

A Guide to the Tasmanian Forest Agreement Law

1. INTRODUCTION

This guide explains the *Tasmanian Forest Agreement Act 2013*. It is not a commentary on the Act.

The *Tasmanian Forests Agreement Act 2013* was passed on 30 April 2013 by the Tasmanian Parliament and became law on 3 June 2013. In this document we call this law "**the TFA Act**".

In brief, the TFA Act will do the following things:

1. Make changes to the obligation on Forestry Tasmania to supply wood to industry.
2. Create a Special Council which will report to Parliament and the relevant Minister on the implementation of the Tasmanian Forest Agreement.
3. Set up a process to create reserves in areas that are currently state forest and open for native timber harvesting. This includes providing compensation for those who suffer financial loss as a result of the state forest becoming a reserve.

2. BACKGROUND TO THE CREATION OF THE TFA ACT

In 2010, the Tasmanian native forest timber industry was in crisis. This led to the major players, in the so-called "forest wars", agreeing to a statement of principles. The principles, it was hoped, would form the platform from which to reach an agreement over the future of Tasmania's native forests. The principles were signed in October 2010. Just over two years later the parties to the statement of principles signed the Tasmanian Forest Agreement (the **TFA**).

Between the signing of the statement of principles and the TFA numerous reports were prepared, funded by government, with respect to the forest industry and the conservation value of Tasmania's forests. Also during that time the Tasmanian Forests Intergovernmental Agreement was signed between the Commonwealth and the Tasmanian Governments (the **IGA**).

The IGA was signed by Julia Gillard and Lara Giddings on 7 August 2011. It provides for about \$250 million of Commonwealth funding to be provided to Tasmania (although \$120 million of that is over 15 years). The Tasmanian Government was required under the IGA to introduce legislation to Parliament to formally protect the forest in areas identified through the process. This is the reason the TFA Act was created.

Signatories to the TFA

- Australian Conservation Foundation
- Australian Forest Contractors Association
- Australian Forest Products Association
- Construction, Forestry, Mining and Energy Union
- Environment Tasmania Inc
- Forest Industries Association of Tasmania
- Tasmanian Forest Contractors Association
- Timber Communities Australia
- Tasmanian Sawmillers Association
- The Wilderness Society Inc
- The Wilderness Society (Tasmania) Inc

DISCLAIMER

This guide is for information purposes only and is not legal advice. For advice about a specific issue in relation to the new legislation, please contact EDO Tasmania on 6223 2770 or edotas@edo.org.au

3. SUMMARY OF THE TFA ACT

3.1. WOOD SUPPLY

The TFA Act changes the *Forestry Act 1920* to reduce the minimum volume of timber Forestry Tasmania must make available to industry. The current minimum volume of 300,000m³ is reduced to 137,000m³.

Currently, the area of forest from which that timber is sourced is called *multiple use forest*. The TFA Act renames this area as *permanent timber production zone land*. This change of name has no legal effect in terms of the actual land area available for harvesting.

3.2. SPECIAL COUNCIL

The TFA Act creates the "Special Council". The Special Council is comprised of a representative from each of the signatories to the TFA, as well as a person nominated by the Minister.

The responsibilities of the Special Council are to:

- Promote the TFA vision;
- Advise the Minister on the implementation of the TFA;
- Advise the Minister on the administration of the TFA Act;
- Advise the Minister on the need to harvest special species from certain areas set out in the TFA Act;
- Prepare "durability reports".

The durability reports must cover all aspects of the TFA and whether it is being effectively implemented. The durability reports will also address whether there "has been substantial active protests or substantial market disruption".

The durability reports will be considered by Parliament, among a range of other documents, when making decisions about proposed reserves.

The Special Council does not have decision making power under the TFA Act, although its recommendations on special species must be followed by the Minister. It has a reporting function only. The Minister and Parliament are the decision-makers.

3.3. CREATION OF RESERVES

In simple terms, the TFA Act provides a process whereby just over half-a-million hectares of land in Tasmania can be reserved. This land could be reserved in a range of categories, including national parks, conservation areas and nature reserves.

When the TFA Act was enacted the vast majority of the half-a-million hectares became "Future Reserve Land". This land is divided into 295 lots for the purposes of the Act. This guide deals with land areas rather than specific locations. There are maps in the TFA Act which depict the location of the lots.

Reserves are regulated under the *Nature Conservation Act 2002*. In contrast to state forest, which is managed by Forestry Tasmania, reserves are managed by the Parks and Wildlife Service.

It is critical to understanding the TFA Act to realise that no new reserves can be created without the approval of Parliament. However, some protections are offered under the TFA Act while decisions about future reserves are made.

TFA act definitions:

Substantial active protests:

activity that has a negative material impact on forest operations legally carried out or on any processing of timber legally carried out

Substantial market disruption:

activity that has a negative material impact on the sale of legally harvested Tasmanian timber

Special species:

blackwood, myrtle, celery top, sassafras, huon pine and silver wattle.

Forestry Facts

1: TFA Act

The process for declaring reserves under the TFA Act is complicated. That process is set out in the flow chart on the next page. It is also described in much greater detail in "Creating Reserves under the Tasmanian Forest Agreement Law", available on the [EDO Tasmania website](#).

There is no guarantee under the TFA Act that any reserves will be created, or what category any reserves may be in. Importantly, the TFA Act is dealing with forestry only. There is nothing in the TFA Act which changes the regulation of mining or other development in Tasmania.

It is also important to note that reserves cannot be created with respect to large parts of the Future Reserve Land until certain forestry operations and Forestry Tasmania receive Forest Stewardship Council accreditation.

The Forest Stewardship Council (**FSC**) is an independent organisation that sets standards for forest management.

To become accredited, an operation / forest manager must be assessed by an independent auditor as meeting the relevant standard.

There is increasing market demand for FSC certified wood products.

3.4. COMPENSATION

When the Governor declares a reserve under the TFA Act, certain contracts, such as wood supply agreements, will be terminated and rights such as the right to harvest timber will be extinguished.

The TFA Act includes compensation provisions setting out a process for people who will suffer financial loss as a result of the reserves being formally declared.

Under the TFA Act, any affected person may make a claim in relation to their actual or future losses. The Minister will verify the value of the loss and make appropriate payments of compensation.

4. CONCLUSION

The TFA Act provides a process for the TFA vision to be achieved. This includes the creation of new reserves, the provision of a secure supply of timber to industry and Forest Stewardship Council accreditation for the industry.

The TFA Act places control of the process in the hands of the relevant Ministers and the Parliament. Time will tell whether the legislation effectively implements the TFA objectives.

Future Reserve Land

Total land listed in the TFA Act: **514,971 ha**.

Native forest harvesting is prohibited on about **493,000 ha** of the Future Reserve Land. This is not a permanent ban. It is in place only while the rest of the TFA Act process takes place.

Around **20,000 ha** (42 coupes) of land listed in the TFA Act is excluded from the Future Reserve Land. The Act does not clearly identify the location and area of these coupes.

Approximately **21,000 ha** of Future Reserve Land is available for timber harvesting. However, this land could still be reserved through the TFA Act process (once reserved, it will no longer be available for harvesting).

The ban on native forest harvesting does **not** prevent building access roads on Future Reserve Land for permitted harvesting, or installing cable harvesting equipment for permitted harvesting.

Tasmanian Forest Agreement Act 2013 (the TFA Act) becomes a law of Tasmania. This means approximately 515,000 hectares of Tasmania becomes "future reserve land". With some exceptions, native forest harvesting is prohibited on this land for the time being.

The Minister (currently the Hon Bryan Green) makes a Proposed Reserve Order. There are time restrictions on when the proposed reserve order can be made. This will result in there being three proposed reserve orders.

Minister does not make order in time. The TFA Act is repealed and is no longer a law in Tasmania.

By 3 July 2013 ("the initial order")

- BEFORE making the Proposed Reserve Order the Minister must obtain:
- 1) A durability report from the Special Council.
 - 2) Advice from the Commonwealth Minister responsible for the carbon farming initiative.
 - 3) For the second and third proposed reserve orders, advice from Forestry Tasmania that FSC certification has been obtained for forestry in the Permanent Timber Production Zone.

Before 1 March 2015 ("the second order")

Minister does not make order in time. The part of the TFA Act which describes the lots is repealed and will no longer apply. This will not affect the land covered by the initial order.

Between 1 January 2022 and 31 December 2022 ("the third order")

Minister makes order within time. Minister must provide the reports and advice mentioned above to Parliament.

If Parliament rejects the initial proposed reserve order, the TFA Act is repealed

Second & Third Orders

Initial Order

If the second or third proposed reserve order is rejected, the Minister can submit it again within 12 months for Parliament to reconsider. A new durability report from the Special Council must be provided to Parliament when the proposed reserve order is presented a second time.

If Parliament accepts the Proposed Reserve Order, the Order is made and the process moves on to the "Making Reserves" stage (see overleaf)

If Parliament rejects the second or third order a second time, the Proposed Reserve Order is revoked. The TFA Act will cease to operate in relation to the land which is subject of the order. This will not affect the land covered by the initial order.

A Proposed Reserve Order has been made.

Nature Conservation Minister determines boundaries, values and purposes of land described in the Proposed Reserve Order. For this process, land covered by the TFA Act is divided into four categories:

Land that can be declared reserves immediately.

~ 210,000 ha

Land that cannot become reserves before **1 October 2014**.

Land also not able to become reserves until Forestry Tasmania achieves FSC accreditation

~248,000 ha
(Schedule 2—118 lots)

Land that cannot become reserves until Forestry Tasmania achieves FSC accreditation and the land has been included in the World Heritage list.

~34,000 ha
(Schedule 3—11 lots)

Land in the special species contingency area.

Land cannot be reserved if the Minister, on advice from the Special Council, has approved harvesting.

~19,000 ha (Schedule 5)
(may be more if specified in regulations)

Minister determines the boundaries, values and purposes are the same as those in the proposed reserve order.

Where no "failure of durability" determination has been made, and the boundaries, values and purposes substantially accord with the proposed reserve order, the order does not need to go to Parliament.

If has been a "failure of durability" determination by Parliament in the previous 12 months the Minister must provide Parliament with a:

- Durability report from the Special Council; and
- Document with boundaries, values and purposes.

Parliament **approves** the boundaries, values or purpose. This is the final determination of boundaries, values or purpose.

The Minister must provide to Parliament the details of the changed boundaries, values or purpose.

If Parliament does not accept the boundaries, values or purpose, the land is no longer a proposed reserve and is removed from Future Reserve Land.

The land reverts to the same situation it was in before the TFA Act.

The proposed reserve is declared.

The reserve is placed in one of the classes specified in the *Nature Conservation Act 2002* (such as a National Park).

People who have suffered loss from the creation of the reserves in relation to forestry contracts, covenants and other rights may seek compensation.

Making reserves