

Explanatory Fact Sheet

Forestry (Miscellaneous Amendments) Bill 2023

BACKGROUND

The Board of Private Forests Tasmania (PFT) has undertaken a legislative reform project to progress a number of miscellaneous legislative changes resulting from internal reviews and issues raised by private forest stakeholders. Apart from minor consequential amendments, legislation pertaining to private forestry has not been substantially amended or updated in 20 years.

These proposed changes have been consolidated into the Forestry (Miscellaneous Amendments) Bill 2023. There are 11 amendments in total which can be grouped under the following three desired outcomes:

- A. Reduce red tape and improve the efficiency of the private timber reserve application process;
- B. Make the private forests service levy fairer and more equitable; and
- C. Modernise and clarify other aspects of legislation relating to private forests and PFT.

PROPOSED CHANGES

A. Reduce red tape and improve the efficiency of the private timber reserve application process in the Forest Practices Act 1985

A private timber reserve (PTR) is an area of private land set aside for forestry purposes and registered on the title. A PTR secures the right to use the land for forestry purposes in the long term, however any forestry operations on the land are still subject to regulation by the Forest Practices System.

A landowner can apply under Part 2 of the Forest Practices Act 1985 to have their land declared as a PTR. The application is in two parts, Part A to be completed by the applicant (landowner) and Part B, completed by a person authorised by the Forests Practices Authority (FPA) Board which provides details on vegetation cover and on any natural or cultural values on the land.

The FPA Board, in their role as the independent regulator, is responsible for all formal decision making about PTR applications, however the administrative procedures to process applications are delegated to PFT. Following a detailed assessment, including a public notification phase, successful applications are recommended by the FPA Board to the Governor that they declare a PTR on the land. The land is then declared a PTR by notification in the Government Gazette. The process can take between 4-5 months to complete.

A review of the application process for PTRs identified areas for red tape reduction and efficiency gains. The following three amendments are proposed.

1. Providing for a more streamlined application process for minor boundary extensions to private timber reserves

Part 2 of the Forest Practices Act prescribes the detailed process for making, assessing and approving an application for a PTR. This includes the public notification of an application and the opportunity for prescribed persons to make an objection prior to the FPA Board's determination on whether to approve or refuse the application.

In some cases, landowners will apply to make a minor boundary extension to an existing PTR. Under the current legislation there is no provision for an abbreviated process for making a minor boundary extension of an existing PTR – the entire legislated process is required to be followed for the addition of sometimes only a few hectares.

It is proposed to introduce a more streamlined application process for minor boundary extensions. A minor boundary extensions will be defined by an existing PTR that is proposed to increase in size by no more than 10 percent in area (to a maximum of 50 additional hectares) and which would not result in the new boundary being within 50 metres of a neighbouring property.

The proposal is for such an application to be assessed and determined by the FPA Board in much the same way, however without requiring the public notification phase and the opportunity for objections or appeals from prescribed persons. That is, sections 6 and 7 of the Act would not apply to these types of applications. This would improve efficiency, greatly reduce the application processing time and reduce red tape for the applicant, with minimal impact on the rights and amenity of neighbours.

Since 2010 there have been 164 applications for new PTRs. On only 5 occasions has an objection been received. On all occasions where objections were received, none were for applications that fitted the minor boundary extension definition in the proposed changes. In other words, even with the proposed changes implemented, the above mentioned objectors would still have had the opportunity to object.

Note: this amendment is dealt with in clause 5, 6, 7 and 8 of the draft Bill.

2. Removing the requirement to go to the Governor to have a private timber reserve declared

Sections 10 and 11 of the Forest Practices Act 1985 outlines the process for the FPA Board to recommend to the Governor that a PTR be declared and sections 13 and 14 provides a similar process for revocations of PTR's.

There is no legal or practical reason why the declaration of PTR's need to involve the Governor. It is proposed that the FPA Board be given the power to declare a PTR instead of the Governor. This will reduce the time it takes to process applications and result in efficiency gains for PFT, the FPA and the applicant. The legal status and land use provisions that apply to PTRs will not change.

Note: this amendment is dealt with in clause 9, 10 and 11 of the draft Bill.

3. Removing the compensation provisions for refused private timber reserve applications

Applications for private timber reserves can be refused by the Forest Practices Authority on a number of different grounds. Applicants aggrieved by a refusal have the right to appeal under the

Tasmanian Civil and Administrative Tribunal. If an appeal is unsuccessful, section 16 of the Forest Practices Act provides that compensation may be payable by the Tasmanian Government under circumstances where the refusal was in the public interest, or where by virtue of the operation of any Act, the owner of the land is prohibited from undertaking forestry operations, and, if the timber on the land is made less valuable to the landowner by virtue of the fact they are prevented from using the land for timber production.

Since the inception of Private Timber Reserves in 1987 there have been 2,166 applications to declare new PTR's, 2,107 of those applications were approved by the Board of the FPA and only 14 have been refused. Of those refused 8 have been appealed in the Tribunal but there is no record of any applicant successfully negotiating compensation through these provisions.

Subsequent to the commencement of the above provisions in 1987, other provisions providing for compensation were enacted in 1991 through the Public Land (Administration and Forests) Act 1991. These provisions, currently in force under section 41 of the Nature Conservation Act 2002, provide for compensation to be paid to affected landowners for the refusal of a forest practices plan (FPP) on the grounds of protecting threatened species or threatened vegetation communities. To date, several landowners have successfully negotiated compensation under these provisions.

It is argued that the latter FPP compensation provisions have largely made the PTR compensation provisions redundant, and the PTR compensation provisions are no longer necessary. It is also the case that the refusal of a PTR does not actually prevent a landowner from using the land for timber production. Timber can still be grown and harvested without a PTR and it is considered that determining any compensation amount closer to the operational stage of a forestry proposal is more appropriate than at the land use determination stage.

It is proposed that the PTR compensation provisions be removed from the Forest Practices Act. The amendment would not affect the compensation provisions in the Nature Conservation Act for refused FPPs. That opportunity for landowners to be compensated for losing access to timber on their land would remain.

Note: this amendment is dealt with in clause 12 of the draft Bill.

B. Make the private forests service levy in the Private Forests Act 1994 fairer and more equitable

PFT's activities are funded primarily by a State Government appropriation and to a lesser degree by the private forest service levy. The levy is charged when a private forest owner engages in commercial operations and therefore revenue from the levy rises and falls with private forestry activity. In 2021-22 the levy contributed 8 percent of PFT's total revenue.

The Private forests Act 1994 (Division 1A) contains the provisions for the levy. The levy is calculated on the net area of a forest operation certified under a forest practices plan (FPP) and is charged at a flat rate per hectare. The rate is set each year by the Minister after consultation with stakeholders. From 2023-24, the rate is proposed to be \$16 per hectare. A recent review of the levy and its structure has identified areas for reform to make it fairer and more equitable. The following two amendments are proposed.

4. Removing the requirement to pay the levy on first rotation plantings on areas of previously cleared land

Under the current levy structure, the levy must be paid twice during the course of a single plantation rotation in situations where the first rotation planting is on previously cleared ground (non-forest). The first payment is after certification of the FPP to establish the forest and the second payment after certification of the harvesting FPP at the end of the rotation. Having the levy imposed on the establishment of a forest is a financial disincentive, particularly for farm foresters, to establish new plantations and works contrary to other Australian and State Government policy encouraging the planting and integration of more trees into the agricultural landscape.

It is proposed to remove the requirement for farm foresters to pay the levy where the first rotation planting is on previously cleared ground (non-forest).

Note: this amendment is dealt with in clause 20 of the draft Bill.

5. Giving the PFT Board the option of waiving the levy under special circumstances

The levy is a legislated requirement and must be collected in accordance with the Act. There has been a number of occasions where PFT has been requested to waive the payment of the levy based on a range of circumstances (e.g., the devastating bushfires in 2019, personal hardship etc). However, there is no room under the current legislation for PFT or the Minister to waive the levy under any circumstance. In the past when these circumstances have arisen, the PFT Board has taken the decision to collect the levy, as required by the legislation, and then rebate the levy, in full or in part, under its broad powers. This is an option that is available to the Board, but it is an administratively cumbersome way to offer fee relief under special circumstances.

It is proposed to introduce a general power for the Board to waive the levy under special circumstances.

Note: this amendment is dealt with in clause 21 of the draft Bill.

C. Modernise and clarify other aspects of legislation relating to private forests and PFT

Apart from minor consequential amendments, legislation pertaining to private forestry has not been substantially amended or updated in 20 years. The following six amendments are proposed to modernise and update the legislation.

6. Modernising and updating PFT legislated functions

Section 6(1) of the Private Forests Act 1994 describes PFT's 13 functions. These functions were drafted when the Act was first introduced in 1994 and some are now obsolete and/or outdated. It is intended to modernise and update these functions to better reflect PFT's current and future operating environment.

Three additional functions are proposed to be added and five current functions are proposed to be amended. The proposed changes to PFT's functions appear as track changes in red text below:

Section 6 Functions of Authority

- 6.1 (a) to advise the Minister on all matters relating to private forestry;
- (b) to provide assistance and advice on forest establishment and management for commercial purposes and on the use of trees for sustainable land management;
- (c) to process applications for private timber reserves under the Forest Practices Act 1985 pursuant to a delegation from the Forest Practices Authority under that Act;
- (d) to promote opportunities for more competitive markets for private forest owners;
- (e) to advise, assist and facilitate the private forest sector in the development of commercially relevant infrastructure;
- (f) to maintain and update an inventory of private forests; and prepare five-yearly reviews of private forests; ~~and report on compliance with export and other licence conditions as required by any agreement entered into between the State and the Commonwealth~~
- (g) to provide advice and assistance to the Forest Practices Authority for implementation of the Forest Practices Act 1985 on private forest lands;
- (h) to provide co-ordinated input on behalf of private forest growers on land use issues;
- (i) to promote private forestry research and education;
- (j) to examine matters relating to the conservation of flora, fauna, land forms, natural and cultural heritage ~~and care of the environment~~ on private forest lands;
- (k) to encourage non-commercial forestry whole farm planning on private land including strategic planning and appropriate technical and policy development;
- (l) to develop plans to deliver funding for private forestry programs from private forest owners;
- (m) to contribute to State and national reporting on private forest matters;
- (n) to advocate on behalf of private forest owners in the formulation and review of state and national forest related policies, programs and legislation;
- (o) to implement and manage priority projects on behalf of private forest owners;
- (mp) to perform such other functions as are imposed on it by this or any other Act.

Note: this amendment is dealt with in clause 15 of the draft Bill.

7. Clarifying and expanding the definition of forestry rights

A forestry right is the right for a person to go onto the land in the ownership of someone else and harvest the trees from that land. Current Tasmanian legislation refers to two types of forestry rights. The first is under Schedule 1 of the Forest Management Act 2013 which refers to the forestry rights carried forward from the now revoked Forestry Act 1920. Those rights are private rights to Crown land and include old timber concessions on State Forest which were provided historically to pulp and paper companies. These rights have been conferred by legislation and are now traded between private companies.

The second type of forestry right under Tasmanian legislation is one that is registered under the Forestry Rights Registration Act 1990. Typically, this right is granted by the owner of the land to a grantee, as opposed to the right being conferred by legislation as above. They are private agreements entered into freely by all parties and the grantor and the grantee can be either public or private entities.

Section 18(4) of the Forest Practices Act refers to forestry rights. Section 3 of that Act interprets forestry rights to mean any forestry right continued under the Forest Management Act. Before a forest practices plan (FPP) can be certified it needs the approval of the landowner, or if there is a forestry rights holder, the approval of the rights holder. The definition of forestry rights referred to in section 18(4) does not include forestry rights registered under the Forestry Rights Registration Act 1990. This omission can effectively give the landowner a power of veto over FPP certifications in situations where they have already agreed to granting the forestry right to another party. In effect this means holders of rights under the Forestry Rights Registration Act can potentially have access to the timber subject of the right denied indefinitely.

It is proposed to clarify and align the definition of forestry rights so rights holders under the Forestry Rights Registration Act would be recognised by the Forest Practices Act in a similar way to rights holders under the Forest Management Act.

Note: this amendment is dealt with in clause 4 of the draft Bill.

8. Removing the outdated reference to a Stakeholder Minister in the Private Forests Act

The Private Forests Act 1994 contains several references to a Stakeholder Minister particularly in relation to consultation requirements when drafting PFT's ministerial charter (section 19A), corporate plans (sections 19D & 19E), annual reports (section 32E) and quarterly reports (sections 32G & 32H). The issue has been that there is no longer any definition of a Stakeholder Minister in Tasmanian legislation since the definition was removed from the Government Business Enterprise Act 1995. It is proposed to remove these outdated references from the Private Forests Act.

Note: this amendment is dealt with in clause 14, 17, 18, 19, 22 and 24 of the draft Bill.

9. Remove the requirement to prepare quarterly reports for the Minister

Section 32G of the Private Forests Act 1994 requires the PFT Board to make quarterly reports to the Minister. It is proposed to remove the requirement to prepare quarterly reports for the Minister as these are no longer required. All other reporting requirements (e.g. annual report) will not change.

Note: this amendment is dealt with in clause 23 of the draft Bill.

10. Modernising the process for passing PFT Board resolutions without meetings in the Private Forests Act

Schedule 1 clause 5 of the Private Forests Act details the process for passing PFT Board resolutions without a Board meeting being convened. Currently the wording of this clause needs directors to sign a document. This clause needs to be modernised to accommodate modern forms of

communications such as email. It is proposed to modernise and simplify a standard procedural matter in how the PFT Board conducts its routine business.

Note: this amendment is dealt with in clause 25 of the draft Bill.

11. Replacing outdated references to repealed legislation

There are references to outdated or repealed legislation. These references will be updated to reflect current legislation.

Note: this amendment is dealt with in clause 16 of the draft Bill.