**Benedict Coyne** BA (Murdoch) | LLB (Hons I – Univ. Medal) (SCU) | GDLP (ANU) | MSt (Oxon) (Dist I) |
*Barrister-at-Law*
ABN 57 157 414 892

ASPECT CHAMBERS
Level 19, 239 George Street
Brisbane QLD 4000
T: (07) 3187 5560
M: 0434 915 713
E: bcoyne@qldbar.asn.au
W: www.benedictcoyne.com

20 April 2026

Natalie Hogan, Senior Lawyer
Isabella Farrell-Hallegraeff, Lawyer
Environmental Justice Australia ABN: 74 052 124 37
The 60L Green Building
Level 3, 60 Leicester Street
Carlton VIC 3063
***Via Email: natalie.hogan@envirojustice.org.au:***
***isabella.farrellhallegraeff@envirojustice.org.au***

# MEMORANDUM OF ADVICE

## Liability Risks in Renewing Tasmanian Timber Supply Contracts

## Table of Contents

## A. OVERVIEW

1. My instructors act for The Wilderness Society (Tasmania) Inc. (**TWS Tas**).
2. I have been requested to provide an advice on relevant statutory obligations and potential legal risks and consequences associated with the Tasmanian Government, via State-owned enterprise Forestry Tasmania (t/as Sustainable Timber Tasmania) (**STT**) entering into/renewing long-term contracts with private sawmills for the supply of timber from native forests (**Wood Supply Contracts**), given current uncertainty as to the ongoing availability of timber due to recently-

passed amendments to federal environment laws, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

3. Relevantly, on 28 November 2025, the federal government passed the *Environmental Protection Reform Act 2025* (Cth) (**EPR Act**) which received Royal assent on 1 December 2025. The EPR Act made significant amendments to to the EPBC Act which include amendments to repeal the Regional Forest Agreement (**RFA**) exemption including:
   (a) repealing section 38, which will come into effect on **1 July 2027**;
   (b) repealing the provisions exempting activities in RFA regions from the need for EPBC Act assessment and approval;
   (the **EPBC Act Reforms**).
4. I am instructed that existing timber supply contracts between the STT and 14 sawmills (private companies) are scheduled to expire in 2027 (the **Existing Sawmiller Wood Supply Contracts**), and the Tasmanian Government has stated that it is in the process of negotiating contract renewals and looking at extending those contracts to 2040 (the **Future 2027-2040 Wood Supply Contracts**).[1]
5. Specifically, TWS Tas are seeking advice as to whether it would be legally correct to say that entering into timber supply contracts now may expose the Tasmanian Government, STT and/or any other parties to the following risks if, after the EPBC Act Reforms come into effect, STT is unable to fulfill its supply obligations due to lack of timber availability:
   (a) Legal action by parties to the contracts (private sawmillers) for breach of contract;
   (b) Liability for compensation to be paid by the Tasmanian Government from public monies (i.e. taxpayers' monies).

## B. EXECUTIVE SUMMARY

6. This memorandum should be read in full. However, in summary, based on my instructions, there appear to be significant and probable liability risks to STT, the State of Tasmania and potentially the relevant Ministers, for claims for compensation (via the various compensation pathways detailed herein) if the Tasmanian government rushes into entering/renewing Wood Supply Contracts prematurely and prior to there being certainty about wood supply going forward after the relevant EPBC Act Reforms come into effect.

[1] See Transcript of House of Assembly Government Business Scrutiny Committee (27 Nov 2025), pp 31-32.

7. There may be other risks of exposure to liability for STT, its officers and the relevant (shareholding Ministers) if STT prematurely enters into any future Wood Supply Contracts with private sawmillers, without sufficient contractual accommodations[2] (such as guarantees and indemnities stipulated in the contract or the Tasmanian government securing relevant guarantees/indemnities from the Commonwealth in the event of short supply arising from the EPBC Act Amendments). Depending on the particular future factual circumstances of any future Wood Supply Contract being renewed/entered into by STT and a private sawmiller and whether a supply failure or supply shortfall by STT occurs, there may be other causes of action that the private sawmiller could rely on including:
   (a) unconscionable conduct;[3]
   (b) misleading and deceptive conduct (especially given public representations made to date);[4]
   (c) other tortious claims for pure economic loss against the relevant Ministers and/or officers of STT as well as STT and the State of Tasmania for example:
      (i) negligence;[5]
      (ii) breach of statutory duty;[6]
      (iii) misfeasance in public office.[7]
8. However, the possibility and prospects of such claims would depend upon the particular material facts that occur to precipitate such causes of action. Without knowing those particular facts it is not possible to advise whether any such claims are viable and, if they are, to provide an assessment of prospects.
9. In response to the queries of TWS Tas, my advice is summarised as follows:

---

[2] Notably any such contractual accommodations expressly referring to the uncertainty of supply of logs due to the EPBC Act Reforms are not provided for in the standard conditions stipulated in the current *Forestry Fair Contract Code 2003* and thus a new Code would need to be prepared in accordance with the provisions of the *Forestry (Fair Contract Codes) Act 2001*.

[3] Pursuant to the unwritten law and s 19 of the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

[4] Pursuant to s 18 of the ACL.

[5] See, for example: *Mallonland Pty Ltd v Advanta Seeds Pty Ltd* (2024) 98 ALJR 956; [2024] HCA 25.

[6] As per the Opal litigation against the State of Victoria the relevant statutory duty in Tasmania might arguably the wood supply requirement pursuant to s 16 of the FM Act. The relevant principles pertaining to an action of breach of statutory duty are set out in *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410; [1995] HCA 24 at [16] (Brennan CJ, Dawson and Toohey JJ).

[7] For elements of misfeasance in public office see: *Brett Cattle Company Pty Ltd v Minister for Agriculture* (2020) 274 FCR 337; [2020] FCA 732 at [269]-[284] (Rares J).

**(1) Could STT and/or the State of Tasmania become liable to pay compensation to private sawmillers if, after 1 July 2027, it fails to fulfil timber supply guarantees under Wood Supply Contracts due to a decrease in timber availability as a result of the EPBC Act Reforms?**

(a) In a scenario where STT prematurely renews/enters into future Wood Supply Contracts with the private sawmillers (i.e. prior to there being established some certainty as to the operation of the EBPC Act Reforms and the consequential effects on future wood supply) and later experiences a supply shortage the EPBC Act Reforms, it is likely that the private sawmillers will have grounds for pursuing various causes of action (depending upon the particular material facts) including for breach of contract, breach of statutory duty and other causes of action described in this Advice. However, without more specific information as to the facts of such claim (i.e. beyond hypothetical and speculative scenarios) it is not possible to assess the prospects of success of such claims.

(b) If a future short supply scenario occurred and claims for compensation were pursued by the private sawmillers (via private causes of action including breach of contract, and possibly the Tasmanian Regional Forest Agreement (**Tasmanian RFA**) compensation regime and/or the *Forest Management Act 2013* (Tas) statutory compensation regime (discussed further below)) then that compensation would typically be paid out of public monies and/or pursuant to an insurance policy held by STT and or the State.

(c) In that regard, it would be prudent (and arguably required by *inter alia* the *Government Business Enterprises Act 1995* (Tas)) for STT, prior to entering into any Future 2027-2040 Wood Supply Contracts with private sawmillers to take all reasonable and possible protective steps to mitigate the potential compensation claims out of the public purse including as referred to herein.

**(2) In the scenario described above, could the STT rely on any Force Majeure Event clause in the Wood Supply Contracts to suspend or terminate timber supply and effectively avoid paying compensation if it is ultimately unable to meet supply obligations under the Wood Supply Contracts?**

(a) If a claim of breach of contract were brought by a private sawmiller against STT and the State of Tasmania for breach of contract, and the terms of such contract are similar to the publicly-available Smithton and Huon Wood Supply Contracts (described below), then STT et al could attempt to rely upon an Event of Force Majeure (including "a change in Law") (or supervening illegality), however, given the foreseeability of the supply shortage and the construction of the current publicly-available contracts and force majeure clause, it is likely to be a difficult argument to make good.

**(3) Would the Commonwealth be required to compensate the State of Tasmania for any loss suffered as a result of any claim(s) for damages brought by parties to the Wood Supply Contracts (i.e. private sawmills) arising out of any failure by STT to meet supply obligations caused by the EPBC Act Reforms?**

(a) Based on the information currently available, and in the absence of the Commonwealth providing guarantees/indemnities, it is difficult to see how the Commonwealth would be liable or required to compensate the State of Tasmania for loss suffered as a result of any supply shortage after 1 July 2027.

(b) In terms of attempting to seek compensation under the Tasmanian RFA, presuming it were possible, the difficulty STT and/or the State of Tasmania faces is that given:

(i) the EPBC Act Reforms passed in December 2025, STT and the Tasmanian Government has been on notice of the RFA exemption expiring on 1 July 2027;

(ii) as the new National Environmental Standards (the **NE Standards**) and the future regulatory pathways for logging in Tasmania are yet to be finalised the forest areas that will be available and the extent of logging that will be authorised to occur after 1 July 2027 is not known, therefore the ongoing long-term supply of timber from Tasmania's native forests is uncertain;

if the State of Tasmania enters into any future Wood Supply Contracts in the interim, the Commonwealth could raise a number of arguments under the Tasmanian RFA that no compensation is payable, in which case Minister Ellis' statements in the 17 March 2026 Correspondence to TWS Tas that "*the Australian Government should be prepared to pay appropriate compensation*" and pleas to "*common fairness*" can be seen as mere optimistic speculation and perhaps wishful thinking without any certain statutory backing).

## C. BACKGROUND

### C.1 Regional Forest Agreements

10. Regional Forest Agreements (**RFAs**) are long-term agreements between the Australian federal government and state governments intended to guide the management and sustainability of forestry activities in a specific region. They cover native forests, including old growth forest, plantations

and other types of forests on both public and private land.

11. Since its commencement in 1999, the EPBC Act has contained provisions that exempted forestry operations under RFAs or in RFA Regions from EPBC Act assessment or approval.[8] Currently, section 38 of the EPBC Act provides that Part 3 (Requirements for Environmental Approvals) does not apply to an RFA forestry operation (the **RFA exemption**).
12. The *Regional Forest Agreements Act 2002* (Cth) (**RFA Act**) also applies to forestry activities. It gives effect to certain Commonwealth obligations under RFAs and certain aspects of the National Forest Policy Statement. 'RFA Regions' are listed areas under the EPBC Act which are regions that have been subject to a process of negotiating a regional forest agreement but an RFA does not apply.[9] RFAs also establish a "Comprehensive Adequate and Representative (CAR) reserve system" for the protection of environmental and heritage values of forests through national parks and other conservation reserves
13. There are RFAs in place in New South Wales, Tasmania and Western Australia. The five Victorian RFAs were terminated on 31 December 2024, following the Victorian Government's decision to end native forest logging.
14. I am instructed that TWS Tas has long held significant concerns that RFAs are not fit for purpose, due to the absence of evidence that they are achieving the required environmental outcomes.

### C.2 Amendments to the EPBC Act

15. The EPBC Act Reforms followed the 2020 independent review of the EPBC Act undertaken by Professor Samuel (the **Samuel Review**)[10] which found *inter alia* that "*the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES and do not align with the assessment of significant impacts on MNES* [matters of national environmental significance] *required by the EPBC Act*".[11] The Samuel Review also acknowledged that there is "*great concern that the controls on logging within forests have not adequately adapted to pressures on the ecosystem such as climate change or bushfire impacts*".[12]
16. Recommendation 15 of the Samuel Review[13] aimed to increase the level of environmental

---

[8] See EPBC Act, Chapter 2, Part 4, Division 4.
[9] EPBC Act, Chapter 2, Part 4, Division 4, Subdivision B; RFA Regions are listed in section 41.
[10] Professor Graeme Samuel AC, *Independent Review of the EPCA Act – Final Report* (October 2020). Available: https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf
[11] Ibid, p 106.
[12] Ibid.
[13] Ibid, pp 30 and 108.

protection afforded in RFAs by recommending:

(a) the Commonwealth should immediately require, as a condition of any accredited arrangement, States ensure RFAs are consistent with National Environmental Standards;

(b) in the second tranche of reform, the EPBC Act should be amended to replace the "RFA exemption" with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of the Environment Assurance Commissioner.

17. The end of the RFA exemption means that native forest logging on public land in Tasmania will become subject to federal environment laws.

18. I am instructed that the Federal and relevant State governments are in the process of negotiating whether assessment(s) under the EPBC Act for native forest logging from July 2027 will likely occur under either:

(a) Strategic assessments under Part 10, EPBC Act;

(b) Bilateral agreements under Division 1 of Part 4, EPBC Act; or

(c) Bioregional planning under Division 3 of Part 4, EPBC Act.

19. There is nothing in the legislation directing that forestry operations be subject to any particular pathway. However, the federal government has stated an intention for RFA forestry operations to be accredited under bilateral agreements.[14]

### C.3 Effect of EPBC Act Reforms on Tasmanian Wood Supply

20. Under the EPR Act native forest logging will need to comply with the new NE Standards from 1 July 2027, including the Matters of National Environmental Significance (**MNES**) Standard. The MNES is defined in cl. 2 of the Tasmanian RFA as follows:

> "**Matters of National Environmental Significance**" for the purpose of this Agreement means those matters protected by Part 3 of the EPBC Act as matters of national environmental significance that are potentially impacted by Forestry Operations, including:
>
> (a) World Heritage Values of declared World Heritage properties;
>
> (b) National Heritage Values of National Heritage Places;
>
> (c) ecological character of Ramsar Wetlands;
>
> (d) species and communities listed in accordance with Part 13 of the EPBC Act (excluding those categories referred to in paragraphs 178(1)(a) and (f), and paragraph 181(1)(c) of the EPBC Act).

[14] Commonwealth, *Parliamentary Debates,* Senate, Thursday 27 November 2025, pp 2677, 2725-2726 (Senator Murray Watt).

21. The MNES include federally listed threatened species, such as swift parrots, Tasmanian devils, masked owls, wedge-tailed eagles and other flora and fauna found in Tasmania's native forests.
22. The new Part 19B of the EPBC Act, which provides for the making of NE Standards, commenced on 2 December 2025. However, the NE Standards are yet to be finalised, and I am instructed that their finalisation is currently estimated to occur in June 2026. Accordingly, the forest areas that will be available for logging in Tasmania and the extent of logging that will be authorised to occur after 1 July 2027 is unknown and therefore the ongoing long-term supply of timber from Tasmania's native forests is uncertain.
23. In the meantime, I am instructed that existing timber supply contracts between the STT and 14 sawmills (private companies) are scheduled to expire in 2027 (the **Existing Sawmiller Wood Supply Contracts**), and the Tasmanian Government has stated that it is in the process of negotiating contract renewals and looking at extending those contracts to 2040 (the **Future 2027-2040 Wood Supply Contracts**).[15]
24. In the circumstances, I am instructed that TWS Tas are concerned that the uncertainty surrounding the ongoing supply of timber after 1 July 2027 means that the Tasmanian Government may be unable to fulfil any Future 2027-2024 Wood Supply Contracts that are entered into prior to 1 July 2027, and that this will ultimately cost Tasmanian taxpayers if any compensation and/or damages are required to be paid for breach of contract or via other compensation pathways.
25. These concerns were recently articulated in a report entitled '*Public Cost, Private Gain – How Native Forest Logging has Failed Tasmania*' by economics researcher, Mr Andrew Bakonyi, and ecologist, Dr Jennifer Sanger, which was commissioned by TWS Tas and published in February 2026 (the **PCPG Report**).
26. The PCPG Report articulates the concerns about the Tasmanian Government's inability to fulfil timber supply contracts post 1 July 2027 and likely resulting liability for damages to the Tasmanian taxpayer, as follows:

> *"Proposed changes to federal environmental laws are likely to place additional pressure on an already struggling native forest logging industry. While the full implications of the new legislation remain uncertain and may not be clear for some time, the Tasmanian Government is nonetheless moving to lock in new long-term supply contracts with sawmills in advance of these outcomes. This approach risks exposing Tasmanian taxpayers to expensive contract surrender payments, of which have occurred in the past.*[16]

---

[15] See Transcript of House of Assembly Government Business Scrutiny Committee (27 Nov 2025), pp 31-32.
[16] A, Bakonyi and Dr J Sanger, '*Public Cost, Private Gain – How Native Forest Logging has Failed Tasmania*' (February 2026) (the **PCPG Report**), p 2.

*[…]*

***Rushing the Lock-In: Contract Renewals Ahead of EPBC Reform***

*The Tasmanian Government is currently renegotiating long-term native forest sawlog supply contracts with processors for the period from 2027 to 2040. These negotiations are being fast-tracked at a time of profound regulatory uncertainty, as major reforms to the national Environment Protection and Biodiversity Conservation (EPBC) Act are still being finalised and their practical implications remain unknown. Rather than exercising caution, the state appears intent on locking in new long-term commitments before tighter national environmental standards come into force. This approach warrants serious public scrutiny.*

*The timing is not accidental. Stronger EPBC Act enforcement is widely expected to reduce allowable logging volumes in native forests, particularly for high-quality sawlogs sourced from ecologically sensitive areas. If these reforms proceed as anticipated, supply contracts may become impossible to honour without breaching federal law or triggering substantial compensation claims. Tasmania has been here before. When market conditions or regulatory settings have shifted in the past, governments have repeatedly paid large sums to buy out or partially surrender long-term forestry contracts. Pushing contracts through now, before the impacts of EPBC Act reforms are clear, risks creating a future liability for taxpayers rather than providing certainty. This pattern is already familiar from the state's experience with Ta Ann. Ta Ann's long-term peeler billet contract, due to expire in 2027, locked Sustainable Timber Tasmania into supplying peeler billets at volumes well above sustainable yield and at prices far below those achieved interstate. This contract played a material role in Forestry Tasmania's financial deterioration, forcing ongoing state and federal bailouts to keep the agency solvent. In effect, public funds were used to subsidise the continued supply of underpriced native forest logs to a private operator which paid no tax, employed few people, and shifted millions of dollars in public grant funding to its overseas parent company.*[17]

*Despite this track record, both major political parties committed during the 2024 election campaign to extending native forest sawlog contracts for 14 Tasmanian sawmills from 2027 through to 2040. While framed as support for local processors, these negotiations sit atop a long history of contracts that have been priced well below cost-reflective levels and widely recognised as an industry subsidy.*

*There is serious concern that contract renewals are being rushed through to inflate their future surrender value. By locking in long-dated supply entitlements now, operators gain a stronger basis for compensation claims if those contracts are later rendered unworkable by environmental law reform. Tasmania's own history provides a clear warning: the Tasmanian Forest Agreement included a $15 million native forest sawlog buy-back program, and other jurisdictions, including Victoria, have paid substantial transition packages to unwind long-term contracts following native forest logging bans. Repeating this strategy in the face of looming EPBC Act reform is fiscally reckless.*

*At best, this rush to renew contracts reflects poor governance and a failure to learn from past mistakes. At worst, it suggests a deliberate attempt to socialise future losses by embedding compensation risks into long-term agreements before federal reforms bite. Either way, the approach prioritises the short-term interests of a shrinking native forest industry over the long-term interests of Tasmanian taxpayers. In a context where native forest logging is already economically marginal, heavily subsidised, and increasingly incompatible with national environmental standards, locking*

[17] Lawrence, J. (2016) Ta Ann Dossier, Tasfintalk, 31 January 2016. Available: https://tasfintalk.blogspot.com/2016/01/ta-ann-dossier.html

*in new contracts through to 2040 is not prudent policy: it is a gamble that the public is being asked to underwrite without informed consent.*[18]
*[…]*
*The Tasmanian Government is rushing to renegotiate long-term native forest sawlog contracts despite major uncertainty surrounding impending reforms to the EPBC Act. Rather than waiting to understand how stronger federal environmental laws may constrain logging volumes, the state appears intent on locking in new supply commitments that could later become unworkable, exposing taxpayers to costly compensation claims. By entrenching long-term contracts the government risks repeating a familiar pattern of privatising gains and socialising losses, raising serious questions about fiscal responsibility and transparency.*

*The conclusion is unavoidable: native forest logging in Tasmania does not serve the public interest. Ending the practice is not an act of economic sacrifice, but a necessary step to protect irreplaceable ecological values and redirect investment towards ecological restoration and climate adaptation. A planned, legislated exit, paired with permanent forest protection, targeted worker support, and a clear industrial strategy for plantation-based forestry, offers Tasmania its best opportunity to build a sustainable future for its forests and communities.* [19]

(Emphasis added)

27. The PCGP Report states that "*The Tasmanian Government is currently renegotiating long-term native forest sawlog supply contracts with processors for the period from 2027 to 2040. These negotiations are being fast-tracked at a time of profound regulatory uncertainty*." This appeared to be confirmed by the Premier of Tasmania, the Hon. Jeremy Rockliff, in response to a question asked by the Hon. Dr Rosalie Woodruff MP of the Tasmanian Greens on 4 March 2026.[20] For the purposes of this advice, I will assume that this is the case.
28. I am instructed that on 5 February 2026, TWS Tas sent a copy of the PCPG Report directly to the Tasmanian Minister for Business, Industry and Resources, Felix Ellis.
29. On 17 March 2026, Minister Ellis responded, and stated *inter alia*:

*With respect to STT's contractual processes, I note your concerns regarding the timing of commercial decisions in the context of the national reforms. STT is a government business operating under a well-established commercial and regulatory framework, and any contracting activity must comply with Tasmania's legislative and governance requirements. As the national environmental standards are finalised, Tasmanian Government agencies will continue to monitor their implications and ensure that any commercial arrangements entered into by STT are consistent with the state's legal obligations and long-term interests. The Government will continue to manage these matters carefully and responsibly, with appropriate regard to due process, commercial prudence and the emerging national framework.*

[18] Ibid, pp 33-34.
[19] Ibid, pp 35-36.

[20] Parliament of Tasmania Hansard, House of Assembly, Report of Debates, Wednesday 4 March 2026, pp 9 – 10/91. Available: https://www.parliament.tas.gov.au/house-of-assembly/chamber-proceedings/proceedings/2026/january/house-of-assembly-4-march

*Businesses need clear forward visibility of post-2027 operating conditions to support investment, workforce planning and commercial decision-making. We are confident that Tasmania's forest practices system already delivers outcomes consistent with the intent of the emerging National Environmental Standards. Our priority is to secure a clear, practical pathway well before the 1 July 2027 deadline, so that workers and communities that rely on our job-rich sustainable forestry sector to put food on the table have the certainty they require.*

*Common fairness would indicate that if decisions of the Australian Government impact on the ability of Tasmanian forestry businesses to continue to operate and produce the wood and wood fibre our nation needs, then the Australian Government should be prepared to pay appropriate compensation. It is telling that the Wilderness Society would seemingly prefer for everyday Tasmanians to be liable.*

(Emphasis added)

30. Minister Ellis also publicly acknowledged the risk to taxpayers in a Government Business Scrutiny Committee hearing in Tasmanian Parliament on 27 November 2025, in response to questioning by the Hon. Dr Rosalie Woodruff MP, as follows:[21]

"**Dr WOODRUFF**-Minister, the current high-quality sawlog contracts expire in 2027 and as a result of decades of overlogging there isa predicted supply cliff fall at that time. It's an open secret that discussions are occurring to lock in native forest high-quality sawlog contracts to 2040 - and with the RFA exemptions now ending, there's a high risk that –

**Mr ELLIS** - An 'open secret'? We announced it in an election campaign. Far out.

**Dr WOODRUFF** -… With the RFA exemptions now ending, there's a high risk that Tasmanian taxpayers would be liable for millions of dollars of contract payouts if contracts are signed but native forest logging is not viable because it wouldn't be getting approved by the new federal environment laws. Minister, will you pause any negotiations about extending contracts to protect taxpayers?

**Mr ELLIS**-There's a whole bunch of things that are wrong in your question, Dr Woodruff, and I'm happy to work through that. On its face, the first one is the claim around transparency on this supply project. We have announced it at election campaigns. I've spoken openly about it. I mentioned it two days ago and we want to lock in certainty for our native forest sector. We've said that we're looking to do that out to 2040. We think that's a great opportunity and it's really important as well that it's noted that the reason there's a reduction in high-quality sawlogs in 2027 is because Labor and the Greens locked up a whole bunch of timber in the early 1990s, which is why they then went and planted –

**Dr WOODRUFF**-Because Forestry Tasmania has been mismanaging forests for decades.

**Mr ELLIS**- plantation trees to then provide the high-quality sawlog through that process. So it's a reduction based on deliberate government decisions that were made in the early 1990s under another Labor-Greens deal. I think for the Tasmanian timber industry, it's part of the

[21] Parliament of Tasmania, House of Assembly, Government Business Scrutiny Committee, Thursday 27 November 2025, pp 31-32. Available: https://www.parliament.tas.gov.au/__data/assets/pdf_file/0022/100777/HA-GBE-Thur-27-Nov-2025-Sustainable-Timber-Tasmania.pdf

reason there is such concern about the decision that was made this morning because we've seen this movie before. We've seen communities dislocated, schools shut down, people thrown out of work, and businesses destroyed. It happened in the 1990s, it happened in the early 2010s, and Ithink there were a lot of people in our community who voted for Labor members on the basis that they thought their jobs were going to be safe with them. Now we're seeing you crowing about the shutdown of native forestry based on the deal that was signed this morning. So, in terms of -

**Dr WOODRUFF**- Do you recognise the risk to taxpayers if you go ahead with signing contracts that may not be viable.

**Mr ELLIS**- Absolutely we recognise the risk. No, Dr Woodruff, this is an enormous risk to taxpayers. The decision that Mr Albanese has made with the Greens is an enormous risk to taxpayers. It's an enormous risk to business. It's an enormous risk to regional communities -
[…]
**Dr WOODRUFF** - Are you going to pause or stop the contract negotiations in this space?
**Mr ELLIS** - Dr Woodruff, we are going to be working through this process. We want to provide certainty to our timber industry and the regional communities that it supports. We will be working very closely with industry –

**Dr WOODRUFF** - Make sure that $300 million goes to workers –

**Mr ELLIS** - businesses. Oh, Dr Woodruff.

**Dr WOODRUFF** - and not to industries that have been getting paid out so many times.

**Mr ELLIS** - $300 million of go away money. It is a disgrace, and it cost $1.5 billion already to shut down the Victorian native forest sector.

(Emphasis added)

31. It is further noted that the Federal government has already announced that it will deliver a $300 million 'Forestry Growth Fund' to "*deliver a bigger forestry industry that supports more secure jobs, better pay and more high-value output*."[22] The joint media release of the Minister for Industry and Innovation and Minister for Science, Senator the Hon. Tim Ayres, Minister for Agriculture, Fisheries and Forestry, the Hon. Julie Collins MP and Minister for the Environment and Water, Senator the Hon. Murray Watt, also states:

> *This package will also support parts of the sector operating under Regional Forest Agreements to implement the new reforms that come into effect under the EPBC Act reforms. As part of efforts to ensure the environmental performance of forestry in Australia, plans for forestry operations currently covered by Regional Forestry Agreements will require accreditation under new National Environmental Standards by 1 July 2027.*
>
> *The initial investment in the Forestry Growth Fund announced today includes:*

[22] See: https://www.minister.industry.gov.au/ministers/timayres/media-releases/secure-and-sustainable-future-forestry-industry

- *$150 million in concessional finance to support the modernisation of processing across the industry and deliver on the Timber Fibre Strategy.*
    - *This funding will support the re-tooling of mills and processing facilities as they increase output and move up the value chain.*
    - *The funding will also be available to support value adding and greater output, with a focus on boosting timber for housing construction.*
    - *The financing will be delivered through the National Reconstruction Fund.*
- *$150 million industry growth grants that will support:*
    - *Training and support for existing and new forestry workforce, workplace health and safety, community well-being and workforce productivity initiatives*
    - *Engineered wood products innovation program to increase output of value-added products*
    - *Housing construction supply-chain support*

32. Further information about the financial status of the industry is contained in a report produced by the Blueprint Institute in 2023, entitled '*Seeing the forests for the trees - Exploring Alternate Land Use Options for the Native Forests of Tasmania*' (the **Blueprint Report**).[23] The Blueprint Report explores alternate land use options for native forests in Tasmania and relevantly states:

> *Native forestry in Australia has fallen into structural decline over the past two decades. As Figure 1 shows, production of hardwood native logs has plummeted nationwide, falling from 10,090 million cubic metres in FY2004 to a mere 3,357 million cubic metres in FY2022. Australian state governments have long subsidised the native logging industry, despite persistent mounting financial losses and clear warning signs of the industry's deteriorating business model. State governments across the political spectrum hold a long and unenviable record of channelling taxpayer funds to subsidise and prop up failing and unprofitable state-owned forestry firms.*[24]
> *[…]*
> *Successive Regional Forest Agreements have sought to quell this social unrest and balance economic and environmental concerns. One such agreement was entered into in 2012 after negotiation with the timber industry, government and environmental groups. At the time, Forestry Tasmania was obligated to make available 300,000 cubic metres of high quality sawlog. Under the new agreement this was reduced to 137,000 cubic metres whilst an additional 500,000 hectares of forests were placed into reserves. Funding of $277 million was also pledged to compensate workers in light of the downturn in the industry, as well as facilitate the creation of new reserves and fund appropriate regional development projects.*
>
> *The agreement was subsequently torn up in 2014 upon the election of the new Liberal government, and replaced with the (Rebuilding the Forest Industry) Act. Under this new agreement, the minimum volume of high quality sawlog Forestry Tasmania was to provide remained at 137,000 cubic metres per year, but 400,000 hectares of previously protected reserves were reclassified as Future Potential Production Forest (FPPF). This area of forest was thus made available for logging operations, but not until after 2020.*

---

[23] Cross, D., Ouliaris, M., Williams, L., Poulton, C., Lubberink, J., Black, S., An Tran, M., *Branching Out: Seeing the Forest for the Trees: Exploring Alternate Land Use Options for the Native Forests of Tasmania*, Blueprint Institute, 2023.
[24] Blueprint Report, p 3.

*Perhaps due to a reluctance to antagonise environmental groups, however, nearly a decade after the repeal of the 2012 Tasmanian Forest Agreement, the FPPF lands remain largely untouched. It has not been until recently that the Tasmanian Sawmillers Association has called for access to the FPPF.*[25]

33. The Blueprint Report also notes that the Tasmanian Government has acknowledged that it is approaching a "sawlog shortfall" in 2027, with supply projected to fall from approx. 137,000 cubic metres or more per year (from 2022) to approx. 58,000 cubic metres (from 2027/2028).[26] Initially, the Tasmanian Liberal government announced its intention to "unlock" a further 158,000 hectares of forest (that had been set aside for future reserves in 2012) in order to make up for the expected reduction in supply.[27] However, during the 2025 Tasmanian State election[28], the Liberal Party changed its position citing "community expectations" after criticism from the industry and environment groups.[29] It remains to be seen whether supply volumes guaranteed under any renewed timber supply contracts will be lower than current amounts given this issue.
34. The Blueprint Report further states:

*The situation for STT now appears to be similar to that of VicForests. To service its contracts, it must venture into more remote coupes, thereby increasing costs. STT is required to publish a review every five years examining the sustainable yield of high quality eucalypt sawlogs from state forests. In the latest report, the company openly concedes that from FY2028 onwards the predicted high quality sawlog yield from eucalypt native forests is expected to decline by 60% to approximately 58,000 cubic metres per year. In order to meet the legislated quota of 137,000 cubic metres, STT claims that the remaining amount will be "augmented by significant additional quantities of high-quality eucalypt sawlogs from eucalypt plantations." Thus, STT now has little choice but to embrace a plantation focused future.*[30]
*[...]*
***Modelling for status quo of logging from FY2025 to FY2049***
*Our status quo or baseline scenario assumes continued native timber logging by STT in the area defined by Tasmania's Regional Forest Agreement from FY2025—when our counterfactual scenario assumes native timber logging stops—through to FY2049.*

*Our projection of STT's future native timber harvest levels is based on the output of the*

[25] Ibid, p 6.
[26] Ibid, p 10 citing STT, *Sustainable high quality eucalypt sawlog supply from Tasmania's Permanent Timber Production Zone Land, Review No. 6* (July 2022), p 15.
[27] See: Jason Ross, "Premier Rockliff Vows to Extend all Tassie Wood Contracts to 2040", WoodCentral, (1 March 2024). Available: https://woodcentral.com.au/premier-rockliff-to-extend-all-tassie-wood-contracts-to-2040/
[28] Noting that "unlocking" FPPF land is a legislative process, requiring both Houses of Parliament in Tasmania to accept a 'Land Conversion Order' under the *Forest Management Act 2013* (Tas), s 11B.
[29] See: S, Wallen, "*Liberals walk back plan to open 39,000 hectares of native Tasmanian forest to 'short notice' logging*" ABC News 10 August 2025. Available: https://www.abc.net.au/news/2025-08-10/tasmanian-liberals-backflip-on-native-forestry-logging-plan/105632720
[30] Ibid, p 10.

*carbon modelling described above, combined with a 10-year historical average of STT's native timber yields, to further breakdown roundwood removals (that is, sawlog, veneer log, and pulp log) into the eight main categories of native timber sold by STT (see Table 11).*

*Compared to the Forestry Corporation of New South Wales and VicForests, where native timber price data were either readily available or easily reverse engineered, STT exhibits a remarkable lack of transparency, particularly given that it is a publicly owned Tasmanian Government Business.*

*Due to the lack of publicly published data, we instead attempted to secure price figures through a Right to Information Act application. Rather bizarrely, STT replied to our request for pricing information from any of the past five financial years not by claiming such information was commercial in confidence, but by claiming that it "does not exist."*

*The only available price data we found were contained in STT's annual reports—although these figures were estimated mill door landed values, and only published for eight financial years from FY2006–FY2013.*[31]

## D. SUSTAINABLE TIMBER TASMANIA (STT)

### D.1 STT's Corporate Entity and Liability to be sued

35. STT is the trading name of Forestry Tasmania (ABN 91 628 769 359)[32]. Forestry Tasmania was formerly known as the Forestry Corporation, established under the *Forestry Act 1920* (Tas) which was repealed by the passage of Schedule 4 of the *Forest Management Act 2013* (Tas) (**FM Act**). Section 6 of the FM Act provides that "*The Forestry corporation established under the repealed Act* [the *Forestry Act 1920*] *continues in existence as a corporation with the same corporate name it had immediately before the commencement of this Act* [the FM Act]".

36. The shareholding ministers of STT are the Treasurer and the Minister for Business, Industry and Resources,[33] currently, the Hon. Eric Abetz MP and the Hon. Felix Ellis MP, respectively.

37. Forestry Tasmania t/a STT is a Government Business Enterprise (**GBE**) pursuant to Schedule 1 of the *Government Business Enterprises Act 1995* (Tas) (**GBE Act**) which provides that the "*Forestry corporation established by the Forestry Act 1920*" is a GBE and a statutory authority.

38. Section 7 of the FM Act provides that:

    (1) The Forestry corporation is the Forest Manager for permanent timber production zone land and has the functions and powers specified in this Act.
    (2) Notwithstanding section 9(1) , sections 9 and 10 of the Government Business Enterprises Act 1995 apply to the Forestry corporation in exercising its powers as the Forest Manager under this Act.

---

[31] Ibid, p 31.

[32] See, the Australian Business Register: https://abr.business.gov.au/ABN/View?abn=91628769359

[33] See clause 1, *Ministerial Charter for Forestry Tasmania trading as Sustainable Timber Tasmania* (3 September 2024).

39. Section 9(1)(c) of the GBE Act provides that STT has the power to enter into contracts. Section 6(c) of the GBE Act provides that STT may sue and be sued in its corporate name.
40. Schedule 8 of the GBE Act provides the only GBE that is not the Crown is the Hydro-electric corporation. Therefore, STT is considered to be the Crown. Thus, pursuant to s 5 of the *Crown Proceedings Act 1993* (Tas) legal proceedings may be brought against the Crown under the name "the State of Tasmania". That is, if any legal proceedings were brought against STT they could also be brought against the State of Tasmania. Alternatively, the State of Tasmania could be sued insofar as STT was acting as its agent as in the Opal Victorian Litigation discussed further below.
41. Where STT and the State of Tasmania and/or any relevant Minister or officer of STT are sued for damages and such suit is successful it is likely the damages would be paid out of the public purse or alternatively pursuant to an insurance policy held by STT or the State.

**D.2 Regulation of STT under the GBE Act**

42. The GBE Act provides for a regulatory regime for officers and employees of STT as a GBE including *inter alia* as follows:
    (a) An officer of a GBE must perform and exercise the functions and powers of his or her office in that GBE in good faith in the best interests of the GBE and for a proper purpose (s 24(2)(a) and (b));
    (b) An officer of a GBE must exercise his or her powers and perform his or her functions with the degree of care and diligence that a reasonable person would exercise if he or she were an officer of a GBE in the circumstances of the GBE; and occupied the office held by, and had the same responsibilities within the GBE as, the officer;
    (c) A director of a GBE has a duty to prevent insolvent trading pursuant to s 25;
43. Contravention of the above duties as well as other provisions of the GBE Act are punishable as criminal offences and thereby if any such breach of duty caused loss or damage to a private sawmiller pursuant to a Wood Supply Contract, then such breach could potentially constitute breach of statutory duty and/or ground the intention element of the tort of misfeasance in public office (discussed further below in Part H).
44. The regulatory framework for STT as provided for under the GBE Act:
    (a) is somewhat analogous the corporate duties of private companies under the *Corporations Act 2001* (Cth); and
    (b) accord with Minister Ellis's stipulations in the 17 March 2026 correspondence to TWS

Tas that "*STT is a government business operating under a well-established commercial and regulatory framework, and any contracting activity must comply with Tasmania's legislative and governance requirements.*"

45. There are also other laws that regulate the operations of STT, (including for example, the *Forestry Fair Contract Code 2003*[34] discussed further below in Part E.2) but which are beyond the scope of this advice given the limited timeframe.

## E. POSSIBLE COMPENSATION PATHWAYS FOR LACK OF SUPPLY

### E.1 STT's Legal Obligations to Supply

46. STT is commercially responsible for the annual supply of 137,000 cubic metres of high-quality sawlog as provided for in s 16 of the FW Act as follows:[35]

> **16 Wood production supply**
> (1) Each year the Forest Manager must make available –
>
> (a) for the veneer and sawmilling industries, a minimum aggregate quantity of eucalypt veneer logs and eucalypt sawlogs, from permanent timber production zone land, that meets the prescribed specifications that are in force immediately before the commencement of this Act; and
>
> (b) for a prescribed industry, the prescribed quantity, prescribed type and prescribed specification of other prescribed timber (including special species timber, as defined in section 19(1) of the *Tasmanian Forests Agreement Act 2013* ).
>
> (2) In subsection (1)(a) – minimum aggregate quantity means –
>
> (a) 137 000 cubic metres of any combination of eucalypt veneer quality 1, eucalypt veneer quality 2, category 1 sawlogs, and category 3 sawlogs, as specified in Schedule 1 to the Forestry Regulations 2009 ; or
>
> (b) if another quantity is prescribed, the prescribed quantity.
> […]

47. Additionally STT has obligation to supply under:
   (a) Existing Sawmiller Wood Supply Contracts (for example the Smithton Wood Supply Contract and the Huon Wood Supply Contract discussed further below in Part E.2).
   (b) A long-term contract with Ta Ann[36] by which STT must supply 157,000 cubic metres of

---

[34] The *Forestry Fair Contract Code 2003* was prepared in accordance with the provisions of the *Forestry (Fair Contract Codes) Act 2001*.

[35] Noting that the *Tasmanian Forests Agreement Act 2013* (Tas) was repealed on 22 October 2014 by Schedule 6 to the *Forestry (Rebuilding the Forest Industry) Act 2014* (Tas).

[36] Which is a contract that I have not been provided and I assume is a different contract to the Smithton Wood Supply Contract and the Huon Wood Supply Contract. Please advise if this is not correct.

peeler logs[37] to Ta Ann.

48. Therefore, if STT is unable to fulfill its supply requirements under legislation and/or private contracts (caused by either the "sawlog shortfall" referred to in paragraph [33] above or caused by the EPBC Act Reforms), it is exposed to liability for the entity it has contracted with to sue for damages via a number of possible causes of action (discussed further below in Part F and Part H) including *inter alia* breach of contract and breach of statutory duty (subject to any defences that could be argued including, for example, an event of force majeure and/or supervening illegality discussed further below).

**E.2 Compensation Payable by Commonwealth under the Tasmanian RFA**

49. While the EPBC Act amendments will remove the RFA exemptions in the EPBC Act, I am instructed that it is unclear whether the RFAs themselves will remain in force, to the extent that they provide for other things (for example, the establishment of the CAR Reserve System[38]). It does not appear that the EPR Act/EPBC Act amendments included a legislative provision to override the end date for the Tasmanian RFA. I also have not been briefed with any information to suggest that the Commonwealth or the Tasmanian government have proposed to vary the terms of the Tasmanian RFA[39] (i.e. pursuant to cl 9).

50. The Tasmanian RFA currently has an end date of 8 November 2037 (clause 7).

51. Relevantly, clause 74 provides for "Industry Stability" as follows:

> In recognition of the contribution of forest-based industries to the Tasmanian economy, the Parties intend that this Agreement will support future growth and development of Tasmania's industries associated with forests and timber products specifically through:
>
> • <u>certainty of resource access to the forest industry</u>; and
> • security of access to the Mining industry by continuing to recognise defined land tenures which allow for exploration and Mining together with the protection of Environment and Heritage Values; and
> • facilitating and enabling industry growth and development, in areas such as:
> (a) skills retention and workforce development;
> (b) research, innovation and extension;
> (c) strategic marketing, communications and education;

[37] Peeler logs are specially cut logs that are used to produce plywood and other engineered wood products. They are typically shorter in length, around eight feet, and are processed by peeling them into thin sheets.

[38] The CAR Reserve System is defined in cl 2 as "*areas under any of the following categories of land tenure – Formal Reserves including Dedicated Reserves, Informal Reserves and other areas on Public Land which have CAR values protected by prescription, and parts of the Private Forest Estate where the CAR values are protected under secure management arrangement by agreement with private landholders. This reserve system is based on the principles of comprehensiveness, adequacy and representativeness, as described in the JANIS Report.*"

[39] As has occurred previously in 2001, 2007 and 2017 (see Recitals cl, CB).

(d) essential and strategic infrastructure;
(e) resource management and access;
(f) reducing regulatory burden.

(Emphasis added)

52. Clauses 85 and 86 provide for "Competition Principles" as follows:

85. The Commonwealth agrees that the day-to-day pricing and allocation arrangements for wood from the Public Forest Estate are matters for the State. The State confirms its commitment to the pricing and allocation principles set out in the NFPS.

86. The Parties recognise that under the Competition Principles Agreement, governments aim to achieve more transparency and greater efficiency in government owned business enterprises.

53. Importantly, the Tasmanian RFA includes a lengthy clause that deals with the circumstances in which the Commonwealth will pay the Tasmanian Government compensation as a result of a "Commonwealth Action" (clause 95). The terms "Action" and "Owner" are defined in cl 95.20 as follows:

95.20 In this clause

(a) **"Action"** means
(i) the commencement of legislation or subordinate legislation; and

(ii) administrative action which is taken pursuant to legislation or subordinate legislation, or otherwise than in accordance with such legislation.

(b) **"Owner"** means
(i) in relation to land

(1) the owner of any estate or interest in that land, including the Crown in right of the State; and

(2) any statutory corporation which has the power to carry on Forestry Operations or Mining Operations, as the case may be, on the land for profit.

(ii) in relation to Forest Products or Mining Products, as the case may be, the owner of any interest in those products.

54. Clause 95.1 provides, inter alia,

95. The Parties agree that:
95.1 If, to protect the environment and heritage values in native forests and in connection therewith the protection of:
(a) CAR Values; or
(b) Old Growth forest; or
(c) wilderness; or
(d) any Priority Species; or
(e) any Endangered Forest Community; or
(f) National Estate Values; or
(g) World Heritage Values; or

(h) Wild Rivers

the Commonwealth takes any Action during the period of this Agreement which is inconsistent with any provision of this Agreement and a foreseeable and probable consequence of which is to prevent or substantially limit:

(i) the use of land which is not included within the CAR Reserve System for Forestry Operations which, immediately before the announcement of the proposed Commonwealth Action, are being undertaken or were intended to be undertaken at any time or the use of land which is not included within the CAR Reserve System or of land within that system but not within a Dedicated Reserve for Mining Operations pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action;
[…]

the Commonwealth will pay compensation to the State in accordance with the remaining provisions of clause 95.2 to 95.20.

55. Clause 95.2 provides, *inter alia*:

95.2 Subject to:

(a) clauses 95.3, 95.4, 95.5, 95.6, 95.8, 95.9, 95.10, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of the use of land for Forestry Operations or prevention by Commonwealth Action of the sale or commercial use of Forest Products is the amount of the reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person in any of the following classes of person:

(i) the Owner of the land or of the Forest Products on the land;

(ii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land or with any person mentioned in sub-paragraph (iii) below for the carrying out of Forestry Operations on the land; and
(iii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land to purchase the Forest Products on the land. [...]

56. "Forest products" is defined in cl 2 as "*all live and dead trees, ferns or shrubs or parts thereof*".

57. Clause 95.8 provides that any compensation claim made by the State is to be notified in writing within 6 months after the loss or damage is sustained. Clause 95.9 provides:

For the purposes of clause 95.1(i), the intention to conduct Forestry Operations is to be established on the basis of contracts, documentation of management history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth

Action.

58. Importantly, clause 95.11 provides that:

> 95.11 No compensation is payable under clause 95.2 in relation to any loss or damage which the person who sustained the loss or damage might have avoided by taking reasonable steps in mitigation including by the making of alternative contractual arrangements which would have avoided or reduced that loss or damage.

59. The procedures in relation to a claim for compensation under clause 95 is set out in clauses 95.13 and 95.14, and commences with a person lodging a claim with the State followed by a corresponding claim by the State to the Commonwealth.

60. Importantly, section 8 of the *Regional Forest Agreements Act 2002* (Cth) provides a statutory power for compensation for breach of RFA by Commonwealth as follows:

> **Compensation for breach of RFA by Commonwealth**
>
> (1) The Commonwealth is liable to pay any compensation that:
> (a) is in relation to reasonable loss or damage arising from the curtailment of legally exercisable rights; and
> (b) is calculated as at the time of the curtailment; and
> (c) the Commonwealth is required to pay to a State in accordance with the compensation provisions of an RFA, being those provisions as in force:
> (i) at the time of commencement of this section; or
> (ii) at the time the RFA comes into force;
> whichever is later.
>
> (2) The Commonwealth's liability incurred under subsection (1) while an RFA is in force continues even though the RFA may subsequently have expired or been terminated.
>
> (3) Compensation that the Commonwealth is liable to pay under this section:
> (a) may be recovered as a debt in a court of competent jurisdiction; and
> (b) is payable out of money appropriated by the Parliament.

61. Clauses 102, 103 and 104 provide for termination of the Tasmanian RFA as follows:

> 102. This Agreement may only be terminated by the Commonwealth:
>
> a) where the dispute resolution procedures in clauses 11 to 15 have been observed and the State has been given a 90 day period of notice on:
>
> **CLAUSE (i) DELETED.**
>
> (ii) a failure by the State to comply with clause 24(a), being a failure to conserve the areas in the CAR Reserve system identified in Attachment 6 (other than Commonwealth owned or leased land), other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature; or

**CLAUSE (iii) DELETED.**

(iv) a failure by the State to observe the terms and conditions referred to in clause 100 or 101 or a failure to use the money referred to in clause 100 or 101 for the purpose for which it is appropriated; or

(v) a failure by the State to comply with clauses 60, 64, other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or

b) on a fundamental failure by the State to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.

103. The Agreement may only be terminated by the State:

a) where the dispute resolution procedures in clauses 11 to 15 have been observed and the Commonwealth has been given a 90 day period of notice on:

i) a breach by the Commonwealth of clauses 100 and 101, being a failure to pay financial assistance in accordance with those clauses, or

ii) a breach by the Commonwealth of clause 95, being a failure to pay compensation due under that clause, or

iii) a failure by the Commonwealth to comply with clause 22 or 23 being a failure to introduce into the Commonwealth Parliament the legislation referred to in clause 23 in accordance with that clause, or a failure to use its best endeavours to secure the enactment of that legislation;

save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or

b) on a fundamental failure by the Commonwealth to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.

104. This Agreement may be terminated with the consent of the Commonwealth and the State.

## E.2 Assumed Timber Supply Contract Terms

62. The Standard Conditions contained in the *Forestry Fair Contract Code 2003*[40] apply to all Forestry Contracts entered into for various types of forestry operations including, harvesting trees for commercial timber production, transporting timber that has been harvested for commercial purposes, as well as road construction and quarrying for forest operations.

63. I am instructed that the Existing Sawmiller Wood Supply Contracts are not publicly available.

[40] The *Forestry Fair Contract Code 2003* was prepared in accordance with the provisions of the *Forestry (Fair Contract Codes) Act 2001*.

However, the Smithton Wood Supply Agreement between Ta Ann Tasmania (subsidiary of the Malaysian palm oil and timber company Ta Ann Group), and Forestry Tasmania (**STT**) dated 16 January 2006 (the **Smithton Wood Supply Contract**) is available via the Department of Climate Action, Energy, the Environment and Water (**DCCEEW**) website.[41] I have also identified a second Huon Wood Supply Agreement between Ta Ann Tasmania and Forestry Tasmania (**STT**) dated 16 January 2006 (the **Huon Wood Supply Contract**) available on the National Library of Australia website[42] which is in similar terms to the Smithton Wood Supply Contract.

64. Clause 2 of the Smithton Wood Supply Contract stipulates that, subject to any extension by parties pursuant to cl 2.2 or cl 2.3, it expired on 31 December 2022. Clause 2 of the Huon Wood Supply Contract stipulates that, subject to any extension by parties pursuant to cl 2.2 or cl 2.3, it expired on 31 December 2021. It is unclear whether either party applied to extend both contracts for five years pursuant to either cll 2.2 or 2.3 (in which case Smithton Wood Supply Contract will expire on 31 December 2027 and the Huon Wood Supply Contract on 31 December 2026), but it is for the purposes of this advice, it is assumed that such extension occurred.

65. Both the Smithton Wood Supply Contract and the Huon Wood Supply Contract includes a 'Sovereign Risk' clause (cl 21) in the following terms:

> **21. SOVEREIGN RISK**
> 21.1 If an Event of Force Majeure arises due to a change in Law, or an exercise of executive power, the Purchaser and [STT] agree to cooperate with each other to the extent reasonably practical in order that <u>each Party may seek compensation from the relevant Crown for loss suffered as a result of that Event of Force Majeure.</u>
>
> 21.2 For the avoidance of doubt, the Purchaser acknowledges that, despite being a governmental statutory corporation, [STT] does not have the power to prevent the occurrence of the Events of Force Majeure referred to in Clause 21.1."
>
> (Emphasis added)

66. Relevantly, "Event of Force Majeure" is defined in clause 1 of the contract to mean/include:

> "**Event of Force Majeure**" any event or circumstance, or combination of events and circumstances meeting all of the following requirements:
>
> > (a) the event or the circumstance is beyond the reasonable control of the concerned Party and was not caused by the concerned Party's negligent act or omission;

---

[41] Amended to Remove Commercial in Confidence Sections. Available: https://www.dcceew.gov.au/sites/default/files/env/pages/1ef3b33d-55c7-4401-b055-1d4dd42b2e80/files/ta-ann-agreement-schedule4-smithton.pdf

[42] Available: https://nla.gov.au/nla.obj-1837907263/view

(b) the event or circumstance prevents or delays the concerned Party from performing some or all of its obligations under this Contract; and

(c) the event or circumstance comprises:
[…]
(v) a change in Law;
[…]
(ix) the effect direct or indirect of the exercise of executive power or discretion by the Commonwealth, State, local or a foreign government, but does not include any lack of, or an ability to use, money or available funds for any reason.

67. "Law" is defined in cl 2 as follows:

"**Law**" includes:

(a) Commonwealth, State or local acts, ordinances, regulations, bylaws, order, awards, local laws, statutes, proclamations, codes, standards or guidelines;

(b) principles of law or equity established by decisions of courts;

(c) provisions of the Constitution of Tasmania, and the Constitution of the Commonwealth of Australia; and

(d) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (c) of this definition, whether in existence at the date of this Contract, or coming into existence after that date.

68. Clause 20 provides for "Force Majeure" *inter alia* as follows:

**20. FORCE MAJEURE**

20.1 Where a Party (referred to in this Clause 20 as "the Concerned Party") is unable, in whole or in part, by reason of an Event of Force Majeure to carry out any obligation under this Contract and that Party:

(a) gives the other Party proper notice of that event and of the probable extent to which the Concerned Party will be unable to perform or will be delayed in performing that obligation, with reasonable particulars thereof so far as they are then known; and

(b) subject to Clause 20.4 uses all reasonable endeavours to remove or mitigate the effect of that event as quickly as possible, then that obligation is suspended but only to the extent, and for so long as, that obligation is affected by that Event of Force Majeure and this Contract must be interpreted to give effect to that suspension.

20.2 Without limiting the generality of Clause 20.1, a Party is deemed to be unable to carry out an obligation under and for the purposes of that Clause if, by reason of an Event of Force Majeure, the carrying out by the Party of the obligation would, more probably than not, involve the incurring of expense or the doing of some act or thing which would:
(a) put seriously at risk; or
(b) result in the failure of,

the business of the Party as a going concern.

20.3 The other Party must cooperate with and assist the Concerned Party to ameliorate the effect of an event of Force Majeure, to the extent that:

(a) it is requested to do so; and
(b) is reasonable in the circumstances.

20.4 Nothing in this Clause 20 requires any Party to settle any strike, lockout, other labour dispute, civil commotion, protest, blockade, civil disobedience, sabotage or other malevolent conduct, or any government or quasi governmental demand on terms that in the reasonable opinion of the Concerned Party compromise the interests of that Party.

20.5 If the disabling effect of any event of Force Majeure is claimed by either Party to have extended beyond six months, then the Party so claiming must give notice to the other Party within seven days of the expiration of the six months that either:

(a) it is terminating the Contract; or

(b) it is not terminating the Contract but maintains that the disabling effect of the event of Force Majeure continues and that its obligations are suspended, and if no notice is given then the disabling effect of the Event of Force Majeure will be deemed to have ceased immediately prior to the expiration of the six month period.

[…]

20.7 The onus of proof of inability, including deemed inability, to carry out an obligation under this Contract by reason of any event of Force Majeure rests upon the concerned Party.

69. Clause 23 of the Smithton Wood Supply Contract relevantly provides for "Liability and Indemnity" of the parties as follows:

23.4 Forestry Tasmania is only liable for Direct Loss incurred by the Purchaser:

(a) as a result of any default under this Contract or negligence by Forestry Tasmania in connection with a specific obligation under this Contract; and

(b) to the extent that such Direct Loss is not incurred as a result of action or omission by the Purchaser.

23.5 Other than Direct Loss, the Purchaser releases Forestry Tasmania from any Loss in connection with this Contract.

70. "Direct Loss" is defined in clause 1 of the contract as follows:

"**Direct Loss**" means any loss, cost, damage, liability or exposure incurred by a Party as a direct result of the failure or breach but excluding any indirect or consequential loss incurred by a Party such as loss of profit, loss of contracts, payment of damages under any agreement other than this Contract, loss of goodwill or any other indirect loss or damage.

**E.3 Statutory Regime for Compensation**

71. Part 5A of the *Forestry Management Act 2013* (Tas) (**FM Act**) provides for "Compensation Arrangements" for purchasers who have an enforceable wood supply contract with STT for the

supply of logs for processing in Tasmania into forest products (s 16B(2)(a(ii)). The term "forest products" excludes woodchips and whole logs that are to be further processed outside Tasmania (s 16A(d)). Part 5A was inserted into the FM Act via the passage of s 22 of the *Forestry (Rebuilding the Forest Industry) Act 2014* (Tas).

72. The term "wood supply contract" is defined in s 16A of the FM Act as follows:

> ***wood supply contract*** *means a contract made between the Forestry corporation and a purchaser, the principal, or a principal, term of which is that the Forestry corporation should make available to that purchaser over a period of not less than 2 years a supply of a quantity of logs in return for monetary or other consideration.*

73. Section 16B(1) provides that the Minister must issue a forestry compensation certificate to a purchaser under a wood supply contract at the request of STT or the purchaser.

74. Section 16E provides for the effect of a forestry compensation certificate as follows:

> (1) A forestry compensation certificate entitles the holder of the certificate to receive compensation in accordance with this section.
>
> (2) The holder of a forestry compensation certificate is entitled to compensation if [STT] certifies to the Minister that the Forestry corporation is, when requested by the holder, prevented from supplying logs to the holder, up to the quantities specified in the forestry compensation certificate and on the terms specified in the wood supply contract to which the certificate relates, as a result of:
>
> > (a) a change of the law of the State, including any change to section 16 of this Act, that has the effect of diminishing the quantities of logs available to [STT] for the supply of logs in accordance with the terms of the wood supply contract; or
> >
> > (b) a change of policy –
> > > (i) in relation to forest practices, within the meaning of the *Forest Practices Act 1985*; or
> > > (ii) solely or primarily in relation to the Tasmanian forest industry by the Tasmanian Government – that has the effect of diminishing the quantities of logs available to [STT] for the supply of logs in accordance with the terms of the wood supply contract.
>
> (3) The Forestry corporation must certify in accordance with subsection (2) if it is unable to supply logs in accordance with the terms of a wood supply contract.

75. Section 16F provides for "Entitlement to Compensation" as follows:

> (1) On receipt of the Forestry corporation's certification under section 16E(2) , the Minister becomes liable to pay compensation to the holder of the forestry compensation certificate to which the certification relates in accordance with this Part.
>
> (2) Subject to subsections (3) and (4) , the amount of compensation referred to in subsection (1) is the amount of damages that would have been payable by the Forestry corporation if the non-supply of the quantity of logs referred to in section 16E(4)(f) for the period referred to in section 16E(4)(g) in accordance with the terms of the wood supply contract had constituted a

breach of contract by the Forestry corporation.

(3) Subsection (2) applies only to the extent that the non-supply referred to in that subsection occurs as a result of the circumstances referred to in paragraph (a) or (b) of section 16E(2).

(4) For the purposes of subsection (2), the following matters are to be disregarded when calculating compensation: (a) any agreement between the holder of the forestry compensation certificate and the Forestry corporation that limits the damages payable for a breach of the wood supply contract; (b) any agreement between the holder of the forestry compensation certificate and the Forestry corporation to pay an agreed amount of damages for a breach of the wood supply contract.

(5) A holder of a forestry compensation certificate entitled to compensation in accordance with this Part and the Forestry corporation must take all reasonable steps to minimise the loss or damage referred to in subsection (2).

76. Notably, the statutory regime for compensation under the FM Act, is not expressly triggered by changes to federal laws (i.e the EPR Act and the EPBC Act Reforms) and/or a change in policy by the Commonwealth.

## F. RISKS OF LIABILITY EXPOSURE FROM ENTERING INTO FUTURE 2027-2040 WOOD SUPPLY CONTRACTS

### F.1 Introduction

77. It is noted that there is significant uncertainty as to the terms of the Existing Sawmiller Wood Supply Contracts between the STT and 14 sawmills (private companies) scheduled to expire in 2027 given that these contracts do not appear publicly available. However, it assumed that those contracts would include standard contractual terms the *Forestry Fair Contract Code 2003* and those similar to the Smithton Wood Supply Agreement and the Huon Wood Supply Agreement. For the purposes of this advice, it is assumed that the Existing Sawmiller Wood Supply Contracts and the Future 2027-2040 Wood Supply Contracts are in similar terms to the Smithton Wood Supply Agreement and the Huon Wood Supply Agreement for example, including force majeure and sovereign risk clauses.

### F.2 Compensation Payable under the Tasmanian RFA?

78. As stated above, I am instructed that it is unclear whether the Tasmanian RFA will remain in force following the EPBC Act Reforms, to the extent that it provides for other things (for example, the establishment of the CAR Reserve System[43]). It is also uncertain whether the Tasmanian RFA will

[43] The CAR Reserve System is defined in cl 2 as "*areas under any of the following categories of land tenure – Formal Reserves including Dedicated Reserves, Informal Reserves and other areas on Public Land which have CAR values protected*

remain in force for the purposes of the compensation regime in cl 95.

79. However, it can be noted that the EPR Act did not repeal the RFA Act but merely amended certain sections of the RFA Act (see ss 637A, 637B and 637C of the EPR Act) namely inserting a new definition of "RFA Wood"[44] via the insertion of s 4A of the RFA Act as follows:

> **4A Meaning of *RFA wood***
>
> (1) ***RFA wood*** means processed or unprocessed wood (including woodchips) sourced from an RFA forestry operation undertaken by a person if the undertaking of the RFA forestry operation is not prohibited by a provision of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* because:
>
> (a) an approval of the undertaking of the RFA forestry operation by the person is in operation under Part 9 of that Act for the purposes of the provision; or
>
> (b) Part 4 of that Act lets the person undertake the RFA forestry operation without an approval under Part 9 for the purposes of the provision; or
>
> (c) both:
>
> (i) there is in force a decision of the Minister under Division 2 of Part 7 of that Act that the action is not a controlled action; and
>
> (ii) if the decision was made because the Minister believed that the action would be taken in a manner specified in the notice of the decision given under section 77 of that Act—the action is taken in this manner.
>
> (2) However, ***RFA wood*** does not include wood sourced from a plantation in a State unless:
>
> (a) a code of practice for that State has been approved under rules made under section 432 of the *Export Control Act 2020*; and
>
> (b) that approval has not been revoked under those rules.

80. In that regard, it would appear that there is no current intention by the Commonwealth or the

---

*by prescription, and parts of the Private Forest Estate where the CAR values are protected under secure management arrangement by agreement with private landholders. This reserve system is based on the principles of comprehensiveness, adequacy and representativeness, as described in the JANIS Report."*

[44] Previously defined in section 4 "Definitions" as:

> ***RFA wood*** means processed or unprocessed wood (including woodchips) sourced from a region covered by an RFA, but does not include wood sourced from a plantation in a State unless:
>
> (a) a code of practice for that State has been approved under rules made under section 432 of the *Export Control Act 2020*; and
>
> (b) that approval has not been revoked under those rules.

Tasmanian government to attempt to repeal the Tasmanian RFA.

81. It appears that the passage of the EPR Act and the EPBC Act Reforms fall squarely within the definition of "Action" by the Commonwealth in cll 95.1 and 95.20(a)(i) of the Tasmanian RFA.

82. In terms of attempting to seek compensation under the Tasmanian RFA, presuming it were possible, the difficulty STT and/or the State of Tasmania faces is that given:

    (a) the EPR Act passed in December 2025, STT and the Tasmanian Government has been on notice of the RFA exemption expiring on 1 July 2027;

    (b) as the NE Standards and the future regulatory pathways for logging in Tasmania are yet to be finalised the forest areas that will be available and the extent of logging that will be authorised to occur after 1 July 2027 is not known, therefore the ongoing long-term supply of timber from Tasmania's native forests is uncertain;

    if the State of Tasmania enters into any Future 2027-2040 Wood Supply Contracts in the interim, the Commonwealth could raise a number of arguments under the Tasmanian RFA that no compensation is payable (in which case Minister Ellis' statements in the 17 March 2026 Correspondence to TWS Tas that "*the Australian Government should be prepared to pay appropriate compensation"* and pleas to "*common fairness*" can be seen as mere optimistic speculation and perhaps wishful thinking without any certain statutory backing).

83. By way of example:

    (a) Clause 95.2(ii) and (ii) provides that compensation is only payable to "*any person who prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land*" in which case, given the Tasmanian government and the private sawmillers have been on notice of the EPBC Act Reforms since December 2025, if they enter into any Future 2027-2040 Wood Supply Contracts, the Commonwealth could rely upon these clauses along with clause 95.11 ("*No compensation is payable under clause 95.2 in relation to any loss or damage which the person who sustained the loss or damage might have avoided by taking reasonable steps in mitigation including by the making of alternative contractual arrangements which would have avoided or reduced that loss or damage"*) in order to argue that the Commonwealth is not liable to pay compensation to the Tasmanian government or private sawmillers for any loss or damage arising from any lack of timber supply arising from the EPBC Act Reforms;

(b) Importantly, clause 95.4 provides that the State warrants that "*no claim will be made in respect of areas where Forestry Operations … would not have been permitted by this agreement and that any claims will be certified by it as being or not being in respect of such areas and as having been assessed by the State in this regard*" which means that if any areas are unlocked for logging under the new, yet-to-be-finalised regulatory regime, that were not available to be harvested under the Tasmanian RFA (which appears unlikely but remains uncertain especially given the Tasmanian Liberal Governments gripes with "*deliberate government decisions that were made in the early 1990s under another Labor-Greens deal*"[45] to lock up forest, inferring that the Tasmanian Liberal government would, unlock protected forest for logging if it could), provided that the Tasmanian RFA remained in force post-1 July 2027, then the State could not make any compensation claims under the Tasmanian RFA for any Future 2027-2040 Wood Supply Contracts for timber to be supplied from logging areas that would not have been permitted under the Tasmanian RFA.

84. Furthermore, although the initial $300 million funding for the Commonwealth's proposed Forestry Growth Fund appears to be targeted towards subsidising concessional finance to support the modernisation of processing across the industry and deliver on the Timber Fibre Strategy and industry growth grants, at this stage it does not appear it could be used to service claims for compensation including for breach of contract etc claims by private sawmillers against the State of Tasmania, although that may change.

85. It is also important to note that any compensation claim pursuant to cl 95.1 of the Tasmanian RFA:

(a) is only in relation to:

(i) "*any* [Commonwealth] *Action during the period of* [the Tasmanian RFA] *which is inconsistent with any provision of* [the Tasmanian RFA]"; and

(ii) "*a foreseeable and probable consequence of which is to prevent or substantially limit"*:

1. *the use of land which is not included within the CAR Reserve System for Forestry Operations which immediately before the announcement of the proposed Commonwealth Action, are being undertaken or were intended to be undertaken at any time or the use of land which is not included within the CAR Reserve System or of land within that system* ***pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the***

[45] Minister Ellis, Government Business Scrutiny Committee hearing in Tasmanian Parliament on 27 November 2025.

***announcement of the proposed Commonwealth Action***" (cl 95.1(i));

2. *the sale or commercial use of Forest Products sourced from land which is not included within the CAR Reserve System or the first sale or first commercial use of Mining Products sourced from land which is not included within the CAR Reserve System or land within that system but not within a Dedicated Reserve for a purpose for which, immediately prior to the announcement of the proposed Commonwealth Action, they had been intended to be sold or used commercially at any time"* (cl 95.1(j))…

(b) requires the State to provide, pursuant to cl 95.9, "*contracts, documentation of management history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth Action"* in order to establish the basis for a compensation claim (i.e. "*the intention to conduct Forestry Operations*"), which may ground an argument that, if the State was to seek compensation under the Tasmanian RFA, if it were possible, the State would need to provide the Future 2027-2040 Wood Supply Contracts to prove such a claim.

86. Whilst the position of the Tasmanian government with regards to the expiration of the Existing Sawmiller Wood Supply Contracts, as expressed by Minister Ellis that "*Businesses need clear forward visibility of post-2027 operating conditions to support investment, workforce planning and commercial decision-making",*[46] is worthy of sympathy and could be seen to be a prudent political commercial position to some extent, in the circumstances of significant uncertainty regarding future timber supply, and thus commercial uncertainty and heightened risk, it would arguably be more prudent for the Tasmanian government to focus its efforts on garnering guidance and/or guarantees/indemnities from the Commonwealth as to how the current commercial uncertainty should be approached and accommodated by the Tasmanian government.

### F.3 Compensation Payable Under FM Act Compensation Regime?

87. As stated above, Part 5A of the FM Act provides for "Compensation Arrangements" for purchasers who have an enforceable wood supply contract with STT for the supply of logs for processing in Tasmania into forest products (s 16B(2)(a(ii)).[47] However, the entitlement to compensation only

[46] Correspondence from Minister Ellis to TWS Tas dated 17 March 2026.

[47] Noting that, pursuant to s 16B(1) of the FM Act, it is mandatory for the Minister to issue a compensation certificate if requested to do so by STT or the purchaser provided that the requirements of ss 16B(2)(a)(i)-(iii) and (b) are met.

arises if, pursuant to ss 16E(2)(a) or (b) there is a change in law or policy of the State.

88. That is, the FM Act compensation regime only exists between the Tasmanian government and another party to a Future 2027-2040 Wood Supply Contract, where compensation is payable by the State (and thus the taxpayer) which provides further argument as to the Tasmanian government's and Tasmanian taxpayer's exposure to liability for compensation in the event the Future 2027-2040 Wood Supply Contracts are entered into between STT and the 14 private sawmillers and the EPBC Act Reforms have the effect of encumbering STT's ability to supply volumes of wood/timber required under those contracts.
89. However, given that the entitlement to compensation only arises if, pursuant to ss 16E(2)(a) or (b) there is a change in law or policy of the State, presumably then if a compensation claim was pursued by a purchaser pursuant to the FM Act, the State of Tasmania would argue that no such compensation is payable under Part 5A of the FM Act because the conditions precedent in ss 16E(2)(a) or (b) have not been met as any short supply of timber would arguably arise as a result of a change in Commonwealth laws and policy. The counter-argument is that the change in Commonwealth laws and policy forced a change in State law or policy and thereby enlivens the FM Act compensation regime. However, without knowing the factual circumstances of such claim it is difficult to assess the viability of such argument.
90. If a compensation claim was made and the Tasmanian government was held liable to pay such compensation, it could then seek reimbursement/compensation from the Commonwealth pursuant to a compensation claim under the Tasmanian RFA (as referred to above) provided that:
    (a) the Tasmanian RFA remained in force; and
    (b) the Tasmanian government was able to satisfy the requirements for a compensation claim pursuant to cl 95.1 of the Tasmanian RFA. However, this potential compensation pathway involves significant risks and uncertainty as detailed above.
91. Thus, the argument is that in the event the Future 2027-2040 Wood Supply Contracts are entered into between STT and the 14 private sawmillers, then compensation could potentially be sought by the 14 private sawmillers from the Tasmanian government (and thus the Tasmanian taxpayer) pursuant to:
    (a) the Tasmanian RFA compensation regime; and/or
    (b) a private cause(s) of action for breach of contract, breach of statutory duty etc (discussed further below); and/or
    (c) the FM Act compensation regime.

**F.4 Compensation Payable for Breach of Future Wood Supply Contracts**

92. If STT enters into the Future 2027-2040 Wood Supply Contracts prior to the EPCA Act Reforms being finalised or without the Tasmanian government securing any guarantees or warranties from the Commonwealth to cover any compensation for breach of the Future 2027-2040 Wood Supply Contracts, then:
    (a) if the terms of such contracts provide for the standard conditions stipulated in the current *Forestry Fair Contract Code 2003,* then if the EPBC Act Reforms constrain the supply of logs under those contracts; or
    (b) if the terms of the Future 2027-2040 Wood Supply Contracts are similar to the Smithton Wood Supply Contract and the Huon Wood Supply Contract;

    there would likely be a cause of action for breach of contract against STT.
93. However, without more specific information as to the facts of such claim (i.e. beyond hypothetical and speculative scenarios) it is not possible to assess the prospects of success of such claim.

*Event of Force Majeure*

94. I am briefed to advise on whether the Tasmanian Government could, for example, rely on "a change in Law" if they are on notice about that change prior to entering into/renewing the contract.
95. If the terms of the Future 2027-2040 Wood Supply Contracts are similar to the Smithton Wood Supply Contract and the Huon Wood Supply Contract and there was a supply shortfall due to the EPBC Act Reforms and a breach of contract claim was made by a private sawmiller:
    (a) the Tasmanian government and/or STT could attempt to rely on the force majeure clause as comprising of a "change in Law" ((c)(v)) or, depending on what regulatory approach is adopted by the Commonwealth in relation to authorising logging, "*the effect direct/indirect of the exercise of executive power or discretion by the Commonwealth* ((c)(ix))".
    (b) however, given that the Tasmanian government and STT have been on notice since at least December 2025 of the uncertainty of future supply of logs caused by the EPBC Act Reforms, then it is unlikely that element (a) of a force majeure event, as defined in clause 1 of the contract, could be satisfied (i.e. that "*the event or the circumstance is beyond the reasonable control of the concerned Party and was not caused by the concerned Party's negligent act or omission*". This is discussed further below).
96. If STT claimed a force majeure event had occurred, pursuant to cl 20.7 the onus of proof of inability, including deemed inability, to carry out an obligation under the contract by reason of any

event of force majeure would rest upon STT.

97. The principles of contractual construction are not controversial and are settled.[48] The task is to determine what a reasonable person in the position of the parties would have understood the words of the contentious provision to mean, taking into account the contract as a whole and giving proper weight to the context in which the contract was made.[49] The proper construction of a contract including a force majeure provision is to be undertaken by reference to the text, context and purpose of the clauses in question.[50]

98. It is uncontroversial that the interpretation of commercial contracts by a court are subject to orthodox principles of construction. Such orthodox principles of construction were identified by Gibbs J in *Australian Broadcasting Commission v Australasian Performing Right Association Ltd*[51], where his Honour stated:

> It is trite law that the primary duty of a court in construing a written contract is to endeavour to discover the intention of the parties from the words of the instrument in which the contract is embodied. Of course the whole of the instrument has to be considered, since the meaning of any one part of it may be revealed by other parts, and the words of every clause must if possible be construed so as to render them all harmonious one with another. If the words used are unambiguous the court must give effect to them, notwithstanding that the result may appear capricious or unreasonable, and notwithstanding that it may be guessed or suspected that the parties intended something different. The court has no power to remake or amend a contract for the purpose of avoiding a result which is considered to be inconvenient or unjust. On the other hand, if the language is open to two constructions, that will be preferred which will avoid consequences which appear to be capricious, unreasonable, inconvenient or unjust, "even though the construction adopted is not the most obvious, or the most grammatically accurate", to use the words from earlier authority cited in *Locke v. Dunlop* (1888) 39 Ch D 387, at p 393, which, although spoken in relation to a will, are applicable to the construction of written instruments generally; see also *Bottomley's Case* (1880) 16 Ch D 681, at p 686 . Further, it will be permissible to depart from the ordinary meaning of the words of one provision so far as is necessary to avoid an inconsistency between that provision and the rest of the instrument. Finally, the statement of Lord Wright in *Hillas &Co. Ltd. v. Arcos Ltd*. (1932) 147 LT 503, at p 514 , that the court should construe commercial contracts "fairly and broadly, without being too astute or subtle in finding defects", should not, in my opinion, be understood as limited to documents drawn by businessmen for themselves and without legal assistance (cf. *Upper Hunter County District Council v. Australian Chilling and Freezing Co. Ltd*. (1968) 118 CLR 429, at p 437 ). (at p110)

99. The point of a force majeure clause is that it is designed to allocate the risk of an '*act of god*'

---

[48] *Yara Nipro Pty Ltd v Interfert Australia Pty Ltd* [2010] QCA 128 (***Yara Nipro***) at [27] (Fraser JA with whom Muir JA and Ann Lyons J agreed).

[49] Ibid.

[50] See, for example: *West End Landco Pty Ltd v Medina Property Services Pty Ltd* [2025] VSC 544 at [35] (Delany J).

[51] (1973) 129 CLR 99 at 109.

or similar event as between the parties.[52] In *World Touring Melbourne v Australian Grand Prix Corporation*[53], Croft J summarised the position concerning force majeure clauses:

> At common law, '*force majeure*' is not a term of art. The effect of such a clause depends in each case on the words used. The particular content of the concept of force majeure in a given case is determined requiring 'close to the words precede or follow it, with due regard to the nature and general terms of the contract'. It is not to be determined by reference to some generalised a *priori* concept of what *force majeure* means. In other words, as with any contractual provision, such a clause falls to be construed by reference to the text of the clause having due regard to the nature and general terms of the agreement.

100. Given its potential impact, a force majeure clause is often construed strictly[54] so that the parties are not excused from obligations imposed on them by the contract without a clear intention that this occur.[55] Furthermore, courts are reluctant to permit a counterparty to use a force majeure clause to avoid the ordinary commercial risk associated with the contract.[56]

101. As to issues of foreseeability of an Event of Force Majeure at the time a contract was made, as Underwood J (with whom Cox CJ and Wright J agreed) observed in *Asia Pacific Resources Pty Ltd v Forestry Tasmania (No 2)* (***Asia Pacific v Forestry Tasmania***):[57]

> Although it has been said that a party cannot invoke a force majeure clause in relation to circumstances which, to the knowledge of the party seeking to rely upon the clause, were in existence at the time the contract was made (*Safadi v Western Assurance Company* (1933) 46 Ll L Rep 140 at 143) more recent authority is to the effect that circumstances existing at the time the agreement is made may be relied upon to bring a party within the scope of a force majeure clause; it all depends on the proper construction of the clause in each case. See *Navrom v Callitsis Ship Management SA (The "Radauti")* [1988] 2 Lloyd's Rep 416 at 420. The expression used in the deed, 7.1 "... cause or causes beyond that party's reasonable control", or

---

[52] *North Queensland Pipeline No 1 Pty Ltd v QNI Resources Pty Ltd* [2021] QSC 190 at [174] (Freeburn J).

[53] [2024] VSC 521, at [204] (Croft J).

[54] Ibid, at [206].

[55] K Kariyawasam and R Palliyaarachchi, 'Importance of the Doctrines of Frustration and Force Majeure in light of COVID-19' (2021) 50 *Australian Bar Review* 370, 381.

[56] See generally: *Yara Nipro*.

[57] [1998] TASSC 50 (Cox CJ, Underwood and Wright JJ). This litigation involved a contractual agreement between the parties imposed an obligation upon the Forestry Tasmania to offer the appellant company (who was to build a sawmill at Bridgewater), within a specified time frame, an agreement to supply up to 90,000 tonnes per annum of flitch log material "meeting an agreed specification" would supply. The contract did not define a flitch log other than by describing it as being "a log which is not milling timber [defined by the deed] but which meets specifications agreed between the parties". Thus, the parties had to reach agreement with respect to the specifications of a flitch log before the respondent could offer the appellant a supply contract. Lying behind this whole proposal was the appellant's concept of using logs not suitable for milling and which hitherto had been pulped, by cutting from them flitches or slabs of timber suitable for milling. In this respect, the proposal was a novel one and Forestry Tasmania was keen to promote it, for it made better use of the State's timber resources. Ultimately, the private sawmiller failed to comply with the milestone deadlines in the contract and Forestry Tasmania terminated the contract. Asia Pacific sued in the Supreme Court of Tasmania including on the basis that an Event of Force Majeure had occurred. However, the trial judge dismissed the claim and the Court of Appeal dismissed the appeal.

words to the like effect, are common to most force majeure clauses. In *Steamship "Induna" Co Ltd v British Phosphate Commissioners* [1949] 2 KB 430, Sellers LJ held that a circumstance existing before the charterparty was entered into could be relied upon as a force majeure event where that circumstance was unknown to either party at the time of contracting. However, his Lordship went on to add at 437, "If both parties, or one of the parties, knew at the time of making the contract of existing circumstances which would or might occasion delay other considerations would arise ...". *Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food* [1962] 1 QB 42 confirmed the proposition that there is no settled rule of construction that prevents a party to a force majeure clause from relying on events in existence at the time the contract is entered into as events beyond that party's control. *Reardon Smith* was a case concerning a strike that was in existence at the time the parties contracted and there are statements in the judgments (Sellers LJ at 80; Willmer LJ at 111) to the effect that a strike is a peculiarly unpredictable event; a strike that exists when the contract is signed is quite likely to be at an end when performance is required and it cannot be said that a contract is doomed because a strike is in progress when the contract is signed. In *Trade and Transport Inc v Iino Kaiun Kaisha Ltd, The Angelia* [1973] 1 WLR 210, Kerr J held at 225 *et seq* that it is always a question of the proper interpretation in each case, but at 225, referred to *Reardon Smith* at 107, 108 and then said at 227 that ordinarily a party would be debarred from relying upon a pre-existing cause as an excepted peril.

102. There are many additional principles of interpretation of force majeure clauses which may be applicable depending upon the particular circumstances in which a claim is brought.[58]

103. It can be noted that the force majeure clause in the the Smithton Wood Supply Contract and the Huon Wood Supply Contract, namely clause 20.2, is relatively narrowly drafted such that:

> …a Party is deemed to be unable to carry out an obligation under and for the purposes of that Clause if, by reason of an Event of Force Majeure, the carrying out by the Party of the obligation would, more probably than not, involve the incurring of expense or the doing of some act or thing which would:
>
> (a) put seriously at risk; or
> (b) result in the failure of,
>
> the business of the Party as a going concern.

104. That is, not only must an Event of Force Majeure have occurred (or be claimed as to have occurred) but it must cause the incurring of expense in fulfilling the contractual obligation to the extent it would "*put seriously at risk…or…result in the failure of*"…the business of STT as a going concern.

105. Clauses 20.5(b) and 20.6(b) provide fairly generous flexibility for allowing for suspension or delay of the contractual obligations in an Event of Force Majeure. Clause 20.3 imposes an obligation on the other party (i.e. the private sawmiller) to cooperate with and assist

[58] See, for example: *Yara Nipro* at [42] and the cases cited therein.

the Concerned Party to ameliorate the effect of an event of Force Majeure, to the extent that:

(a) it is requested to do so; and

(b) is reasonable in the circumstances.

106. Furthermore, the definition of "an Event of Force Majeure" as contained in the authorities cited by Underwood J in the Tasmanian Court of Appeal in *Asia Pacific v Forestry Tasmania* are more nuanced in including the that the Event of Force Majeure is an event or circumstances:

(a) beyond the reasonable control of the concerned Party; and

(b) <u>was not cause by the concerned Party's negligent act or omission</u>.

107. That is, if STT claimed an Event of Force Majeure due to an inability to supply logs due to the EPBC Act Reforms, given STT has been on notice since December 2025 of the potential impact of those reforms on wood supply under a Future 2027-2040 Wood Supply Contract, if STT failed to accommodate such uncertainty within the terms of such contract, it could be argued that such conduct constitutes "a negligent act or omission" thereby scuttling a claim of an Event of Force Majeure.

108. In summary, while an Event of Force Majeure could always be relied upon and argued by STT in a hypothetical scenario of the EPBC Act Reforms causing a supply shortage in breach of a Future 2027-2040 Wood Supply Contract, the prospects of success of such argument, and/or assessment of same would only be possible and utile if the particular facts of such argument could be discerned.

*Supervening Illegality*

109. By way of another example of how a future wood supply contract might be validly terminated by STT if such contract becomes impossible to perform because of a change in federal law (which makes the supply of timber unlawful under the contract) is the principle of supervening illegality. At common law, supervening illegality is a change to the law that arises after the formation of a contract and that renders the future performance of a contract unlawful. Supervening illegality is a defence to non-performance of the contract.[59] In some

[59] *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd* [2024] FCA 43; 171 ACSR 556 at [357] (O'Bryan J) citing *Gerraty v McGavin* (1914) 18 CLR 152; *Cooper & Sons v Neilson and Maxwell Ltd* [1919] VLR 66 at 76 (Cussen J, Hodges and Hood JJ agreeing).

circumstances, supervening illegality may have the same terminating effect as frustration.[60]

110. However, there may be issues of reasonable foreseeability of an event of supervening illegality (i.e. the EPBC Act Reforms making wood supply effectively illegal), and in any event, the private sawmillers would have other causes of action they could pursue (depending on the circumstances) including as referred to in this advice.

*Reliance Damages*

111. It is also worth noting that circumstances where allegations of breach of contract are made good, "reliance damages" (i.e. for preparatory/anticipatory expenditure by the sawmillers) may also be available and can be extensive (depending of course on the relevant expenditures claimed) as illustrated in the decision of *Commonwealth v Amann Aviation Pty Ltd* (1992) 174 CLR 64; [1991] HCA 54.

## G. THE VICTORIAN SITUATION

112. I am instructed that recent events in Victoria in relation to the *Forests (Wood Pulp Agreement) Act 1996* (Vic) (the **Wood Pulp Agreement**) may be seen as a cautionary tale as to what might transpire in Tasmania should STT enter into Future 2027-2040 Wood Supply Contracts prior to there being supply certainty following the EPBC Act Reforms.

113. The State of Victoria entered into the Wood Pulp Agreement in May 1996 with Amcor Limited. The Wood Pulp Agreement was ratified by the *Forests (Wood Pulp Agreement) Act 1996* (Vic) and a copy of it is the schedule to that Act. In September 1998, Amcor assigned its rights under the Wood Pulp Agreement to Paper Australia Pty Ltd (trading as **Opal**), a subsidiary of Japanese-owned paper manufacturer, Nippon Paper Group. Under the Agreement, timber was supplied to Maryvale Mill in the Latrobe Valley, operated by Opal.

114. In 2023, the Wood Pulp Agreement guaranteed the supply of 265,000 cubic metres of predominantly Mountain Ash timber to the Maryvale Mill and allowed Victoria's native forests to be pulped for low value products like cardboard boxes and packaging products until 2030.

115. During the Black Summer bushfires in 2019/2020, approximately 1.3 million hectares of public native forest was burnt in Victoria alone in 2019/20 which compounded two decades of increasingly frequent and severe bushfires - since 1996 half of the forest area designated for

---

[60] Ibid, citing *Denny, Mott & Dickson Ltd v James B Fraser & Co Ltd* [1944] AC 265; see also *Cheshire & Fifoot, Law of Contract* (12th Aust Ed, 2023) at [19.15]; JW Carter, *Contract Law in Australia* (8th Ed, 2023) at [33-22]; *Heydon on Contract* (1st Ed, 2019) at [23.120]; *Chitty on Contracts* (35th Ed, 2023) at [27-096].

the contract burnt and 40% of the forests intended to supply the contract were logged.

116. VicForests was unable to meet the supply guaranteed under the Wood Pulp Agreement even before the 2019/20 fires requiring compensation to be paid to Opal for failing to meet supply, which added to the financial issues for VicForests in consistently failing to return a profit to the State from its vast native forest logging operations.

117. In May 2023, the Andrews Government announced the end of native forest logging on public land in Victoria which took effect on 1 January 2024.

118. In September 2025, Opal filed proceedings against the State of Victoria (for whom VicForest acted as the State's agent in respect of the Wood Pulp Agreement) in the Supreme Court of Victoria for loss and damage resulting from:

(a) breach and repudiation of the Wood Pulp Agreement, namely cl 14(2) which guaranteed a minimum supply of 350,000 cubic metres of pulpwood in each of FY23 to FY30 (inclusive);

(b) in the alternative, breach of statutory duty, namely s 5(1) of the *Forest (Wood Pulp Agreement) Act 1996* (Vic) which is alleged to have imposed a duty on the State to comply with the terms of the Wood Pulp Agreement.

119. This proceeding is ongoing in the Supreme Court of Victoria and listed for mediation in April and a Directions Hearing in May.

120. Notwithstanding the jurisdictional and factual distinctions between what might happen in Tasmania and what has occurred in Tasmania, the Opal Victorian Litigation certainly provides a cautionary tale especially in circumstances where Minister Ellis has publicly asserted and/or acknowledged that "*it cost $1.5 billion already to shut down the Victorian native forest sector.*"[61]

## H. OTHER POSSIBLE LITIGIOUS RISKS FOR STT, THE STATE & MINISTERS

121. There may be other risks of exposure to liability for STT, its officers and the relevant (shareholding Ministers) if STT prematurely enters into any Future 2027-2040 Wood Supply

[61] Parliament of Tasmania, House of Assembly, Government Business Scrutiny Committee, Thursday 27 November 2025, pp 31-32.

Contracts with private sawmillers, without sufficient contractual accommodations[62] (such as guarantees and indemnities stipulated in the contract or the Tasmanian government securing relevant guarantees/indemnities from the Commonwealth in the event of short supply arising from the EPBC Act Reforms). Depending on the particular future factual circumstances of a Future 2027-2040 Wood Supply Contract being entered into by STT and a private sawmiller and whether there occurs a supply failure or supply shortfall by STT, there may be other causes of action that the private sawmiller could rely on including:

(a) unconscionable conduct;[63]

(b) misleading and deceptive conduct (especially given public representations made to date);[64]

(c) other tortious claims for pure economic loss against the relevant Ministers and/or officers of STT as well as STT and the State of Tasmania for example:

   (i) negligence;[65]

   (ii) breach of statutory duty;[66]

   (iii) misfeasance in public office.[67]

122. However, the possibility and prospects of such claims would depend upon the particular material facts that occur to precipitate such causes of action. Without knowing those particular facts it is not possible to advise whether any such claims are viable and, if they are, to provide an assessment of prospects.

123. Previous litigation in the Supreme Court of Tasmania and the Tasmanian Court of Appeal is also instructive. That litigation is summarised in the decision of Einfeld J in the Federal Court of Australia

---

[62] Notably any such contractual accommodations expressly referring to the uncertainty of supply of logs due to the EPBC Act Reforms are not provided for in the standard conditions stipulated in the current *Forestry Fair Contract Code 2003* and thus a new Code would need to be prepared in accordance with the provisions of the *Forestry (Fair Contract Codes) Act 2001*.

[63] Pursuant to the unwritten law and s 19 of the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

[64] Pursuant to s 18 of the ACL.

[65] See, for example: *Mallonland Pty Ltd v Advanta Seeds Pty Ltd* (2024) 98 ALJR 956; [2024] HCA 25.

[66] As per the Opal litigation against the State of Victoria the relevant statutory duty in Tasmania might arguably the wood supply requirement pursuant to s 16 of the FM Act. The relevant principles pertaining to an action of breach of statutory duty are set out in *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410; [1995] HCA 24 at [16] (Brennan CJ, Dawson and Toohey JJ).

[67] For elements of misfeasance in public office see: *Brett Cattle Company Pty Ltd v Minister for Agriculture* (2020) 274 FCR 337; [2020] FCA 732 at [269]-[284] (Rares J).

considering an application for strike out (which was ultimately refused): *HECEC Australia Pty Ltd v Hydro-Electric Corp* [1999] FCA 822.

124. In that case, the Applicant, HECEC Australia Pty Ltd was a provider of engineering and management services to the power, water and environmental protection industries in Australia and overseas. HECEC sued the Hydro-Electric Corporation (the HEC), a public enterprise constituted under Tasmanian legislation to generate, transmit, distribute and sell electricity in that State, three other Tasmanian representative parties (the Premier, who was also the Treasurer, the Minister for Energy and the State itself), and two new State-owned corporations, Aurora Energy Pty Ltd (Aurora) and Transend Networks Pty Ltd (Transend), (together, unless otherwise obvious or stated, the Tasmanian parties), under the *Trade Practices Act 1974* (Cth) and in law and equity for damages, injunctions and declaratory and other relief. The lawsuit was premised upon the removal of exclusivity of its licences due to the then Government's decision to corporatise and disaggregate various elements of the electricity industry in that State and to pass a volume of legislation to achieve that result, namely, the Electricity Companies Bill (EC Bill).

125. The strike out application was dismissed by Einfield J and it does not appear that the litigation proceeded to a final hearing. However, it does provide an instructive answer to TWS Tas's queries whether it would be legally correct to say that entering into timber supply contracts now may expose the Tasmanian Government to the following risks if, after the relevant federal environment laws come into effect, it is unable to fulfill its supply obligations due to lack of timber availability.

126. That is, if the hypothetical scenario provided by TWS Tas was to occur, then it would certainly be possible for any private sawmillers who entered into a Future 2027-2040 Wood Supply Contract with STT, to sue STT, the State of Tasmania, and possibly the relevant Ministers for damages if they suffered loss and damage as a result of a shortfall of wood supply. However, the prospects of success of such legal action cannot be assessed without knowing the factual circumstances of such a suit.

127. Regardless of the prospects of success of any claim for compensation brought by the private sawmillers in relation to STT's inability to provide the required supply of logs under a Future 2027-2040 Wood Supply Contracts, the mere bringing of such claim(s) will subject the Tasmanian government to incurring legal fees and devoting resources to such litigation or arbitration.

## I. CONCLUSION

128. A summary of my advice is provided in the Executive Summary at Part B above.

Please let me know if you would like to discuss further.

I so advise.

Benedict Coyne

Aspect Chambers