

No. 30 of 1991.

Forestry Act 1991.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 30 of 1991.

Forestry Act 1991.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Forestry Act 1991,

Being an Act to provide for and to give effect to the National Goals and the Directive Principles and in particular to—

- (a) manage, develop and protect the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for the succeeding generations; and
- (b) maximise Papua New Guinean participation in the wise use and development of the forest resources as a renewable asset; and
- (c) utilize the Nation's forest resources to achieve economic growth, employment creation and industrial and increased "down stream" processing of the forest resources; and
- (d) encourage scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National developmental objectives; and
- (e) repeal various Acts and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. of the *Constitution (qualified rights)*, namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and

- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

(3)¹ ²For the purposes of Section 53(1) (*protection from unjust deprivation of property*) of the *Constitution* and of the *Land Act 1996* it is hereby declared that—

- (a) forestry purposes; and
- (b) the purchase of logs under Section 115(1)(a),

are public purposes.

2. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**at stump**”, in relation to timber, means at the place where the timber is felled or otherwise severed from the ground, before it is moved, conveyed or transported;

“**Authority**” means the Papua New Guinea Forest Authority established by Section 5;

“**Board**” means the National Forest Board established by Section 9;

“**burning permit**” means a burning permit issued under Section 53;

“**Chairman**” means the Chairman of the Board;

³⁴“**Chairman of the Provincial Forestry Committee**” means the Chairman of the Committee established for a province by the Provincial Executive Council to be responsible for forestry matters in that province, means the Chairman of the Committee of that province;

⁵“**consultant**” means a person (whether natural or corporate) holding himself out as having expertise particular to the forest industry and offering for reward (otherwise than as an employee of another consultant or of a forest industry participant) services related to that expertise;

¹ Section 1(3) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s1.

² Section 1(3) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s1.

³ Section 2 (definition of “Chairman of the Provincial Forestry Management Committee”) inserted by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s2; Section 2 Amended by No. 3 of 2005, s. 1; Section 2 (definition of “Director-General”) repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s2(b); Section 2 (definition of “forest industry operations”) repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s2(d); Section 2 (definition of “Provincial Minister”) repealed by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s2.

⁴ Section 2 Amended by No. 3 of 2005, s. 1.

⁵ Section 2 (definition of “consultant”) inserted by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s2(a).

⁶**“customary owners”**, in relation to an area of customary land, means persons having customary rights—

- (a) of ownership over the land; or
- (b) of ownership over forest produce growing on the land; or
- (c) relating to the use of the land;

“firewood” includes parts of trees made up into bundles, billets or loads, or cut up in the manner used to cut wood for burning, and refuse wood generally;

“forest development project” means a project to develop forest resources within—

- (a) an area the subject of a Forest Management Agreement; or
- (b) Government land;

⁷**“forest industry activities”** means any commercial activities within Papua New Guinea directly connected with—

- (a) harvesting or processing timber or rattan; or
- (b) buying unprocessed timber or rattan for processing or export; or
- (c) selling or, on behalf of another person or other persons, arranging or procuring the sale or purchase of, timber or rattan (whether unprocessed or processed but not including manufactured items made from timber or rattan materials);

“forest industry participant” means any person engaging in, or intending to engage in, forest industry activities (otherwise than as an employee of a forest participant or in the capacity of a common carrier) where the timber or rattan harvested, processed, bought, sold or arranged or procured to be sold or purchased, by that person in a calendar year exceeds—

- (a) 500m³ in volume; or
- (b) in the case of sandalwood timber or rattan—K20,000.00 in market value;

“Forest Inspector” means an officer of the National Forest Service appointed as a Forest Inspector under Section 41;

“Forest Officer” means an officer of the National Forest Service appointed as a Forest Officer under Section 41;

⁸**“forest plantation”** means an area of forest established artificially either by afforestation on land which has not carried forest within living memory

⁶ Section 2 (definition of “customary owners”) inserted by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s2(a).

⁷ Section 2 (definition of “forest industry activities”) inserted by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s2(c); inserted by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s2(c).

⁸ Section 2 Amended by No. 3 of 2005, s. 1.

or by reforestation of land which carried forest before but where the indigenous species are replaced with a species or genetic variety;

“forest produce” means—

- (a) growing or dead trees, whether standing or fallen; and
- (b) any part of or any product of such trees; and
- (c) any other vegetable growth, whether alive or dead,

and in a National forest includes stone, gravel, limestone, lime, salt, sand, loam and brick earth, but does not include oil, metal or minerals;

“Forest Management Agreement” means a Forest Management Agreement entered into in accordance with Division III.4;

“Government land” means land other than—

- (a) customary land; or
- (b) land held by a person other than the State for an estate greater than an estate for a term of years; or
- (c) land that is the subject of a State lease or a lease from the State under the *Land Act 1996* or any other Act; or
- (d) a timber rights purchase area, continued in existence under Part X; or
- (e) land the subject of a Forest Management Agreement;

“licence” means a licence issued under Section 91;

⁹**“Managing Director”** means the Managing Director of the National Forest Service appointed under Section 34;

“National forest” means a National forest dedicated under Section 3;

“National Forest Plan” means the National Forest Plan drawn up in accordance with Section 47;

“National Forest Service” means the National Forest Service established by Section 33;

“Papua New Guinea Forest Authority” means the Papua New Guinea Forest Authority established by Section 5;

“Provincial Forest Management Committee” means a Provincial Forest Management Committee established by Section 21, and in relation to—

- (a) a province—means the Provincial Forest Management Committee for that province; and
- (b) a project—means the Provincial Forest Management Committee for the province in which the project is situated;

⁹ Section 2 (definition of “Managing Director”) inserted by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s2(g).

“project area” means—

- (a) in relation to matters specified in Subdivision III.5.A—the area in respect of which tenders are invited; and
- (b) in relation to a timber permit—the area in respect of which the timber permit is granted; and
- (c) in relation to a timber authority—the area in respect of which the timber authority is granted;

“Register” means the Register of Forest Industry Participants and Consultants established by Section 106;

“registered consultant” means a consultant registered under Part IV;

“registered forest industry participant” means a forest industry participant registered under Part IV;

“reserved trees” means trees declared under Section 4 to be reserved trees;

“restricted area” means an area of forest declared to be a restricted area under Section 52;

“State Marketing Agency” means the State Marketing Agency established by Section 42;

“State Purchase Option” means the State Purchase Option under Section 115;

“this Act” includes the Regulations;

“timber” includes fallen trees and felled trees, and all wood whether sawn, hewn, split or otherwise fashioned;

¹⁰**“timber authority”** means a timber authority granted under Section 87 and includes an authority granted under the *Forestry Act* (Chapter 216) (*repealed*) and continued by virtue of Section 137;

¹¹**“timber permit”** means a timber permit granted under Section 73 or 75 and includes—

- (a) a permit or licence granted under the *Forestry Act* (Chapter 216) (*repealed*) continued by virtue of Section 137; and
- (b)¹² an agreement deemed to be a timber permit by virtue of Section 137(1A); and
- (c)¹³ an extension to an existing approved timber permit operation which is consolidated under an existing approved timber permit under Section 64;

¹⁰ Section 2 (definition of “timber authority”) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s2(h).

¹¹ Section 2 (definition of “timber permit”) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s2(i).

¹² Section 2 Amended by No. 3 of 2005, s. 1.

¹³ Section 2 Amended by No. 3 of 2005, s. 1.

“timber rights” means the rights to fell, cut, remove and dispose of growing or dead trees, whether standing or fallen, and any part of such trees, and any other vegetable growth, and the right to plant, grow and manage trees and to carry out regeneration and reforestation work, and in a National forest includes the right to remove gravel and other roadmaking materials;

“timber rights purchase area” means an area of customary land over which the State has acquired the rights of felling, cutting, removing and disposing of timber under Section 8 of the *Forestry Act* (Chapter 216) (*repealed*);

“tree” includes tree, shrub, bush, seedling and re-shoot of any kind and of any age.

3. DEDICATION OF NATIONAL FORESTS.

The Head of State, acting on advice, may, by notice in the National Gazette, dedicate any Government land as a National forest.

4. DECLARATION OF RESERVED TREES.

The Minister may, by notice in the National Gazette, declare any trees or members of any species or class of trees to be reserved trees.

PART II. – PAPUA NEW GUINEA FOREST AUTHORITY.

Division 1.

Papua New Guinea Forest Authority.

5. ESTABLISHMENT, ETC., OF PAPUA NEW GUINEA FOREST AUTHORITY.

(1) The Papua New Guinea Forest Authority is hereby established.

(2) The Authority–

(a) is a corporation with perpetual succession; and

(b) shall have a seal; and

(c) may acquire, hold and dispose of property; and

(d) may sue and be sued in its corporate name.

(3) The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the Board and the affixing of the seal shall be attested by any two members of the Board.

(4) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

6. OBJECTIVES OF THE AUTHORITY.

In carrying out its functions under this Act, the Authority shall pursue the following objectives:–

(a) the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations;

(b) the maximization of Papua New Guinea participation in the wise use and development of the forest resources as a renewable asset;

(c) the utilization of the Nation's forest resources to achieve economic growth, employment creation and industrial and increased "down-stream" processing of the forest resources;

(d) the encouragement of scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National development objectives;

(e) the increased acquisition and dissemination of skills, knowledge and information in forestry through education and training;

(f) the pursuit of effective strategies, including improved administrative and legal machinery, for managing forest resources and the management of National, provincial and local interests.

7. FUNCTIONS OF THE AUTHORITY.

(1) The functions of the Authority are—

- (a) to provide advice to the Minister on forest policies and legislation pertaining to forestry matters; and
- (b) to prepare and review the National Forest Plan and recommend it to the National Executive Council for approval; and
- (c)¹⁴ to direct and supervise the National Forest Service; and
- (d) to negotiate Forest Management Agreements; and
- (e)¹⁵ to select operators and negotiate conditions on which timber permits, timber authorities, large scale agricultural or other land use and road forest clearing authorities and licences may be granted in accordance with the provisions of this Act; and
- (f)¹⁶ [*Repealed.*]
- (g) subject to the *Customs Act 1951*, *Customs Tariff Act 1990* and *Exports (Control and Valuation) Act 1973*, to control and regulate the export of forest produce; and
- (h) to oversee the administration and enforcement of this Act and any other legislation pertaining to forestry matters, and of such forestry policy as is approved by the National Executive Council; and
- (i) to undertake the evaluation and registration of persons desiring to participate in any aspect of the forestry industry; and
- (j) to act as agent for the State, as required, in relation to any international agreement relating to forestry matters; and
- (k) to carry out such other functions as are necessary to achieve its objectives or as are given to it under this Act or any other law.

(2)¹⁷ ¹⁸Subject to this Act and any other law, the Minister may give to the Authority, through the Board, any direction in regard to the carrying out of the functions of the Authority as he considers necessary for the purpose of achieving the objectives of the Authority.

8. POWERS OF THE AUTHORITY.

The Authority has, in addition to the powers otherwise conferred on it by this Act and any other law, full powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and the achievement of its objectives.

¹⁴ Section 7(1)(c) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule; Section 7 Subsection (1) amended by No. 3 of 2005, s. 2.

¹⁵ Section 7 Subsection (1) amended by No. 3 of 2005, s. 2.

¹⁶ Section 7(1)(f) repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s3(a).

¹⁷ Section 7(2) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s3(b).

¹⁸ Section 7(2) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s3(b).

Division 2.
National Forest Board.

9. NATIONAL FOREST BOARD.

There shall be a National Forest Board which shall carry out the functions and objectives, manage the affairs and exercise the powers of the Authority.

10. MEMBERSHIP OF THE BOARD.

¹⁹(1) The Board shall consist of—

- (a) the Managing Director, *ex officio*; and
- (b)²⁰ the Departmental Heads, *ex officio*, of the Departments responsible for planning and implementation matters and environmental matters respectively or their nominees (who shall be of a level in the Public Service not less than that of Assistant Secretary) appointed by the National Executive Council; and
- (c)²¹ the President of the Forest Industries Association, *ex officio*, as his nominee; and
- (d)²² a citizen, being the President of the Association of Foresters of Papua New Guinea, *ex officio*, or his nominee; and
- (e) a provincial administrator, to represent Provincial Governments, appointed by the National Executive Council from a list, submitted to the National Executive Council by the Minister, of two provincial administrators selected by the Minister responsible for provincial affairs in consultation with the Provincial Governors; and
- (f)²³ one member from the community involved in forest activities; and
- (g) one member, to represent forest resource owners, appointed by the National Executive Council from a list of two persons selected in accordance with Subsection (2) and submitted to the National Executive Council by the Minister; and
- (h)²⁴ one member, with awareness of the concerns of women affected by forestry operations, appointed by the National Executive Council from a list of two persons submitted by the National Council of Women.
- (i)²⁵ the Minister's nominee.

¹⁹ Section 10 repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s4; repealed and replaced by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s3.

²⁰ Section 10(1)(b) amended by No. 36 of 2000 s. 1(a)(i).

²¹ Section 10(1)(c) repealed and replaced by No. 36 of 2000 s. 1(a)(ii); Section 10 Subsection (1) amended by No. 3 of 2005, s. 3.

²² Section 10(1)(d) repealed and replaced by No. 36 of 2000 s. 1(a)(iii).

²³ Section 10(1)(f) repealed and replaced by No. 36 of 2000 s. 1(a)(iv); Section 10 Subsection (1) amended by No. 3 of 2005, s. 3.

²⁴ Section 10(1)(h) added by No. 36 of 2000 s. 1(a)(v).

(2)²⁶ ²⁷The *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* shall apply to and in relation to the appointment of the members referred to in Subsection (1)(e),(f),(g),(h) and (i).

(3)²⁸ [*Repealed.*]

(4) The—

(a)²⁹ members referred to in Subsection (1)(e) shall be appointed for a term of two years and are eligible for re-appointment; and

(b) the member referred to in Subsection (1)(g) shall be appointed for a term of two years and is not eligible for immediate re-appointment, but may be so re-appointed when the time for further representation from his region is due; and

(c)³⁰ members referred to in Subsection (1)(c), (d), (f), (g) and (h) shall be entitled to such fees and allowances as are determined by the Minister.

(5) Notification of appointments under Subsection (1) shall be given in the National Gazette.

(6)³¹ ³²Where a vacancy exists in respect of a member appointed under Subsection (1)(e), (g) or (h), the appropriate procedure as required under the relevant Paragraph should be invoked for the purpose of enabling the Minister to make an appropriate submission to the National Executive Council for an appointment.

(7)³³ ³⁴Where, in a case to which Subsection (6) applies, the Minister has not, within a period of three months of the date on which the vacancy occurred, been furnished names to enable him to make a submission to the National Executive Council for an appointment, the Minister may submit to the National Executive Council a list of two persons whom he considers suitable and appropriate to represent the Provincial Governments, National Council of Women or forest resource owners, as the case may be, and the National Executive Council shall make an appointment from the list.

(8) In the case of a vacancy in respect of a member appointed under Subsection (1)(g), an appointment effected by Subsection (6) or (7) shall be—

(a) in respect of the region of the country represented by the member who vacated office; and

(b) for the balance of the term of office which the member who vacated office would otherwise have served.

²⁵ Section 10 Subsection (1) amended by No. 3 of 2005, s. 3.

²⁶ Section 10 Subsection (2) substituted by No. 3 of 2005, s. 3.

²⁷ Section 10 Subsection (2) substituted by No. 3 of 2005, s. 3.

²⁸ Section 10 Subsection (3) omitted by No. 3 of 2005, s. 3.

²⁹ Section 10(4)(a) amended by No. 36 of 2000 s. 1(a)(vi).

³⁰ Section 10(4)(c) amended by No. 36 of 2000 s. 1(a)(vii).

³¹ Section 10(6) amended by No. 36 of 2000 s. 1(b).

³² Section 10(6) amended by No. 36 of 2000 s. 1(b).

³³ Section 10(7) amended by No. 36 of 2000 s. 1(c).

³⁴ Section 10(7) amended by No. 36 of 2000 s. 1(c).

(9)³⁵ [*Repealed.*]

11. ALTERNATE MEMBERS.

³⁶(1)³⁷ ³⁸For each of the members appointed under Section 10(1)(e),(g) and (i), an alternate member shall be appointed in the same manner and subject to the same conditions.

(2) In the event of the inability to act of a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

12. CHAIRMAN AND DEPUTY CHAIRMAN.

³⁹The members of the Board shall elect—

- (a)⁴⁰ one of their number, other than the members holding office under Section 10(1)(a) and (c), to be the Chairman of the Board; and
- (b) another of their number to be Deputy Chairman of the Board.

13. LEAVE OF ABSENCE OF MEMBERS, ETC.

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman or Deputy Chairman on such terms and conditions as the Minister determines.

14. VACATION OF OFFICE.

(1)⁴¹ ⁴²A member, other than a member appointed under Section 10(1)(a), (b), (c) or (d) may resign his office by writing signed by him and delivered to the Minister.

(2)⁴³ ⁴⁴If a member, or the Chairman or Deputy Chairman—

- (a) dies; or
- (b) becomes permanently incapable of performing his duties; or
- (c) resigns his office in accordance with Subsection (1); or

³⁵ Section 10(9) added by No. 36 of 2000 s. 1(d); Section 10 Subsection (9) omitted by No. 3 of 2005, s. 3.

³⁶ Section 11 repealed and replaced by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s4.

³⁷ Section 11(1) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s5; Section 11(1) amended by No.36 of 2000 s. 1A; Section 11 Subsection (1) substituted by No. 3 of 2005, s. 4.

³⁸ Section 11(1) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s5; Section 11(1) amended by No.36 of 2000 s. 1A; Section 11 Subsection (1) substituted by No. 3 of 2005, s. 4.

³⁹ Section 12 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s6; repealed and replaced by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s5; repealed and replaced by No. 36 of 2000 s. 2.

⁴⁰ Section 12 Amended by No. 3 of 2005, s. 5.

⁴¹ Section 14(1) repealed and replaced by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s6.

⁴² Section 14(1) repealed and replaced by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s6.

⁴³ Section 14 Subsection (2) amended by No. 3 of 2005, s. 6.

⁴⁴ Section 14 Subsection (2) amended by No. 3 of 2005, s. 6.

- (d) is absent, except with the written consent of the Minister, from three consecutive meetings of the Board; or
- (e) fails to comply with Section 18; or
- (f) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

- (h)⁴⁵ divulges any information or releases any document relating to the proceedings of Board meetings or in relation to Board matters, without the express approval of the Board or except in the ordinary course of business of the Authority or for purposes of reporting to the organization or persons whom the member represents on the Board.

(2A - 3)⁴⁶ [*Repealed.*]

(4) The National Executive Council, may, at any time, by written notice, advise a member or the Chairman or Deputy Chairman that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(5) Within 14 days of the receipt of a notice under Subsection (3), the member or the Chairman or Deputy Chairman as the case may be, may reply in writing to the National Executive Council, who shall consider the reply, and, where appropriate, terminate the appointment.

(6) Where the member referred to in Subsection (3) or the Chairman or Deputy Chairman, as the case may be, does not reply in accordance with Subsection (4), his appointment is terminated.

15. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

16. CALLING OF MEETINGS.

(1) The Board shall meet as often as the business of the Authority requires, and at such times and places as the Board determines, or as the Chairman, or in his absence, the Deputy Chairman, directs, but in any event shall meet not less frequently than once in every four months.

⁴⁵ Section 14 Subsection (2) amended by No. 3 of 2005, s. 6.

⁴⁶ Section 14 Subsection (2) amended by No. 3 of 2005, s. 6.

(2) Where he receives a request to do so by the Minister or by not less than two members, the Chairman, or in his absence the Deputy Chairman, shall convene a meeting of the Board within 14 days.

(3) For the purposes of Subsection (1), the Chairman or the Deputy Chairman shall give, to every member, at least 14 days notice of the meeting.

(4) The Minister may, from time to time, request the Board to meet and consider and advise him on matters he may put to the Board.

(5)⁴⁷ ⁴⁸Where he receives a request under Subsection (4), the Chairman shall convene such a meeting within 14 days.

17. MEETINGS OF THE BOARD.

(1) At a meeting of the Board—

(a)⁴⁹ six members constitute a quorum;

(b) the Chairman, or in his absence the Deputy Chairman, shall preside, but, if both the Chairman and Deputy Chairman are absent, the members present shall appoint a Chairman for that meeting from among their own number; and

(c) matters arising shall be decided by a majority of the votes of the members present and voting; and

(d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(2) The Board shall cause minutes of its meetings to be recorded and kept.

(3) The Board, in its discretion, may invite persons to attend as observers at any meeting of the Board.

(4) Subject to this Act, the procedures of the Board are as determined by the Board.

18. DISCLOSURE OF INTEREST BY MEMBERS.

(1) A member who has a direct or indirect personal interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Board, and the member—

(a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and

⁴⁷ Section 16(5) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s7.

⁴⁸ Section 16(5) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s7.

⁴⁹ Section 17(1)(a) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s7; amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s8.

- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

19. DELEGATION.

⁵⁰(1) The Minister may, by instrument, delegate to the Board all or any of his powers and functions under this Act (except this power of delegation).

(2) The Board may, by instrument, delegate to the Managing Director all or any of its powers and functions under this Act (except this power of delegation).

20. ANNUAL REPORTS.

(1)⁵¹ ⁵²The Board shall, by 31 March in each year, furnish to the Minister an annual report on the progress, performance and finances of the Authority in relation to its functions during the year ended 31 December previously.

(2) As soon as practicable after he has received the report referred to in Subsection (1), the Minister shall forward—

- (a) the report to the Speaker for presentation to the Parliament; and
 (b) a copy of the report to each Provincial Government.

Division 3.

Provincial Forest Management Committees.

21. PROVINCIAL FOREST MANAGEMENT COMMITTEES.

The Board shall establish a Provincial Forest Management Committee for each province.

22. MEMBERSHIP OF PROVINCIAL FOREST MANAGEMENT COMMITTEES.

(1) A Provincial Forest Management Committee shall consist of—

- (a) a senior officer in the administration of the province, nominated by the Provincial Government, who shall be the Chairman; and
 (b)⁵³ an officer of the National Forest Service, nominated by the Managing Director; and
 (c) one person to represent the Local-level Governments situated within those areas of the province which contain forest resources, who shall be the president of such a Local-level Government nominated by the provincial executive; and

⁵⁰ Section 19 repealed and replaced by No. 36 of 2000 s.4.

⁵¹ Section 20 Subsection (1) substituted by No. 3 of 2005, s. 7.

⁵² Section 20 Subsection (1) substituted by No. 3 of 2005, s. 7.

⁵³ Section 22(1)(b) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s. 48 and Schedule.

- (d) two persons to represent land-owning groups in the province nominated by the Provincial Forest Management Committee; and
 - (e) one person to represent non-governmental organizations concerned with environmental, social or developmental issues nominated by the National Alliance of Non-Governmental Organizations.
- (2) The members of a Provincial Forest Management Committee—
- (a) shall be appointed by the Board by notice in the provincial gazette; and
 - (b)⁵⁴ subject to this Act, shall be appointed during the pleasure of the Board; and
 - (c)⁵⁵ shall be appointed on such terms and conditions as the Board determines; and
 - (d) are eligible for re-appointment.

23. ALTERNATE MEMBERS.

(1) For each of the members of a Provincial Forest Management Committee appointed under Subsection (1)(a), (b), (c) and (e), an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability to act of a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

24. LEAVE OF ABSENCE OF MEMBERS.

(1) The Chairman of a Provincial Forest Management Committee may grant leave of absence to a member of that Committee on such terms and conditions as the Chairman determines.

(2) The Chairman of the Board may grant leave of absence to the Chairman of a Provincial Forest Management Committee on such terms and conditions as the Chairman of the Board determines.

25. VACATION OF OFFICE.

(1) A member of a Provincial Forest Management Committee other than the Chairman may resign his office by writing signed by him and delivered to the Chairman of the Board.

- (2) If a member of a Provincial Forest Management Committee—
- (a) dies; or
 - (b) becomes permanently incapable of performing his duties; or

⁵⁴ Section 22 Subsection (2) amended by No. 3 of 2005, s. 8.

⁵⁵ Section 22 Subsection (2) amended by No. 3 of 2005, s. 8.

- (c) resigns his office in accordance with Subsection (1); or
- (d) is absent, except with the written consent of the Chairman of that Committee, from three consecutive meetings of the Provincial Forest Management Committee; or
- (e) ceases to be employed in the industry or organization he was appointed to represent on the Board; or
- (f) fails to comply with Section 29; or
- (g) becomes bankrupt, or applies to take the benefit of any law for benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (h) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Chairman of the Board shall terminate his appointment.

(3) Where the body which has nominated a member of a Provincial Forest Management Committee appointed under Section 22(1)(e), (f) or (g) requests the Board to terminate the appointment, the Board shall terminate the appointment.

(4) The Chairman of the Board, may, at any time, by written notice, advise a member of a Provincial Forest Management Committee that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(5) Within 14 days of the receipt of a notice under Subsection (4), the member may reply in writing to the Chairman of the Board, who shall consider the reply, and, where appropriate, terminate the appointment.

(6) Where the member referred to in Subsection (4), does not reply in accordance with Subsection (5), his appointment is terminated.

(7)⁵⁶ ⁵⁷The Board may, at any time, by written notice, advise a Provincial Forest Management Committee that it intends to suspend the Committee on the grounds of inefficiency in carrying out its powers and functions under the Act or failure to comply with, or non performance of its powers and functions under the Act.

(8)⁵⁸ ⁵⁹Within fourteen days of the date of service of a notice under Subsection (7), the Provincial Forest Management Committee may reply in writing to the Board and, where appropriate, the Board may suspend the Committee.

(9)⁶⁰ ⁶¹Where the Committee referred to in Subsection (7) does not reply in accordance with Subsection (8), it is deemed suspended at the expiration of the time specified in Subsection (8).

⁵⁶ Section 25 Subsection (7) inserted by No. 3 of 2005, s. 9.

⁵⁷ Section 25 Subsection (7) inserted by No. 3 of 2005, s. 9.

⁵⁸ Section 25 Subsection (8) inserted by No. 3 of 2005, s. 9.

⁵⁹ Section 25 Subsection (8) inserted by No. 3 of 2005, s. 9.

⁶⁰ Section 25 Subsection (9) inserted by No. 3 of 2005, s. 9.

⁶¹ Section 25 Subsection (9) inserted by No. 3 of 2005, s. 9.

(10)⁶² ⁶³The Board may revoke the suspension imposed by Subsection (9) on sufficient cause being shown.

26. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of a Provincial Forest Management Committee is not invalidated by reason of a vacancy in the membership of that Provincial Forest Management Committee.

27. CALLING OF MEETINGS.

(1) A Provincial Forest Management Committee shall meet as often as the business of the Committee requires, and at such times and places as the Chairman determines, but in any event shall meet not less frequently than once in every four months.

(2)⁶⁴ ⁶⁵Where he receives a request to do so by the Board or by the Managing Director or by not less than two members, the Chairman shall convene a meeting of the Provincial Forest Management Committee within 14 days.

(3) For the purposes of Subsection (1), the Chairman shall give, to every member, at least 14 days' notice of the meeting.

28. MEETINGS OF THE PROVINCIAL FOREST MANAGEMENT COMMITTEE.

(1) At a meeting of a Provincial Forest Management Committee—

- (a) four members constitute a quorum; and
- (b) the Chairman shall preside, but, if the Chairman is absent, the members present shall appoint a Chairman for the meeting from among their own number; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(2) A Provincial Forest Management Committee shall cause minutes of its meetings to be recorded and kept.

(3) Where a Provincial Forest Management Committee is deliberating in respect of a particular forest resource, the owners of that particular forest resource shall be entitled to be represented at the meeting of the Provincial Forest Management Committee by two of their number selected by them, who shall be entitled to take part in the deliberations but shall not be entitled to vote.

⁶² Section 25 Subsection (10) inserted by No. 3 of 2005, s. 9.

⁶³ Section 25 Subsection (10) inserted by No. 3 of 2005, s. 9.

⁶⁴ Section 27 Subsection (2) amended by No. 3 of 2005, s. 10.

⁶⁵ Section 27 Subsection (2) amended by No. 3 of 2005, s. 10.

(4) Subject to this Act, the procedures of a Provincial Forest Management Committee are as determined by that Provincial Forest Management Committee.

29. DISCLOSURE OF INTEREST BY MEMBERS.

(1) A member of a Provincial Forest Management Committee who has a direct or indirect personal interest in a matter being considered or about to be considered by that Provincial Forest Management Committee shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Provincial Forest Management Committee.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Provincial Forest Management Committee, and the member—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Provincial Forest Management Committee in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Provincial Forest Management Committee for any such deliberation or decision.

30. FUNCTIONS OF A PROVINCIAL FOREST MANAGEMENT COMMITTEE.

(1) The functions of a Provincial Forest Management Committee are—

- (a) to provide a forum for consultation and co-ordination on forest management between the National Government and Provincial Governments, forest resource owners and special interest groups; and
- (b)⁶⁶ to undertake continuous consultation with the Chairman of the Provincial Forestry Committee on matters relating to acquisition and allocation of forest resources; and
- (c) to assist the Provincial Government in preparing forest plans and forest development programmes, consistent with national and provincial programmes; and
- (d) to make recommendations to the Board on—
 - (i) the preparation and terms of Forest Management Agreements; and
 - (ii) the selection of operators and the preparation of timber permits; and
 - (iii) the enforcement of timber permit conditions and of this Act; and
- (e)⁶⁷ to make recommendations to the Chairman of the Provincial Forestry Committee on—

⁶⁶ Section 30(1)(b) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

- (i) the issue of timber authorities; and
- (ii)⁶⁸ the amendment or surrender of timber authorities; and
- (f) to supervise extension services with respect to business management, agroforestry, silviculture, reforestation, environmental protection, processing and marketing; and
- (g) to oversee the receipt and distribution of government levies and charges and other benefits due to landowners; and
- (h) to assist in the early identification and resolution of land-owning disputes affecting forest resources; and
- (i) to carry out such other functions as it is required to carry out by this Act or any other law.

(2) A Provincial Forest Management Committee may, by notice in writing, delegate to the National Forest Service any of its functions under Subsection (1).

31. REPORTS.

(1) A Provincial Forest Management Committee shall, before 31 March in each year, submit to the Chairman of the Board a report on the activities of the Provincial Forest Management Committee for the year ending 31 December previously.

(2)⁶⁹ ⁷⁰As soon as practicable after receiving a report under Subsection (1), the Chairman of the Board shall forward a copy of the report to the Minister and to the Chairman of the Provincial Forestry Committee.

Division 4.

Other Committees of the Board.

32. ESTABLISHMENT OF ADVISORY AND OTHER COMMITTEES.

(1) The Board—

- (a) shall establish such advisory Committees as may be necessary; and
- (b) may, from time to time, establish such other Committees to advise on matters pertaining to resource management, research, training and education, marketing and industry development and on such other matters as the Board considers necessary for purposes of the Authority, in accordance with this section.

(2) In establishing a Committee under Subsection (1), the Board shall—

- (a) appoint such persons (including members of the Board) as it thinks fit to be members of the Committee; and

⁶⁷ Section 30(1)(e) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

⁶⁸ Section 30 Subsection (1) amended by No. 3 of 2005, s. 11.

⁶⁹ Section 31(2) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

⁷⁰ Section 31(2) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

(b) specify the functions, powers and procedures of the Committee.

(3)⁷¹ ⁷²Subject to the *Boards (Fees and Allowances) Act 1955*, the terms and conditions of members of a Committee are as determined by the Board.

(4)⁷³ ⁷⁴A Committee shall meet as directed by the Board or as often as the business of the Committee requires.

Division 5.

National Forest Service.

33. NATIONAL FOREST SERVICE.

(1) There is established a National Forest Service consisting of—

(a)⁷⁵ the Managing Director appointed in accordance with Section 34; and

(b) other officers appointed in accordance with Section 36.

(2) The National Forest Service constitutes the staff of the Authority.

34. MANAGING DIRECTOR.

⁷⁶(1) There shall be a Managing Director of the National Forest Service who—

(a)⁷⁷ shall be appointed, suspended or dismissed in the manner as is specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and

(b) shall be appointed for a period of four years; and

(c) shall be the chief executive officer and Head of the National Forest Service.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of the appointment of the Managing Director are as determined by the Head of State, acting on the advice of the Minister.

35. FUNCTIONS, ETC., OF THE MANAGING DIRECTOR.

⁷⁸(1) The Managing Director shall—

(a) manage the National Forest Service, and in relation to the management of the National Forest Service, shall act in accordance with the policy and directives of the Board; and

⁷¹ Section 32 Subsection (3) substituted by No. 3 of 2005, s. 12.

⁷² Section 32 Subsection (3) substituted by No. 3 of 2005, s. 12.

⁷³ Section 32 Subsection (4) inserted by No. 3 of 2005, s. 12.

⁷⁴ Section 32 Subsection (4) inserted by No. 3 of 2005, s. 12.

⁷⁵ Section 3(1)(a) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

⁷⁶ Section 34 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s8.

⁷⁷ Section 34 Subsection (1) amended by No. 97 of 2006, Sched. 1.

⁷⁸ Section 35 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s9.

- (b) advise the Board on any matter concerning the Authority referred to him by the Board.

(2) The Managing Director has such other functions as the Minister on advice from the Board may from time to time determine.

(3)⁷⁹ ⁸⁰The Managing Director may, by written instrument, delegate to an officer of the National Forest Service all or any of his functions or powers under this Act (except this power of delegation).

36. APPOINTMENT OF OFFICERS.

The Board may appoint to be officers of the National Forest Service such persons as it considers fit and necessary for the purposes of the Authority.

37. PUBLIC SERVICE RIGHTS.

Where—

- (a)⁸¹ an officer of the Public Service is appointed to be Managing Director, his service as Managing Director; and
- (b) an officer of the National Forest Service was, immediately before his appointment, an officer of the Public Service, his service as an officer of the National Forest Service,

shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (c) leave of absence on the grounds of illness; and
- (d) furlough, or pay in lieu of furlough (including pay to dependents on the death of the officer).

38. REGULATIONS FOR THE NATIONAL FOREST SERVICE.

(1) The Regulations may make provision in relation to the National Forest Service, and, in particular, may—

- (a) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, prescribe the terms and conditions of employment of officers; and
- (b) make provision for a superannuation or other retirement benefits scheme to provide benefits for the staff; and
- (c) make provision for a home ownership scheme for citizen officers; and
- (d) prescribe disciplinary procedures, creation and abolition of offices, promotion of officers and other matters for the regulation of the National Forest Service.

⁷⁹ Section 35(3) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s9(d).

⁸⁰ Section 35(3) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s9(d).

⁸¹ Section 37(a) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

(2) In the absence of Regulations under Subsection (1), any appropriate provisions of the *Public Services (Management) Act 1995* and Regulations and General Orders made thereunder shall, in so far as relevant, apply.

39. OTHER EMPLOYEES.

(1)⁸² ⁸³The Managing Director may, with the approval of the Board, appoint such other employees as he thinks necessary for the purposes of the Authority.

(2) Employees appointed under Subsection (1) shall be appointed on such terms and conditions as the Board, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, determines.

40. CONSULTANTS.

The Minister may, from time to time—

- (a)⁸⁴ after consultation with the Board and the Managing Director; and
- (b) within the limits of funds available for the purpose; and
- (c) on such terms and conditions as are fixed by the Minister on advice of the Board,

appoint as employees of the Authority such consultants as, in the opinion of the Minister on advice of the Board, are necessary for the purposes of the Authority.

41. FOREST OFFICERS AND FOREST INSPECTORS.

(1) The Minister may, on the recommendation of the Board, appoint an officer of the National Forest Service who has obtained the degree or diploma of a recognized forestry school to be a Forest Officer.

(2) The Minister may, on the recommendation of the Board, appoint an officer of the National Forest Service to be a Forest Inspector.

Division 6.

State Marketing Agency.

42. STATE MARKETING AGENCY.

(1) The Minister may establish, within the Authority as a division of the National Forest Service or otherwise, a State Marketing Agency after consultation with the Board.

(2) If established as a division of the National Forest Service, the management, staffing and control of the State Marketing Agency shall be as determined by the Board.

⁸² Section 39(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

⁸³ Section 39(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

⁸⁴ Section 40(a) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

43. FUNCTIONS ETC., OF STATE MARKETING AGENCY.

(1) The functions of the State Marketing Agency are—

- (a) to exercise the State purchase option on logs and other forest produce; and
- (b) to be available by mutual agreement for appointment as a general log marketing agent at the discretion of the holder of a timber permit or timber authority; and
- (c) to promote Papua New Guinea forest products for export and for domestic use, and to provide promotional material and information to producers and buyers; and
- (d) to undertake market intelligence and explore market diversification; and
- (e) to provide market intelligence to the Board for export licensing purposes; and
- (f) to carry out such other functions as are given to it by this Act or any other law.

(2) Subject to any direction from the National Executive Council on all or any of its functions and powers, the State Marketing Agency has full powers to carry out its functions.

Division 7.***Financial Procedures.*****44. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT*.**

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

(2) The Authority is a trading enterprise for the purposes of Section 62 of the *Public Finances (Management) Act 1995*.

45. APPLICATION OF *AUDIT ACT 1989*.

The accounts of the Authority shall be audited in accordance with Part III of the *Audit Act 1989*.

PART III. – FOREST MANAGEMENT AND DEVELOPMENT.

Division 1.

General.

46. CUSTOMARY RESOURCE OWNERSHIP.

The rights of the customary owners of a forest resource shall be fully recognized and respected in all transactions affecting the resource.

Division 2.

Forest Plans.

Subdivision A. – National Forest Plan.

47. NATIONAL FOREST PLAN.

(1) The Authority shall cause to be drawn up a National Forest Plan to provide a detailed statement of how the National and Provincial Governments intend to manage and utilize the country's forest resources.

(2) The National Forest Plan shall–

- (a) be consistent with the national forest policy and relevant Government policies; and
- (b) be based on a certified National Forest Inventory which shall include particulars as prescribed; and
- (c) consist of–
 - (i) National Forestry Development Guidelines prepared by the Minister in consultation with the Board and endorsed by the National Executive Council; and
 - (ii) the National Forest Development Programme; and
 - (iii)⁸⁵ a statement, prepared annually by the Board, of allowable cut volumes, being the amount of allowable cut for each province for the next succeeding year which will ensure that the areas of forest resource set out in the Provincial Forest Plan, for present or future production, are harvested on a sustained yield basis.
 - (iv)⁸⁶ provincial forest plans.

(3) For the purposes of Subsection (2)(c)(iii), “**allowable cut**” means the amount of timber which may be cut annually.

(4)⁸⁷ ⁸⁸The National Forest Plan shall be reviewed every five years from the date of the coming into operation of the Forest (Amendment) Act 2005 and shall be submitted to the National Executive Council for its approval.

⁸⁵ Section 47 Subsection (2) amended by No. 3 of 2005, s. 13.

⁸⁶ Section 47 Subsection (2) amended by No. 3 of 2005, s. 13.

(5)⁸⁹ ⁹⁰Where the National Forest Plan is not approved by the National Executive Council, it shall be referred to the Authority for review and recommendation for approval to the National Executive Council which shall grant its approval.

48. NATIONAL FOREST PLAN TO BE PRESENTED TO PARLIAMENT.

As soon as practicable after the National Forest Plan has been drawn up, the Chairman shall send a copy to the Minister who shall table it in the Parliament.

Subdivision B. – Provincial Forest Plans.

49. PROVINCIAL FOREST PLANS.

(1) Each Provincial Government shall, as soon as practicable after the coming into operation of this Act, in consultation with the Provincial Forest Management Committee, and in conformity with the National Forestry Development Guidelines, draw up a Provincial Forest Plan.

(2) A Provincial Forest Plan shall contain–

- (a) Provincial Forestry Development Guidelines; and
- (b) a five year rolling forest development programme.

(3) Provincial Forestry Development Guidelines referred to in Subsection (2)(a) shall–

- (a) provide an overview of the role of forestry in the economy of the province; and
- (b) be broadly directed towards areas of industrial, rural, economic and social development objectives; and
- (c) set out broad objectives and predictions for the long term of 40 years and, in greater detail, for the medium term of 10 years; and
- (d) state how the forestry sub-sector is expected to contribute to the economy; and
- (e)⁹¹ be reviewed every five years from the date of the coming into operation of the Forestry (Amendment) Act 2005.

(4)⁹² ⁹³A provincial Forest Plan shall be submitted to the Authority within three months of the review under Subsection (3)(e).

⁸⁷ Section 47 Subsection (4) inserted by No. 3 of 2005, s. 13.

⁸⁸ Section 47 Subsection (4) inserted by No. 3 of 2005, s. 13.

⁸⁹ Section 47 Subsection (5) inserted by No. 3 of 2005, s. 13.

⁹⁰ Section 47 Subsection (5) inserted by No. 3 of 2005, s. 13.

⁹¹ Section 49 Subsection (3) amended by No. 3 of 2005, s. 14.

⁹² Section 49 Subsection (4) inserted by No. 3 of 2005, s. 14.

⁹³ Section 49 Subsection (4) inserted by No. 3 of 2005, s. 14.

(5)⁹⁴ ⁹⁵Where a Provincial Forest Plan is not submitted to the Authority or is not submitted within the required period specified in Subsection (4), a new forest development area shall not be included in the Plan for the succeeding five years.

(6)⁹⁶ ⁹⁷Notwithstanding the provisions of Subsection (4), the Board may grant an extension of time not exceeding six months from the date the National Forest Plan is tabled in Parliament under Section 48, for the submission of a Provincial Forest Plan and, upon approval by the Minister on the recommendation of the Board, the Provincial Forest Plan shall be deemed to form part of the National Forest Plan.

50. PROVINCIAL FOREST PLANS TO BE SUBMITTED TO BOARD, ETC.

(1)⁹⁸ ⁹⁹The Chairman of the Provincial Forestry Committee shall, on completion of a Provincial Forest Plan, submit a copy to the Board.

(2)¹⁰⁰ ¹⁰¹The Board shall consider a Provincial Forest Plan submitted to it under Subsection (1) and, where it considers that the Plan is inconsistent with the National Forest Policy or with the National Forestry Development Guidelines, shall refer it back to the Provincial Government with details of the inconsistency.

(3)¹⁰² ¹⁰³Where a Provincial Forest Plan has been referred back to a Provincial Government under Subsection (2), the Provincial Government shall remove the inconsistency and the Chairman of the Provincial Forestry Committee shall resubmit the Provincial Forest Plan to the Board.

51. PROVINCIAL FOREST PLAN TO BE SENT TO MINISTER, ETC.

¹⁰⁴Where the Board considers that a Provincial Forest Plan submitted under Section 50(1) or resubmitted under Section 50(3) is consistent with the National Forestry Development Guidelines, it shall—

- (a)¹⁰⁵ notify the Chairman of the Provincial Forestry Committee, who shall table a copy of the Provincial Forest Plan in the provincial assembly; and
- (b) send a copy of the Provincial Forest Plan to the Minister.

⁹⁴ Section 49 Subsection (5) inserted by No. 3 of 2005, s. 14.

⁹⁵ Section 49 Subsection (5) inserted by No. 3 of 2005, s. 14.

⁹⁶ Section 49 Subsection (6) inserted by No. 3 of 2005, s. 14.

⁹⁷ Section 49 Subsection (6) inserted by No. 3 of 2005, s. 14.

⁹⁸ Section 50(1) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

⁹⁹ Section 50(1) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

¹⁰⁰ Section 50(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s10.

¹⁰¹ Section 50(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s10.

¹⁰² Section 50(3) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

¹⁰³ Section 50(3) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

¹⁰⁴ Section 51 amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s11.

¹⁰⁵ Section 51(a) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

Division 3.
Forest Protection.

52. RESTRICTED AREA.

(1)¹⁰⁶ ¹⁰⁷Where the Managing Director considers that an area of forest is endangered by hazardous fire conditions, he may declare that the area shall be a restricted area on and from a date specified in the declaration.

(2)¹⁰⁸ ¹⁰⁹As soon as practicable after making a declaration under Subsection (1), the Managing Director shall—

- (a) cause it to be published in the National Gazette; and
- (b) bring it to the notice of the public in whatever manner he considers to be most effective.

53. BURNING PERMITS.

A Forest Officer may issue to a person a burning permit authorizing that person to ignite and maintain an open fire in a restricted area on such conditions as may be specified in the burning permit.

Division 4.
Resource Acquisition, etc.

54. FOREST RESOURCE DEVELOPMENT TO ACCORD WITH NATIONAL FOREST PLAN.

Forest resources shall only be developed in accordance with the National Forest Plan.

55. TYPES OF LAND ON WHICH, AND MANNER IN WHICH FOREST INDUSTRY ACTIVITIES MAY BE PERMITTED.

¹¹⁰(1)¹¹¹ ¹¹²Subject to Subsection (2), only a forest industry participant may exercise timber rights on land which is—

- (a) Government land—as approved by the Board; and
- (b) State leasehold land—where the lessee consents and subject to the conditions of the lease; and
- (c) private leasehold—where the owner consents; and

¹⁰⁶ Section 52(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁰⁷ Section 52(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁰⁸ Section 52(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁰⁹ Section 52(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹¹⁰ Section 55 repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s12.

¹¹¹ Section 55(1) amended by No. 36 of 2000 s. 5(a).

¹¹² Section 55(1) amended by No. 36 of 2000 s. 5(a).

- (d) private freehold—where the owner consents; and
- (e) customary land—where—
 - (i) a Forest Management Agreement in accordance with this Division has been entered into between the customary owners and the Authority; or
 - (ii) a timber authority has been granted; or
 - (iii) a clearing authority has been granted under Section 90B or 90D.

(2) A forest industry participant may carry out forest industry activities only under and in accordance with—

- (a) a timber permit granted under Section 73; or
- (b) a timber authority granted under Section 87; or
- (c) a licence issued under Section 92.
- (d)¹¹³ a forest clearing authority under Section 90B or 90D; or
- (e)¹¹⁴ an authority to carry out large scale agriculture or other land use development under Section 90B where forest industry activities are to be carried out; or
- (f)¹¹⁵ an authority to carry out roadline clearance under Section 99D where forest industry activities are to be carried out.

56. ACQUISITION OF TIMBER RIGHTS, ETC., BY THE AUTHORITY.

(1)^{116 117} Subject to this Division, the Authority may acquire timber rights from customary owners pursuant to a Forest Management Agreement between the customary owners and the Authority.

(2) An acquisition under Subsection (1) is not valid, and no Forest Management Agreement is valid, unless it is approved by the Minister.

(3) No acquisition under this section shall affect the customary rights of ownership of the land.

57. OBTAINING CONSENT OF CUSTOMARY OWNERS TO FOREST MANAGEMENT AGREEMENT.

¹¹⁸(1) Where it is proposed to enter into a Forest Management Agreement over customary land, the title of the customary owners to that land shall be—

¹¹³ Section 55(2)(d) added by No. 36 of 2000 s. 5(b).

¹¹⁴ Section 55(2)(e) added by No. 36 of 2000 s. 5(b).

¹¹⁵ Section 55(2)(f) added by No. 36 of 2000 s. 5(b).

¹¹⁶ Section 56(1) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s13.

¹¹⁷ Section 56(1) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s13.

¹¹⁸ Section 57: headnote repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s14(a).

- (a) vested in a land group or land groups incorporated under the *Land Groups Incorporation Act 1974*; or
- (b) registered under a law providing for the registration of title to customary land.

(2)^{119 120}Where it is impractical to give effect to the requirements of Subsection (1)(a) or (b), a Forest Management Agreement may be executed on behalf of customary groups who are customary owners in respect of the land covered by the Agreement, by agents of such groups, provided that—

- (a) such agents are authorized to so act in a manner which is consistent with the custom of the group they represent; and
- (b) 75% of the adult members resident on the land of each such group give written consent to their group entering into the Agreement.

(3)^{121 122}Where the Authority intends to enter into a Forest Management Agreement, the Board shall consult with —

- (a) the Provincial Government for the province and the Local-level Government in which the area covered by the Agreement is situated; and
- (b) the member or members of Parliament for the Province and the electorate or electorates in which the area covered by the Agreement is situated,

in relation to the intention of the Board to enter into the proposed Forest Management Agreement.

58. FOREST MANAGEMENT AGREEMENT.

A Forest Management Agreement shall—

- (a) be in writing; and
- (b) specify the monetary and other benefits, if any, to be received by the customary owners in consideration for the rights granted; and
- (c) specify the estimated volume or other measure of quantity of merchantable timber in the area covered by the Agreement; and
- (d) specify a term of sufficient duration in order to allow for proper forest management measures to be carried out to completion; and
- (e) be accompanied by a map showing clearly the boundaries of the area covered by the Agreement; and
- (f) contain a certificate from the Provincial Forest Management Committee to the effect that it is satisfied as to—

¹¹⁹ Section 57(2) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s14(b).

¹²⁰ Section 57(2) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s14(b).

¹²¹ Section 57 Subsection (3) inserted by No. 3 of 2005, s. 15.

¹²² Section 57 Subsection (3) inserted by No. 3 of 2005, s. 15.

- (i) the authenticity of the tenure of the customary land alleged by the persons or land group or groups claiming to be the customary owners; and
 - (ii) the willingness of those customary owners to enter into the agreement; and
- (g)¹²³ specify and other forestry related land use options, if any.

59¹²⁴. [REPEALED.]

60. RIGHTS UNDER FOREST MANAGEMENT AGREEMENT.

¹²⁵Where the Authority enters into a Forest Management Agreement—

- (a) subject to this Act and the terms and conditions of the Agreement, the Authority may assign timber rights acquired under the Agreement to one or more other persons; and
- (b) for the purposes of exercising timber rights, the Authority, and persons claiming under the Authority may, according to the terms of the Agreement—
 - (i) enter on land covered by the Agreement; and
 - (ii) build, maintain and use roads, wharves, bridges, buildings and other infrastructure on land covered by the Agreement; and
 - (iii) use gravel on land covered by the Agreement free of charge for the purposes of Subparagraph (ii).

Division 5.

Resource Allocation.

Subdivision A. – General.

61. FOREST DEVELOPMENT PROJECT.

¹²⁶Subject to Sections 64(3) and 87(4), a forest development project shall be carried out only after advertisement and in accordance with the procedure set out in this Part.

¹²³ Section 58(g) repealed by *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s15; Section 58 Amended by No. 3 of 2005, s. 16.

¹²⁴ Section 59 amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Repealed by No. 3 of 2005, s. 17.

¹²⁵ Section 60 repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s16.

¹²⁶ Section 61 amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

62. DEVELOPMENT OPTIONS STUDY BY THE BOARD.

¹²⁷(1)¹²⁸ ¹²⁹Subject to Subsection (2), before advertising a tender for a forest development project, the Board shall arrange for a development options study to be carried out over the proposed project area.

(2)¹³⁰ ¹³¹A development options study under Subsection (1) is not necessary—

(a)¹³² where the proposed annual allowable cut of a forest development project shall not exceed 5000m³; or

(b) for the harvesting of forest plantations; or

(c) for logging within an area designated as a salvage forest in the National Forest Plan.

(3)¹³³ ¹³⁴A development options study under Subsection (1) shall—

(a) be carried out by the National Forest Service or as contracted out by the Board; and

(b) be carried out in accordance with directions given by the appropriate Provincial Forest Management Committee; and

(c) provide an inventory of the forest resources in the proposed project area; and

(d) identify feasible options for development of the area and investigate—

(i) means of landowner participation in such development; and

(ii) possible environmental and social impacts of such development; and

(iii)¹³⁵ in respect of any forest produce to be harvested from the area—the feasibility of local processing and marketing prospects generally.

(4)¹³⁶ ¹³⁷The Board shall make available to the Minister and the Provincial Forest Management Committee true copies of the development options study.

63. PROJECT GUIDELINES.

(1)¹³⁸ ¹³⁹After completion of a development options study under Section 62, the Provincial Forest Management Committee shall, in consultation with the owners of

¹²⁷ Section 62: headnote repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹²⁸ Section 62(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹²⁹ Section 62(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹³⁰ Section 62(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹³¹ Section 62(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹³² Section 62(2)(a) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹³³ Section 62(3) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹³⁴ Section 62(3) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s17.

¹³⁵ Section 62 Subsection (3) amended by No. 3 of 2005, s. 18.

¹³⁶ Section 62 Subsection (4) amended by No. 3 of 2005, s. 18.

¹³⁷ Section 62 Subsection (4) amended by No. 3 of 2005, s. 18.

¹³⁸ Section 63(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹³⁹ Section 63(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

the forest resource the subject of the forest development project and the Provincial Government concerned, prepare draft guidelines on the manner in which the project is to be developed.

(2) The Provincial Forest Management Committee shall submit draft guidelines under Subsection (1) to the Board, which shall review them and issue final guidelines for the project.

(3) The final guidelines under Subsection (2) shall be the guidelines for enabling intending parties to submit project proposals and shall be utilized for the purposes of—

- (a) evaluating applications for; and
- (b) setting conditions in,

timber permits relating to the project.

64. ADVERTISEMENT OF PROJECT.

(1) Subject to Subsection (3), after completion of—

- (a)¹⁴⁰ a development options study under Section 62; and
- (b) project guidelines under Section 63,

the Board shall advertise the forest development project and seek expressions of interest from registered forest industry participants.

(2) Advertisement under Subsection (1)—

- (a) shall be made in Papua New Guinea; and
- (b) may be made outside Papua New Guinea; and
- (c) shall be done in the manner considered by the Board likely to be most effective; and
- (d) shall specify a date on or before which project proposals for timber permits may be lodged.

(3)¹⁴¹ ¹⁴²Where a forest development project—

- (a) is contiguous to any existing approved timber permit operations and the holders of timber permits of the existing timber permit operations have, in the opinion of the Board, a record of satisfactory performance in the forestry industry and have complied with their contractual obligations under all timber permits held by them at any time and such persons are acceptable to the landowners in the forest development project area; and
- (b) is the subject of development option studies carried out under Section 62; and

¹⁴⁰ Section 64 Subsection (1) amended by No. 3 of 2005, s. 19.

¹⁴¹ Section 64(3) repealed and replaced by No. 36 of 2000 s. 6.

¹⁴² Section 64(3) repealed and replaced by No. 36 of 2000 s. 6.

- (c) is the subject of final project guidelines issued by the Board under Section 63; and
- (d) is consistent with the National Forest Development Program; and
- (e) is, in the opinion of the Board, so small on its own that it is unable to operate as as commercially sustainable forest development project,

the Board may determine that the forest development project shall be an extension of one of the existing approved timber permit operations.

(4)¹⁴³ ¹⁴⁴If, in the event that the Board determines under Subsection (3) that the forest development project shall be an extension of an existing approved operation, then, subject to Subsections (5) and (6), all timber permit holders whose timber permit operations are contiguous to the forest development project shall be invited by the Board to make project proposals in respect to the forest development project.

(5)¹⁴⁵ ¹⁴⁶If any timber permit holder referred to in Subsection (4), has at any time already been granted an extension into a forest development project area, such timber permit holder shall not, except with the endorsement of the National Executive Council, be eligible to be invited by the Board to make application for a project proposal under Subsection (4).

(6)¹⁴⁷ ¹⁴⁸Any extension granted shall be made only on the basis that—

- (a) the forest resources within the forest development project shall be used primarily to sustain an existing processing facility; and
- (b) the existing timber permit area and the forest development project area shall be consolidated under the one timber permit and the consolidated timber permit area shall be managed and harvested on a sustainable harvest yield basis.

(7)¹⁴⁹ ¹⁵⁰A project proposal submitted to the Board under Section 64 shall be evaluated in accordance with Division 5.B.

65. REGISTERED FOREST INDUSTRY PARTICIPANT MAY APPLY FOR PERMISSION TO CARRY OUT DEVELOPMENT OPTIONS STUDY, ETC.

¹⁵¹A registered forest industry participant may apply to the Managing Director for permission for himself or for a registered consultant engaged by him to enter the project area for the purposes only of carrying out—

¹⁴³ Section 64(4) added by No. 36 of 2000 s. 6.

¹⁴⁴ Section 64(4) added by No. 36 of 2000 s. 6.

¹⁴⁵ Section 64(5) added by No. 36 of 2000 s. 6.

¹⁴⁶ Section 64(5) added by No. 36 of 2000 s. 6.

¹⁴⁷ Section 64(6) added by No. 36 of 2000 s. 6.

¹⁴⁸ Section 64(6) added by No. 36 of 2000 s. 6.

¹⁴⁹ Section 64(7) added by No. 36 of 2000 s. 6; Section 64 Subsection (7) substituted by No. 3 of 2005, s. 19.

¹⁵⁰ Section 64(7) added by No. 36 of 2000 s. 6; Section 64 Subsection (7) substituted by No. 3 of 2005, s. 19.

- (a)¹⁵² feasibility studies; and
- (b) appraisal of the forest resources; and
- (c) other preparatory work,

relating to the project, and where the Managing Director is satisfied that the conditions of registration of the applicant are appropriate to the project, he shall grant such permission.

Subdivision B. – Project Proposals and Agreements.

66. PROJECT PROPOSALS.

(1) A registered forest industry participant may make project proposals in relation to a forest development project advertized under Section 64.

(2) Project proposals under Subsection (1) shall–

- (a) be in the prescribed form; and
- (b)¹⁵³ be lodged with the Managing Director; and
- (c) be lodged on or before the date specified in Section 64(2)(d); and
- (d) be accompanied by–
 - (i) the prescribed fee; and
 - (ii) the prescribed particulars.

67. PROJECT PROPOSALS TO BE REFERRED TO PROVINCIAL FOREST MANAGEMENT COMMITTEE FOR EVALUATION.

(1)¹⁵⁴ ¹⁵⁵The Managing Director shall refer project proposals lodged under Section 64 and 66 to the Provincial Forest Management Committee for evaluation.

(2) An evaluation of project proposals will be made against–

- (a) the National Forestry Development Guidelines; and
- (b) the specific guidelines for the project prepared in accordance with Section 63; and
- (c) the National Forest Policy; and
- (d) any relevant Provincial Government policies, provided that they are not inconsistent with the National Forest Policy; and

¹⁵¹ Section 65: headnote amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 65 amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s18, and s48 and Schedule.

¹⁵² Section 65(a) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 65 Amended by No. 3 of 2005, s. 20.

¹⁵³ Section 66(2)(b) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁵⁴ Section 67 Subsection (1) amended by No. 3 of 2005, s. 21; Section 67(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁵⁵ Section 67 Subsection (1) amended by No. 3 of 2005, s. 21; Section 67(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

- (e) the commercial viability of the project (including the financial resources of the applicant, the past performance of the applicant in forest industry and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State).

(3) In making an evaluation under this section, a Provincial Forest Management Committee shall at all times obtain the assistance of the National Forest Service and of any relevant Department.

68. PROVINCIAL FOREST MANAGEMENT COMMITTEE MAY SEEK CLARIFICATION OF PROPOSALS.

(1)¹⁵⁶ ¹⁵⁷Where, following an evaluation under Section 67, the Provincial Forest Management Committee is of the opinion that project proposals for a timber permit merit further consideration, it may invite the proponent to provide such further information in order to clarify or elaborate on the proposals as the Committee considers necessary.

(2) Any further information referred to in Subsection (1) may be obtained at interview or by written submission.

(3) The Provincial Forest Management Committee shall evaluate, in accordance with the principles specified in Section 67(2), any further information required and obtained under this section.

69. PROVINCIAL FOREST MANAGEMENT COMMITTEE TO GIVE RECOMMENDATIONS, ETC., TO PROPOSALS.

Where the Provincial Forest Management Committee is satisfied with—

- (a) its evaluation under Section 67; and
- (b) any further evaluation under Section 68,

it shall prepare a detailed report of its evaluations including a recommendation as to the proponents (if any) with whom further negotiation should proceed and submit the report and recommendations to the Board.

70. BOARD TO CONSIDER REPORT, ETC.

(1) The Board shall—

- (a) consider and consult with the Minister on a report and recommendations submitted to it under Section 69; and
- (b)¹⁵⁸ subject to Subsection (2), direct the Provincial Forest Management Committee with which proponents, if any, it should enter into further negotiations with a view to negotiating a project agreement and advise

¹⁵⁶ Section 68(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁵⁷ Section 68(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁵⁸ Section 70(b) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s19(a).

the Provincial Forest Management Committee of any comments by the Minister; and

- (c) in conjunction with the Provincial Forest Management Committee, set the parameters within which such negotiations shall be conducted; and
- (d) assist the Provincial Forest Management Committee to set up negotiating committees.

(2)¹⁵⁹ ¹⁶⁰A project agreement referred to in Subsection (1)(b) may be entered into with a person (natural or corporate) other than a proponent with whom further negotiations were entered into under Subsection (1)(b), provided that the proponent is a shareholder of or contractor in the project to that person.

71. PROVINCIAL FOREST MANAGEMENT COMMITTEE TO ENTER INTO NEGOTIATIONS.

The Provincial Forest Management Committee shall—

- (a) negotiate a project agreement in accordance with Section 70; and
- (b) submit the final draft of the project agreement to the Board.

72. BOARD TO CONSIDER AGREEMENT AND MAKE RECOMMENDATIONS TO THE MINISTER.

(1) The Board shall—

- (a) consider a draft project agreement submitted to it under Section 71 or Subsection (2); and
- (b) where satisfied that the draft project agreement makes adequate provision for all aspects of the project—
 - (i) execute the project agreement on behalf of the Authority; and
 - (ii) recommend to the Minister to grant a timber permit to the person with whom the project agreement has been entered into; and
- (c)¹⁶¹ where not satisfied that the draft project agreement makes adequate provision for all aspects of the project—return the draft project agreement to the Provincial Forest Management Committee with details of the matters therein requiring further negotiation.

Note The *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule intended to amend Section 72(1)(b)(ii).

(2) Where a draft project agreement has been returned to a Provincial Forest Management Committee under Subsection (1)(c), the Provincial Forest Management Committee shall carry out such further negotiations as are necessary and submit a

¹⁵⁹ Section 70(2) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s19(b).

¹⁶⁰ Section 70(2) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s19(b).

¹⁶¹ Section 72(1)(c) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

further final draft project agreement for consideration by the Board in accordance with Subsection (1).

Subdivision C. – Timber Permit.

73. DUTIES OF MINISTER ON RECOMMENDATION.

(1)¹⁶² ¹⁶³Where the Minister accepts a recommendation from the Board under Section 72, he shall invite the person with whom the Authority has entered into a project agreement under Section 72(1)(b)(i) to make an application under Section 77 and, within 30 days of a duly completed application being made, grant a timber permit to that person.

(2) A timber permit shall–

- (a) be in the prescribed form; and
- (b) include a description of the project area; and
- (c) specify the amount of allowable cut; and
- (d) specify the term, which term shall be no more than the term of any Forest Management Agreement relating to the project area; and
- (e) where the term specified in Paragraph (d) exceeds 10 years, provide for the terms and conditions of the permit to be reviewed by the Board on the expiry of 10 years and on the expiry of every successive period of five years; and
- (f) specify the rate of royalties, levies and charges to be paid; and
- (g) make provision for the construction and/or use of roads, bridges and other infrastructural requirements; and
- (h) require a performance bond in accordance with Section 98 for an amount specified in the permit; and
- (i) relate to the project agreement under Section 72(1)(b)(i); and
- (j) contain such other conditions as may be prescribed.

(3)¹⁶⁴ ¹⁶⁵The effect of a timber permit is to authorize the holder to carry out the operations specified therein in the project area for the term and subject to the conditions specified therein and in accordance with the project statements, five year working plans and annual logging plans in respect of the project as from time to time are approved by the Board under Section 99.

(4) Where the Minister does not accept a recommendation under Section 72, he shall refer the matter back to the Board, with reasons for his non-acceptance of the recommendation, for reconsideration by the Board.

¹⁶² Section 73(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s20(a).

¹⁶³ Section 73(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s20(a).

¹⁶⁴ Section 73(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s20(b).

¹⁶⁵ Section 73(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s20(b).

74. BOARD TO RECONSIDER, ETC., REFERRAL BY MINISTER UNDER SECTION 73.

The Board shall reconsider any referral back to it under Section 73 and shall thereafter make a final recommendation on the matter to the Minister.

75. DUTIES OF MINISTER ON RECEIPT ON FINAL RECOMMENDATION FROM THE BOARD.

(1)¹⁶⁶ ¹⁶⁷Where the Minister accepts a final recommendation from the Board under Section 74, he shall invite the person with whom the Authority has entered into a project agreement under Section 72(1)(b)(i) to make an application under Section 77 and, within 30 days of a duly completed application being made, grant a timber permit to that person.

(2) Where the Minister does not accept a final recommendation from the Board under Section 74, he shall refer the matter, together with the recommendation of the Board and his reasons for not accepting it, to the National Executive Council.

76. NATIONAL EXECUTIVE COUNCIL TO DIRECT MINISTER TO ACCEPT OR REJECT RECOMMENDATION.

(1) The National Executive Council shall consider any matter referred to it under Section 75(2) and shall direct the Minister to—

- (a) accept; or
- (b) reject,

the project proposals.

(2) The Minister shall—

- (a) comply with a direction under Subsection (1); and
- (b) advise the Board of the direction; and
- (c) where the direction is to accept the recommendation of the Board, proceed in the manner required by Section 75(1).

(3) In its direction to the Minister under Subsection (1), the National Executive Council may direct the Minister to comply with certain requirements it may impose.

(4)¹⁶⁸ ¹⁶⁹Where a direction under Subsection (1) is to reject the recommendation of the Board, the National Executive Council shall direct the Minister to refer the matter back to the Board for the Board either to—

¹⁶⁶ Section 75(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s21.

¹⁶⁷ Section 75(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s21.

¹⁶⁸ Section 76(4) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s22.

¹⁶⁹ Section 76(4) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s22.

- (a) renegotiate such terms and conditions in the project agreement executed under Section 72(1)(b)(i) as are specified by the National Executive Council as requiring renegotiation; or
- (b) re-advertise the forest development project under Section 64 and take action thereafter in the manner required under this Division.

77. APPLICATION FOR A TIMBER PERMIT.

¹⁷⁰(1) A person who is invited to do so under Section 73(1) or 75(1) may make application for a timber permit.

(2) An application under Subsection (1) shall be—

- (a) in the prescribed form; and
- (b) lodged with the Managing Director; and
- (c) accompanied by—
 - (i) the prescribed fee; and
 - (ii) the prescribed particulars; and
 - (iii) an environmental plan which has been approved under the *Environmental Planning Act 1978*.

78. EXTENSION OR RENEWAL OF TIMBER PERMIT.

(1) The holder of a timber permit may apply to the Board for extension or renewal of the term of the permit.

(2) An application under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) be accompanied by the prescribed fee; and
- (c)¹⁷¹ be lodged with the Managing Director.

(3) The Board shall obtain from the Provincial Forest Management Committee a report on—

- (a) the social acceptability of the holder of the timber permit in the project area; and
- (b) the performance of the holder of the timber permit in carrying out the operations authorized by the timber permit; and
- (c) the amount of forest resources available in the vicinity of the project area in accordance with sustained yield management practices.

(4) Where the reports required under Subsection (3) are satisfactory, the Board shall recommend to the Minister that an extension or renewal of the term be granted

¹⁷⁰ Section 77 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s23.

¹⁷¹ Section 78(2)(c) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

to the holder of the timber permit and the Minister may grant such extension or renewal.

79. TRANSFER, AMENDMENT OR SURRENDER OF A TIMBER PERMIT.

(1) The holder of a timber permit may apply to the Board for the transfer of that timber permit to a registered forest industry participant or for the amendment or surrender of that timber permit.

(2) An application under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) contain the prescribed particulars; and
- (c) be accompanied by the prescribed fee; and
- (d)¹⁷² be lodged with the Managing Director.

(3) Where the Board requires an amendment of a timber permit it may negotiate that amendment by mutual agreement with the holder of the timber permit.

80. BOARD TO CONSIDER APPLICATIONS AND MAKE RECOMMENDATIONS.

The Board shall—

- (a) consider an application under Section 79; and
- (b) where satisfied, recommend to the Minister that the application be granted.

81. DUTIES OF MINISTER ON RECOMMENDATION.

(1)¹⁷³ ¹⁷⁴Where the Minister accepts a recommendation from the Board under Section 80, he shall approve the transfer, amendment or surrender of the timber permit and the Managing Director shall notify the holder of the timber permit accordingly.

(2) In the case of the transfer of a timber permit, the transferee shall be required to lodge, within a period specified by the Minister, a performance bond in accordance with Section 98 for an amount specified by the Minister, and where the performance bond is not lodged within the specified period the transfer of the timber permit is null and void and the timber permit shall be deemed to have been surrendered.

(3) Where the Minister does not accept a recommendation under Section 81, he shall refer the application back to the Board, with reasons for his non-acceptance of the recommendation, for reconsideration by the Board.

¹⁷² Section 79(2)(d) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁷³ Section 81(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁷⁴ Section 81(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

82. BOARD TO RECONSIDER, ETC., REFERRAL BY MINISTER UNDER SECTION 81.

The Board shall reconsider an application referred back to it under Section 81(3) and shall thereafter make a final recommendation to the Minister.

83. DUTIES OF MINISTER ON RECEIPT OF FINAL RECOMMENDATION FROM THE BOARD.

(1)¹⁷⁵ ¹⁷⁶Where the Minister accepts a final recommendation from the Board under Section 82, he shall approve the transfer, amendment or surrender of the timber permit and the Managing Director shall notify the holder of the timber permit accordingly.

(2) In the case of the transfer of a timber permit, the provisions of Section 81(2) shall apply.

(3) Where the Minister does not accept a final recommendation from the Board under Section 82, he shall refer the application, together with the final recommendation from the Board and his reasons for not accepting it, to the National Executive Council.

84. NATIONAL EXECUTIVE COUNCIL TO DIRECT MINISTER TO ACCEPT OR REJECT RECOMMENDATION.

(1) The National Executive Council shall consider any application and other papers referred to it under Section 83(3) and shall direct the Minister to—

- (a) accept; or
- (b) reject,

the application.

(2) The Minister shall—

- (a) comply with a direction under Subsection (1); and
- (b) advise the Board and the holder of the timber permit of the direction.

(3)¹⁷⁷ ¹⁷⁸A direction under Subsection (1)(b) to reject an application shall give the reasons for the rejection, but this shall not preclude the applicant from making a further application to the Board where the circumstances giving rise to the reasons have been resolved or no longer apply.

¹⁷⁵ Section 83(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

¹⁷⁶ Section 83(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

¹⁷⁷ Section 84(3) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s24.

¹⁷⁸ Section 84(3) repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s24.

85. SUSPENSION OF RIGHTS.

(1)¹⁷⁹ ¹⁸⁰The Managing Director may, in addition to any penalty under this Act, suspend, in whole or in part, the rights in a timber permit, timber authority, forestry clearing authorities under Section 90B(22) and 90D(22) or licence where its holder—

- (a) made a material misrepresentation, omission or mis-statement of fact in his application for it; or
- (b)¹⁸¹ fails to perform an obligation to be performed by him under it; or
- (c) fails to comply with this Act with regard to it.

(2)¹⁸² ¹⁸³Before the rights are suspended, the Managing Director shall serve a notice on the holder—

- (a)¹⁸⁴ specifying the alleged misrepresentation, omission or mis-statement or failure of performance or compliance; and
- (b) allowing the holder at least 14 days after the date of serving the notice to remedy the failure of performance or compliance.

(3)¹⁸⁵ ¹⁸⁶A suspension of rights under Subsection (1) takes effect on the expiry of the time allowed in the notice under Subsection (2) and continues until the rights are re-instated by the Managing Director or expire or are cancelled under this Act.

(4)¹⁸⁷ ¹⁸⁸On the request of the holder, the Managing Director shall allow him an opportunity to be heard and shall rescind the notice where he considers that the holder is not subject to Subsection (1).

(5)¹⁸⁹ ¹⁹⁰On the application of the holder, the Managing Director shall reinstate rights suspended under this section where the holder remedied the failure of performance or compliance for which the rights were suspended under this section.

86. CONVICTION OF THE HOLDER OF A TIMBER PERMIT, ETC.

(1) Where the holder of a timber permit (or where the holder is a corporate person, any of the principals of the holder)—

¹⁷⁹ Section 85 Subsection (1) amended by No. 3 of 2005, s. 22; Section 85(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁰ Section 85 Subsection (1) amended by No. 3 of 2005, s. 22; Section 85(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸¹ Section 85(1)(b) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s25(a).

¹⁸² Section 85(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸³ Section 85(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁴ Section 85(2)(a) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s25(b).

¹⁸⁵ Section 85(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁶ Section 85(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁷ Section 85(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁸ Section 85(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁸⁹ Section 85(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 85 Subsection (5) substituted by No. 3 of 2005, s. 22.

¹⁹⁰ Section 85(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 85 Subsection (5) substituted by No. 3 of 2005, s. 22.

- (a) is or are convicted of an offence—
 - (i) against this Act; or
 - (ii) concerning forestry matters, against any other law; or
- (b) has or have failed to comply with any of the conditions of the timber permit,

the Minister may cancel the timber permit.

(2) For the purposes of Subsection (1), “**principals**” includes director, manager, secretary or other similar officer or any person purporting to act in such a capacity.

(3)¹⁹¹ ¹⁹²Where it is proposed to cancel a timber permit under Subsection(1), the Managing Director shall serve a notice on the holder—

- (a) advising him of the intention to cancel the timber permit and of the reasons for the intended cancellation; and
- (b) requiring him, within 14 days from the date of service of the notice, to make representations as to why the timber permit should not be cancelled.

(4)¹⁹³ ¹⁹⁴On the request of the holder within 14 days from the date of service of the notice under Subsection (3), the Managing Director shall allow the holder an opportunity to be heard.

(5) Where the holder does not make, within the 14 day period, representations under Subsection (3)(b) or a request to be heard under Subsection (4), the Minister shall cancel the timber permit.

(6)¹⁹⁵ ¹⁹⁶The Minister shall consider any representations made under Subsection (3)(b), and, where appropriate, shall cancel the timber permit.

(7)¹⁹⁷ ¹⁹⁸Where there has been a hearing under Subsection (4)—

- (a) the Managing Director shall make and forward to the Board a written report on the hearing; and
- (b) the Board shall consider the report and forward it, together with its recommendations thereon, to the Minister; and
- (c) the Minister shall consider the report and the recommendations from the Board and, where appropriate, shall cancel the permit.

¹⁹¹ Section 86(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁹² Section 86(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁹³ Section 86(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁹⁴ Section 86(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

¹⁹⁵ Section 86(6) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s26(a).

¹⁹⁶ Section 86(6) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s26(a).

¹⁹⁷ Section 86(7) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s26(b).

¹⁹⁸ Section 86(7) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s26(b).

Subdivision D. – Timber authority.**87. TIMBER AUTHORITY.**

(1)¹⁹⁹ ²⁰⁰Upon the recommendation of the Provincial Forest Management Committee and the consent of the Board under Section 89 and otherwise subject to this section and to Sections 88 and 89, a Chairman of the Provincial Forestry Committee shall grant to a registered forest industry participant a timber authority–

- (a) where–
 - (i) subject to Subsection (5), the amount of timber to be harvested annually from the project area does not exceed 5,000m³; and
 - (ii) the timber to be harvested is for domestic processing only; or
 - (b)²⁰¹ for purposes of–
 - (i) the removal of trees on areas designated for agriculture or other land use by the relevant authorities where the agriculture or other land use would result in a clearance of less than 50 hectares of trees; or
 - (ii) the removal of trees on areas designated for a road by the relevant authorities where the roadline would not exceed 12.5 kilometres outside the area covered by the Forest Management Agreement; or
 - (c)²⁰² for the purposes of harvesting of other forest produce to an amount specified in the timber authority.
 - (d)²⁰³ for the purpose of harvesting a forest plantation including a State owned forest plantation.
- (2) A timber authority shall–
- (a) be in the prescribed form; and
 - (b) include a description of the project area; and
 - (c) specify the amount of allowable cut or forest produce that may be taken; and
 - (d) specify the term, appropriate to the project area, for which the timber authority applies; and
 - (e) require a performance bond in accordance with Section 98 for an amount specified in the timber authority; and
 - (f) specify such conditions as are laid down by the Provincial Forest Management Committee.

¹⁹⁹ Section 87(1) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule.

²⁰⁰ Section 87(1) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule.

²⁰¹ Section 87(1)(b) repealed and replaced by No. 36 of 2000 s.7.

²⁰² Section 87 Subsection (1) amended by No. 3 of 2005, s. 23.

²⁰³ Section 87 Subsection (1) amended by No. 3 of 2005, s. 23.

(3) The effect of a timber authority is to authorize the holder to carry out the operations specified in the timber authority in the project area for the specified term, subject to any conditions specified in the timber authority.

(4) A timber authority may be granted without feasibility study, guidelines, advertisement or the other procedure set out in Sections 61 to 65 inclusive and is non-transferable.

(5)²⁰⁴ ²⁰⁵Where the registered forest industry participant is the holder of a timber authority or timber authorities within a distance of 10km from any boundary of the project area, the aggregate amount of timber to be harvested annually from that timber authority or those timber authorities and the project area shall not exceed 5000m³.

88. APPLICATION FOR TIMBER AUTHORITY.

(1) A registered forest industry participant may make application for a timber authority.

(2) An application under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b)²⁰⁶ be lodged with the Managing Director; and
- (c) be accompanied by—
 - (i) the prescribed fee; and
 - (ii) the prescribed particulars; and
 - (iii) a map of the area in respect of which application is made for the timber authority; and
 - (iv) details of the project proposed; and
 - (v) details of any agreements relating to the sale of timber harvested; and
 - (vi) verification of ownership; and
 - (vii) the written consent of the landowners to the project proposed.

(3)²⁰⁷ ²⁰⁸To ensure the proper management and harvest of a forest plantation and before any rights under the timber authority are exercised, the holder of a forest plantation timber authority shall submit to the Provincial Forest Management Committee for approval a five year project statement setting out a general outline of the objectives and strategies of the timber authority holder, a five year working plan setting out the proposed activities over the succeeding five years and an annual

²⁰⁴ Section 87(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s27.

²⁰⁵ Section 87(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s27.

²⁰⁶ Section 88(2)(b) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁰⁷ Section 88 Subsection (3) inserted by No. 3 of 2005, s. 24.

²⁰⁸ Section 88 Subsection (3) inserted by No. 3 of 2005, s. 24.

logging plan setting out the details of the proposed work over the succeeding twelve months.

(4)²⁰⁹ ²¹⁰The five year project statement, five year working plan and annual logging plan may renewed three months prior to the expiry of each respective term subject to the availability of any remaining harvestable resource.

89. APPLICATION TO BE REFERRED TO PROVINCIAL FOREST MANAGEMENT COMMITTEE.

(1)²¹¹ ²¹²On receipt of an application under Section 88, the Managing Director, on being satisfied that the application has been lodged in the approved manner, shall refer the application to the Provincial Forest Management Committee who shall—

- (a) consider and evaluate the application; and
- (b)²¹³ thereafter make recommendations to the Chairman of the Provincial Forest Committee.

(2) An evaluation of an application will be made against—

- (a) the National Forest Policy; and
- (b) any relevant Provincial Government policies, provided they are not inconsistent with the National Forest Policy; and
- (c) the commercial viability of the project (including the financial resources of the applicant, the past performance of the applicant in forest industry and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State).

(3) In making an evaluation under this section, a Provincial Forest Management Committee may require the assistance of the National Forest Service and of any relevant Department.

(4)²¹⁴ ²¹⁵Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that the application is satisfactory, it shall prepare a report of its evaluation including a recommendation of an applicant, if any, and shall submit the report to the Chairman of the Provincial Forest Committee.

²⁰⁹ Section 88 Subsection (4) inserted by No. 3 of 2005, s. 24.

²¹⁰ Section 88 Subsection (4) inserted by No. 3 of 2005, s. 24.

²¹¹ Section 89(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²¹² Section 89(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²¹³ Section 89 Subsection (1) amended by No. 3 of 2005, s. 25.

²¹⁴ Section 89(4) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule; Section 89 Subsection (4) substituted by No. 3 of 2005, s. 25.

²¹⁵ Section 89(4) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule; Section 89 Subsection (4) substituted by No. 3 of 2005, s. 25.

(5)²¹⁶ ²¹⁷On receipt of a report under Subsection (4), the Chairman of the Provincial Forest Committee shall –

- (a) consider the report; and
- (b) forward to the Board the report with a notification of his intention to grant a timber authority over the project area, and shall request the consent of the Board to the grant.

(6)²¹⁸ ²¹⁹Subject to Subsection (7), the Board shall consider the report referred in Subsection (5) and may give consent to the grant of a timber authority.

(7)²²⁰ ²²¹Where the Board does not consent to the grant of a timber authority, it shall inform the Chairman of the Provincial Forest Committee accordingly and stating the reasons for not consenting to the grant, and the Chairman of the Provincial Forestry Committee shall not grant a timber authority but shall refer the matter to the Provincial Forest Management Committee for re-evaluation or fresh application, as the case may be.

90. CONVICTION OF THE HOLDER OF A TIMBER AUTHORITY, ETC.

²²²(1) Where the holder of a timber authority (or where the holder is a corporate person, any of the principals of the holder)–

- (a) is or are convicted of an offence–
 - (i) against this Act; or
 - (ii) concerning forestry matters, against any other law; or
- (b) has or have failed to comply with any or the conditions of the timber authority,

the Chairman of the Provincial Forestry Committee may cancel the timber authority.

(2) For the purposes of Subsection (1), “**principals**” includes director, manager, secretary or other similar officer or any person purporting to act in such a capacity.

90A. A LARGE SCALE CONVERSION OF FOREST TO AGRICULTURAL OR OTHER LAND USE.

²²³(1) A person may make application in the prescribed form and accompanied by the prescribed application fee for an authority to carry out any agricultural or

²¹⁶ Section 89(5) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule; Section 89 Subsection (5) substituted by No. 3 of 2005, s. 25.

²¹⁷ Section 89(5) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule; Section 89 Subsection (5) substituted by No. 3 of 2005, s. 25.

²¹⁸ Section 89 Subsection (6) substituted by No. 3 of 2005, s. 25.

²¹⁹ Section 89 Subsection (6) substituted by No. 3 of 2005, s. 25.

²²⁰ Section 89 Subsection (7) inserted by No. 3 of 2005, s. 25.

²²¹ Section 89 Subsection (7) inserted by No. 3 of 2005, s. 25.

²²² Section 90 amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

²²³ Section 90A inserted by No. 36 of 2000 s.8.

other land use development (other than roadline clearing on an existing forested area) where the amount of proposed clearance of natural forest for the project is greater than 50 hectares in total.

(2) An application under Subsection (1) shall not be made where the proposed project is within a Forest Management Agreement Area, Timber Rights Purchase Agreement Area or Local Forest Area except with the approval of the Board and, where applicable, the holder of any relevant Timber Permit.

(3) An application under Subsection (1) shall contain—

- (a) a detailed development plan, evaluation report and certificate of approval from the Secretary of the Department responsible for agriculture and livestock matters or the Secretary of any relevant Government Department or such other evaluation reports and certificates as the Board considers necessary; and
- (b) a copy of the relevant State Lease or other documentation relating to other type of land tenure appropriate for the project; and
- (c) an implementation schedule for the complete agricultural or other land use project showing the precise areas and proposed rate of harvesting to be carried out by an independent contractor appointed by the Forest Authority and successive land use development approved in writing by the Departmental Head of the Department responsible for agriculture and livestock matters or the Secretary of the relevant Government Department or, where relevant, the Provincial Government including detailed start and completion dates of all activities associated with the project; and
- (d) details of costs of the agricultural or other land use project and a certificate from a bank or financial institution which is satisfactory to the Managing Director certifying that the full costs of funding the project will be available to the applicant; and
- (e) a map and description of the project area in respect of which the application is made showing any areas of slope in excess of 30° or any other areas which are unsuitable for agricultural or other land use development and any areas important for conservation; and
- (f) a verification of ownership and the consent of each resource owning clan agent (or incorporated Land Groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form; and
- (g) supporting letters from any other relevant Department authorities or relevant industry body regarding the appropriateness of the design and implementation of the proposed project; and
- (h) an approval in writing from the office or Department responsible for environment and conservation matters of the environment impact statement submitted by the applicant to that office or Department; and

- (i) details of equipment and manpower suitable for the development of the proposed project and evidence of past experience in such developments; and
- (j) such other particulars as are prescribed.

90B. DEALING WITH APPLICATIONS FOR AGRICULTURAL OR OTHER LAND USE.

²²⁴(1) if the Board determines that an application under Section 90A is in the prescribed form and contains all relevant particulars, it shall—

- (a) by written notice consult with any government body that has, in its opinion, an interest in the grant of the application or that has any jurisdiction in the area to which the application relates; and
- (b) arrange for public hearings at which government bodies and the private sector may be heard; and
- (c) prepare, not less than seven days prior to the hearings referred to in Paragraph (b), a report and summary of matters associated with the application and the Board's consultation under Paragraph (a).

(2) Notice of an application and a public hearing in respect of it shall be given by the Board by publication in the prescribed form—

- (a) in the National Gazette; and
- (b) in a newspaper circulated nationally; and
- (c) in a newspaper circulated in the province in which the area, the subject of the application, is situated (if any) and by a radio broadcasting service that specifically services the province (if any).

(3) A notice under Subsection (2) shall specify the date of the hearing not less than 28 days from the date of publication of the notice.

(4) The Board shall appoint a person to be the Chairman of the hearing who shall conduct a hearing, as he thinks fit, and such hearing shall be held at or as near as practicable to the proposed agricultural or other land use project site.

(5) A person may, on payment of the prescribed fee, inspect and make copies of the summary referred to in Subsection (1)(c).

(6) Upon the completion of the hearing under Subsection (4), the Chairman of the hearing shall refer the application and a summary of the hearing to the Provincial Forest Management Committee who shall—

- (a) consider and evaluate the application and the summary of the hearing; and
- (b) thereafter make recommendations to the Board.

²²⁴ Section 90B inserted by No. 36 of 2000 s.8.

(7) An evaluation of an application by the Provincial Forest Management Committee under Subsection (6) shall be made taking into account—

- (a) the National Forest Policy; and
- (b) any relevant Provincial Government policies provided they are not inconsistent with the National Forest Policy; and
- (c) the commercial viability of the project including the financial resources of the applicant, the past performance of the applicant in agriculture or the proposed land use and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State; and
- (d) any other matters that the Provincial Forest Management Committee considers relevant.

(8) In making an evaluation under this Subsection (7), the Provincial Forest Management Committee may request the assistance of the National Forest Service and of any relevant Department.

(9) Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that it is satisfactory, it shall recommend to the Board to approve the application for a conversion of the forest to agriculture or other land use.

(10) If the Provincial Forest Management Committee is not satisfied with the application it shall inform the Board accordingly together with reasons for its decision and the application shall be rejected.

(11) The Board shall inform the applicant of the rejection of the application and the reasons therefor.

(12) If the Board is satisfied with the recommendation under Subsection (9) and the outcome of the public hearing under Subsection (4), the Board may recommend to the Minister to recommend to the National Executive Council to endorse the application for a conversion of the forest to agriculture or other land use in respect of the project area.

(13) If the Board is not satisfied with the recommendation or the outcome of the public hearing or both, it shall reject the application and advise the applicant that the application has been rejected and giving the reasons for the rejection.

(14) When the Minister receives the recommendation from the Board under Subsection (12), he shall refer the application together with the recommendation from the Provincial Forest Management Committee and the Board and all its evaluation reports, certificates of approvals from all relevant Departments and a summary of the public hearing to the National Executive Council.

(15) The National Executive Council shall consider the application and other papers referred to it under Subsection (14) and shall direct the Minister to—

- (a) endorse; or
- (b) reject,

the application and if the application is rejected it shall state the reasons for the rejection.

(16) The Minister shall—

- (a) comply with a direction under Subsection (15); and
- (b) advise the Board of the direction.

(17) If the National Executive Council does not endorse the project, the Board shall inform the applicant and the Provincial Forest Management Committee of the decision of the National Executive Council and the reasons for the rejection of the application.

(18) On the receipt of the advice from the Minister that the National Executive Council has endorsed an application, the Board shall call for tenders only from registered forest industry participants by advertisement in Papua New Guinea or abroad in such a manner considered by the Board likely to be most effective and specifying a date on or before which proposals for the forest clearing operation shall be lodged.

(19) An applicant for the proposed agricultural or other land use project or any related person or corporation as that expression is defined in the *Companies Act 1997* is prohibited from tendering for the project providing that in the event no tenderers are received or they are, in the Board's opinion, commercially unsatisfactory, then in such a case, the Board may invite the applicant to carry out the forest clearing operation and, if the applicant agrees, the applicant shall then be deemed for the purposes of Section 90(b) to be the successful tenderer.

(20) The successful tenderer shall enter into the prescribed Sales and Purchase Agreement with the customary owners which agreement shall provide for the purchase, harvesting, processing or marketing of timber and other forest products and which agreement shall be subject to the grant of a forest clearing authority by the Board.

(21) The Board shall, on the completion of the sales and purchase agreement, grant to the applicant an authority to carry out an agricultural or other land use development which authority shall—

- (a) be in the prescribed form; and
- (b) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (c) specify such other conditions as are laid down by the Board.

(22) A grant of a forest clearing authority shall—

- (a) be in the prescribed form; and
- (b) in order to ensure that the planned use by the successful applicant referred to in Section 90(A)(1) actually takes place, provide that any forest clearing operation shall be authorized in four phases, each phase—

- (i) shall represent approximately one quarter of the total area to be cleared under a forest clearing authority; and
- (ii) shall contain such conditions as are determined by the Board; and
- (iii) shall be subdivided into blocks for clearing of a maximum 500 hectares unless the Board considers that the maximum of 500 hectares is inappropriate in the circumstances in which case it may increase or decrease the maximum clearance figure; and
- (c) provide that the successful tenderer shall comply with the approved implementation schedule determined by the Department responsible for agriculture and livestock matters or other relevant Department; and
- (d) provide that a further phase under the same forest clearing authority may only be granted for the same purposes of forest clearance for agricultural or other land use where all conditions relating to an agricultural development plan or other land use implementation schedule have been satisfied; and
- (e) provide that the rights under the authority may be suspended where the planned land use by the applicant referred to in Section 90(A)(1) is not progressing according to, or meeting the set standards of, the Department responsible for agriculture and livestock matters or other relevant government agency or instrumentality's approved implementation schedule; and
- (f) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (g) specify such other conditions as are laid down by the Board.

(23) If an application for an agricultural or other land use development is at any stage and for any reason rejected, the applicant may at any time make a fresh application together with the prescribed application fee.

90C. LARGE SCALE CONVERSION OF FOREST TO ROAD.

²²⁵(1) A person may make application in the prescribed form and accompanied by the prescribed application fee for an authority to carry out any roadline development over an existing forested area where the proposed road will be greater than 12.5 kilometres in length.

(2) An application under Subsection (1) may not be made where the proposed road project is within a Forest Management Agreement Area, a Timber Rights Purchase Agreement Area or Local Forest Area except with the agreement of the Board and, where applicable, the holder of any relevant Timber Permit

(3) An application under Subsection (1) shall contain—

²²⁵ Section 90C inserted by No. 36 of 2000 s. 8.

- (a) a detailed development plan, evaluation report and certificate of approval from the Departmental Head of the Department responsible for transport matters certifying that the proposed road route is in accordance with the relevant National or Provincial infrastructure plans, and that funding is available to maintain the road after construction or such other evaluation, reports and certificates as the Board considers necessary; and
- (b) a certificate from the Departmental Head of the Department responsible for works matters certifying that the proposed standard of construction and design (including alignment) for the road meets the Department's standards; and
- (c) a certificate from the relevant Provincial Government certifying in writing that it approves the construction of the public road in the province and that the approval is given in terms of the design certified by the Departmental Head of the Department responsible for works matters and that when the responsibility to maintain the road is with the relevant Provincial Government, and that the Provincial Government undertakes that it can and will maintain the road when built; and
- (d) an implementation schedule for the complete roadline project showing the precise areas and the proposed rate of harvesting to be carried out by an independent contractor appointed by the Forest Authority and successive land use development approved in writing by the Departmental Head of the Department responsible for transport matters including detailed start and completion dates of all activities associated with the roadline project; and
- (e) details of costs of the roadline project and a certificate from a bank or financial institution certifying that the full costs of funding the roadline project will be made available to the applicant; and
- (f) a map and description of the roadline project area in respect of which the application is made giving details of land tenure and showing the route of the proposed road in numbered 5 kilometre sections; and
- (g) a verification of ownership and the consent of each resource owning clan agent (or incorporated Land Groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form; and
- (h) supporting letters from any other relevant Department authorities or relevant industry bodies regarding the appropriateness of the design and implementation of the proposed roadline project; and
- (i) details of equipment and manpower suitable for the development of the proposed roadline project and evidence of past experience in such developments; and

- (j) such other evaluation reports and certificates as the Board considers necessary and as prescribed.

90D. DEALING WITH APPLICATIONS FOR CONVERSION OF FOREST TO ROAD.

²²⁶(1) If the Board determines that an application under Section 90C in the prescribed form contains all relevant particulars, it shall—

- (a) by written notice consult with any government body that has, in its opinion, an interest in the grant of the application or that has any jurisdiction in the area to which the application relates; and
- (b) arrange for public hearings at which government bodies and the private sector may be heard; and
- (c) prepare, not less than seven days prior to the hearings referred to in Paragraph (b), a report and summary of matters associated with the application and the Board's consultation under paragraph (a).

(2) Notice of an application and a public hearing in respect of it shall be given by the Board by publication in the prescribed form—

- (a) in the National Gazette; and
- (b) in a newspaper circulated nationally; and
- (c) in a newspaper circulated in the province (if any) in which the area, the subject of the application, is situated and by a radio broadcasting service that specifically services the province (if any).

(3) A notice under Subsection (2) shall specify the date of the hearing not less than 28 days from the date of publication of the notice.

(4) The Board may appoint a person to be the Chairman of the hearing who shall conduct a hearing, as he thinks fit, and such hearing shall be at or as near as practicable to the proposed roadline project site.

(5) A person may, on payment of the prescribed fee, inspect and make copies of the summary referred to in Subsection (1)(c).

(6) Upon the completion of the hearing referred to in Subsection (4), the Chairman of the hearing shall refer the application and summary of the hearing to the relevant Provincial Forest Management Committee who shall—

- (a) consider and evaluate the application and the hearing summary; and
- (b) thereafter make recommendations to the Board.

(7) An evaluation of an application by the Provincial Forest Management Committee under Subsection (6) shall be made taking into account—

- (a) The National Forest Policy; and

²²⁶ Section 90D inserted by No. 36 of 2000 s. 8.

- (b) any relevant Provincial Government policies provided they are not inconsistent with the National Forest Policy; and
- (c) the commercial viability of the project including the financial resource of the applicant, the past performance of the applicant in roadline projects and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State; and
- (d) any other matters that the Provincial Management Committee considers relevant.

(8) In making an evaluation under Subsection (7), the Provincial Forest Management Committee may request the assistance of the National Forest Service and of any relevant Department.

(9) Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that it is satisfactory, it shall recommend to the Board to approve the application for a conversion of the forest to roadline.

(10) If the Provincial Management Committee is not satisfied with the application, it shall inform the Board accordingly together with the reasons for its decision and the application shall be rejected.

(11) The Board shall inform the applicant of the rejection of the application and the reasons therefor.

(12) If the Board is satisfied with the recommendation made under Subsection (9) and the outcome of the public hearing under Subsection (4), the Board shall recommend to the Minister to recommend to the National Executive Council to endorse the application for a conversion of the forest to road use in respect of the project area.

(13) If the Board is not satisfied with the recommendations and the outcome of the public hearing or both, it shall reject the application and advise the applicant that the application has been rejected and giving the reasons for the rejection.

(14) When the Minister receives the recommendation from the Board under Subsection (12), he shall refer the application together with the recommendation from the Provincial Forest Management Committee and the Board and all evaluations reports, certificates of approvals from all relevant Departments and a summary of the public hearing to the National Executive Council for its consideration.

(15) The National Executive Council shall consider the application and other papers referred to it under Subsection (14) and shall direct the Minister to—

- (a) endorse; or
- (b) reject,

the application and if the application is rejected, it shall state the reasons for the rejection.

(16) The Minister shall—

- (a) comply with a direction under Subsection (15); and
- (b) advise the Board of the direction.

(17) If the National Executive Council does not endorse the project, the Board shall inform the applicant and the Provincial Forest Management Committee of the decision of the National Executive Council and the reasons for the rejection of the application.

(18) On receipt of the advice from the Minister that the National Executive Council has endorsed an application, the Board shall call for tenders only from registered forest industry participants by advertisement in Papua New Guinea or abroad in such manner considered by the Board likely to be most effective and specifying a date on or before which proposals for the forest clearing operation must be lodged.

(19) An applicant for the proposed roadline project or any related person or corporation as that expression is defined in the *Companies Act 1997* is prohibited from tendering for the project provided that in the event no tenderers are received or they are, in the Board's decision, commercially unsatisfactory, then, in such a case, the Board may invite the applicant to carry out the forest clearing operation and, if the applicant agrees, the applicant shall be deemed, for the purposes of Section 90D, to be the successful tenderer.

(20) The successful tenderer shall enter into the prescribed Sales and Purchase Agreement with the customary owners which agreement shall provide for the purchase, harvesting, or marketing of timber and other forest products and which agreement shall be subject to the grant of a forest clearing authority by the Board.

(21) The Board shall, on the completion of the Sales and Purchase Agreement, grant to the applicant an authority to carry out any roadline development which authority shall—

- (a) be in the prescribed form; and
- (b) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (c) specify such other conditions as are laid down by the Board.

(22) A grant of a forest clearing authority shall—

- (a) be in the prescribed form; and
- (b) provide that forest clearance for road construction shall only be authorized in stages of 20 kilometres in length in order to ensure actual construction of the road takes place; and
- (c) provide that the forest clearing must follow a surveyed alignment which must have been carried out by a registered surveyor; and
- (d) specify that where the Managing Director receives a statement in writing from the Department responsible for works matters that road construction has been completed in the previous section of cleared road corridor to the requirements of the Department, the Managing Director

may authorize further road clearance to take place in a further section of road corridor, not exceeding 20 kilometres in length, which is next scheduled for clearing; and

- (e) specify that the maximum roadline corridor which may be cleared under a forest clearance authority shall not exceed—
 - (i) in respect to the corridor length – the length of road planned to be constructed; and
 - (ii) in respect to the corridor width for each and every stage of forest clearance – shall not exceed 40 metres in width and such said width shall not be more than 20 metres on either side of the centre of the road; and
- (f) provide that the rights under the authority may be suspended where—
 - (i) construction of the road in the corridor cleared under the timber authority is not progressing according to the approved implementation schedule of the Department responsible for transport matters or the Department responsible for works matters; or
 - (ii) the applicant has not provided the Authority with a certificate from the Department responsible for works matters confirming that the length of road constructed in the roadline has been cleared in accordance with any stage of an implementation schedule and that it meets the road construction standards of that Department.
- (g) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (h) specify such other conditions as are laid down by the Board.

(23) If, at any time, after the coming into operation of this provision, a road that is presently being constructed or that is proposed to be constructed through forested areas under an existing permit, authority or licence and which is at variance with any of the provisions of this section, then, in such a case, such permit authority or licence, as the case may be, shall be varied by the Authority so that such permit authority complies with this section and no compensation shall be payable to the permit, authority or licence holder, as the case may be, as a result of such holder being required to comply with this section.

(24) If an application for a roadline development is at any stage and for any reason rejected the applicant may at any time make a fresh application together with the prescribed application fees.

90E. CANCELLATION, ETC., OF AUTHORITIES.

An authority to carry out an agricultural or other land use, forest clearing authority or authority to carry out a roadline development granted under Section

90B or 90D is subject to the provisions of Section 97 relating to the right of the Minister to cancel the authority as if that authority was a licence.

Subdivision E. – Licence.

91. ISSUE OF A LICENCE.

²²⁷(1) The Board may, on the application of a registered forest industry participant, issue to that registered forest industry participant, a licence to engage in forest industry activities other than those carried out, or proposed to be carried out, under a timber permit or timber authority held by the forest industry participant.

(2) A licence shall—

- (a) be in the prescribed form; and
- (b) include as a condition compliance with the terms and conditions of any timber permit or timber authority or permit to which the activities authorized by the licence are related; and
- (c) specify the activity or activities in respect of which the licence is granted; and
- (d) require a performance bond in accordance with Section 98 for an amount specified in the licence; and
- (e) include such other conditions in accordance with the National Forest Policy as are applicable.

92. APPLICATION FOR A LICENCE.

An application for a licence—

- (a) may be made only by a registered forest industry participant or registered consultant; and
- (b) shall be in the prescribed form; and
- (c) shall be accompanied by the prescribed particulars; and
- (d) shall specify the activity in respect of which the licence is sought; and
- (e) shall be accompanied by the prescribed fee; and
- (f)²²⁸ shall be lodged with the Managing Director.

93. APPLICATION TO BE REFERRED TO BOARD.

(1) On receipt of an application under Section 92, the Managing Director shall refer the application to the Board who shall consider and evaluate the application.

(2) An evaluation of an application will be made against—

²²⁷ Section 91 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s28.

²²⁸ Section 92(f) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

- (a) the National Forest Policy; and
- (b) any relevant Provincial Government policies, provided they are not inconsistent with the National Forest Policy; and
- (c) the commercial viability of the activity (including the financial resources of the applicant, the past performance of the applicant in forest industry and other projects, analysis of projected cash flows and the anticipated net benefit to the resource owners and to the State); and
- (d) in the case of a consultant, the need for a consultancy in the activity.

(3) In making an evaluation under this section, the Board may require the assistance of the National Forest Service and of any relevant Department.

(4) Where the Board, after having considered and evaluated an application, is of the opinion that it is satisfactory it may grant a licence to the applicant.

94. TERM OF A LICENCE.

A licence may be granted for a term not exceeding 12 months.

95. EXTENSION OF TERM OF LICENCE.

(1)²²⁹ ²³⁰Subject to Subsection (2), the Board shall, on the application in the prescribed manner by the holder of a licence, grant an extension or extensions of the licence, each for such period not exceeding 12 months as the Board determines.

(2)²³¹ ²³²Where a condition of a licence has been breached, the Board shall not grant an extension of the term of the licence.

96. LICENCE NOT TRANSFERABLE.

A licence is not transferable and shall not be amended.

97. CONVICTION OF THE HOLDER OF A LICENCE, ETC.

(1) Where the holder of a licence (or where the holder is a corporate person, any of the principals of the holder)–

- (a) is or are convicted of an offence–
 - (i) against this Act; or
 - (ii) relating to forestry matters, against any other law; or
- (b) has or have failed to comply with any of the conditions of the licence,

the Minister may cancel the licence.

²²⁹ Section 95(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s29(a).

²³⁰ Section 95(1) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s29(a).

²³¹ Section 95(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s29(b).

²³² Section 95(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s29(b).

(2) For the purposes of Subsection (1), “**principals**” includes director, manager, secretary and other similar officer or any person purporting to act in such a capacity.

(3)²³³ ²³⁴Where it is proposed to cancel a licence under Subsection (1), the Managing Director shall serve a notice on the holder—

- (a) advising him of the intention to cancel the licence and of the reason for the intended cancellation; and
- (b) requiring him, within 14 days from the date of service of the notice to make representations as to why the licence should not be cancelled.

(4)²³⁵ ²³⁶On the request of the holder within 14 days from the date of service, the Managing Director shall allow the holder an opportunity to be heard.

(5)²³⁷ ²³⁸Where the holder does not, within the 14 days period, make representations under Subsection (3)(b) or a request to be heard under Subsection (4), the Minister shall cancel the licence.

(6)²³⁹ ²⁴⁰The Minister shall consider any representations made under Subsection (3)(b) and, where appropriate, shall cancel the licence.

(7)²⁴¹ ²⁴²Where there has been a hearing under Subsection (4)—

- (a) the Managing Director shall make and forward to the Board a written report on the hearing; and
- (b) the Board shall consider the report and forward it, together with its recommendations thereon, to the Minister; and
- (c) the Minister shall consider the report and the recommendations from the Board and, where appropriate, shall cancel the licence.

Subdivision F. – Performance Bonds.

98. PERFORMANCE BONDS.

(1) A performance bond required under—

- (a) Section 73(2)(h) or 81(2) in relation to a timber permit; or
- (b) Section 87(2)(e) in relation to a timber authority; or
- (c) Section 91(2)(d) in relation to a licence; or

²³³ Section 97(3) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁴ Section 97(3) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁵ Section 97(4) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁶ Section 97(4) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁷ Section 97(5) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁸ Section 97(5) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²³⁹ Section 97(6) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²⁴⁰ Section 97(6) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²⁴¹ Section 97(7) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

²⁴² Section 97(7) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s30.

(ca)²⁴³ Section 90B(21)(b) in relation to a grant of an authority to carry out an agricultural or other land use development; or

(cb)²⁴⁴ Section 90B(22)(f) in relation to a grant of a forest clearing authority; or

(cc)²⁴⁵ Section 90D(21)(b) in relation to a grant of an authority to carry out a roadline development; or

(cd)²⁴⁶ Section 90D(22)(f) in relation to a forest clearing authority,

shall be—

(d) in the prescribed form; and

(e)²⁴⁷ lodged with a bank approved by the Managing Director; and

(f)²⁴⁸ subject to Subsection (2), authorize the Authority to draw directly on the bond in the event of non-performance by the holder of the timber permit, timber authority or licence, or forest clearing authority, authority to carry out an agriculture or other land use development or an authority to carry out roadline clearing, as the case may be, of any condition or requirement of the timber permit, timber authority or licence or forest clearing authority, authority to carry out an agriculture or other land use development or an authority to carry out roadline clearing respectively, or of any provision of this Act.

(2) The Authority may draw directly on a bond only—

(a) after following the prescribed procedures; and

(b) to the extent of the prescribed scale of deductions for nominated breaches of conditions or requirements.

(3) Where the Authority has drawn on a bond in accordance with this section, the holder of the timber permit, timber authority or licence, as the case may be, shall, within 30 days of being so notified by the Authority, deposit with the bank a sum equivalent to the amount drawn.

(4)²⁴⁹ ²⁵⁰No Timber Permit, timber authority, licence, forest clearing authority or an authority to carry out an agricultural or other land use development or roadline development shall commence or be in effect until the performance bond payable under Section 98 has been lodged with the Authority.

(5)²⁵¹ ²⁵²If such bond is not lodged within 21 days of the date of grant of a Timber Permit, Timber Authority, Licence, forest clearing authority or for an

²⁴³ Section 98(1)(ca) Paragraph (ca) inserted by No. 36 of 2000 s. 9(a). .

²⁴⁴ Section 98(1)(cb) Paragraph (ca) inserted by No. 36 of 2000 s. 9(a). .

²⁴⁵ Section 98(1)(cc) Paragraph (ca) inserted by No. 36 of 2000 s. 9(a). .

²⁴⁶ Section 98(1)(cd) Paragraph (ca) inserted by No. 36 of 2000 s. 9(a). .

²⁴⁷ Section 98(1)(e) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁴⁸ Section 98(1)(f) amended by No. 36 of 2000 s. 9(b).

²⁴⁹ Section 98(4) added by No. 36 of 2000 s. 9(c).

²⁵⁰ Section 98(4) added by No. 36 of 2000 s. 9(c).

²⁵¹ Section 98(5) added by No. 36 of 2000 s. 9(c).

²⁵² Section 98(5) added by No. 36 of 2000 s. 9(c).

Authority to carry out any agriculture or other land use development or roadline development, then the said grant or authority, as the case may be, shall be deemed void and shall be cancelled by the Board forthwith.

(6)²⁵³ ²⁵⁴The Board may, in its absolute and unfettered discretion, on being satisfied that extenuating circumstances exist, on application by the holder of a Timber Permit, Timber Authority, Licence, forest clearance authority or authority to carry out any agriculture or other land use development or roadline development, as the case may be, extend the time prescribed in Section 98(5) by which a person is required to lodge a performance bond.

(7)²⁵⁵ ²⁵⁶The amount of a bond for a timber permit, timber authority, licence, an authority under Section 90B(21) and 90D(21) and a clearing authority under Section 90B(22) and 90D(22) shall be as determined by the Board.

Division 6.

Forest Management Controls.

99. DOCUMENTS TO BE PROVIDED BY HOLDERS OF TIMBER PERMITS.

The holder of a timber permit shall, to ensure proper management of the project, submit to the Board for approval—

- (a) a project statement in accordance with Section 100; and
- (b) a five year forest working plan in accordance with Section 101; and
- (c) an annual logging plan in accordance with Section 102.

100. PROJECT STATEMENT.

²⁵⁷(1) A project statement shall be submitted to the Board by the holder of a timber permit—

- (a) before any rights under that timber permit are exercised; and
- (b) one month prior to the end of each three years of operations under the permit.

(2) The project statement shall be a general outline of the objectives and strategies of the holder of a timber permit in relation to the project over the succeeding five years and shall contain details as prescribed.

²⁵³ Section 98(6) added by No. 36 of 2000 s. 9(c).

²⁵⁴ Section 98(6) added by No. 36 of 2000 s. 9(c).

²⁵⁵ Section 98(7) added by No. 36 of 2000 s. 9(c).

²⁵⁶ Section 98(7) added by No. 36 of 2000 s. 9(c).

²⁵⁷ Section 100 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s31.

101. FIVE YEAR WORKING PLAN.

²⁵⁸(1) A five year working plan shall be submitted to the Board by the holder of a timber permit—

- (a) before any rights under that timber permit are exercised; and
- (b) one month prior to the end of each three years of operations under the permit.

(2) The five year working plan shall describe the proposed activities under the permit over the succeeding five years and shall contain details as prescribed.

102. ANNUAL LOGGING PLAN.

²⁵⁹(1) An annual logging plan shall be submitted to the Board by the holder of a timber permit—

- (a) before any timber rights under that timber permit are exercised; and
- (b) one month prior to the end of each year of operations under the permit.

(2) The annual logging plan shall detail the proposed work to be carried out under the permit over the succeeding 12 months and shall contain details as prescribed.

(3) A Forest Inspector or Forest Officer shall check on work as prescribed and, where satisfied that a unit of work has been completed as detailed in the annual logging plan, shall issue a certificate to that effect.

(4) Where a certificate has been issued under Subsection (3), the holder of a timber permit may carry out further work under and in accordance with the permit.

103. IDENTIFICATION AND MEASUREMENT OF TIMBER FELLED UNDER TIMBER PERMIT OR TIMBER AUTHORITY.

(1) Any timber taken under a timber permit or timber authority shall be identified, measured and branded in a manner specified by the Managing Director.

(2)²⁶⁰ ²⁶¹The Managing Director may specify different methods of identification, measurement and branding for different categories of timber.

(3)²⁶² ²⁶³The holder of a timber permit or timber authority shall keep, and at all times make available for inspection by a Forest Inspector, a written record of identification, measurements and branding of all timber taken under the timber permit or timber authority.

²⁵⁸ Section 101 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s32.

²⁵⁹ Section 102 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s33.

²⁶⁰ Section 103(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁶¹ Section 103(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁶² Section 103(3) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁶³ Section 103(3) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

(4) A Forest Inspector may, at any time, measure or estimate the volume and quantity of timber felled and, for the purposes of determining royalty or other charges payable in respect of such timber, such measurement or estimate shall prevail, notwithstanding that the timber has been measured in accordance with Subsection (1).

103A. PUBLIC REGISTER.

²⁶⁴(1) There is established a Public Register to be kept and maintained by the Authority.

(2) The Public Register shall—

- (a) be in the prescribed form; and
- (b) contain such particulars as are required by this section or as are prescribed.

(3) The Public Register shall contain—

- (a) summaries of decisions of the Board containing brief facts and the resolutions thereto but shall not contain summaries of matters which are of a commercial-in-confidence nature or sub-judice or information which is not in the public interest and ought not to be in the public domain; and
- (b) maps relating to forests; and
- (c) details of—
 - (i) registered Forest Industry Participants and Consultants; and
 - (ii) licenced Scalers; and
 - (iii) registered timber processing plants, including an extract of the relevant certificate of registration of licence; and
 - (iv) Timber Permit holders; and
 - (v) timber authority holders; and
 - (vi) licence holders; and
 - (vii) holders of forest clearing authorities; and
 - (viii) holders of authorities to carry out large scale agricultural or other land use projects; and
 - (ix) authorities to carry out large scale roadline projects, including an extract containing a description of the timber area, the name of the permit or authority holder, the permit or authority number and the duration of the permit or authority; and
 - (x) forest potential areas including an extract containing their details and the unallocated areas; and

²⁶⁴ Section 103A inserted by No. 36 of 2000 s. 10.

- (xi) Forest Management Agreements and field reports relating to the signing of the Agreements with resource owners.

PART IV. – REGISTRATION OF FOREST INDUSTRY PARTICIPANTS AND CONSULTANTS.

104²⁶⁵. [REPEALED.]

105. PERSON NOT TO APPLY FOR OR BE GRANTED A LICENCE, ETC., UNLESS REGISTERED UNDER THIS PART.

A person shall not–

- (a) apply for or be granted permission to enter a project area to carry out feasibility studies under Section 65 unless registered as a forest industry participant or consultant under this Part; or
- (b)²⁶⁶ make project proposals under Section 64 and 66 unless registered as a forest industry participant under this Part; or
- (c) apply for or be granted a timber permit or timber authority–unless registered as a forest industry participant under this Part; or
- (d)²⁶⁷ apply for or be granted a licence–unless registered as a forest industry participant or consultant under this Part.
- (e)²⁶⁸ apply for a forest clearing authority under Section 90B(22) – unless registered as a forest industry participant under this Part; or
- (f)²⁶⁹ apply for a forest clearing authority under Section 90D(22) – unless registered as a forest industry participant under this Part.

106. REGISTER OF FOREST INDUSTRY PARTICIPANTS AND CONSULTANTS.

²⁷⁰The Managing Director shall establish and maintain a Register of Forest Industry Participants and Consultants.

107. APPLICATION FOR REGISTRATION.

²⁷¹(1)²⁷² ²⁷³A person may apply to the Managing Director for registration as a forest industry participant or a consultant.

- (2) An application under Subsection (1) shall–
 - (a) be in the prescribed form; and

²⁶⁵ Section 104 repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s34.

²⁶⁶ Section 105 Amended by No. 3 of 2005, s. 26.

²⁶⁷ Section 105 Amended by No. 3 of 2005, s. 26.

²⁶⁸ Section 105 Amended by No. 3 of 2005, s. 26.

²⁶⁹ Section 105 Amended by No. 3 of 2005, s. 26.

²⁷⁰ Section 106 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷¹ Section 107 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s35.

²⁷² Section 107(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷³ Section 107(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

- (b) specify the full name and address of the applicant; and
- (c) specify the activity or activities in respect of which the applicant requires to be registered as a forest industry participant or consultant; and
- (d) contain the prescribed particulars; and
- (e) be accompanied by the prescribed fee.

108. MANAGING DIRECTOR MAY REQUIRE FURTHER INFORMATION.

²⁷⁴On receipt of an application under Section 107, the Managing Director shall consider the application and, where he is of the opinion that further information is required from the applicant, may require the applicant, if he wishes to proceed with the application, to furnish such further information.

109. MANAGING DIRECTOR TO REFER APPLICATIONS TO BOARD WITH RECOMMENDATION.

²⁷⁵(1) Where the Managing Director is satisfied that he is in receipt of sufficient information to enable him fully to consider an application under Section 107, he shall—

- (a) consider the application fully; and
- (b) refer the application to the Board with a recommendation as to whether or not the applicant should be registered as a forest industry participant or as a consultant.

(2)²⁷⁶ ²⁷⁷In considering an application and making a recommendation under Subsection (1), the Managing Director shall have regard to—

- (a) the financial resources of the applicant; and
- (b)²⁷⁸ the expertise and experience of the applicant in the activity or activities in respect of which application is sought; and
- (c) any previous performances of the applicant in the forest industry.

110. BOARD TO CONSIDER APPLICATION, ETC., AND MAKE DIRECTION.

(1)²⁷⁹ ²⁸⁰The Board shall, on receipt of a referral under Section 109(1)(b), consider the application and recommendation and shall direct the Managing Director—

²⁷⁴ Section 108 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷⁵ Section 109 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷⁶ Section 109(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷⁷ Section 109(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁷⁸ Section 109(2)(b) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s36.

²⁷⁹ Section 110(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁸⁰ Section 110(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

- (a) to register the applicant as a forest industry participant or as a consultant; or
- (b) not to register the applicant as a forest industry participant or as a consultant.

(2) In considering an application and recommendation under Subsection (1), the Board shall have regard to the matters specified in Section 109(2).

111. DUTIES OF MANAGING DIRECTOR.

²⁸¹The Managing Director shall, on receipt of a direction—

- (a)²⁸² under Section 110(1)(a)—register the applicant as a forest industry participant or consultant in respect of the activity or activities specified in the application and issue to the applicant a certificate of registration; or
- (b) under Section 110(1)(b)—advise the applicant of the decision of the Board.

112. CANCELLATION OF REGISTRATION.

(1)^{283 284}Where—

- (a)²⁸⁵ a person registered under this Part (or where a person so registered is a corporate person, any of the principals of that corporate person) —
 - (i) is convicted of —
 - (A) an offence against a provision of this Act; or
 - (B) an offence involving dishonesty under any law; or
 - (ii) fails to comply with a condition of a timber permit, timber authority, licence, forest clearing authority under Section 90B(22) or forest clearing authority under Section 90D(22),

which, in the opinion of the Managing Director, is sufficient to justify cancellation of registration; or
- (b) the Managing Director is of the opinion that there has been a change in the circumstance of a person registered under this Act sufficient to justify cancellation of registration,

the Managing Director may refer the matter to the Board for consideration as to whether registration should be cancelled.

²⁸¹ Section 111 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁸² Section 111(a) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s37.

²⁸³ Section 112(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁸⁴ Section 112(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

²⁸⁵ Section 112 Subsection (1) amended by No. 3 of 2005, s. 27.

(2)²⁸⁶ ²⁸⁷Before making a referral under Subsection (1), the Managing Director shall notify the person registered of his intention to make the referral and shall invite him to make a submission within 14 days as to why the registration should not be cancelled.

(3) A referral under Subsection (1) shall be accompanied by—

- (a)²⁸⁸ a statement by the Managing Director of the reasons for the referral; and
- (b) any submission made under Subsection (2).

(4)²⁸⁹ ²⁹⁰The Board shall, on receipt of a referral under this section, consider the statement and any submission and direct the Managing Director—

- (a) to cancel the registration forthwith; or
- (b) to cancel the registration with effect from a future date to allow for completion of a current project; or
- (c) not to cancel the registration.

(5)²⁹¹ ²⁹²The Managing Director shall, on receipt of a direction—

- (a) under Subsection (4)(a)—cancel the registration and advise the person involved of the cancellation; and
- (b) under Subsection (4)(b)—advise the person registered of the proposed cancellation and subsequently cancel the registration in accordance with the direction; and
- (c) under Subsection (4)(c)—advise the person registered of the decision of the Board.

(6)²⁹³ ²⁹⁴Where the registration of a person is cancelled under this section, any timber permit, timber authority, forest clearing authority under Section 90B(22), forest clearing authority under Section 90D(22) or licence held by that person is suspended with effect on and from the date of cancellation of the registration.

113. APPEAL.

(1) Where—

²⁸⁶ Section 112(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁸⁷ Section 112(2) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁸⁸ Section 112(3)(a) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁸⁹ Section 112(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹⁰ Section 112(4) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹¹ Section 112(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹² Section 112(5) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹³ Section 112 Subsection (6) amended by No. 3 of 2005, s. 27; Section 112(6) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s38.

²⁹⁴ Section 112 Subsection (6) amended by No. 3 of 2005, s. 27; Section 112(6) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s38.

(a)²⁹⁵ an applicant is aggrieved by a decision of the Board under Section 110(1)(b); or

(b) a person is aggrieved by a decision of the Board to cancel his registration under Section 112(4)(a) or (b),

he may appeal in writing to the Minister for a review of the decision.

(2) On receipt of an appeal under Subsection (1), the Minister shall—

(a) obtain a report on the matter from the Board; and

(b) consider the appeal and the report; and

(c) uphold or reject the appeal; and

(d)²⁹⁶ advise the Board and the Managing Director and the appellant of his decision under Paragraph (c).

(3)²⁹⁷ ²⁹⁸The Managing Director shall give effect to a decision of the Minister under Subsection (2)(c).

(4) The decision of the Minister under Subsection (2)(c) is final.

114. OFFENCE TO PARTICIPATE, ETC., IN FOREST INDUSTRY UNLESS REGISTERED.

(1) A person who makes application for a timber permit, timber authority or licence without being registered under this Part, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

(2)²⁹⁹ ³⁰⁰A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in a forest industry activity without the forest industry participant being registered under this Part in respect of that activity, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding five years, or both.

(3) A person who, not being registered under this Part, claims to be so registered, or holds himself out as being so registered, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

²⁹⁵ Section 113(1)(a) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 113 Subsection (1) amended by No. 3 of 2005, s. 28.

²⁹⁶ Section 113(2)(d) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹⁷ Section 113(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹⁸ Section 113(3) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

²⁹⁹ Section 114(2) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s39(a).

³⁰⁰ Section 114(2) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s39(a).

(4) A person who, not being registered under this Part, enters into negotiations with a landowner in relation to any activity, to engage in which that person would require to be registered under this Part, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

(5)³⁰¹ ³⁰²A consultant, who provides or offers services in the capacity of a consultant, without being registered as a consultant under this Part, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years or both.

³⁰¹ Section 114(5) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s39(b).

³⁰² Section 114(5) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s39(b).

PART V. – MARKETING.**115. STATE OPTION TO PURCHASE LOGS.**

³⁰³(1) The State Marketing Agency may, on behalf of the State—

- (a) in any one year purchase compulsorily at the market price from the holder of a timber permit up to 25% of the amount of logs which the holder of the timber permit is permitted to export in that year; and
- (b) otherwise by agreement purchase logs from the holder of a timber permit.

(2) Where the State proposes to exercise its option under Subsection (1)(a), the State Marketing Agency shall give notice in writing to the holder of the timber permit.

(3) Any exercise of purchase rights under Subsection (1) shall be known as the State Purchase Option.

(4) The procedures to be followed in the State Purchase Option shall be as prescribed.

116. CERTAIN HOLDERS OF TIMBER PERMITS TO ESTABLISH MARKETING UNIT.

(1) The holder of a timber permit with an annual log export quota of 72,000m³ or greater shall—

- (a) establish a marketing unit within its corporate structure in Papua New Guinea; or
- (b) employ the State Marketing Agency as its marketing unit.

(2) The holder of a timber permit shall not appoint a marketing agent based outside Papua New Guinea as the exclusive agent of the holder for the export of logs from Papua New Guinea.

117. QUALITY CONTROL.

The methods of grading logs and other forest produce for export and of seasoning and preservation of forest produce shall be as prescribed.

118. CONTROL, ETC., OF TRANSFER PRICING.

Provisions for the control or prevention of transfer pricing of forest produce and timber shall be as contained in the *Income Tax Act 1959* or as are prescribed.

³⁰³ Section 115 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s40.

PART VI. – FOREST FINANCE.**119. FOREST REVENUE SYSTEM.**

There shall be established a forest revenue system which shall form the basis for prescribing royalties and other forest charges.

120. ROYALTIES.

(1) Subject to this section, the royalty payable on timber and forest produce taken or deemed to be taken under a timber permit is at a rate, fixed by the Minister in the timber permit, on the volume of merchantable timber or forest produce calculated at stump.

(2) In the case of a timber permit, the Minister may—

- (a) at least once in each year during the currency of the timber permit; and
- (b) where in his opinion there exists a special reason to do so, at any other time during the currency of the timber permit,

review the royalty payable for timber or forest produce under the timber permit.

(3) Where the Minister has conducted a review under Subsection (2), he may vary the royalty payable in relation to the timber permit by written notice to the holder of the timber permit.

(4) Where royalty is varied under Subsection (3)—

- (a) the varied royalty is, from the date specified in the notice, the royalty payable for timber or forest produce taken under the timber permit; and
- (b) the timber permit, is, from the date specified in the notice, subject to the payment as so varied.

(5) Notwithstanding this section, where the Minister is of the opinion that it is desirable in the national interest to do so, he may enter into an agreement with the holder of a timber permit, or any applicant for a timber permit, that the royalty fixed or to be fixed in the timber permit shall not be varied within such period as is specified in the agreement.

(6) Royalty payable under this section shall be paid by monthly instalments at the time of lodgement of such monthly statements by the holder of a timber permit as may be prescribed.

(7) A person to whom royalties are paid under this Act shall furnish to the Commissioner General of Internal Revenue such information in relation to the royalties as the Commissioner General of Internal Revenue may require.

Note Section 2 of the *Commissioner General of Internal Revenue (Consequential Amendments) Act* 1993 (No. 1 of 1993) provides that “Chief Collector” shall be read as “Commissioner General”. It is assumed that “Collector of Taxes” should also be read as “Commissioner General”.

121. LEVIES.

(1) The Minister, after consultation with the Board, may, by notice in the National Gazette, fix levies in respect of, but not limited to, all or any of the following:—

- (a) follow-up development;
- (b) provincial development;
- (c) forest management and development;
- (d) Papua New Guinea Forest Authority.

(2)³⁰⁴ ³⁰⁵A levy under Subsection (1) may be imposed on all holders of timber permits and of timber authorities and of licences or on such categories of holders of timber permits and of timber authorities and of licences as are specified in the notice.

(3) A levy under this section shall be paid and collected as prescribed.

³⁰⁴ Section 121(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

³⁰⁵ Section 121(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

PART VII. – ENFORCEMENT.

122. OFFENCES.

(1)³⁰⁶ ³⁰⁷A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in forest industry activities except under and in accordance with a timber permit, timber authority or licence, held by the forest industry participant, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: fine not exceeding K10,000.00.

(2) A person who—

(a) without lawful authority, fells, cuts, injures, destroys, obtains or removes any forest produce in, on or from—

- (i) a National forest or other Government land; or
- (ii) land held under lease from the Government; or
- (iii) land the subject of a Forest Management Agreement; or
- (iv) a timber rights purchase area; or
- (v)³⁰⁸ the project area of a timber authority; or

(b) counterfeits or unlawfully affixes to any forest produce a mark used by Forest Officers or Forest Inspectors; or

(c) without due authority—

- (i) makes or causes to be made; or
- (ii) uses or causes to be used; or
- (iii) has in his possession,

a brand or stamp usually used by Forest Officers or Forest Inspectors; or

(d)³⁰⁹ unlawfully alters, obliterates, defaces, pulls up, removes or destroys a boundary mark or any stamp, mark, sign, timber permit, timber authority, licence or order, used or issued by the Minister, Chairman of the Provincial Forestry Committee, Managing Director or a Forest Officer or Forest Inspector; or

(e) unlawfully—

³⁰⁶ Section 122(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s41(a).

³⁰⁷ Section 122(1) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s41(a).

³⁰⁸ Section 122(2)(a)(v) repealed and replaced by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s41(b).

³⁰⁹ Section 122(2)(d) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule. Section 122(2)(d) amended by the *Forestry (Amendment No. 2) Act* 1996 (No. 27 of 1996), s10 and Schedule.

- (i) cuts, breaks, throws down or otherwise destroys or damages any building, fence or gate in or enclosing a National forest; or
 - (ii) cuts through, breaks down or otherwise destroys the bank, dam or wall of any part of any natural or artificial reservoir or pond of water within or partly within and adjoining any National forest; or
- (f) for the purpose of obtaining—
- (i) a favourable report, recommendation, certificate, valuation or royalty assessment, whether in respect of any place, employment, sale, auction, timber permit, timber authority, licence, lease or any other benefit; or
 - (ii) any abstention on the part of a Forest Officer or Forest Inspector or any member of the National Forest Service from any act which forms part of his duties,
 - exercises compulsion on a Forest Officer or a Forest Inspector or any member of the National Forest Service by violence or threats, or corrupts or attempts to corrupt him by promises, offers, gifts or presents; or
- (g) refuses or fails to comply with a lawful direction of a Forest Officer or Forest Inspector; or
- (h)³¹⁰ knowingly furnishes the Minister, Chairman of the Provincial Forestry Committee, Managing Director, Forest Officer or Forest Inspector with a false or incorrect statement of any forest produce felled, cut, split, sawn or removed by the person or by an agent or employee of the person and on which fees, royalties, levies or charges are payable to the State or to the Authority; or
- (i) knowingly makes or causes to be made any entry or writing that is false in any material particular, in any book, return, declaration or statement required by this Act to be kept or made; or
- (j) unlawfully occupies land for the purpose of carrying out forest industry operations; or
- (k) ignites or maintains an open fire in a restricted area except under and in compliance with a burning permit issued to him, unless the fire is used only for cooking or warmth; or
- (l) ignites or maintains an open fire in or near a forest and who—
- (i) leaves the fire unattended; or
 - (ii) fails to extinguish the fire before leaving it,

³¹⁰ Section 122(2)(h) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule. Section 122(2)(h) amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule; Section 122 Subsection (2) amended by No. 3 of 2005, s. 29.

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding three years, or both.

(3)³¹¹ [*Repealed.*]

(4) A person who—

- (a) by intimidation or threat hinders or prevents a person from making an application for a timber permit, timber authority, licence or registration under this Act; or
- (b) for an improper purpose threatens to make an application for a timber permit, timber authority, licence or registration under this Act; or
- (c) participates in or is a party to an agreement or arrangement among two or more persons, under which—
 - (i) one or more of the persons agrees or undertakes not to make an application for a timber permit, timber authority, licence or registration under this Act; or
 - (ii) particulars of an application made for a timber permit, timber authority, licence or registration under this Act, or the amount of an offer to pay royalty or bonus to the State or to the Authority are arrived at,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding three years, or both.

(5) Subsection (4) does not apply to—

- (a) an agreement or arrangement made only among two or more related corporations within the meaning of the *Companies Act 1997*; or
- (b) an application for a permit or licence made jointly by two or more persons.

(6) Where a person is convicted of an offence under Subsection (4), that person, and any corporation controlled by him, is disqualified from making an application for a timber permit, timber authority, licence or registration under this Act, either by himself or through an agent, for a period of five years commencing on and from the date of his conviction.

123. POWER TO SEIZE AND SELL TIMBER, ETC.

³¹²(1) A Forest Inspector or Forest Officer may seize one or more of the following:—

³¹¹ Section 122(3) repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s41(c).

³¹² Section 123 repealed and replaced by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s42.

- (a) timber or other forest produce that, on reasonable grounds, he believes was felled, removed, sold or processed in contravention of—
 - (i) this Act; or
 - (ii) a term or condition of a timber permit, timber authority or licence;
- (b) timber or other forest produce that is mixed with timber or forest produce to which Paragraph (a) applies;
- (c) a boat, barge or other vessel, truck or trailer in which is found or which is towing, timber or forest produce to which Paragraph (a) or (b) applies.

(2) Timber or other forest produce seized under Subsection (1) may be sold by the Authority.

(3) A boat, barge or other vessel, truck or trailer seized under Subsection (1)(c) shall be released from seizure when the timber or forest produce thereon or towed thereby is delivered to a location required by the Forest Inspector or Forest Officer who made the seizure.

(4) Subject to Subsections (5) and (6), the net proceeds of sale of timber or forest produce realized from a seizure and sale under this Section shall be paid to the owner of the timber or forest produce at the time of the seizure.

(5) Where the owner of timber or forest produce seized and sold under this section is proved to have assisted in, connived at or assented to the contravention as a result of which the timber or forest produce was seized, the net proceeds of the sale shall be forfeited to the Authority.

(6) Where there is a dispute as to the ownership of any timber or forest produce seized and sold under this section, the net proceeds of the sale shall be held by the Authority pending agreement as to ownership or the determination of ownership by a court of competent jurisdiction.

124. UNLAWFUL POSSESSION OF FOREST PRODUCE.

- (1) A person who—
 - (a) is found within—
 - (i) a National forest or other Government land; or
 - (ii) land held under lease from the State; or
 - (iii) an area covered by a timber permit or timber authority,

or in the vicinity of any such forest, land or area; and

- (b) has in his possession any forest produce; and
- (c) on being required to do so by a Forest Officer or Forest Inspector, refuses or fails to give an account to the satisfaction of the officer of the manner in which he came into possession of the forest produce,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

(2)^{313 314} Subject to Subsection (3), any forest produce in respect of which an offence against Subsection (1) has been committed is forfeited to the Authority.

(3)^{315 316} Where the owner of forest produce in respect of which an offence has been committed under Subsection (1) and which has been forfeited to the Authority under Subsection (2)–

(a) is a person other than the person who committed the offence; and

(b) is known to the Authority,

the Authority shall give possession of the forest produce to the owner, or shall pay to the owner the net proceeds realized from a sale of the forest produce.

125. RECEIVING FOREST PRODUCE UNLAWFULLY OBTAINED.

A person, who receives any forest produce knowing it to have been unlawfully obtained, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

126. ENTRY AND INSPECTION ON LAND.

(1)^{317 318} The Minister, the Managing Director, a Chairman of the Provincial Forestry Committee, a Forest Officer or a Forest Inspector may enter on any land on which activities are being carried out under a timber permit, timber authority or licence for the purpose of–

(a) making inspections; or

(b) carrying out silviculture or other forest work; or

(c) preventing or suppressing fires.

(2)^{319 320} A person, who obstructs or hinders the Minister, the Managing Director, a Chairman of the Provincial Forestry Committee, a Forest Officer or Forest Inspector in the exercise of his powers under Subsection (1), is guilty of an offence.

³¹³ Section 124(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s43.

³¹⁴ Section 124(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s43.

³¹⁵ Section 124(3) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s43.

³¹⁶ Section 124(3) added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s43.

³¹⁷ Section 126(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s44. Section 126(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

³¹⁸ Section 126(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s44. Section 126(1) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

³¹⁹ Section 126(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule; amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule.

³²⁰ Section 126(2) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule; amended by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s10 and Schedule.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year.

127. AWARD OF DAMAGES.

A person who commits an offence against this Act is, on conviction, in addition to the penalty for the offence, liable for any loss or damage caused by the offence, and the amount of such loss or damage may be—

- (a) awarded by the court in fixing the penalty; and
- (b) recovered in the same manner as a pecuniary penalty.

128. PRESUMPTION AS TO PROPERTY IN FOREST PRODUCE.

Where, in any proceeding under this Act, a question arises as to whether any forest produce is the property of the Authority, the forest produce shall be presumed to be the property of the Authority until the contrary is proved.

129. CONDUCT OF PROCEEDINGS.

(1) A Forest Inspector may lay informations and conduct prosecutions for offences under this Act, and the Authority may sue for and recover fees, royalties, levies and charges due and payable under this Act.

(2) In any prosecution or proceedings under this Act, proof is not required of—

- (a)³²¹ the appointment of the Managing Director or of a Forest Officer or Forest Inspector; or
- (b) any authority, general or special, of any such officer to prosecute or to take any proceeding or to sue.

130³²². [REPEALED.]

131. SEARCH WARRANT FOR FOREST PRODUCE.

On the complaint on oath of a Forest Officer or Forest Inspector stating his belief that any forest produce liable to the payment of any royalties, levies, dues or charges is secreted in any place other than a National forest or an area in respect of which a Forest Management Agreement has been entered into, a Principal Magistrate or a District Court Magistrate may issue a warrant to search for the forest produce.

³²¹ Section 129(2)(a) amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

³²² Section 130 repealed by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s45.

PART VIII. – MISCELLANEOUS.**132. PROTECTION OF OFFICERS.**

³²³The Minister, the Managing Director, a Chairman of the Provincial Forestry Committee, a Forest Officer, a Forest Inspector or an officer of the National Forest Service is not personally liable for any matter or thing done by him in good faith in the exercise of his powers or the performance of his duties under this Act.

133. INDEMNITY OF MEMBERS OF BOARD, ETC.

A member of the Board or of any Committee established under this Act is not personally liable for any act done, in good faith, in the course of carrying out the duties of the Board or Committee.

134. EXPORT OF CERTAIN TIMBER.

(1) The Minister may, by notice in the National Gazette, declare that any species or class of timber specified in the notice—

- (a) is banned from export; or
- (b) shall not be exported until—
 - (i) the timber has been inspected; and
 - (ii) the permission of the Minister to export has been obtained.

(2) A person, who exports any timber to which a notice under Subsection (1) applies and which does not bear a mark or brand affixed by a Forest Officer or Forest Inspector indicating that permission has been given under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 and a further penalty of a fine not exceeding K15.00 for each cubic metre of the timber exported.

135. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to—

- (a) the management of—
 - (i) National forests; and
 - (ii) forests on other Government land and land held under lease from the State; and
 - (iii) areas subject to Forest Management Agreements; and

³²³ Section 132 amended by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s48 and Schedule.

- (iv) forests on customary land,
 - including the regulation of–
- (v) the cutting, removal, hewing and sawing of timber; and
- (vi) the cutting, hewing, stripping, tapping and removal of other forest produce; and
- (b) the forms of timber permits, timber authorities and licences under this Act, and the manner of applying for, granting, issuing, registering and transferring them and the covenants, terms and conditions under which they shall be held, determined, cancelled or withdrawn; and
- (c) the procedure for the sale, by auction or by tender, of forest produce and enabling upset prices or minimum royalties to be fixed; and
- (d) the assessing of royalty on forest produce and the payment and distribution of royalties; and
- (e) the manner of doing or performing anything required by this Act to be done or performed; and
- (f) the fees or deposits to be paid with any application or tender; and
- (g) the rate or amount–
 - (i) of rents, fees, dues and charges payable in respect of timber permits, timber authorities, licences or registration under this Act; and
 - (ii) fees to be paid to the State in respect of services rendered by Forest Officers or Forest Inspectors; and
- (h) the fees (if any) payable in respect of any matter under this Act; and
- (i) regulating the exercise of the powers conferred by timber permits, timber authorities and licences under this Act, including–
 - (i) the protection and preservation of trees; and
 - (ii) the cutting, marking, and removing of timber and other forest produce; and
- (j) the making of declarations or written statements as to–
 - (i) the quantity and description of forest produce obtained, held, removed, hewn, sawn or otherwise treated, consigned or exported; and
 - (ii) the place where any forest produce was obtained; and
 - (iii) the place to which it was, or is intended to be, consigned; and
- (k) the inspection of forest produce for export and for local use, and the forms and certificates, and the brands or marks, to be used; and
- (l) rules for the grading of timber for export and for local use; and

- (m) regulating or prohibiting the export of any species or class of timber or other forest produce; and
- (n) prohibiting the cutting of reserved trees; and
- (o) the kinds, sizes and quantities of any forest produce that may be cut or removed in or from—
 - (i) a National forest; or
 - (ii) any other Government land; or
 - (iii) any land held under lease from the State; or
 - (iv) any land subject to a Forest Management Agreement; or
 - (v) a timber rights purchase area,

and prohibiting the removal of any forest produce until branded by a Forest Officer or Forest Inspector; and
- (p) the mode in which any forest produce is to be branded or marked, and the way in which such brands or marks shall be registered; and
- (q) the establishment of depots where timber and other forest produce may be deposited and stored and—
 - (i) charges for depositing and storing timber and other forest produce in such depots; and
 - (ii) the regulation and management of such depots; and
 - (iii) the detention of timber or other forest produce in such depots until the royalty or other charges on the timber or other forest produce are paid; and
- (r)³²⁴ requiring the holder of any timber permit, timber authority, other authorities or licence under this Act to produce for inspection by the Managing Director or by a Forest Officer or Forest Inspector, all books of account, returns and other documents to enable the royalties payable to be ascertained; and
- (s) regulating or prohibiting the burning-off of forest produce and the lighting and use of fires; and
- (t) regulating traffic through National forests, and the prevention of trespass in any part of a National forest; and
- (u) enabling Forest Officers or Forest Inspectors to give directions regarding the roads or tracks in or by which any forest produce may be removed or taken through any part of—
 - (i) a National forest; or

³²⁴ Section 135(1)(r) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule; Section 135 Subsection (1) amended by No. 3 of 2005, s. 30.

- (ii) other Government land; or
 - (iii) land held under lease from the State; or
 - (iv) any land subject to a Forest Management Agreement; or
 - (v) a timber rights purchase area,
and the manner of such removal or taking; and
- (v) reserving any area of–
- (i) a National forest; or
 - (ii) a timber reserve; or
 - (iii) other Government land; or
 - (iv) land held under lease from the State; or
 - (v) any land subject to a Forest Management Agreement; or
 - (vi) area subject to a Forest Management Agreement,
from the operation of any permit, licence, or other authority under this Act; and
- (w) reserving any area of National forest or other Government land required for the agistment of draught cattle used by any person holding a permit, licence, or other authority under this Act from the operation of any permit, licence, or other authority under this Act; and
- (x) regulating reforestation in a National forest subject to a Forest Management Agreement; and
- (y) providing for advisory services and assistance to be made available by the State to stimulate economic development in areas where timber rights are purchased under this Act, and to encourage participation in such development by customary owners who dispose of their timber rights under this Act; and
- (z) prohibiting, except under permit, the depasturing of cattle within, and regulating the passage of cattle through, a National forest; and
- (za) authorizing Forest Officers or Forest Inspectors to stop, detain, or seize any forest produce within the boundaries of, or on any public highway within or abutting on–
- (i) a National forest; or
 - (ii) any other Government land; or
 - (iii) any land held under lease from the State; or
 - (iv) any land subject to a Forest Management Agreement; and
- (zb) requiring the holders of permits, licences, and other authorities under this Act to register in the Authority, and retain the use of, a brand by

which timber cut in or proceeding from their holdings may be distinguished from any other timber; and

- (zc) the registration of sawmills and other factories or industrial plants dependent on supplies of forest produce; and
- (zd) regulating the purchase of forest produce from citizens by non-citizens; and
- (ze) the form of authority to purchase forest produce from the owners of customary land, and the conditions subject to which such an authority may be granted; and
- (zf) the protection of forest produce on—
 - (i) any Government land; or
 - (ii) any land held under lease from the State; or
 - (iii) customary land,

and regulating the cutting, hewing, sawing, or other methods of conversion of that forest produce; and

- (zg)³²⁵ matters relating to National Forest Inventory, National Forest Plan, forest classification and National Forestry Development Guidelines; and
- (zh) requirements in submissions by permit holders in relation to project statement, follow-up land use plan and working and logging plans; and
- (zi) regulating quality control on timber and other forest produce; and
- (zj) the regulation of transfer pricing in relation to forest produce and timber; and
- (zk)³²⁶ the imposition of penalties of fines not exceeding K100,000.00 for offences against the regulations.

(2) The regulations may be of general application or may be limited to a particular area or restricted in their operation to—

- (a) National Forests; or
- (b) other Government land; or
- (c) land held under lease from the State; or
- (d) areas subject to a Forest Management Agreement; or
- (e)³²⁷ certain species or timber or other forest produce.

³²⁵ Section 135(1)(zg) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

³²⁶ Section 135(1)(zk) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s48 and Schedule.

³²⁷ Section 135 Subsection (2) amended by No. 3 of 2005, s. 30.

PART IX. – REPEAL.

136. REPEAL.

³²⁸The following Acts are hereby repealed:–

- (a) *Forest Industries Council Act* (Chapter 215);
- (b) *Forestry Act* (Chapter 216);
- (c) *Forestry (Private Dealings) Act* (Chapter 217).

³²⁸ Section 136 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

PART X. – SAVINGS AND TRANSITIONAL.

137. SAVING OF EXISTING PERMITS, ETC.

³²⁹(1)³³⁰ ³³¹Subject to Subsection (2), all—

- (a) registrations granted under the *Forest Industries Council Act* (Chapter 215) (*repealed*); and
- (b)³³² permits, licences, timber rights purchase agreements and other authorities granted under the *Forestry Act* (Chapter 216) (*repealed*); and
- (c)³³³ [*Repealed.*]

valid and in force immediately before the coming into operation of this Act, shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or entered into or until they sooner expire or are revoked according to law.

(1A)³³⁴ ³³⁵Subject to Subsection (2), all agreements entered into under the *Forestry (Private Dealings) Act* (Chapter 217) (*repealed*) valid and in force immediately before the coming into operation of this Act are, on that coming into operation deemed to be timber permits granted under this Act (and the purchasers under the agreements shall be deemed to be the holders of the timber permits) and shall have full force and effect as such timber permits for the term for which the agreements were entered into or until they sooner expire or are revoked according to law.

(1B)³³⁶ ³³⁷Where the term of a timber rights purchase agreement granted under the *Forestry Act* (Chapter 216)(*repealed*) is longer than the term of timber permit granted in respect of the timber rights purchase agreement, the timber permit may be extended under this section subject to —

- (a) the social acceptability of the holder of the timber permit in the project area by the customary owners in writing; and
- (b) the satisfactory performance of the holder of the timber permit in carrying out the operations including compliance with the Act, the terms and conditions of the timber permit and the Papua New Guinea Logging Code of Practice; and
- (c) the amount of forest resources available in the project area to commercially support the operations for not less than two years; and

³²⁹ Section 137 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

³³⁰ Section 137 Subsection (1) amended by No. 3 of 2005, s. 31.

³³¹ Section 137 Subsection (1) amended by No. 3 of 2005, s. 31.

³³² Section 137(1)(b) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(a)(i).

³³³ Section 137(1)(c) repealed by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(a)(ii).

³³⁴ Section 137(1A) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(b).

³³⁵ Section 137(1A) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(b).

³³⁶ Section 137 Subsection (1B) inserted by No. 3 of 2005, s. 31.

³³⁷ Section 137 Subsection (1B) inserted by No. 3 of 2005, s. 31.

- (d) the rate of the annual allowable harvest which shall not be increased at the time of the application for extension; and
- (e) the currency of or payment of a performance bond as prescribed; and
- (f) where applicable, amendments to the terms and condition of the timber permit to include a time table for the delivery of infrastructure and other community based benefits and any forest management and other silvicultural treatments specified in the permit.

(1C)^{338 339}The holder of a timber permit under Subsection (1)(b) may apply to the Board for an extension of the term of the timber permit in the prescribed form, be accompanied by the prescribed fee, and be lodged with the Managing Director.

(1D)^{340 341}The Board shall obtain a report from the Provincial Forest Management Committee on the requirements in Subsection (1B) and where satisfactory, shall recommend to the Minister to extend the term of the timber permit and the Minister may grant such extension subject to the term of the timber rights purchase agreement.

(1E)^{342 343}A timber permit under Subsection (1A) may be extended under this section by the Minister upon recommendation of the Board where the Board considers that the remaining forest resource in the project area is not sufficient to meet the requirements of Section 78.

(1F)^{344 345}All timber permits saved under Subsection (1) and (1A) and extended under Section 78 are deemed to be extended under this Section.

(2) Where the Board is of the opinion that any term or condition of any—

- (a) registration as a forest product operator granted under the *Forest Industries Council Act* (Chapter 215) (*repealed*); or
- (b)³⁴⁶ permit, licence timber rights purchase agreement or other authority granted under the *Forestry Act* (Chapter 216) (*repealed*); or
- (c) agreement entered into under the *Forestry (Private Dealings) Act* (Chapter 217) (*repealed*),

is at variance with the provisions of this Act to an extent which makes it unacceptable, it shall by written notice—

- (d)³⁴⁷ advise the registered forest product operator, holder of the permit, licence or other authority or parties to the agreement or timber rights

³³⁸ Section 137 Subsection (1C) inserted by No. 3 of 2005, s. 31.

³³⁹ Section 137 Subsection (1C) inserted by No. 3 of 2005, s. 31.

³⁴⁰ Section 137 Subsection (1D) inserted by No. 3 of 2005, s. 31.

³⁴¹ Section 137 Subsection (1D) inserted by No. 3 of 2005, s. 31.

³⁴² Section 137 Subsection (1E) inserted by No. 3 of 2005, s. 31.

³⁴³ Section 137 Subsection (1E) inserted by No. 3 of 2005, s. 31.

³⁴⁴ Section 137 Subsection (1F) inserted by No. 3 of 2005, s. 31.

³⁴⁵ Section 137 Subsection (1F) inserted by No. 3 of 2005, s. 31.

³⁴⁶ Section 137(2)(b) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(c)(i).

³⁴⁷ Section 137(2)(d) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(c)(ii).

purchase agreement, as the case may be, of the term or condition that is unacceptable; and

- (e) specify the variation in the term or condition required to ensure compliance with this Act; and
- (f)³⁴⁸ intimate that variation shall apply in respect of the registration, permit, licence, other authority or agreement or timber rights purchase agreement, as the case may be, with effect from a date specified in the notice, unless it receives notification from the registered forest product operator, holder of the permit, licence or other authority or parties to the agreement or timber rights purchase agreement, as the case may be, that such variation is unacceptable, in which case the registration, permit, licence, other authority or agreement or timber rights purchase agreement, as the case may be, shall cease to have effect from the date specified.

(3)³⁴⁹ ³⁵⁰In order to achieve the intention of this Act that registrations, permits, licences, agreements, timber purchase agreements and other authorities saved by this section are able to be adapted to conform to the provisions of this Act, the Board may grant in respect of any registration, permit, licence, agreement, timber purchase agreement or other authority a grace period during which—

- (a) the provisions of this Act shall not apply; and
- (b) the provisions of the repealed Act under which the registration, permit, licence or other authority was granted or the agreement or timber purchase agreement was entered into shall apply.

138. TRANSFER OF ASSETS ETC., TO THE AUTHORITY.

³⁵¹(1) All—

- (a) assets (other than land held by the State) which, immediately before the coming into operation of this Act, were held or occupied by the Department of Forests and all liabilities and obligations of the Department of Forests immediately before the coming into operation of this Act; and
- (b) assets (other than land held by the State) which immediately before the coming into operation of this Act were held or occupied by the Forest Industries Council and all liabilities and obligations of the Forest Industries Council immediately before the coming into operation of this Act,

are, on that coming into operation, transferred to and become assets and liabilities and obligations of the Authority.

³⁴⁸ Section 137(2)(f) amended by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(c)(iii).

³⁴⁹ Section 137(3) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(d).

³⁵⁰ Section 137(3) added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s46(d).

³⁵¹ Section 138 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

(2) Where any property transferred under Subsection (1) is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the Authority, enter or register the Authority in the Register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

139. ACTIONS, ETC., NOT TO ABATE.

³⁵²Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the Acts repealed by Section 136, it does not, on that coming into operation, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

139A. TRANSFER OF LAND TO THE AUTHORITY.

³⁵³(1) All land in Papua New Guinea in the name of the State held under a Certificate of Occupancy or set aside for use by the Department of Forests or the Forest Industries Council immediately before the coming into operation of this Act is, on and from the coming into operation of this Act deemed to have been transferred to and to have become the property of the Authority.

(2) Where land referred to in Subsection (1) is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the Authority, enter or register the Authority in the Registrar kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

140. CONTRACTS.

³⁵⁴All contracts and agreements entered into, made with or addressed to—

- (a) the State, through the Department of Forests; or
- (b) the Forest Industries Council,

in so far as they relate to the functions of the Authority under this Act, are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of the Department of Forests or the Forest Industries Council are, on that coming into operation, binding on and of fully force and effect against or in favour of the Authority as fully and effectually as if, instead of the State or the Forest Industries Council, the Authority has been a party to them or bound by them or entitled to the benefit of them.

³⁵² Section 139 added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s47.

³⁵³ Section 139A inserted by the *Forestry (Amendment No. 2) Act 1996* (No. 27 of 1996), s9.

³⁵⁴ Section 140 added by the *Forestry (Amendment) Act 1993* (No. 3 of 1993), s47.

141. STAFF.

³⁵⁵(1) The person who, immediately before the coming into operation of this Act, held the position of Departmental Head of the Department of Forests, shall, on that coming into operation hold office as Director-General and, subject to the *Salaries and Conditions Monitoring Act* 1988 on the same terms and conditions, until such time as a Director-General is appointed and terms and conditions determined in accordance with Section 34.

(2) A person who, immediately before the coming into operation of this Act, held an office—

- (a) in the Forest Industries Council under the *Forest Industries Council Act* (Chapter 215) (*repealed*); or
- (b) in the Department of Forests under the *Public Services (Management) Act 1986*, or
- (c) in the Division of Forests in a provincial government,

shall, on that coming into operation, hold a similar office under this Act until such time as appointments are made under this Act.

142. APPLICATION OF ACTS, ETC.

³⁵⁶Where—

- (a) any Act, or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Department of Forests (or the Department responsible for forestry matters) or the Forest Industries Council, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the Authority.

143. BOARD MAY EXTEND SAVED PERMITS, ETC.

³⁵⁷The Board may, until—

- (a) the National Forest Plan has been drawn up under Section 47; or
- (b) 31 December 1993,

whichever shall first happen, notwithstanding the provisions of this Act—

- (c) extend the term of any permit or licence saved by Section 137; or
- (d) grant a timber authority,

for a period not exceeding one year in a form approved by the Board.

³⁵⁵ Section 141 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

³⁵⁶ Section 142 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

³⁵⁷ Section 143 added by the *Forestry (Amendment) Act* 1993 (No. 3 of 1993), s47.

144. SAVING OF EXISTING TIMBER AUTHORITIES.

³⁵⁸Subject to Section 90D(23), a timber authority that was valid and in force immediately before the coming into operation of this provision shall, on that coming into operation, have full force and effect for the duration of its term.

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³⁵⁸ Section 144 added by No. 36 of 2000 s. 11.