

# Forest Products Bill 1999

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**Defined Terms**



Western Australia

LEGISLATIVE ASSEMBLY

## **Forest Products Bill 1999**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Forest Products Act 1999*.

### **2. Commencement**

5 This Act comes into operation on a day fixed by proclamation.

### **3. Definitions**

In this Act, unless the contrary intention appears —

“**Account**” means the Forest Products Account referred to in section 41;

10 “**CALM Act**” means the *Conservation and Land Management Act 1984*;

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

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

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

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

“**Department**” means the Department of Conservation referred to in section 32 of the CALM Act;

“**departmental land**” means —

- 25
- (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 Executive Director under section 131 of the CALM Act;

**“Executive Director”** means the Executive Director of the Department referred to in section 36(1) of the CALM Act;

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

- 5           (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;

10 **“forest products”** has the meaning given by section 4;

**“General Manager”** means the person holding or acting in the office mentioned in section 37(1);

**“harvesting”** means —

- 15           (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;
- 20

**“production contract”** has the meaning given by section 50;

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

25 **“public land”** means —

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

30 **“relevant management plan”** has the meaning given by section 50;

**“sharefarmed land”** means land that is the subject of a timber sharefarming agreement;

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“**staff member**” means a member of the Commission’s staff other than the General Manager (including an officer or employee referred to in section 39(1));

5 “**timber sharefarming agreement**” means an agreement referred to in section 34B of the CALM Act to which the Commission, through the agency of the Executive Director, is a party;

10 “**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.

**4. Meaning of forest products**

- 15 (1) Subject to subsection (2) —
- (a) trees or parts of trees;
  - (b) timber, sawdust or chips;
  - (c) charcoal, gum, kino, resin or sap; and
  - (d) firewood,

20 are “**forest products**” for the purposes of this Act if they are located on public land or sharefarmed land.

- (2) When something referred to in subsection (1) has been removed under a contract or arrangement entered into by the Commission, any residues that remain are not forest products for the purposes of this Act.

## 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.
- 5 (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 42, enjoys the status, immunities and privileges of the Crown.

### 10 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 as is relevant to the functions of the Commission.
- 15 (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 —
  - 20 (a) the General Manager or a staff member;
  - (b) a member of the Conservation Commission or a member of its staff;
  - (c) the Executive Director or an employee of the Department.
- 25 (4) The commissioners are the governing body of the Commission.
- (5) The commissioners, in the name of the Commission, are to perform the functions, determine the policies and control the affairs of the Commission.

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**7. Constitution, proceedings etc.**

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

**8. Remuneration of commissioners**

- 5 (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.
- 10 (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**

5 Subject to section 42, 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 —
- 10 (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;
  - 15 (d) to acquire rights and powers, and accept obligations, under timber sharefarming agreements referred to in section 34B of the CALM Act through the agency of the Executive Director;
  - (e) to enter into contracts with any person for the harvesting of forest products;
  - 20 (f) to promote, and to advise the Minister in relation to, employment in, and development of, the forest products industry;
  - (g) for the purpose of ensuring that any stockpile of forest products is kept to a minimum, to enter into arrangements with the Executive Director in relation to —
    - 25 (i) the amount of forest products that can be stockpiled; and
    - (ii) the circumstances in which forest products can be stockpiled;

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- 5
- (h) to enter into a memorandum of understanding with the Department relating to the performance of the Commission's and the Department's respective functions and any other matter prescribed under the CALM Act;
- (i) to monitor the cost of production of forest products, including the costs of services provided by the Department in respect of —
- 10
- (i) the use, management and protection, for any purpose, of land on which forest products are located;
- (ii) the harvesting of forest products;
- (iii) the construction of roads or other infrastructure for the purposes of harvesting forest products;
- 15
- (iv) silvicultural operations and other preparations before, and silvicultural operations after, the felling or cutting of forest products; and
- (v) regeneration of the forest products;
- 20
- (j) 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;
- (k) to provide the Executive Director 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;
- 25
- (l) to advise the Minister as to the performance of the Minister's functions —
- 30
- (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



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(c) acquiring or holding interests in land, or managing land, through the agency of the Executive Director to the extent required for the purposes of timber sharefarming agreements.

5 (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.

10 (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.

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

15 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**

20 (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

25 (b) the ecologically sustainable management of indigenous forest products located on public land.

(2) 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.

- 5 (3) 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**

- 10 (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
  - 15 (d) a committee established under Schedule 1 clause 16.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorized by the instrument of delegation to do so.
- (4) A function performed by a delegate of the Commission is to be  
20 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**

- 5 (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.
- 10 (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 64 —
- 15 (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.
- 20 (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 section 66 of the *Financial Administration and Audit Act 1985*.
- 25 (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.
- 30 (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.

- 5 (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).
- 10 (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.

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

- 15 (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.
- 20 (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;
  - 25 (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;

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

**16. Consultation**

10 (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 —

- 15 (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 —

20 (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;

25 (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 —

- 30 (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**

- 5 (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  
10 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;
- 15 (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  
20 Commission is able to satisfy the relevant financial  
obligation when it is due.

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

**Subdivision 1 — Strategic development plans**

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

- 25 (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) Each draft strategic development plan is to be submitted not  
30 later than 3 months before the start of the next financial year.

**20. 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.

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

- 5 (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.
- 10 (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);
  - 15 (b) having regard to any relevant management plan —
    - (i) strategies for harvesting;
    - (ii) service efficiency and effectiveness; and
    - (iii) productivity levels;
  - 20 (c) competitive strategies, sales and revenue projections, infrastructure maintenance, financial requirements, capital expenditure, customer service arrangements, relevant government policy and personnel requirements; and
  - 25 (d) any other matters that the Minister and the commissioners agree should be considered.

**22. 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.

30

**23. 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 —
- 5           (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.
- 10
- (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 —
- 15           (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
- 20           cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 64.

**24. Strategic development plan pending agreement**

- (1) If the commissioners and the Minister have not reached agreement on the draft strategic development plan before the
- 25           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 25.
- (2) In subsection (1) —
- 30           **“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.

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

5 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.

**26. Modifications of strategic development plan**

10 (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.

15 (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  
20 cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 64.

**27. Concurrence of Treasurer**

The Minister is not to —

(a) agree to a draft strategic development plan under section 25; or

25 (b) agree to or direct any modification of a strategic development plan under section 26,

except with the concurrence of the Treasurer.

**Subdivision 2 — Statement of corporate intent**

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

- 5 (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) Each draft statement of corporate intent is to be submitted not later than 3 months before the start of the next financial year.

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

- 10 (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.

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

- 15 (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 —
- 20 (a) an outline of objectives including —
- (i) the long-term viability of the forest products industry; and
  - (ii) the ecologically sustainable management of forest products located on public land;
- 25 (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;

- 5
- (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;
- 10 (i) the type of information to be given to the Minister;
- (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;
- 15 (l) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
- (m) such other matters as may be agreed by the Minister and the commissioners.
- 20
- (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.
- 25 (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), (d) and (e).

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

30 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.

**32. 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 —
- 5       (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.
- 10       (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 —
- 15       (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.
- 20       (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 64.

**33. 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 34.
- 25       (2) In subsection (1) —
- 30       **“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.

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

- 5 (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.
- 10 (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 64.
- 15 (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.
- 20 (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.

25 **35. Modifications of statement of corporate intent**

- (1) A statement of corporate intent may be modified by the commissioners with the agreement of the Minister.
- 30 (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.

5 (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 64.

**36. Concurrence of Treasurer**

The Minister is not to —

- 10 (a) agree to a draft statement of corporate intent under section 34; or
- (b) agree to or direct any modification of a statement of corporate intent under section 35,

except with the concurrence of the Treasurer.

**Part 5 — Staff**

**37.        General Manager**

- (1) The Commission is to have a chief employee to be known as the General Manager.
- 5        (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.

**38.        Other staff**

- 10        (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.
- 15        (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*.
- 20        (4) Nothing in this section affects the operation of the *Workplace Agreements Act 1993* or section 100 of the *Public Sector Management Act 1994*.
- 25        (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*.

**39. 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 —
- 5           (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 —
- 10           (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
- 15           such terms as are agreed to by the parties.

## **Part 6 — Financial provisions**

### **40. Funds of Commission**

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

- 5 (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 44 or 45; and
- 10 (d) other moneys lawfully received by, made available to, or payable to, the Commission.

### **41. Forest Products Account**

(1) The funds referred to in section 40 are to be credited to an account to be called the “Forest Products Account” —

- 15 (a) at the Treasury; or
- (b) with the approval of the Treasurer, at a bank,

and if paragraph (a) applies that Account is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

20 (2) The Account is to be charged with —

- (a) the remuneration and allowances payable under section 8 or 61(7);
- (b) the salaries and allowances payable to the General Manager and the staff engaged under section 38;
- 25 (c) interest on and repayment of moneys borrowed by the Commission under section 44 or 45 and any other fees or charges payable in respect of any such borrowing;

- (d) the payment of amounts to the Department in accordance with a memorandum of understanding entered into under section 10(1)(h); and
- (e) all other expenditure lawfully incurred by the Commission in the performance of its functions.

**42. 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

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(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.

5 **43. 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 —

- 10 (a) may, in accordance with this section, be paid wholly or partly as a final dividend to the Consolidated Fund; and  
(b) to the extent that it is not so paid, is to be applied for the purposes of the Commission.

15 (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 —

- 20 (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 —

- 25 (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

- (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 Fund 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.

**44. 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).

**45. Other borrowing**

- (1) In addition to its powers under section 44, 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.

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- (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.
- 5 (3) The total amount of the moneys so borrowed in any one financial year is not to exceed such amount as the Treasurer approves.

**46. Guarantee by Treasurer**

- 10 (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 45.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- 15 (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.
- 20 (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
- 25 of the guarantee.

**47. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee under section 46 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

5 (3) The Treasurer is to cause to be credited to the Consolidated Fund 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 46.

**48. Charges for guarantees**

10 (1) The Treasurer may fix charges to be paid by the Commission to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 46.

(2) Payment of any charges fixed under subsection (1) is to be made at such time or times as the Treasurer determines.

**49. Application of *Financial Administration and Audit Act 1985***

15 The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

## **Part 7 — Contracts for harvesting or sale of forest products**

### **50. Definitions**

In this Part, unless the contrary intention appears —

5 **“production contract”** means a contract for the 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 —

10 (a) relates to departmental land on which forest products that are to be harvested or sold under the contract are located; and

(b) has effect during the term of the contract;

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

### **51. Contracts generally**

20 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.

### **25 52. Harvesting contracts and related arrangements**

(1) A production contract with a person for the 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 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.

5 (2) If forest products to be harvested under a production contract are located on departmental land —

(a) the Commission must enter into arrangements with the Executive Director in relation to —

- 10 (i) the access of the contractor and the contractor’s employees and agents to that land for the performance of the contractor’s functions under the contract; and
- 15 (ii) the performance of the Department’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 Executive Director; and

20 (c) the inclusion of provisions referred to in subsection (1) in the contract does not affect the Department’s functions referred to in paragraph (a)(ii).

**53. 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 harvested or sold under the contract,

30 are in accordance with the provisions of the relevant management plan.

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- (2) A production contract referred to in subsection (1) has no effect after the relevant management plan has expired.

**54. Components of contract price**

- 5 (1) When the Commission sets a price for the sale of forest products under a production contract it is to include —
- 10 (a) a component for the costs of harvesting the forest products (including costs relating to compliance with obligations referred to in section 52(1));
  - 15 (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 Department in relation to the forest products under an arrangement referred to in that section;
  - 20 (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 Department under the CALM Act or the relevant management plan in —
    - (i) establishing, regenerating, tending, protecting or otherwise managing the forest products; and
    - (ii) managing and protecting that departmental land;
  - 25 (d) in the case of a contract relating to forest products on sharefarmed land, a component for the purpose of enabling the full recovery of the costs incurred by the Executive Director in establishing and maintaining, or maintaining, the crop of trees from which the forest products are derived;
  - 30 (e) the Commission's operating costs in relation to the forest products; and
  - (f) a component representing a profit from the exploitation of the forest products.

- (2) If the Commission and the Executive Director 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.

5 **55. Contractors' access to timber 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
- 10 (b) forest products on a mining tenement,

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

- (2) In subsection (1) —

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

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

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

20 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 located on departmental land —
- (i) the CALM Act; or
- 25 (ii) the relevant management plan,

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

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## **Part 8 — Enforcement powers**

### **57. Authorized person**

In this Part —

“**authorized person**” means the General Manager or —

- 5 (a) a staff member; or  
(b) a forest officer under the CALM Act,  
who is authorized by the General Manager to exercise  
powers under this Part;

10 “**sawmill**” means a sawmill registered under the *Timber  
Industry Regulation Act 1926*.

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

- (1) An authorized person may enter any place in order to search for  
and seize any forest products —
- 15 (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  
20 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.
- 25 (4) A warrant under subsection (2) can only be issued if an  
authorized person makes a complaint 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 authorized person on reasonable grounds suspects that that has occurred, the powers conferred by this section can be exercised in relation to those timber products.

**59. Entry to sawmills**

5 An authorized 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.

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

10 (1) An authorized 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  
15 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  
20 otherwise disposed of as the Commission may direct, and the proceeds of the sale are to be dealt with under sections 40 and 41, subject to the claim to those proceeds of any lawful owner of the forest products.

**Part 9 — Miscellaneous**

**61.      Advisory committees**

- 5                      (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.
- 10                     (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.
- 15                     (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.
- 20                     (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  
25                     (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  
30                     Minister for Public Sector Management.

- 5 (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.

**62. Protection from liability for wrongdoing**

- 10 (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.
- 15 (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.
- 20 (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.

**63. Execution of documents by Commission**

- 25 (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 authorized 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 authorized 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, authorize 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 authorization.
- (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 authorized 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.

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

- (1) If —
- (a) at the commencement of a period referred to in section 14(3), 23(5), 26(4), 32(5), 34(2) or 35(4) or Schedule 1 clause 21(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.

- 5 (2) A copy of a document transmitted to the Clerk of a House is to be —
- (a) taken to have been laid before that House; and
  - (b) taken to be a document published by order or under the authority of that House.
- 10 (3) The laying of a copy of a document that is taken to have occurred under subsection (2)(a) 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.

**65. Regulations**

- 15 (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 —
- 20 (a) arrangements for entering into contracts as referred to in section 51;
- (b) a system for recording, making available, and otherwise dealing with information concerning forest products taken and their destination;
- 25 (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
- 30 forest products on public land or on any road;

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- 5                      (e) the identification, measurement or weighing of forest products or the use of any other method to determine the 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;
- 10                    (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
- 20                    (l) any other matter relating to the Commission's functions in relation to forest products whether on public land or sharefarmed land.
- 25                    (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.

**66. Review of Act**

- 30                    (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after 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.

**67. Consequential amendments**

The Acts specified in Schedule 3 are amended as set out in that Schedule.

## Schedule 1 — Commissioners

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

5    **1.    Definition**

In this Schedule —

“**meeting**” means a meeting of the commissioners.

10    **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.

15    (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.

20    **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.

25    **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 to hold office as a commissioner;  
    (c) is an insolvent under administration, as that term is defined in the Corporations Law; 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) has misbehaved;

(c) is incompetent;

(d) is suffering from mental or physical incapacity, other than temporary illness, impairing the performance of the commissioner's functions under this Act; or

(e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of which the commissioner has had notice.

**5. Leave of absence**

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

**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.

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

10      (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.

15      (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.

20      **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**

25      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**

5 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**

10 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**

- 15 (1) The commissioners may appoint committees to assist them in the performance of their functions, and may discharge or alter any committee so appointed.
- 20 (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 —
- 25 (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**

- 30 (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

**Schedule 1**      **Commissioners**

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commissioner's knowledge, disclose the nature of the interest at a meeting.

Penalty: \$10 000.

- 5            (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 —

- 10            (a) must not vote whether at a meeting or otherwise —  
                  (i) on the matter; or  
                  (ii) on a proposed resolution under clause 19 in respect of the matter, whether relating to that commissioner or a different commissioner;

and

- 15            (b) must not be present while —  
                  (i) the matter; or  
                  (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),  
                  is being considered at a meeting.

20      **19.      Clause 18 may be declared inapplicable**

Clause 18 does not apply if the commissioners have at any time passed a resolution that —

- 25            (a) specifies the commissioner, the interest and the matter; and  
                  (b) states that the commissioners voting for the resolution are satisfied that the interest should not disqualify the commissioner from considering or voting on the matter.

**20.      Quorum where clause 18 applies**

- 30            (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).

5 **21. Minister may declare clauses 18 and 20 inapplicable**

- (1) The Minister may in writing declare that clause 18 or 20 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

- 10 (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 64.

**Schedule 2 — General Manager**

[s. 37(2)]

**1. Appointment**

5            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.
- 10        (2) The General Manager may resign office by written notice delivered to the chairman.

**3. Salary, conditions of appointment**

- The General Manager —
- 15            (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**

- 20            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;
- 25            (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 Law.

**5. Superannuation**

- 5 (1) If a person was a contributor as defined in the *Superannuation and Family Benefits Act 1938* 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 —
- 10 (a) is a department as defined by the *Superannuation and Family Benefits Act 1938*; 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**

- 15 (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.
- 20 (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 —
- 25 “**public service officer**” has the same meaning as it has in the *Public Sector Management Act 1994*.

**Schedule 3 — Consequential amendments**

[s. 67]

**1. Constitution Acts Amendment Act 1899 amended**

5 Schedule V to the *Constitution Acts Amendment Act 1899*\* is amended in Part 3 by inserting after the item relating to the Fluoridation of Public Water Supplies Advisory Committee the following item —

10 “ The Forest Products Commission established under the *Forest Products Act 1999*. ”.

[\* Reprinted as at 15 April 1999.  
For subsequent amendments see Acts Nos. 53 of 1998 and 5, 8, 26 and 34 of 1999.]

15 **2. Financial Administration and Audit Act 1985 amended**

Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting after the item relating to the Fire and Emergency Services Authority of Western Australia the following item —

20 “ Forest Products Commission ”.

[\* Reprinted as at 9 July 1999.  
For subsequent amendments see Acts Nos. 5 and 8 of 1999.]

**3. Statutory Corporations (Liability of Directors) Act 1996 amended**

25 Schedule 1 to the *Statutory Corporations (Liability of Directors) Act 1996*\* is amended by inserting after the item relating to the Grain Pool of W.A. the following item —



Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
Account .....	3
authorized person .....	57
CALM Act .....	3
CALM Act Minister .....	3
Commission .....	3
commissioner .....	3
committee .....	61(1)
Conservation Commission .....	3
Department .....	3
departmental land .....	3
document .....	15(4)
Executive Director .....	3
firewood.....	3
forest products.....	3, 4(1)
General Manager .....	3
harvesting .....	3
information .....	15(4)
latest draft plan.....	24(2)
latest draft statement.....	33(2)
management plan .....	3
meeting.....	Sch. 1
mining tenement.....	55(2)
planned targets .....	12(2)
production contract.....	3, 50
profit.....	3
public land .....	3
public service officer .....	Sch. 2
relevant management plan .....	3, 50
road contract .....	50
sawmill .....	57
sharefarmed land .....	3
staff member .....	3
State forest .....	3
the commissioners .....	3
timber .....	3
timber reserve.....	3
timber sharefarming agreement.....	3
tree.....	3