

FOREST PRODUCTS BILL 1999**EXPLANATORY MEMORANDUM**

The purpose of this Bill is to establish the Forest Products Commission as the body which will be responsible for contracting for the harvesting of forest products on public land and for selling those forest products. It will also have similar responsibilities with respect to timber sharefarming agreements entered into under section 34B of the Conservation and Land Management Act if harvesting or sale of forest products is provided for under such an agreement.

The Forest Products Commission will effectively take over the commercial responsibilities that the Department of Conservation and Land Management presently has with respect to the harvesting and sale of forest products and matters related to the forest products industry.

Amendments and transitional provisions in the *Conservation and Land Management Amendment Bill 1999* also address this change in responsibility for harvesting and sale of forest products and related matters, including a change in the name of the Department to the Department of Conservation.

The commercial functions, accountability and related financial provisions applying to the Forest Products Commission are similar to those applying to existing Government trading enterprises.

Part 1 - Preliminary

This Part contains the title of the Bill, the relevant commencement provisions, and definitions for terms used within the Bill.

Clause 1: Short title and citation: *Forest Products Act 1999*.

Clause 2: This clause provides that the proposed Act will commence operation on a day fixed by a proclamation made by the Governor. This will also be the same day that the proposed Conservation and Land Management Amendment Act will commence operation.

Clause 3: This clause provides definitions for certain words and expressions used in the proposed Act. Some terms in the Bill have the same meaning as they have in the *Conservation and Land Management Act 1984*, these are "management plan", "State forest", "timber", "timber reserve" and "tree".

Clause 4: This clause provides a meaning for "forest products".

Subclause 4(1) provides that if trees or parts of trees; timber, sawdust or chips; charcoal, gum, kino, resin or sap; or firewood are located on public land or timber sharefarm land, they are "forest products" for the purposes of the proposed Act. These forest products are elements of forest produce that the present harvesting and sale powers under the Conservation and Land Management Act can be applied. The Conservation and Land Management Amendment Bill will amend these powers so that they will not apply to forest products.

Subclause 4(2) excludes post-harvesting residue of trees or parts of trees; or timber, sawdust or chips; or charcoal, gum, kino, resin or sap; or firewood from the meaning of forest products.

Part 2 - Forest Products Commission

This Part provides for the establishment of the Forest Products Commission; qualifications and appointment of the members of the Commission as commissioners; the Commission's constitution, proceedings and related matters; and the determination of the remuneration of the commissioners.

Clause 5: This clause establishes the Forest Products Commission and provides for related matters.

Subclause 5(1) establishes the body called the Forest Products Commission.

Subclause 5(2) provides that the Forest Products Commission is a body corporate with perpetual succession.

Subclause 5(3) provides that proceedings can be taken against the Forest Products Commission in its corporate name and that, similarly, if the Commission is to take legal proceedings this is to be done in its corporate name.

Subclause 5(4) provides that the Forest Products Commission is an agent of the Crown in right of the State and that it enjoys the status, immunities and privileges of the Crown. Subclause 5(4) also provides that the Forest Products Commission does not enjoy the status, immunities and privileges of the Crown with regard to its required compliance with written laws as provided for in clause 9. The Forest Products Commission's standing as a body with the status, immunities and privileges of the Crown is also subject to clause 42 with regard to its liability for duties, taxes, rates and similar charges.

Clause 6: This clause provides for the appointment of the commissioners of the Forest Products Commission and for related matters.

Subclause 6(1) provides that there will be a total of 7 commissioners appointed to the Forest Products Commission. The commissioners will be nominated by the Minister for appointment by the Governor. They will be persons having expertise in commercial activities that are relevant to the functions of the Forest Products Commission.

Subclause 6(2) provides that the Chairman and the Deputy Chairman are to be commissioners appointed to those offices by the Governor.

Subclause 6(3) provides that certain persons will be ineligible for appointment or to hold office as a commissioner of the Forest Products Commission. The ineligible persons are the General Manager of the Commission; the Commission's staff; members of the Conservation Commission of Western Australia which is intended to be established under the *Conservation and Land Management Amendment Bill 1999*; staff of the Conservation Commission; and the Executive Director of the Department of

Conservation or any employee of that Department. The definition of "staff member" under clause 3 of the Bill includes government officers that may be used by arrangement under clause 39. These persons are also ineligible for appointment as a commissioner.

Subclause 6(4) provides that the governing body of the Forest Products Commission comprises the commissioners.

Subclause 6(5) provides that the commissioners are to perform the functions, determine the policies and control the affairs of the Forest Products Commission.

Clause 7: This clause provides that Schedule 1 of the Bill applies to the commissioners of the Forest Products Commission, and meetings and proceedings of the commissioners. Schedule 1 provides for tenure, conditions and proceedings of the commissioners; and the disclosure of personal material interests by commissioners and related matters.

Clause 8: This clause provides for the remuneration of the commissioners of the Forest Products Commission.

Subclause 8(1) provides that the remuneration and travelling and other allowances that a commissioner will receive will be determined by the Minister on the recommendation of the Minister for Public Sector Management.

Subclause 8(2) provides that if a commissioner is a public sector employee then the commissioner is only entitled to travelling and subsistence allowances.

Part 3 - Functions of Commission

This part establishes that the Forest Products Commission is not immune from the operation of written laws in the performance of its functions; establishes the functions of the Commission; provides limitations on its functions; provides certain duties and obligations to be met in the performance of its functions; and provides for appropriate delegation of its functions.

Clause 9: This clause will establish that the Forest Products Commission does not have an immunity to the operation of written laws except that its liability to duties, taxes and rates will be as provided in clause 42.

Clause 10: This clause provides the functions of the Forest Products Commission.

Subclause 10(1)(a) provides the Commission with a Ministerial advisory function with regard to the production and yield of forest products.

Subclause 10(1)(b) provides the Commission with a Ministerial advisory function with regard to the commercial value and prices of forest products.

Subclause 10(1)(c) provides that it is a function of the Commission to sell forest products by way of contract.

Subclause 10(1)(d) provides that it is a function of the Commission to acquire certain rights and powers, and accept obligations under timber sharefarming agreements through the agency of the Executive Director of the Department of Conservation. This function is applicable to the Commission being given responsibility for harvesting and sale elements of timber sharefarming agreements. For existing agreements this will be effected under transitional provisions in the *Conservation and Land Management Amendment Bill 1999* (Schedule 1, clause 4 of that Bill).

Subclause 10(1)(e) provides that it is a function of the Commission to harvest forest products by way of contract.

Subclause 10(1)(f) provides that it is a function of the Commission to promote employment in, and development of, the forest products industry. The clause also provides that the Commission has a Ministerial advisory function with regard to these matters.

Subclause 10(1)(g) provides a function to the Commission with regard to entering into stockpiling arrangements for forest products with the Executive Director of the Department of Conservation. Stockpiling of forest products is intended, as far as is practical, to be minimized to manage environmental impacts and control harvesting levels in balance with removal of forest products from State forests and timber reserves to mills.

Subclause 10(1)(h) provides a function to the Commission to enter into a memorandum of understanding with the Department of Conservation with regard to each body's respective functions. The memorandum of understanding will address matters such as access to State forests and timber reserves by timber harvesting contractors of the Forest Products Commission. The Department will be provided a similar function under the *Conservation and Land Management Amendment Bill 1999* (clause 15(1)(b) of that Bill).

Subclause 10(1)(i) provides that it is a function of the Commission to monitor the costs of production of forest products including costs of services provided by the Department of Conservation. Such costs have to be included as components of the contracts that the Commission enters into with respect to the harvesting and sale of forest products (clause 54 applies to components of contract price).

Subclause 10(1)(j) provides that it is a function of the Commission to participate in the preparation of management plans for State forests and timber reserves under the Conservation and Land Management Act. Amendments in the *Conservation and Land Management Amendment Bill 1999* provide for the joint preparation of such management plans with the Conservation Commission through the agency of the Department (clauses 22(c), 23 and 24(b) of that Bill). These plans include a setting of the level of forest products that may be harvested.

Subclause 10(1)(k) provides that the Commission has a function to provide records of the quantities, types and grades of forest products harvested on public land to the Executive Director of the Department of Conservation. These records are relevant to that Department's inventory of the quantities of

forest products being produced and for auditing of the quantities of forest products being harvested under management plans.

Subclause 10(1)(l) provides the Commission with a Ministerial advisory function with regard to proposed changes to timber reserves and the establishment of forest products temporary control area classifications in State forests and timber reserves under the Conservation and Land Management Act.

Subclause 10(1)(m) provides the Commission with a function to promote the sustainable use of indigenous forest products on public land having regard to management plans for State forests and timber reserves. This function is relevant to the promotion of value-adding processes to harvested forest products.

Subclause 10(1)(n) provides the Commission with a consultative and advisory function with respect to its policies and programmes as they relate to the public and the forest products industry.

Subclause 10(1)(o) provides the Commission with a study and research function with regard to its other functions. Study or research carried out or caused to be carried out by the Commission has to be approved by the Minister.

Subclause 10(1)(p) provides that it is a function of the Commission to develop and turn to account such intellectual property as may be developed under its study and research function.

Subclause 10(2) prevents the Forest Products Commission from having land vested in it, or having reserves placed with it for care, control and management, or managing land generally, because the Forest Products Commission is not intended to be established as a land management agency.

Subclause 10(3) establishes that the Forest Products Commission is not prevented from having its own offices premises or premises to carry out its study and research function. Similarly, it is provided that the Commission can control land to the extent required to carry out its functions of harvesting and sale of forest products.

Subclause 10(4) provides the Commission with a general power to perform its functions.

Subclause 10(5) provides that the proposed Forest Products Act will not limit or otherwise affect the operation of the *Wildlife Conservation Act 1950* in relation to the Commission or any other person because all flora has been protected throughout the State and this includes the species that are also forest products indigenous to the State.

Subclause 10(6) establishes that as long as forest product harvesting and related activities under a production contract relating to departmental land are carried out in accordance with the relevant management plan then authorization under the Wildlife Conservation Act is not required. On non-departmental land, e.g. unallocated Crown land, authorization under the Wildlife Conservation Act will be required.

Clause 11: This clause provides that the Commission is bound to perform its functions in accordance with its strategic development plan and its statement of corporate intent. These policy instruments are provided for in Part 4 of the Bill.

Clause 12: This clause provides the principles that the Forest Products Commission must act on in performing its functions.

Subclause 12(1) provides that the Commission must try to ensure that a profit consistent with planned targets from exploitation of forest products is made, on the provisos that it ensures long-term viability of the forest products industry and the ecologically sustainable management of indigenous forest products on public land. With respect to forest products on public land, clause 3 provides that "profit", in relation to the exploitation of forest products produced on public land, means an appropriate return to the State for that exploitation.

Subclause 12(2) provides a definition of "planned targets" for the purposes of subclause 12(1) in respect of principles that apply to performance of the Commission's functions.

Subclause 12(3) provides that if the Commission is subject to a written direction from the Minister or a duty to act in accordance with its strategic development plan or its statement of corporate intent, and a matter of conflict or inconsistency with the duty to act in accordance with the principles in clause 12(1) arises, then the Commission must comply with the Minister's direction or the duties in the Commission's strategic development plan or its statement of corporate intent.

Clause 13: This clause enables the Forest Products Commission to formally delegate performance of its functions to commissioners, the General Manager, staff members or a committee that the Commission has established to assist it with its functions.

Part 4 - Accountability

This Part provides the means by which the Forest Products Commission will be accountable to the Minister and provides for an appropriate level of consultation and the provision of information. The policy instruments that determine the implementation of the Commission's commercial responsibilities are provided for in the form of Strategic Development Plans and Statements of Corporate Intent which are developed in consultation with the Minister and the Treasurer. Where the Minister gives directions to the Commission with regard to drafts of these policy instruments or modifications to those in operation, the directions have to be laid before each House of Parliament.

Division 1 - Ministerial directions and provision of information

Clause 14: This clause enables the Minister to give written directions to the Commission about the performance of its functions under the proposed Act. The Commission is required to comply with the Minister's directions but the Commission can question the direction given by the procedure provided in section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*.

Any written direction given to the Commission by the Minister about the performance of the Commission's functions is required to be laid before each House of Parliament.

Clause 15: This clause provides, for accountability purposes, that the Minister is entitled to have information possessed by the Forest Products Commission and that the information must be provided by the Commission to the Minister.

Clause 16: This clause provides for consultation between the commissioners and the Minister.

Subclause 16(1) provides that the commissioners and the Minister are to consult about the operations of the Commission. Consultation may be undertaken by appropriate representatives on behalf of the commissioners or the Minister.

Subclause 16(2) provides that the commissioners must consult the Minister about a proposed course of action that amounts to a major initiative or is likely to be of significant public interest.

Clause 17: This clause requires the commissioners to keep the Minister reasonably informed about its operations and promptly advise the Minister about matters that may prevent or significantly affect the Commission achieving the objectives in its statement of corporate intent, or targets in its strategic development plan.

Clause 18: This clause provides that the commissioners must advise the Minister if it is unable or unlikely to meet its financial obligations. Once informed the Minister must inform the Treasurer, and confer with the commissioners and the Treasurer so that a course of action can be undertaken to ensure that the financial obligation of the Commission will be met.

Division 2 - Strategic development plans and statements of corporate intent

Subdivision 1 - Strategic development plans

Clause 19: This clause provides that a draft strategic development plan has to be submitted to the Minister annually but not later than 3 months before the start of the next financial year.

Clause 20: This clause provides that the forecast period of a strategic development plan is 5 years. If the Minister agrees the forecast period can be less than 5 years.

Clause 21: Subclause 21(1) provides the matters that the Commission's strategic development plan must include. The plan must set out medium and long term objectives, operational targets and how the objectives and targets will be achieved.

Subclause 21(2) provides the matters that are to be considered in the preparation of the Commission's strategic development plan.

Clause 22: This clause provides that the commissioners and the Minister must try to reach agreement on a draft strategic development plan promptly. They must reach agreement no later than one month before the start of the next financial year so that the strategic development plan can be implemented from the commencement of that financial year.

Clause 23: This clause provides the Minister with powers in relation to the Commission's draft strategic development plan.

Subclause 23(1) provides the Minister with the discretion to return a draft strategic development plan to the commissioners for reconsideration and revision.

Subclause 23(2) requires the commissioners to comply with the Minister's request for reconsideration and revision of the plan as soon as is practicable.

Subclause 23(3) enables the Minister to give written direction to the commissioners to take specified steps in relation to the strategic development plan or to modify it as specified if agreement cannot be reached on the plan one month before the start of the next financial year.

Subclause 23(4) requires the commissioners to comply with the Minister's request to take specified steps or modify the plan as soon as is practicable.

Subclause 23(5) provides that the Minister's directions to the commissioners about a draft strategic development plan have to be laid before each House of Parliament.

Clause 24: This clause provides that if agreement cannot be reached between the commissioners and the Minister on a draft strategic development plan before the start of the financial year then the latest draft plan will operate until agreement is reached.

Clause 25: This clause provides that once agreement between the commissioners and the Minister on a draft strategic development plan has been reached it becomes the plan for the relevant financial year. If agreement is reached after the commencement of the financial year the plan applies to the remainder of the financial year. Agreement requires concurrence of the Treasurer (clause 27).

Clause 26: This clause provides for the modification of a strategic development plan by the commissioners with agreement of the Minister or if the Minister directs that the plan be modified. The Minister's direction has to be laid before each House of Parliament. Modifications require concurrence of the Treasurer (clause 27).

Clause 27: The Minister requires the concurrence of the Treasurer with regard to the Minister's agreement to a draft strategic development plan or the Minister's agreement to or the Minister's direction to modify a plan.

Subdivision 2 - Statement of corporate intent

Clause 28: This clause provides that a draft statement of corporate intent has to be submitted to the Minister annually but not later than 3 months before the start of the next financial year.

Clause 29: This clause provides that a statement of corporate intent covers a financial year. The Commission's first statement of corporate intent will cover the next full financial year after the commencement of Part 4 of the proposed Act.

Clause 30: Subclause 30(1) provides that a statement of corporate intent must be consistent with the strategic development plan.

Subclause 30(2) lists the matters that must be specified in the Commission's statement of corporate intent.

Subclause 30(3) provides the Minister with the discretion to exempt the Commission from including a matter that ordinarily has to be included in the statement of corporate intent. If such an exemption is granted it has to be noted in the statement of corporate intent.

Subclause 30(4) provides that community service obligations specified in the statement of corporate intent that may have to be compensated for are those that affect the Commission's capacity to meet its duty to try to ensure that a profit is made in accordance with the principles provided in clause 12 as they apply to contracting for the harvesting and sale of forest products on public land and timber sharefarm land.

Clause 31: This clause provides that the commissioners and the Minister must try to reach agreement on a draft statement of corporate intent promptly. They must reach agreement no later than one month before the start of the next financial year so that the statement of corporate intent can apply from the commencement of that financial year.

Clause 32: This clause provides the Minister with powers in relation to the Commission's draft statement of corporate intent. They are equivalent to the powers applying to draft strategic development plans (clause 23).

Subclause 32(1) provides the Minister with the discretion to return a draft statement of corporate intent to the commissioners for reconsideration and revision.

Subclause 32(2) requires the commissioners to comply with the Minister's request for reconsideration and revision of the statement as soon as is practicable.

Subclause 32(3) enables the Minister to give written direction to the commissioners to take specified steps in relation to the statement of corporate intent or to modify it as specified if agreement cannot be reached on the statement one month before the start of the next financial year.

Subclause 32(4) requires the commissioners to comply with the Minister's request to take specified steps or modify the statement as soon as is practicable.

Subclause 32(5) provides that the Ministers directions to the commissioners about a draft statement of corporate intent have to be laid before each House of Parliament.

Clause 33: This clause provides that if agreement cannot be reached between the commissioners and the Minister on a draft statement of corporate intent before the start of the financial year then the latest draft statement will operate until agreement is reached.

Clause 34: Subclause 34(1) provides that once agreement between the commissioners and the Minister on a draft statement of corporate intent has been reached it becomes the statement for the relevant financial year. If agreement is reached after the commencement of the financial year the statement applies to the remainder of the financial year. Agreement requires concurrence of the Treasurer (clause 36).

Subclause 34(2) provides that the statement of corporate intent agreed to by the Minister has to be laid before each House of Parliament.

Subclause 34(3) provides that a matter of a commercially sensitive nature can be deleted from a statement of corporate intent before it is laid before Parliament if the commissioners request the Minister to delete it. Such a deletion is made at the discretion of the Minister.

Subclause 34(4) provides that if a commercially sensitive matter is deleted from a statement of corporate intent before it is laid before Parliament then the statement that is laid before Parliament must contain a statement detailing the reasons for deletion at the place where the deletion was made. Subclause 34(4) also provides that under these circumstances an opinion of the Auditor General must accompany the statement and the Auditor General's opinion must state whether or not the information deleted is commercially sensitive.

Clause 35: This clause provides for the modification of a statement of corporate intent by the commissioners with agreement of the Minister or if the Minister directs that the statement be modified. The Minister's direction has to be laid before each House of Parliament. Modifications require concurrence of the Treasurer (clause 36).

Clause 36: The Minister requires the concurrence of the Treasurer with regard to the Minister's agreement to a draft statement of corporate intent, or the Minister's agreement to modify or the Minister's direction to modify a statement.

Part 5 - Staff

This Part provides for the chief employee (General Manager) and other staff of the Forest Products Commission. Transitional provisions in the *Conservation and Land Management Amendment Bill 1999* provide for the transfer of a number of relevant positions from the Department of Conservation and Land Management to the staff of the Forest Products Commission. Other government staff can be used by the Commission by arrangement with their employer. Similarly, arrangements can be made for the use of government facilities by the Forest Products Commission.

Clause 37: This clause provides for the chief employee of the Forest Products Commission (the General Manager).

Subclause 37(1) establishes that the Commission is to have a chief employee known as the General Manager.

Subclause 37(2) provides that Schedule 2 of the proposed Act will have effect with respect to the General Manager. Schedule 2 sets out the conditions of employment of the General Manager.

Subclause 37(3) provides that the General Manager is subject to control of the commissioners. Subclause 37(3) also provides that the General Manager is responsible for and is empowered to administer the day to day operations of the Commission.

Clause 38: Subclause 38(1) empowers the General Manager to engage and manage the staff of the Commission.

Subclause 38(2) enables the General Manager's powers to engage and manage staff to be delegated.

Subclause 38(3) provides for the remuneration and other terms and conditions of staff of the Commission to be not less favourable than those in an applicable industrial award, order or agreement; or the *Minimum Conditions of Employment Act 1993*.

Subclause 38(4) provides that the operation of the Workplace Agreements Act is not affected. Similarly, section 100 of the Public Sector Management Act is not affected (that section provides for the powers of employing authorities).

Subclause 38(5) provides that the Commission is obliged to comply with government policies relating to industrial relations and human resource management that apply generally to public sector bodies. These obligations cannot be overridden by other provisions in the proposed Act or anything in the Commission's strategic development plan or statement of corporate intent.

Clause 39: This clause enables the Commission to make use of the services of other government staff by arrangement with their employer. Similarly, the Commission can make arrangements for the use of the facilities of a Public Service department, or a State agency or instrumentality.

Part 6 - Financial provisions

This Part establishes what funds will be available to the Forest Products Commission; establishes the Forest Products Account; provides for the liability of the Commission to taxes; provides for the way in which dividends from the surplus of its operations are to be paid; enables borrowings to be made and provides for guarantees of borrowings; and establishes the application of the *Financial Administration and Audit Act 1985* to the Commission and its operations.

Clause 40: This clause provides that the funds available to the Commission to perform its functions consist of moneys appropriated by Parliament, received in the performance of its functions, borrowed from the Treasurer or borrowed with the approval of the Treasurer, and other moneys lawfully received by, made available to or payable to the Commission.

Clause 41: Subclause 41(1) provides that the funds available to the Commission under clause 40 are to be credited to the "Forest Products Account" which can be at the Treasury or a bank approved by the Treasurer.

Subclause 41(2) establishes the matters that the Forest Products Account is to be charged with.

Clause 42: Subclause 42(1) provides that the Commission is liable to and chargeable for duties, taxes or other imposts.

Subclause 42(2) provides that land held by the Commission is not rateable land for the purpose of the Local Government Act unless it leased or let to another party.

Subclause 42(3) provides that if the Commission leases or lets the land it holds, then the land is rateable under the Local Government Act.

Subclause 42(4) provides that the Commission must pay to the Treasurer a tax equivalent to the rates for the land that it holds as if the land was rateable under the Local Government Act.

Subclause 42(5) provides that a tax equivalent does not have to be paid to the Treasurer for the land that the Commission has to pay rates on because the land has been leased or let to another party.

Subclause 42(6) provides that payment of the tax equivalent for land rates to the Treasurer will be determined in accordance with principles and paid at such times as the Treasurer directs.

Subclause 42(7) provides that the first tax equivalent payment to the Treasurer will be for the next financial year after the commencement of the proposed Act.

- Clause 43: This clause provides for the payment of dividends to the consolidated fund.
- Subclause 43(1) provides that a dividend from any surplus may be paid wholly or partly into the consolidated fund or to the extent that it is not paid into the Consolidated Fund is to be applied for the purpose of the Commission.
- Subclause 43(2) provides that as soon as practicable after the end of the financial year the commissioners must make a recommendation to the Minister about whether a final dividend is to be paid and the amount to be paid.
- Subclause 43(3) provides that the recommended dividend can be accepted by the Minister or, after consulting the commissioners, the Minister can direct that a different dividend be paid. These actions require the concurrence of the Treasurer.
- Subclause 43(4) provides the periods in which the Commission must pay the dividend.
- Subclause 43(5) provides for the payment of interim dividends during part of a financial year.
- Subclause 43(6) provides that the recommended interim dividend can be accepted by the Minister or, after consulting the commissioners, the Minister can direct that a different interim dividend be paid. These actions require the concurrence of the Treasurer.
- Subclause 43(7) provides the periods in which the Commission must pay the interim dividend.
- Clause 44: This clause enables the Commission to borrow moneys from the Treasurer.
- Clause 45: This clause enables the Commission to borrow moneys for the purpose of performing its functions from elsewhere subject to the approval of the Treasurer and terms and conditions determined by the Treasurer.
- Clause 46: This clause provides for the Treasurer to guarantee the moneys owed by the Commission from borrowings in such form and on such terms and conditions as the Treasurer determines, and according to the security and other matters required of the Commission.
- Clause 47: This clause provides the effect of the Treasurer's guarantee. Payment under the guarantee will be charged to the Consolidated Fund.
- Clause 48: This clause enables the Treasurer to charge the Commission for the Treasurer's guarantee for the payment of moneys owed by the Commission from borrowings.

Clause 49: This clause provides that the Forest Products Commission is subject to the Financial Administration and Audit Act requirements that regulate the financial administration, audit and reporting of statutory authorities.

Part 7 - Contracts for harvesting or sale of forest products

This Part establishes the contracting powers of the Forest Products Commission, the limitations that apply to those powers and related matters.

Clause 50: This clause provides definitions applicable to Part 7. Definitions are provided for "production contract", "relevant management plan" and "road contract".

Clause 51: This clause provides that the commercial arrangements that the Forest Products Commission may make for the purposes of production contracts and road contracts include conducting negotiations by private treaty, calling for expressions of interest, calling tenders and arranging sales by auction.

Clause 52: Subclause 52(1) provides that a production contract for the harvesting of forest products may include obligations with regard to construction or maintenance of roads or other infrastructure for harvesting purposes, silviculture operations and regeneration of forest products.

Subclause 52(2) provides that if forest products are to be harvested on departmental land the Commission must make arrangements with the Executive Director of the Department of Conservation with regard to access to the land by the harvesting contractor and the performance of that Department's functions under the Conservation and Land Management Act and the relevant management plan.

Subclause 52(3) provides that obligations with regard to construction or maintenance of roads or other infrastructure for harvesting purposes, silviculture operations and regeneration of forest products cannot be included in a production contract without the consent of the Executive Director of the Department of Conservation.

Subclause 52(4) provides that if a production contract includes obligations with regard to construction or maintenance of roads or other infrastructure for harvesting purposes, silviculture operations and regeneration of forest products, this does not affect the Department of Conservation's functions on the land.

Clause 53: Subclause 53(1) provides that the Commission cannot enter into a production contract relating to forest products on departmental land unless it ensures that the quantities and kinds of forest products and the location of the forest products to be harvested and sold under the contract are in accordance with the relevant management plan.

Subclause 53(2) provides that a production contract of the Commission does not have effect after the relevant management has expired.

Clause 54: Subclause 54(1) provides a description of the components of the price for the sale of forest products under a production contract that must, where applicable, be included by the Commission in that price.

Subclause 54(1)(a) provides the price component for the costs of harvesting the forest products, including where applicable road construction and maintenance costs, infrastructure costs, silviculture cost and regeneration costs.

Subclause 54(1)(b) provides the price component for services and other matters provided by the Department of Conservation by arrangement.

Subclause 54(1)(c) provides the price component for the costs incurred by the Department of Conservation in establishing, regenerating, tending, protecting or otherwise managing forest products on departmental land and managing and protecting that land.

Subclause 54(1)(d) provides the price component applicable to the costs of the Executive Director of the Department of Conservation incurred under a timber sharefarming agreement in establishing and maintaining, or maintaining, the crop of trees from which the forest products are derived.

Subclause 54(1)(e) provides the price component applicable to the Commission's operating costs in relation to forest products.

Subclause 54(1)(f) provides the price component representing a profit from the exploitation of forest products. With respect to forest products on public land, clause 3 provides that "profit", in relation to the exploitation of forest products produced on public land, means an appropriate return to the State for that exploitation.

Subclause 54(2) provides that the Treasurer is to resolve a disagreement between the Commission and the Executive Director about recovery of the amount of the full costs of the Department by determining the amount.

Clause 55: This clause provides that contractors of the Commission may enter pastoral and other leases, or a mining tenement for the purpose of taking and removing forest products. This provision will have effect subject to the regulations. Clause 55 is provided as a replacement for section 96(4) of the Conservation and Land Management Act which presently applies in a similar way to forest produce.

Clause 56: This clause provides that a provision or condition of a production contract or a road contract does not have any effect if it is inconsistent with the proposed Forest Products Act, the Conservation and Land Management Act or the relevant State forest or timber reserve management plan.

Part 8 - Enforcement powers

This Part provides enforcement powers that may be applied when forest products have been hidden (secreted) and are subject to a debt owed to the Forest Products Commission. Such forest products are the property of the State. Entry to registered sawmills by an authorized person is provided for. Forest products that are involved in an offence against the proposed Forest Products Act are liable to seizure by an authorized person.

Clause 57: This clause provides definitions of “authorized person” and “sawmill” applicable to the enforcement powers provided in Part 8 of the Bill. A forest officer under the Conservation and Land Management Act can be authorized to exercise the enforcement powers by the General Manager of the Forest Products Commission.

Clause 58: This clause provides that if payment for forest products under a production contract has not been received an authorized person may search and seize the forest products. Sections 117 and 119 of the Conservation and Land Management Act have similar provisions which apply to forest produce.

Subclause 58(1) provides the power for an authorized person to search for and seize forest products.

Subclause 58(2) defines “production contract”.

Subclause 58(3) provides that the search and seizure power cannot be exercised if the forest products have been hidden (secreted) unless a warrant has been issued by a justice to enter and search for the secreted forest products.

Subclause 58(4) provides that a warrant to enter and search for forest products on which a debt is due to the Forest Products Commission is not needed if the forest products are on public land or at a registered sawmill.

Subclause 58(5) provides that issue of a warrant is conditional on an authorized person making a complaint on oath to a justice that the authorized person believes that forest products have been secreted.

Subclause 58(6) provides that on reasonable grounds of suspicion, where forest products on which a debt is due to the Forest Products Commission have been manufactured into timber products, the timber products may be searched for and seized under the enforcement powers of proposed section 58.

Clause 59: This clause provides a power to enter a registered sawmill for the purposes of inspection and inquiry with regard to compliance with the proposed Forest Products Act. Section 119A of the Conservation and Land Management Act has a similar provision.

Clause 60: This clause provides that an authorized person can seize forest products from a person where there are reasonable grounds of suspicion that the forest products are the subject of an offence against the proposed Forest Products

Act. The forest products seized may be sold or otherwise disposed of by the Forest Products Commission. A lawful owner of the forest products can claim the proceeds of disposal. Section 118 of the Conservation and Land Management Act has a similar provision.

Part 9 - Miscellaneous

This Part provides miscellaneous provisions which apply to advisory committees established by the Minister; liability for wrongdoing; execution of documents; laying certain documents before Parliament when a House is not sitting; regulation headpowers; a review of the proposed Act; and consequential amendments.

Clause 61: This clause enables the Minister to establish temporary advisory committees to advise the Minister in relation to employment in, and development of, the forest products industry. Advisory committees may also be established to advise the Minister about any other matters relating to administration of the proposed Forest Products Act. Provision is also made for the Forest Products Commission to be consulted about the establishment of advisory committees and the advice they provide to the Minister.

Clause 62: This clause provides protection from liability for wrong doing for a person performing a function under the proposed Forest Products Act in good faith. This protection does not extend to the Forest Products Commission or the Crown. The liability of a person who is a commissioner of the Forest Products Commission is subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

Clause 63: This clause provides binding processes for the execution of documents by the Forest Products Commission and for legal recognition of documents executed under the common seal of the Commission.

Clause 64: This clause provides that when a House of Parliament is not sitting during a period when a document that is required under the proposed Act to be laid before it, the Minister is to provide the Clerk of the relevant House with a copy of the document. Those documents are a direction of the Minister to the commissioners with regard to performance of functions (clause 14(3)); a direction of the Minister to the commissioners with regard to a draft strategic development plan (clause 23(5)); a direction of the Minister to the commissioners with regard to modifying a strategic development plan (clause 26(4)); a direction of the Minister to the commissioners with regard to a draft statement of corporate intent (clause 32(5)); a statement of corporate intent agreed to by the commissioners and the Minister (clause 34(2)); a direction of the Minister to the commissioners with regard to modifying a statement of corporate intent (clause 35(4)); and a declaration of the Minister about a commissioner's entitlement to vote on a matter being considered by the commissioners (Schedule 1, clause 21(2)).

Clause 65: This clause provides regulation headpowers for regulations to be made under the proposed Act.

Subclause 65(1) provides the general headpower for the Governor to make regulations.

Subclause 65(2) provides for the specific matters that regulations may be made for. They are matters presently administered under the Conservation and Land Management Act (*Forest Management Regulations 1993*) in relation to harvesting and sale of forest products which will be administered by the Forest Products Commission on commencement of the proposed Forest Products Act.

Subclause 65(3) provides that the regulations may prescribe a maximum penalty of up to \$2 000 for an offence against a regulation. This is the same maximum penalty level that can apply to regulation offences made under the Conservation and Land Management Act.

Clause 66: This clause provides for the operation of the Forest Products Commission to be reviewed by the Minister 5 years after the proposed Forest Products Act commences. A report of the review has to be laid before each House of Parliament. This review provision is consistent with the standard review provision that is applied to the operation of new statutory bodies.

Clause 67: This clause provides that the Acts in Schedule 3 of the Bill are consequentially amended. The Acts to be amended are the *Constitution Acts Amendment Act 1899*; the *Financial Administration and Audit Act 1985*; and the *Statutory Corporations (Liability of Directors) Act 1996*.

Schedule 1 - Commissioners

Schedule 1 sets out the tenure, conditions and proceedings of the commissioners of the Forest Products Commission and their obligations with regard to disclosure material personal interests and related matters. With regard to the General Manager of the Commission, this schedule provides that the General Manager may attend meetings and participate in their business but cannot vote on any matter.

Schedule 2 – General Manager

Schedule 2 sets out the conditions of employment of the General Manager, who is the chief employee of the Forest Products Commission.

Schedule 3 - Consequential amendments

Schedule 3 provides for the amendment of 3 Acts as a consequence of the establishment of the Forest Products Commission under the proposed Forest Products Act. The Acts to be consequentially amended are:

1. the *Constitution Acts Amendment Act 1899*;
 2. the *Financial Administration and Audit Act 1985*; and
 3. the *Statutory Corporations (Liability of Directors) Act 1996*.
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