

obligations would need to be accompanied by a monitoring and compliance system.

Laws that require access to information, public consultation, dispute resolution and transparency will also be needed to help ensure that the public appreciates the rationale behind the standards. The public should also be kept informed about progress being made. Use of public funds to achieve these goals will have to be accountable given the large expenditure that is likely to be required.

The importance of a complete set of objectives as the end point of management within a region is also consistently referred to.<sup>85</sup> The 2011 SoE has stated that there are no

*systematically derived regional objectives for marine biodiversity to guide strategic planning or management.*<sup>86</sup>

Objectives are set as measures against which achievements or outcomes can be measured. Objectives can provide structure as well as flexibility within that structure concerning how to achieve the objectives. Objectives become integrating where all stakeholders know their role in achieving the objectives. As a result, requirements to consult and advise the private sector and local communities regarding what is expected of their activities will be needed.

Zoning is frequently provided for within marine parks and is a tool for integrating activities across sectors. A question arises as to how far this approach could and should be applied outside MPAs. Space has not permitted, for example, an examination of the zoning arrangements within the GBRMP, and it is too early to assess the effectiveness of the zoning and management plans that have been established within the NRSMPA. NELA has expressed in principle support for marine spatial planning and zoning across all our seas as was originally envisaged in *Australia's Oceans Policy*.<sup>87</sup> It is suggested that the operation of zoning in GBRMPA, the NRSMPA, and overseas in areas outside MPAs should be the subject of research for the purpose of further policy development.

## The Tasmanian Forest Agreement legislation by Adam Beeson\*

### Introduction

The *Tasmanian Forest Agreement Act 2013* (the Act) became law on 3 June 2013. The controversial legislation, which is intended to implement the Tasmanian Forest Agreement (the Agreement) signed by industry and conservation groups, was significantly amended in the Legislative Council. This article briefly outlines significant aspects of the Act.

In its final form, the Act creates a process for transferring just over half a million hectares of native forest from state forest into reserves in which forestry operations are not permitted, and transferring management responsibilities for these areas from Forestry Tasmania<sup>1</sup> to the Tasmanian Parks and Wildlife Service.<sup>2</sup> The Act makes the future reservation of forest areas contingent upon a complex range of factors. Time will tell whether these factors present insurmountable hurdles to the realisation of the objectives of the Agreement.

The Act also reduces minimum wood supply requirements, provides compensation for affected contractors, and provides for the establishment of a Special Council to advise on the implementation of the Agreement.

### Legislative context

In 2010, Gunns Ltd, at the time the largest player in the Tasmanian native forest industry, announced that it would cease timber harvesting in native forests in Tasmania. Gunns' exit, along with a variety of other factors, gave rise to a crisis in the native forestry industry. In an effort to address the crisis, industry and conservation stakeholders commenced negotiations aimed at reaching agreement over the industry's future in Tasmania. This led to the signing of the *Tasmanian Forests Statement of Principles to Lead to an Agreement* in October 2010.

The Tasmanian and Commonwealth Governments provided initial funding to support progress towards a negotiated agreement, enabling the parties to engage various experts and facilitators. In August 2011, these governments also

85 For example, in relation to MPAs, Trevor Ward said that we need to talk about their role in a *complete* set of objectives, that is, on- and off-reserve measures, to deal with climate change and fish populations.

86 Department of Sustainability, above n 16, 434.

87 Wells and Cornwall, above n 5, 37.

1 Forestry Tasmania, operating pursuant to the *Forestry Act 1920* (Tas), is a government business enterprise which controls and manages all state forest in Tasmania.

2 The Parks and Wildlife Service operates under the *National Parks and Reserves Management Act 2002* (Tas). It manages reserves created in Tasmania under the *Nature Conservation Act 2002* (Tas).

entered into the *Tasmanian Forests Intergovernmental Agreement* (the TFGA), which provided for \$250m in Commonwealth funding<sup>3</sup> for Tasmania to implement agreed outcomes, including reserve management, exit payments and the re-skilling of forestry workers.

The Agreement was signed on 22 November 2012.<sup>4</sup>

The Agreement could be implemented, in theory, using existing legislation and policy frameworks. However, in addition to the socio-political reasons for enacting enabling legislation, the TFGA made Commonwealth funding contingent upon the introduction to the Tasmanian Parliament by 30 June 2012 of legislation to formally protect the hectares of high conservation value forest identified through the negotiation process. To fulfil this commitment, the Tasmanian Government introduced the *Tasmanian Forest Agreement Bill 2012* on 21 June 2012.

The Bill passed the lower house in June 2012, without the support of the Tasmanian Liberals, and was subject to review by the upper house.<sup>5</sup> Following strong lobbying, the upper house amended the Bill in a range of significant ways. The amended legislation was subsequently passed by a narrow majority in the lower house.

Enormous controversy has surrounded the legislation from the outset, and was intensified by the amendments made by the Legislative Council. This article does not seek to analyse the range of conflicting views. It is limited to explaining what the legislation now provides for. Though initiated and supported by significant representative stakeholders, a range of both industry and conservation groups continue to oppose the Agreement.

### Special Council

The Act creates a Special Council, comprised of a representative from each of the signatories to the Agreement, as well as a person nominated by the Minister. The responsibilities of the Special Council are to promote

the vision of the Agreement, to advise the Minister on implementation and administrative issues, and to prepare durability reports (see below).

The Special Council does not have any decision making power, although its recommendations on special species must be followed by the Minister. Ultimately, all decisions made under the Act are made by the Minister and Parliament.

### Wood supply and compensation

Under the current *Forestry Act 1920* (Tas), Forestry Tasmania must make available to industry a minimum sawlog volume of 300,000m<sup>3</sup> annually. Based on evidence regarding sustainable economic yields, the Act reduces this quota to 137,000m<sup>3</sup>.

When a reserve is declared under the Act, certain contracts, such as wood supply agreements, will be terminated, and rights, such as the right to harvest timber, will be extinguished. The Act includes compensation provisions setting out a process for people who will suffer financial loss as a result of the reserves being formally declared.

### The mechanics of forest protection

The Act sets out a convoluted process, whereby each stage has several elements which in turn lead to multiple pathways. *Figure 1* attempts to lay out the process diagrammatically.

### Future reserve land

When the Act came into force, 515,000 ha of state forest immediately became 'future reserve land'<sup>6</sup>. The Act prohibits native forest harvesting in part, but not all of the Future Reserve Land, while the reserve making process takes place.

Approximately 21,000 ha of the Future Reserve Land remains available for timber harvesting. While the land could still be reserved through the reserve creation process in the Act, timber harvesting can continue in the interim.

In addition, 42 forestry coupes are excluded from the Future Reserve Land.<sup>7</sup> These coupes cannot be reserved through the process created by the Act.

3 Some of the funding was provided upfront, with approximately \$120m to be paid over 15 years.

4 The signatories to the Tasmanian Forest Agreement are the Australian Conservation Foundation, Australian Forest Contractors Association, Australian Forest Products Association, Construction, Forestry, Mining and Energy Union, Environment Tasmania Inc, Forest Industries Association of Tasmania, Tasmanian Forest Contractors Association, Timber Communities Australia, Tasmanian Sawmillers Association, The Wilderness Society Inc and The Wilderness Society (Tasmania) Inc.

5 Tasmania has a House of Assembly (Lower house) and Legislative Council (upper house). The House of Assembly determines who forms government and all members are from the Liberal, Labour or Green parties. The 15 Legislative Councillors in the Upper House are mainly Independents.

6 Sch 1 of the Act is a table of the state forest that is subject to the Act. The area is divided into lots. Sch 7 provides maps which show the location of the lots.

7 These are listed in sch 6 of the Act. The Act does not clearly identify the location and area of these coupes, however, based on other sources the total area is probably in the order of 2,000 ha.

Following amendments introduced by the Legislative Council, the Minister for Energy and Resources (the Minister) may also allow special species<sup>8</sup> harvesting in parts of the Future Reserve Land<sup>9</sup> or in additional coupes identified in regulations. The Minister can only allow special species harvesting on advice from the Special Council that special species timber needs cannot be met from within the permanent timber production zone land. The Minister's decision to permit harvesting must be accepted by both Houses of Parliament before it can take effect.

### Creating reserves

The Minister can make an order declaring any area of future reserve land to be 'proposed reserves' under the Act. The three tranches of proposed reserve orders must be made within the following time limits, depending on which land is concerned:<sup>10</sup>

- the initial order must be made by 3 July 2013
- the second order must be made no later than 1 March 2015
- the third order can only be made between 1 January 2022 and 31 December 2022.

If the specified orders are not made within the statutory time limits, the Act will cease to have effect, but reserves created before that time will be protected.

Before a proposed reserve order can be made, the Minister must:

- obtain a durability report<sup>11</sup> from the Special Council
- obtain advice from the federal minister responsible for the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) addressing whether reservation will generate carbon credits, and how much revenue such credits may attract
- for the second and third orders, be satisfied that Forest Stewardship Council (FSC) certification has been obtained for forestry operations in the permanent timber production zone. This is not required for the initial proposed reserve order.

The durability report is prepared by the Special Council and must consider all aspects of the Agreement. If requested

by Parliament, the report must detail whether 'substantial active protests' or 'substantial market disruption'<sup>12</sup> has occurred in the previous twelve months.

Whilst the durability report must be tabled in the Tasmanian Parliament, there is no explicit requirement for the Minister to take it into account when deciding whether to make the Proposed Reserve Order. Both Houses of Parliament must accept the Proposed Reserve Order for it to have effect.

The Initial Proposed Reserve Order was made on 1 July 2013 and applies to 392, 237 ha of forest.

If accepted by both Houses of Parliament, land specified in a Proposed Reserve Order can be transferred into formal reserves, such as national parks or nature reserves.<sup>13</sup> This process begins with the Nature Conservation Minister confirming the boundaries, values and purpose of the proposed reserve areas, as set out in Sch 1 of the Act. The Minister can either confirm the boundaries, values and purposes, or determine that different boundaries, values and purposes should apply.

It is not clear why different boundaries, values or purpose might be declared, but such a situation may result if new scientific evidence was had become available after the commencement of the Act. Both Houses of Parliament must agree to a determination if the boundaries, values or purposes are significantly different from those set out in the Reserve Order.

There are some significant exceptions and restrictions in relation to the reserve boundary determinations. In particular:

- the boundaries of approximately 248,000 ha of land within the initial proposed reserve order land cannot be finalised by the Nature Conservation Minister until after 1 October 2014 and Forestry Tasmania has received FSC accreditation
- the boundaries of approximately 34,000 ha can only be determined by the Nature Conservation Minister after Forestry Tasmania had received FSC accreditation and the land had been included in the World Heritage List.

8 Special species include blackwood, myrtle, celery top, sassafras, huon pine and silver wattle.

9 These are specified in sch 5 of the Act.

10 The time limits for each of the lots in the Future Reserve Land are part of the table in sch 1 of the Act.

11 Section 17 of the Act prescribes the necessary content of a durability report.

12 These are defined in s 4 of the Act: 'substantial active protest' means an activity that has a negative material impact on forest operations legally carried out or on any processing of timber legally carried out; 'substantial market disruption' means an activity that has a negative material impact on the sale of legally harvested Tasmanian timber.

13 Information on the reserve system in Tasmania can be found EDO Tasmania, *Environmental Law Handbook* (Updated 2013) <edohandbook.org/doku.php>.

The proposed extension of the Tasmanian Wilderness World Heritage Area to include those lots was made in June 2013 at the 37th session of the World Heritage Committee in Cambodia in June 2013.<sup>14</sup>

Provided these pre-requisites are met, the confirmed boundaries mirror those in the Act, and no failure of durability determination<sup>15</sup> has been made in the preceding 12 months, these reserves may be declared without further reference to Parliament. However, if the boundaries are altered or an adverse durability report has been made, approval from both Houses of Parliament will be required before the reserves can take effect. The convoluted process for making reserves is set out in *Figure 1*.

### Conclusion

The Act provides a process for reserves to be created over more than 500,000 ha of forest in Tasmania currently open for logging. The process is long and complex, and Parliament retains complete control over what does, and does not become a reserve. Whilst the subject of much debate and acrimony; within both the environment movement and forest industry, the question as to whether this legislation will see the full implementation of the Agreement is yet to be answered.

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14 UNESCO, Convention Concerning the Protection of the World Cultural and Natural Heritage, *Decisions adopted by the World Heritage Committee at its 37th Session (Phnom Penh, 2013)*, UN Doc WHC-13/37.COM/20 (5 July 2013), 215 <[whc.unesco.org/en/sessions/37COM/](http://whc.unesco.org/en/sessions/37COM/)>.

15 A durability determination can be made (and revoked) by Parliament at any time pursuant to s 24 of the Act. Either House of Parliament can make a determination. The determination is that there has been a 'failure of durability including, but not limited to, substantial active protests or substantial market disruption since the previous durability report or, if there is no previous durability report, since the commencement of this Act.

Figure 1: Reserve creation under the *Tasmanian Forest Agreement Act 2013*.



