended by No. 50 of 2004 s. 8.]*

## **Part 9 — Enforcement powers**

### **62. Terms used**

In this Part —

**authorised person** means the General Manager or —

- (a) a staff member; or
- (b) a forest officer under the CALM Act,

who is authorised by the General Manager to exercise powers under this Part;

**sawmill** means a place where any operation for the purpose of preparing, treating or processing timber is carried on.

*[Section 62 amended by No. 74 of 2003 s. 21(3).]*

### **63. Entry and seizure powers in relation to contracts**

- (1) An authorised person may enter any place in order to search for and seize any forest products —
  - (a) which have been harvested under a production contract and are still subject to the contract; or
  - (b) which are being sold under a production contract but for which payment has not yet been received.
- (2) The powers conferred by subsection (1) cannot be exercised to enter a place in order to search for and seize secreted forest products unless a warrant to enter and search the place has been issued by a justice.
- (3) A warrant under subsection (2) is not needed if the place concerned is on public land or is a sawmill.
- (4) A warrant under subsection (2) can only be issued if an authorised person makes an application supported by evidence on oath to a justice stating the person's belief that forest products referred to in subsection (1) are secreted in the place concerned.



- (5) Forest products referred to in subsection (1) remain the property of the State even if they have been manufactured into timber products and, if an authorised person on reasonable grounds suspects that that has occurred, the powers conferred by this section can be exercised in relation to those timber products.

*[Section 63 amended by No. 84 of 2004 s. 80.]*

**64. Entry to sawmills**

An authorised person may enter any sawmill and make any inspection and inquiry that the person thinks necessary to ascertain whether or not this Act has been or is being complied with.

**65. Seizure powers in relation to offences**

- (1) An authorised person who finds a person committing an offence against this Act in respect of any forest products or who on reasonable grounds suspects that such an offence has been committed may seize the forest products and stamp or mark them with a distinctive mark, and the forest products then become and remain the property of the State until the title of a lawful owner is established.
- (2) Any forest products seized under this section may be sold or otherwise disposed of as the Commission may direct, and the proceeds of the sale are to be dealt with under sections 41 and 42, subject to the claim to those proceeds of any lawful owner of the forest products.

## **Part 10 — Miscellaneous**

### **66. Advisory committees**

- (1) The Minister may establish one or more advisory committees (a *committee*) to provide advice to the Minister in relation to employment in, and development of, the forest products industry or on any other matter relating to the administration of this Act.
- (2) Before establishing a committee the Minister is to consult with the Commission about —
  - (a) the need to establish the committee; and
  - (b) the terms of reference proposed for the committee.
- (3) After establishing a committee the Minister is to advise the Commission —
  - (a) that the committee has been established; and
  - (b) of the committee's terms of reference.
- (4) The Minister may give directions in writing to a committee as to its procedure but otherwise a committee may determine its own procedure.
- (5) A committee is to provide the Commission with a copy of any advice it provides to the Minister.
- (6) If the Minister requests advice from a committee the Minister is to —
  - (a) advise the Commission of the precise nature of the advice requested; and
  - (b) give the Commission reasonable opportunity to comment on the advice the committee provides.
- (7) A committee member is to be paid such remuneration and travelling and other allowances as are determined in the member's case by the Minister on the recommendation of the Minister for Public Sector Management.

- (8) A committee member who is an employee (as defined in the *Public Sector Management Act 1994*) is to be paid only such travelling and subsistence allowances as are determined in that member's case by the Minister on the recommendation of the Minister for Public Sector Management.
- (9) The Minister is to ensure that a committee is provided with such support services as it may reasonably require.

**67. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person, other than the Commission, for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Commission nor the Crown is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
- (5) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

**68. Execution of documents by Commission**

- (1) The Commission is to have a common seal.
- (2) A document is duly executed by the Commission if —
  - (a) the common seal of the Commission is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Commission by a person or persons authorised to do so under subsection (5).

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- (3) The common seal of the Commission is not to be affixed to any document except as authorised by the Commission.
- (4) The common seal of the Commission is to be affixed to a document in the presence of 2 commissioners, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Commission may, by writing under its seal, authorise a commissioner or commissioners or the General Manager or a staff member or staff members to sign documents on behalf of the Commission, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this section without the common seal of the Commission is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Commission, it is to be presumed that the seal is the common seal of the Commission until the contrary is shown.

**69.        Supplementary provision about laying documents before Parliament**

- (1) If —
  - (a) at the commencement of a period referred to in section 14(3), 19(5), 24(5), 27(4), 33(5), 35(2), 36(4) or 58A(5) or Schedule 1 clause 20(2) in respect of a document a House of Parliament is not sitting; and

- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 69 amended by No. 50 of 2004 s. 9; No. 8 of 2009 s. 62(2) and (3).]*

**70. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may provide for —
  - (a) arrangements for entering into contracts as referred to in section 56;
  - (b) a system for recording, making available, and otherwise dealing with information concerning forest products taken and their destination;
  - (c) the inspection, grading, branding and marking of felled trees, and parts of felled trees;
  - (d) the authority of forest officers as defined in the CALM Act to give directions as to the route for the movement of forest products on public land or to stop or detain forest products on public land or on any road;
  - (e) the identification, measurement or weighing of forest products or the use of any other method to determine the

**s. 71**

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- quantity or kind of forest products or the place from which the products were taken;
- (f) the identification of persons who fell, cut or otherwise take forest products and the registration of the means of identification;
  - (g) the taking of firewood;
  - (h) the prohibition or regulation of the export of any specified kind of forest products;
  - (i) the identification, by branding or otherwise, of forest products and the registration of the means of identification;
  - (j) the registration of, and information relating to, persons who are engaged in the harvesting of forest products or who are proposed to be so engaged, and the creation of offences for the purpose of ensuring that any such system of registration is effective;
  - (k) the provision of information relating to contracts for harvesting of forest products by persons who are engaged in the harvesting of those products; or
  - (l) any other matter relating to the Commission's functions in relation to forest products whether on public land or sharefarmed land.
- (3) Regulations made under this Act may provide for a penalty for contravention of a provision of the regulations not exceeding a fine of \$2 000.

**71.      Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 12 months of the expiry of 5 years from its commencement.
- (2) In the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Commission;

- (b) the need for the continuation of the functions of the Commission; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

[72. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

## **Schedule 1 — Commissioners**

[s. 7]

### **Division 1 — Tenure, conditions and proceedings of the commissioners**

**1. Term used: meeting**

In this Schedule —

*meeting* means a meeting of the commissioners.

**2. Presiding member**

- (1) The chairman is to preside at all meetings at which the chairman is present.
- (2) When the chairman is unable to act because of illness, absence or other cause, or during any vacancy in that office, the deputy chairman is to perform the functions of the chairman.
- (3) If both the chairman and the deputy chairman are absent from a meeting the commissioners present are to appoint one of the commissioners present to preside.

**3. Term of office**

- (1) Subject to clause 4, a commissioner holds office for such term (not exceeding 3 years) as is specified in the commissioner's instrument of appointment, and is eligible (if otherwise qualified) for reappointment.
- (2) A commissioner whose term of office expires by the passage of time continues in office until the commissioner is reappointed or the successor of the commissioner comes into office.

**4. Resignation, removal etc.**

- (1) The office of a commissioner becomes vacant if the commissioner —
  - (a) resigns the office by written notice delivered to the Minister;
  - (b) becomes ineligible under section 6(3)(a), (b) or (c) to hold office as a commissioner;



- (c) is an insolvent under administration, as that term is defined in the *Corporations Act 2001* of the Commonwealth; or
  - (d) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove a commissioner from office on the grounds that the commissioner —
- (a) has neglected the commissioner's duty;
  - (b) is ineligible under section 6(3)(d) to hold office as a commissioner;
  - (c) has misbehaved;
  - (d) is incompetent;
  - (e) is suffering from mental or physical incapacity, other than temporary illness, impairing the performance of the commissioner's functions under this Act; or
  - (f) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of which the commissioner has had notice.

*[Clause 4 amended by No. 10 of 2001 s. 220.]*

**5. Leave of absence**

The commissioners may grant leave of absence to a commissioner on such terms and conditions as they think fit.

*[Clause 5 amended by No. 8 of 2009 s. 62(4).]*

**6. Commissioner unable to act**

- (1) The Minister may appoint a person to act temporarily in the place of a commissioner (other than the chairman) when the commissioner is unable to act because of illness, absence or other cause.
- (2) While acting according to the tenor of the appointment, the person appointed to act in the place of a commissioner is to be treated as a commissioner.
- (3) The appointment of a person to act in the place of a commissioner may be terminated at any time by the Minister.

**7. Saving**

No act or omission of a person acting in place of another under clause 2(2) or 6 is to be questioned on the ground that the occasion for the person's appointment or acting had not arisen or had ceased.

**8. Commissioner not a public service officer by virtue of appointment as commissioner**

Part 3 of the *Public Sector Management Act 1994* does not apply in relation to the appointment of a commissioner.

**9. Co-opted commissioners and participation of General Manager**

- (1) The commissioners may appoint any person having specialized experience, skills or qualifications as would enable the person to make a contribution to the commissioners' functions to be a co-opted commissioner for such period, or in relation to such matters, as specified in the instrument of appointment.
- (2) A co-opted commissioner is not entitled to vote but while acting according to the tenor of the appointment, he or she —
  - (a) may take part in the commissioners' deliberations; and
  - (b) is to be treated as a commissioner.
- (3) The General Manager may attend meetings and take part in the consideration and discussion of matters at a meeting, but cannot vote on any matter.
- (4) Nothing in this clause prevents the commissioners from arranging for any other person to participate in meetings in a consultative capacity.

**10. General procedure**

The procedure for the calling of meetings and for the conduct of business at meetings is, subject to this Act, to be determined by the commissioners.

**11. Quorum**

The quorum for a meeting is a majority of the commissioners.

**12. Voting**

- (1) At a meeting each commissioner present has a deliberative vote.
- (2) A decision supported by a majority of the votes cast at a meeting at which a quorum is present is the decision of the commissioners.

**13. Minutes**

The commissioners are to cause accurate minutes to be kept of the proceedings at each meeting.

**14. Decisions may be made without meeting**

A decision in writing signed or assented to by a majority of commissioners by letter, facsimile transmission or other written means has effect as if it had been passed at a meeting.

**15. Telephone or video meetings**

Despite anything in this Schedule, a communication between commissioners constituting a quorum by telephone, audio-visual or other electronic means is a valid meeting, but only if each participating commissioner is able to communicate with every other participating commissioner instantaneously at all times while participating in the proceedings.

**16. Committees**

- (1) The commissioners may appoint committees to assist them in the performance of their functions, and may discharge or alter any committee so appointed.
- (2) Persons who are not commissioners may be members of a committee but the chairman of a committee must be a commissioner.
- (3) The procedure for calling committee meetings and for the conduct of business at those meetings is to be as determined —
  - (a) subject to this Act, by the commissioners; or
  - (b) subject to this Act, by the committee in accordance with any determination of the commissioners.

**Division 2 — Disclosure of interests, etc.**

**17. Disclosure of interests**

- (1) A commissioner who has a material personal interest in a matter being considered or about to be considered by the commissioners must, as soon as possible after the relevant facts have come to the commissioner's knowledge, disclose the nature of the interest at a meeting.

Penalty: \$10 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**18. Voting by interested commissioners**

A commissioner who has a material personal interest in a matter that is being considered by the commissioners —

- (a) must not vote whether at a meeting or otherwise on the matter; and
- (b) must not be present while the matter is being considered at a meeting.

**19. Quorum where clause 18 applies**

- (1) Despite clause 11, if a commissioner is disqualified under clause 18 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 commissioners are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

- (2) The Minister may deal with a matter in so far as the commissioners cannot deal with it because of subclause (1).

**20. Minister may declare clauses 18 and 19 inapplicable**

- (1) The Minister may in writing declare that clause 18 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

- (2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with section 69.

**21. Ineligibility provisions not affected**

This Division does not affect the operation of section 6(3)(d) and clause 4(1)(d) and (2)(b).

## **Schedule 2 — General Manager**

[s. 38(2)]

**1. Appointment**

The General Manager is to be appointed by the commissioners in consultation with the Minister.

**2. Tenure of office**

- (1) Subject to this Act, the General Manager holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for reappointment once or more than once.
- (2) The General Manager may resign office by written notice delivered to the chairman.

**3. Salary, conditions of appointment**

The General Manager —

- (a) is to be paid salary and allowances at such rates per annum as are determined by the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*; and
- (b) has such leave and other entitlements as are determined by the commissioners.

**4. Removal from office**

The commissioners may remove the General Manager from office on the grounds that the General Manager —

- (a) has neglected his or her duty;
- (b) has misbehaved;
- (c) is incompetent;
- (d) is suffering from mental or physical incapacity, other than temporary illness, impairing the performance of his or her functions under this Act; or
- (e) is an insolvent under administration, as that term is defined in the *Corporations Act 2001* of the Commonwealth.

*[Clause 4 amended by No. 10 of 2001 s. 220.]*

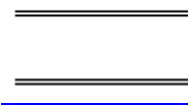
**5. Superannuation**

- (1) If a person was a contributor as defined in the *Superannuation and Family Benefits Act 1938*<sup>2</sup> immediately before being appointed as the General Manager, the person may continue to be a contributor under that Act after being appointed.
- (2) For the purposes of subclause (1) the Commission —
  - (a) is a department as defined by the *Superannuation and Family Benefits Act 1938*<sup>2</sup>; and
  - (b) is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of *department* in section 6 of that Act.

**6. Portability of entitlements of General Manager**

- (1) If a public service officer is appointed as General Manager he or she is entitled to retain all existing and accrued rights, rights under a superannuation scheme or continuity of service as if his or her service as General Manager were a continuation of his or her service as a public service officer.
- (2) If a person ceases to be the General Manager and becomes a public service officer his or her service as General Manager is to be regarded as service in the Public Service for the purposes of determining his or her rights, including those as to superannuation, as a public service officer.
- (3) In this clause —  
*public service officer* has the same meaning as it has in the *Public Sector Management Act 1994*.

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*



## Notes

<sup>1</sup> This reprint is a compilation as at 13 November 2009 of the *Forest Products Act 2000* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Forest Products Act 2000</i>	34 of 2000	10 Oct 2000	s. 1 and 2: 10 Oct 2000; Act other than s. 1 and 2: 16 Nov 2000 (see s. 2 and <i>Gazette</i> 15 Nov 2000 p. 6275)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 18	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 20 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 21(3)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Forest Products Amendment Act 2004</i>	50 of 2004	12 Nov 2004	12 Nov 2004 (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 1: The <i>Forest Products Act 2000</i> as at 15 Jul 2005</b> (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 2 Div. 4	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)



Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1), 10 and Sch. 1 cl. 70	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 62	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

**Reprint 2: The Forest Products Act 2000 as at 13 Nov 2009** (includes amendments listed above)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89 <sup>3</sup>	39 of 2010	1 Oct 2010	<del>To be proclaimed</del> <a href="#">1 Dec 2010</a> (see s. <del>2(b)</del> ) and <a href="#">Gazette 5 Nov 2010 p. 5563</a> )

<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

<sup>3</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 71 had not come into operation. It reads as follows:

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Forest Products Act 2000</i>	s. 8(1) and (2), 66(7) and (8)
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