



# **THE FORESTS BILL 2004**





## **THE FORESTS BILL 2004**

**A**

**BILL**

**Entitled**

AN ACT TO PROVIDE FOR THE CONSERVATION AND PROTECTION OF FORESTS AND THE IMPROVED MANAGEMENT OF FOREST RESOURCES, TO CONTROL THE HARVESTING OF TIMBER, TO ENCOURAGE AND FACILITATE SUSTAINABLE FORESTRY ACTIVITIES, THE ESTABLISHMENT OF PLANTATIONS AND DOMESTIC PROCESSING OF TIMBER AND TO REPEAL THE FOREST RESOURCES AND TIMBER UTILISATION ACT (CAP 40) AND THE FORESTS ACT 1999, AND FOR RELATED PURPOSES.

ENACTED by the National Parliament of Solomon Islands.

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## PART 1 – PRELIMINARY

**Short title**

1. This Act may be cited as the Forests Act 2004.

**Interpretation**

2. (1) In this Act, unless the contrary intention appears –

"approved map" means –

- (a) a topographic or survey map issued by the Department of Lands and Survey of a scale of 1:50,000 or a scale that shows more detail (for example, a scale of 1:20,000 or 1:10,000); or
- (b) a copy of a map referred to in paragraph (a);

"clearing" means an activity which results in at least half the total basal area of trees growing in an area of forested land being felled or destroyed;

"code of logging practice" means a code of logging practice prescribed under section 29(2);

"code of practice" means a code of practice prescribed under section 29(1);

"commercial harvesting licence" means a licence granted under Division 4 of Part 6;

"Commissioner" means the Commissioner of Forests appointed under section 7 or the Deputy Commissioner when acting as the Commissioner;

(Cap 133)

"Commissioner of Lands" means the Commissioner with in the meaning of the Land and Titles Act;

(Cap 133)

"customary land" has the same meaning as in the Land and Titles Act;

(Cap 132)

"customary land holding group" has the same meaning as in the Customary Land Records Act;

"customary owner" means a member of a customary land holding group;

“customary representative”, in relation to a customary land holding group, means a person appointed, in accordance with the customs of the group, to represent the group in dealings about the customary land owned by the group;

“Deputy Commissioner” means the Deputy Commissioner appointed under section 8;

“determination of permitted forest uses”, in relation to an area of forested land, means a determination made under section 27 setting out the forestry uses that are permitted in the area;

“determined value”, in relation to timber, means the value of timber determined under section 89;

“draft statement of customary ownership” means a statement of customary ownership that has not been endorsed under section 54;

“dwelling-house” means a premises or part of a premises that is used exclusively as a domestic residence;

“foreign investor” has the same meaning as in the Investment Act;

(Cap 142)

“forest access agreement” means an agreement entered into under Division 3 of Part 6 between the owner of an area of natural forest and another person for the purpose of allowing the other person to carry out forestry activities and forestry related activities in the area;

“forest officer” means a forest officer appointed under section 17;

“forested land” means an area of land predominantly covered by trees other than trees planted for agricultural purposes;

“forestry activities” means any one or more of the following activities:

- (a) cultivating a seed, seedling, plant, or tree;
- (b) seeding or planting trees;
- (c) tending trees;
- (d) cutting, trimming, lopping, topping or cropping trees;
- (e) harvesting timber;
- (f) an activity referred to in section 33(b);

“forestry related activities”, in relation to a forestry activity, means activities that are reasonably necessary for carrying out the forestry activity, and includes any one or more of the following:

- (a) entering on or occupying forested land;
- (b) inspecting, surveying or mapping areas;
- (c) enumerating or marking of trees;
- (d) obtaining access to, and removing, timber that has been harvested;
- (e) taking and using water;
- (f) carrying out road works or earthworks and constructing water crossings;
- (g) constructing, maintaining and using facilities relating to harvesting timber or carrying out other related operations;
- (h) extracting, removing, using materials for the activities referred to in paragraphs (f) and (g);

“harvesting timber” means cutting or felling trees or taking the wood of fallen or felled trees;

“licence” means a local harvesting licence or a commercial harvesting licence;

“licensee” means the holder of a licence;

“log” means a length of round wood that has been derived from the stem of a felled tree and that is suitable for commercial sale or use;

“local harvesting licence” means a licence granted under Part 5;

“merchantable species of tree” means a species of tree for which there is a market for logs or processed timber of that species;

“national forest policy statement” means a national forest policy statement made under section 25;

“natural forest” means forested land which is not a timber plantation;

“objection” means an objection to a draft statement of customary ownership made to a Local Court under section 50(2);

“performance bond” means a bond required under Division 6 of Part 6;

“permittee” means the holder of a permit;

“permit” means a permit granted under Part 10 or 11;

“premises” means –

- (a) an area of land or water; or
- (b) a building or a part of a building;

“prescribed” means prescribed by a regulation made under this Act;

“prescribed fee” means a fee prescribed by the Minister under section 119;

“processed timber” means timber that has been processed in any way (for example, sawn timber, wood particles, wood pulp, veneer and firewood), but does not include timber that has only been stripped of sapwood or bark, has only been roughly squared or has a cross sectional area exceeding 900 square centimetres;

"provincial forest policy statement", in relation to a province, means a provincial forest policy statement made under section 26 for the province;

"provincial forestry officer", in relation to a province, means the provincial forestry officer appointed for the province under section 12 or the Commissioner when he is the provincial forestry officer for a province under section 13;

(Cap 133)

"public land" has the same meaning as in the Land and Titles Act;

(Cap 133)

"registered land" means land or an interest in land registered under the Land and Titles Act, but does not include any public land registered under that Act;

"registered owner" means –

(Cap 133)

- (a) in relation to an interest in registered land, the person in whose name the interest is registered under the Land and Titles Act; or
- (b) in relation to public land (including registered public land), the Commissioner of Lands;

"relevant Provincial Assembly", in relation to a province, means the Provincial Assembly, within the meaning of section 7 of the Provincial Government Act 1997, for the province;

"relevant provincial government", in relation to an area of land, means the Provincial Executive, within the meaning of section 19 of the Provincial Government Act 1997, with jurisdiction over the land;

"relevant provincial secretary", in relation to a province, means the provincial government officer who is responsible for forested land and the conduct of forestry activities in the province;

"scaling" means measuring, classifying, grading, marking and recording timber;

"statement of customary ownership" means a statement of customary ownership completed and endorsed in accordance with Division 2 of Part 6;

"tending trees" means an activity carried out for growing trees and promoting and improving the yield of merchantable species of trees, including (but not limited to) thinning, pruning, fertilising and protecting trees from weeds, fire, disease and parasites;

"timber" means trees, whether dead, alive, fallen, felled, cut up, shaped or hollowed out;

"timber plantation" means an area of forested land on which the trees are predominantly trees that have been planted for the purpose of being harvested for timber;

"total basal area", in relation to an area, means the sum of the measurement of the cross-section across the stem of each tree in the area measured at 1.3 metres above the ground;

"tree" includes a seedling, sapling and pole;

"vehicle" means any form of conveyance on land or sea or by air, whether self-propelled or not, including (but not limited to) a trailer, caravan, pontoon or raft.

(2) A reference in this Act to a prescribed condition of a forest access agreement or licence is a reference to a condition prescribed by the regulations that is specified in the forest access agreement or on the licence.

3. The objects of this Act are –

(a) to conserve and protect natural forests;

Objects

- (b) to ensure that forest resources are used for the benefit of the people of Solomon Islands;
- (c) to promote and encourage sustainable forestry activities;
- (d) to provide for proper management and control of forestry activities and forestry related activities conducted in Solomon Islands;
- (e) to encourage participation by provincial authorities in the management of the forests in their provinces by transferring functions to them;
- (f) to encourage the establishment and proper management of timber plantations; and
- (g) to encourage domestic processing of timber.

Administration  
of Act

4. This Act shall be administered in a manner that has regard to –

- (a) the objects set out in section 3;
- (b) the Government's obligations arising under international treaties, conventions or other international agreements or instruments relating to forests and forestry resources to which Solomon Islands is a party; and
- (c) the rights of customary owners in relation to customary land.

Act binds Crown

5. This Act binds the Crown.



## PART 2 – ADMINISTRATION

### *Division 1 – Commissioner of Forests*

6. (1) There is a Commissioner of Forests.

Commissioner of  
Forests

(2) The Commissioner is a public officer.

(3) The Commissioner is responsible to the Minister for the administration of this Act and subsidiary legislation made under this Act.

7. (1) The Public Service Commission shall, in writing, appoint a person to be the Commissioner in accordance with the Public Service Regulations and General Orders.

Appointment of  
Commissioner

(2) The Public Service Commission shall not appoint a person to be the Commissioner unless it is satisfied that the person holds suitable qualifications, or has suitable knowledge and experience, relating to forestry that will enable him to carry out the functions of the Commissioner.

8. (1) The Public Service Commission shall, in writing, appoint a person to be the Deputy Commissioner in accordance with the Public Service Regulations and General Orders.

Deputy  
Commissioner

(2) The Deputy Commissioner is a public officer.

(3) The Public Service Commission shall not appoint a person to be the Deputy Commissioner unless it is satisfied that the person holds suitable qualifications, or has suitable knowledge and experience, relating to forestry that will enable him to carry out the functions of the Deputy Commissioner.

(4) Subject to subsections (5) and (6), the functions of the Deputy Commissioner are –

- (a) to assist the Commissioner in carrying out his functions under this Act;
- (b) if the Commissioner is absent from duty or Solomon Islands, or is otherwise unable or unavailable to exercise his powers or perform his

functions, to act as the Commissioner temporarily in his place; and

- (c) if there is a vacancy in the office of Commissioner, to act as the Commissioner temporarily while the office is vacant.

(5) In performing his function under subsection (4)(a), the Deputy Commissioner is subject to the direction of the Commissioner.

(6) The Deputy Commissioner shall not act continuously as the Commissioner under subsection (4)(c) for more than 12 months.

**Functions of  
Commissioner**

- 9.** (1) The functions of the Commissioner are to –
- (a) administer this Act and subsidiary legislation made under this in accordance with the objects set out in section 3;
  - (b) ensure all forested land is properly managed in a manner that is in the best interests of the people and communities of Solomon Islands;
  - (c) advise the Minister on matters concerning forests and forestry resources of Solomon Islands;
  - (d) monitor and review the Government's obligations arising under international treaties, conventions or other international agreements or instruments relating to forests and forestry resources to which Solomon Islands is a party and advise and make recommendations to the Minister about those obligations;
  - (e) train and manage forest officers;
  - (f) set up and administer assistance programmes for supporting small-scale forestry activities; and
  - (g) keep a copy of each of the following documents:
    - (i) the national forest policy statement;
    - (ii) the provincial forest policy statement for each province;
    - (iii) each determination of permitted forest uses;
    - (iv) each statement of customary ownership.

(2) The Commissioner has any other functions imposed on the Commissioner under this or any other Act.

10. The Commissioner has power to do all things that are necessary or convenient to be done for or incidental to the proper performance of his functions.

Powers of  
Commissioner

11. (1) Subject to subsection (2), the Commissioner may, in writing, delegate any of his powers and functions under this Act.

Delegation by  
Commissioner

(2) The Commissioner shall not delegate –

- (a) his power to grant or cancel licences or permits under this Act; or
- (b) his power of delegation.

(3) A delegation of a power or function under subsection (1) does not prevent the exercise of the power or performance of the function by the Commissioner.

(4) A power or function delegated under this section is, when exercised or performed by the delegate, taken to be exercised or performed by the Commissioner.

### *Division 2 – Provincial forestry officers*

12. (1) Subject to subsection (3) and section 13, the Public Service Commission shall, for each province, appoint a person to be the provincial forestry officer for the province.

Appointment of  
provincial forestry  
officers

(2) A provincial forestry officer is a public officer.

(3) The Public Service Commission shall not appoint a person to be a provincial forestry officer unless it is satisfied that the person holds suitable qualifications, or has suitable knowledge and experience, relating to forestry that will enable him to carry out the functions of provincial forestry officer.

(4) Before appointing a provincial forestry officer, the Public Service Commission shall consult with the Commissioner.

(5) A provincial forestry officer is responsible to the Commissioner for the administration of this Act and subsidiary legislation made under this Act in the province.

Circumstances  
where  
Commissioner acts  
as provincial  
forestry officer

13. (1) If, in the opinion of the Commissioner, a province does not have a forestry industry of sufficient scale to justify the appointment of a provincial forestry officer for the province, the Commissioner shall consult with the relevant provincial government about whether a provincial forestry officer should be appointed.

(2) After consulting with the relevant provincial government, the Commissioner may decide to advise the Public Service Commission not to appoint a provincial forestry officer for the province.

(3) If the Public Service Commission does not appoint a provincial forestry officer for a province, the Commissioner is the provincial forestry officer for the province until the Commissioner advises the Public Service Commission that the province does have a forestry industry of sufficient scale to justify the appointment of another person as the provincial forestry officer for the province and the Public Service Commission appoints a provincial forestry officer for the province.

Functions of  
provincial forestry  
officers

14. (1) The functions of a provincial forestry officer are to –

- (a) assist the Commissioner in performing his functions under this Act in the province;
- (b) make recommendations to the Commissioner on determinations of permitted forest uses;
- (c) advise and liaise with the relevant provincial government regarding forests and forest resources, and the conduct of forestry activities and forestry related activities, in the province;
- (d) manage and direct forest officers carrying out functions in the province;
- (e) make reports to the Commissioner;
- (f) keep a copy of all of the following documents:
  - (i) the national forest policy statement;
  - (ii) the provincial forest policy statement for the province;

- (iii) each determination of permitted forest use that relates to the province;
  - (iv) each statement of customary ownership that relates to the province; and
- (g) carry out any other functions imposed on the provincial forestry officer under this Act.

(2) In performing his functions, the provincial forestry officer is subject to the direction of the Commissioner.

**15.** A provincial forestry officer has power to do all things that are necessary or convenient to be done for or incidental to the proper performance of his functions.

**Powers of provincial forestry officer**

**16.** (1) Each provincial forestry officer shall, by 1 March in each year, report to the Commissioner about forests and forestry resources in the province.

**Annual reports by provincial forestry officers on forestry resources of provinces**

- (2) The report shall –
- (a) contain the provincial forest policy statement for the province;
  - (b) specify the measures taken during the year to manage, conserve and protect natural forests and timber plantations in the province; and
  - (c) make recommendations relating to appropriate measures to be implemented in the province –
    - (i) to ensure compliance with this Act and subsidiary legislation made under this Act;
    - (ii) to manage the conduct of forestry activities and forestry related activities in the province;
    - (iii) to encourage the establishment and proper management of timber plantations in the province;
    - (iv) to conserve and manage forested land in the province; and
    - (v) to encourage and manage domestic timber processing activities in the province.

(3) On receiving the reports from the provincial forestry officers, the Commissioner shall incorporate the reports to form one consolidated annual report on forest resources in the provinces.

(4) The Commissioner shall, within one month after receiving the reports under subsection (3), give a copy of the consolidated report to the Minister.

(5) The Minister shall lay the report before Parliament at the meeting of Parliament immediately following his receipt of the report.

### *Division 3 – Forest officers*

**Appointment of  
forest officers**

17. (1) The Commissioner is a forest officer.

(2) The Deputy Commissioner is a forest officer.

(3) A provincial forestry officer is a forest officer.

(4) A police officer is a forest officer.

(5) The Public Service Commission may, in writing, appoint other persons to be forest officers in accordance with the Public Service Regulations and General Orders.

(6) In appointing persons to be forest officers under subsection (5), the Public Service Commission may appoint the number of forest officers that it considers appropriate for the proper administration of this Act and subsidiary legislation made under this Act.

(7) Before appointing a forest officer, the Public Service Commission shall consult with the Commissioner.

(8) A forest officer is a public officer.

**Functions of forest  
officers**

18. (1) The functions of a forest officer are to –

(a) ensure that this Act and subsidiary legislation made under this Act are not contravened; and

(b) if the forest officer is a forest officer appointed by or

under section 17(2), (3) or (5), assist the Commissioner in administering this Act and subsidiary legislation made under this Act.

(2) In performing his functions, a forest officer appointed by or under section 17(2), (3) or (5) is subject to the direction of the Commissioner.

**19.** (1) Subject to subsection (2), a forest officer may, at any time, enter forested land for the purpose of exercising his powers and performing his functions.

**Powers of entry  
and search of forest  
officers**

(2) If a forest officer suspects on reasonable grounds that an offence has been committed, is being committed or is likely to be committed against this Act or subsidiary legislation made under this Act, a forest officer may with the assistance he thinks is necessary –

- (a) subject to paragraph (b), at any hour, and with the force that is necessary and reasonable, enter or board and remain on premises or a vehicle in or on which he believes on reasonable grounds there may be evidence of, or which he believes on reasonable grounds otherwise relates to, the offence and inspect or search the premises or vehicle;
- (b) at all reasonable hours and with the force that is necessary and reasonable, enter and remain in a dwelling-house in which he believes on reasonable grounds there may be evidence of, or which he believes on reasonable grounds otherwise relates to, the offence and inspect or search the dwelling house;
- (c) require a person in charge of a vehicle in or on which he believes on reasonable grounds there may be evidence of, or which he believes on reasonable grounds otherwise relates to, the offence to stop the vehicle, bring it to a place in Solomon Islands and to remain in control of it at that place until a forest officer permits him to depart from that place;
- (d) inspect any timber harvested, or which the forest officer suspects on reasonable grounds has been harvested, in Solomon Islands that is in or on premises or a vehicle;
- (e) require a person in or on premises or a vehicle who is doing an act for which a licence or permit is required to produce the licence or permit authorising the act; or

- (f) take any other action that is necessary and reasonable to prevent the commission of the offence.

(3) A forest officer who enters or boards premises or a vehicle pursuant to subsection (2) may –

- (a) with the force that is necessary and reasonable, open and search a cupboard, drawer, chest, trunk, box, cage, package or other receptacle, whether a fixture or not;
- (b) ask a person in or on the premises or vehicle questions about the conduct of forestry activities and forestry related activities in or on the premises or vehicle or about timber in or on the premises or vehicle;
- (c) examine, inspect, make inquiries about or take samples of the premises or vehicle, or a thing in or on the premises or vehicle, which he believes on reasonable grounds to be evidence of or otherwise relates to the offence;
- (d) inspect any document in or on the premises or vehicle which he believes on reasonable grounds is evidence of or otherwise relates to the offence;
- (e) require a person to produce a logbook, shipping record, scaling sheet or other record or document required to be kept under this Act that is in the person's possession or for which the person is responsible;
- (f) take copies of or extracts from a licence, permit or document referred to in paragraph (d) or (e); or
- (g) seize, remove and detain, in accordance with Division 4, any thing (for example timber, tools, machinery, equipment, plant or a vehicle in or on the premises or vehicle) that the forest officer believes on reasonable grounds is evidence of or otherwise relates to the offence.

Offences relating to  
obstruction etc. of  
forest officer

20. A person commits an offence if the person –

- (a) refuses or fails to comply with a request or requirement of a forest officer;
- (b) gives an answer to a question asked by a forest officer that is false or misleading in a material particular;
- (c) hinders or obstructs a forest officer in the proper performance of his functions; or



- (d) uses abusive, threatening or insulting language to a forest officer while he is performing his functions.

Penalty: \$50,000 or imprisonment for 12 months or both.

**21.** A person who falsely represents, by words or conduct, that he is a forest officer commits an offence.

Person not to hold himself out as forest officer

Penalty: \$50,000 or imprisonment for 12 months or both.

***Division 4 – Seizure, forfeiture and disposal of seized things***

**22.** If a forest officer seizes a thing under section 19(3)(g), the forest officer or another forest officer shall –

Forest officer's duties in relation to seized thing

- (a) mark the item in such a way that identifies the place and person from whom it was seized;
- (b) give the person apparently in charge of the thing at the time it was seized notice in writing specifying –
- (i) the thing seized;
  - (ii) the date and time of seizure;
  - (iii) the reason for its seizure;
  - (iv) the name of the forest officer who seized the thing; and
  - (v) the place where the thing will be kept for safekeeping; and
- (c) as soon as practicable deliver the thing into the custody of the Commissioner and place the item in the place specified under paragraph (b)(v) for its safekeeping.

**23.** (1) The Commissioner may retain in his possession or under his control a thing delivered to him under section 22 until the institution of proceedings for an offence against this Act or subsidiary legislation made under this Act in relation to the thing and, if necessary, during the proceedings.

Detention and release of seized thing

(2) The Commissioner shall, by notice in writing, invite the person from whom the thing was seized, or another person appearing to the Commissioner to be the owner of or have an interest in the thing, to claim delivery of the thing to him if –

- (a) no proceedings are instituted for an offence relating to the thing; or
- (b) proceedings instituted have ended and the court did not make an order forfeiting the thing.

(3) If the person wishes to make a claim for the delivery of the thing to him, he shall do so within 3 months after the date of the notice.

(4) If the person makes a claim for the delivery of the thing seized, the Commissioner shall deliver the thing into the custody of the person.

**Forfeiture and  
disposal of seized  
thing**

**24.** (1) If no claim for delivery of a thing is made under section 23, the thing is forfeited to the Government.

(2) The Commissioner may sell, destroy or otherwise dispose of a thing forfeited under subsection (1) in the manner he considers appropriate.

(3) Subject to subsection (4), the proceeds of any sale under subsection (2) shall be paid into the Consolidated Fund.

(4) If the Commissioner sells a thing that was seized on customary land, he shall, subject to subsection (5), distribute the proceeds of the sale (less any unpaid taxes, duties, levies, fees or other charges payable to the Government or relevant provincial government in relation to the conduct of forestry activities on the customary land and the amount of costs incurred by the Commissioner in relation to the seizure and detention of the thing) to the customary owners belonging to the customary land holding group owning the land.

(5) The Commissioner shall not distribute any proceeds to a customary owner who is convicted of the offence relating to the thing.

### **PART 3 –PLANNING FOR USE OF FORESTRY RESOURCES**

**National forest  
policy statement**

**25.** (1) There is a national forest policy statement.

(2) The purpose of the national forest policy statement is to set out strategies for conserving, protecting and developing forest resources in Solomon Islands.

(3) On the commencement of this Act, the national forest policy made on 13 March 2003 is taken to be, and this Act applies to it and it shall be dealt with under this Act as if it were, the national forest policy statement.

(4) The Minister shall review the national forest policy statement not less than 5 years after the commencement of this Act and thereafter not less than 5 years after it was last reviewed.

(5) After reviewing the national forest policy statement, the Minister shall, with the approval of Cabinet –

- (a) confirm that the national forest policy statement remains in force without variation;
- (b) vary the national forest policy statement; or
- (c) revoke the national forest policy statement and make a replacement national forest policy statement.

(6) The Minister's confirmation or variation of the national forest policy statement, or revocation and making of a replacement national forest policy statement, shall be by notice in writing.

(7) The Minister shall –

- (a) publish notice of the confirmation or variation of the national forest policy, or the replacement national forest policy, (as the case may require) in a newspaper circulating nationally;
- (b) give a copy of the confirmation or variation, or the replacement national forest policy, to each relevant provincial secretary; and
- (c) lay the confirmation or variation, or the replacement national forest policy, before Parliament at the meeting of Parliament immediately after the review.

**26.** (1) The relevant provincial secretary shall, within 3 months after the commencement of this Act, make a provincial forest policy statement for the province setting out strategies for conserving, protecting and developing forest resources in the province.

**Provincial forest  
policy statement**

(2) The provincial forest policy statement shall be –

- (a) in writing; and

(b) consistent with the national forest policy statement.

(3) The relevant provincial government shall approve the provincial forest policy statement before it is made.

(4) After making the provincial forest policy statement, the relevant provincial secretary shall –

- (a) publish notice of the making of the provincial forest policy in a newspaper circulating nationally;
- (b) give a copy of the provincial forest policy to the Minister and to the Commissioner; and
- (c) lay a copy of the provincial forest policy before the Provincial Assembly at its first meeting after the provincial forest policy is made.

(5) The relevant provincial secretary shall review the provincial forest policy statement not less than 5 years after the commencement of this Act and thereafter not less than 5 years after it was last reviewed.

(6) After reviewing the provincial forest policy statement, the relevant provincial secretary shall, with the approval of the relevant provincial government –

- (a) confirm that the provincial forest policy statement remains in force without variation;
- (b) vary the provincial forest policy statement; or
- (c) revoke the provincial forest policy statement reviewed and make a replacement provincial forest policy statement.

(7) The relevant provincial secretary's confirmation or variation of the provincial forest policy statement, or revocation and making of a replacement provincial forest policy statement shall be –

- (a) by notice in writing; and
- (b) consistent with the national forest policy statement.

(8) The relevant provincial secretary shall –

- (a) publish notice of the confirmation or variation of the provincial forest policy, or the replacement provincial forest policy, (as the case may require) in a newspaper circulating nationally;

- (b) give a copy of the confirmation or variation, or the replacement provincial forest policy, to the Minister and to the Commissioner; and
- (c) lay a copy of the confirmation or variation, or the replacement provincial forest policy, before the Provincial Assembly at its first meeting after the review.

27. (1) Before a licence may be granted in respect of an area of forested land, there shall be a determination of permitted forest uses in force in respect of the area of forested land.

Determination of  
permitted forest  
uses

(2) If there is no determination of permitted forest uses in force in respect of an area of forested land, a registered owner of land which includes the area of forested land, a customary owner of customary land which includes the area of forested land or a customary representative in respect of customary land which includes the area of forested land may apply to the Commissioner for a determination of permitted forest uses for the area of forested land.

(3) The application shall be –

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee (if any).

(4) The area of forested land referred to in subsection (2) shall not be a timber plantation.

(5) The applicant shall make the application by lodging it with the provincial forestry officer for the province where the forested land is located.

(6) The provincial forestry officer shall, as soon as after receiving the application under subsection (5) –

- (a) send a copy of the application to the relevant provincial secretary; and
- (b) send the application to the Commissioner together with his comments and recommendations regarding the environment and the conduct of forestry activities and forestry related activities in the area of forested land referred to in the application, and any other matter he considers relevant.

(7) The relevant provincial secretary shall, as soon as practicable after receiving the application from the provincial forestry officer, send comments to the Commissioner regarding the policy of the relevant provincial government in relation to the determination of permitted forestry uses applied for.

(8) Subject to section 28, the Commissioner shall, within one month after receiving the application, consider and take into account the comments and recommendations of the provincial forestry officer and the relevant provincial secretary and make a determination of permitted forest uses for the forested land referred to in the application.

(9) The Commissioner shall give a copy of the determination to the applicant and the relevant provincial secretary as soon as practicable after making the determination.

(10) In this section –

“forest uses” includes uses of an area of forested land for any of the following purposes:

- (a) conservation;
- (b) protecting of wildlife habitat;
- (c) traditional and domestic purposes;
- (d) water catchment;
- (e) scientific research or exploration;
- (f) forestry activities and forestry related activities.

**28.** (1) A determination of permitted forest uses shall be in writing.

(2) A determination of permitted forest uses shall be consistent with the national forest policy and the provincial forest policy.

(3) A determination of permitted forest uses –

- (a) shall describe the area of forested land to which it applies, specify the name of the area (if any) and indicate the area on an approved map by a red line;
- (b) shall specify the forest uses that are permitted to be carried out within the area of forested land and indicate where on the map referred to in paragraph (a) within the area they may be carried out;

- (c) shall take into account any restrictions imposed on the use of the forested land under any other law in force in Solomon Islands;
- (d) may include comments regarding the environmental and social impact of implementing the forest uses on the forested land; and
- (e) shall include the prescribed matters (if any).

**29.** (1) The Minister may, by regulation, prescribe a code of practice for setting out standards for conducting forestry activities or forestry related activities.

Codes of practice  
and codes of  
logging practice

(2) The Minister may, by regulation, prescribe a code of logging practice for setting out procedures that will ensure that forestry activities and forestry related activities are conducted in a manner that protects –

- (a) a forest's productive potential;
- (b) soil and water; and
- (c) tambu sites and other places of cultural significance.

(3) On the commencement of this Act, the code of logging practice known as "The Revised Solomon Islands Code of Practice" and dated May 2002 is taken to be a code of logging practice prescribed under subsection (2), and this Act applies to it and it shall be dealt with under this Act, as if it were a code of logging practice.

(4) A person who contravenes a code of practice or a code of logging practice commits an offence.

Penalty: If the offender is a natural person – \$100,000 or imprisonment for 2 years or both.  
If the offender is a body corporate – \$500,000.

**PART 4 – GENERAL CONTROLS OF CONDUCT OF  
FORESTRY ACTIVITIES IN NATURAL FORESTS**

Requirement for  
authorisation to do  
certain activities

**30.** (1) A person who harvests timber from a natural forest, or enters and remains in a natural forest for the purpose of harvesting timber, commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

(2) It is a defence to a prosecution of an offence against subsection (1) if the person proves that –

- (a) the person was authorised to harvest the timber by a licence; or
- (b) the person was harvesting timber for traditional or domestic purposes.

(3) A person who clears natural forest or takes part in clearing natural forest commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

(4) It is a defence to a prosecution of an offence against subsection (3) if the person proves that –

- (a) the person was authorised to clear natural forest, or take part in clearing natural forest, by a local harvesting licence;
- (b) the person was clearing the forest for traditional or domestic purposes; or
- (c) the person was authorised to clear natural forest, or take part in clearing natural forest, under the Environment Act.

(5) A reference in subsection (1) or (3) to a person authorised by a licence is a reference to –

- (a) the licensee;



- (b) an employee of the licensee;
- (c) a subcontractor of the licensee; or
- (d) if the licensee is a customary owner, another customary owner belonging to the same customary land holding group as the licensee who harvests timber or clears natural forest with the consent of the licensee.

**31.** (1) A person who acquires, sells or otherwise disposes of a log that has been harvested from a natural forest commits an offence.

**Control of sale or other disposal of logs harvested from natural forest**

**Penalty:** If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

(2) It is a defence to a prosecution of an offence against subsection (1) if the person proves that the log was harvested by a person authorised to harvest the log by a licence.

**32.** (1) A licence is not transferable.

**Licence not transferable**

(2) A licensee who purports to transfer his licence or to offer to transfer his licence (whether or not he receives any payment, commission or other reward, in cash or any other form, for doing so) commits an offence.

**Penalty:** If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$2,000,000.

## **PART 5 – LOCAL HARVESTING LICENCES**

**33.** (1) The purpose of a local harvesting licence is to authorise a natural person who is a registered owner of land, or a customary owner of customary land, to do one or both of the following:

**Purpose of local harvesting licence**

- (a) harvest not more than 500 cubic metres of logs from a natural forest on the land and to carry out forestry activities and forestry related activities connected with the harvesting of that timber;

- (b) clear not more than 5 hectares of natural forest for establishing or extending a timber plantation and carry out forestry activities and forestry related activities connected with that clearing.

(2) Timber harvested under a local harvesting licence shall not be exported as logs (but may be exported as processed timber).

**Application for  
local harvesting  
licence**

**34.** (1) A natural person who is a registered owner of land on which there is natural forest, or a customary owner belonging to a customary land holding group owning customary land on which there is natural forest, may apply to the relevant provincial secretary for the province where the land is located for a local harvesting licence to do one or both of the following:

- (a) harvest not more than 500 cubic metres of logs from the natural forest;
- (b) clear not more than 5 hectares of the natural forest for the purpose of establishing or extending a timber plantation.

(2) The application shall be –

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee (if any).

(3) The relevant provincial secretary may request the applicant to provide further information to enable him to determine whether to grant or refuse to grant the licence.

**Grant or refusal to  
grant local  
harvesting licence**

**35.** (1) The relevant provincial secretary shall, as soon as practicable after receiving the application or, if he requests further information under section 34(3), after receiving that information, consider the application and any information received under section 34(3) and, subject to subsection (2) –

- (a) determine whether the applicant is a fit and proper person to hold a local harvesting licence; and
- (b) decide whether to grant or refuse to grant the local harvesting licence.

(2) The relevant provincial secretary shall not grant the local harvesting licence unless –

- (a) the applicant is a natural person;
- (b) the applicant is the registered owner of the land specified in the application or, if the application relates to customary land, the applicant is a customary owner belonging to the customary land holding group owning the land specified in the application;
- (c) where the applicant is a customary owner, the other members of the customary land holding group have consented to the making of the application;
- (d) the applicant has obtained all authorisations in respect of the conduct of forestry activities and forestry related activities under the licence in the area of natural forest specified in the application that are required under any other Acts or provincial ordinances;
- (e) granting the licence is consistent with the national forest policy statement;
- (f) granting the licence is consistent with the provincial forest policy statement;
- (g) granting the licence is consistent with the determination of permitted forest uses applying to the land specified in the application;
- (h) where there is a forest access agreement in force that relates to the area of land specified in the application, the forest access agreement permits customary owners to retain the right to harvest the timber;
- (i) the relevant provincial secretary is satisfied that the applicant is a fit and proper person to hold the licence (for example, the relevant provincial secretary believes that the applicant will comply with the conditions of the licence); and
- (j) the licence complies with this Act.

(3) For the purposes of ascertaining whether the other members of the customary land holding group have consented to the making of the application as required by subsection (2)(c), the relevant provincial secretary or a person authorised by him shall, as soon as practicable after the application is made, undertake an investigation to identify the members of the customary land holding group in the manner he considers appropriate (which shall at least be by visiting the area of customary land concerned and consulting with the persons who reside in that area) and to inquire into whether they have consented to the making of the application.

(4) The provincial secretary shall, by notice in writing to the applicant, grant or refuse to grant the licence.

(5) If the relevant provincial secretary grants the licence, he shall give a copy of the licence to the Commissioner and the provincial forestry officer.

(6) If the relevant provincial secretary refuses to grant the licence, the notice shall specify his reasons for the refusal and advise the applicant of his rights of review and appeal under Part 12.

**Form and content  
of local harvesting  
licence**

**36.** (1) A local harvesting licence shall be in the prescribed form.

(2) The licence shall –

- (a) specify the name and address of the licensee;
- (b) describe the area of land in respect of which the licence is granted, specify the name of the area (if any) and indicate the area on an approved map by a red line;
- (c) specify the forestry activities and forestry related activities the licensee is authorised to carry out on the land;
- (d) specify one or both of the following, as appropriate:
  - (i) the volume of logs (which shall not be more than 500 cubic metres) that the licensee is authorised to harvest;
  - (ii) the area of natural forest (which shall not be more than 5 hectares) the licensee is authorised to clear under the licence;
- (e) specify the term of the licence (which shall not be more than 5 years) and the date it takes effect; and
- (f) specify the conditions of the licence.

**Conditions of local  
harvesting licence**

**37.** A local harvesting licence is subject to the following conditions:

- (a) that the licensee shall comply with the conditions of the licence;

- (b) that the licensee shall not conduct his activities under the licence in a manner that is inconsistent with the national forest policy statement, provincial forest policy statement and determination of permitted forest uses applying to the area of land subject to the licence;
- (c) if the licence authorises the harvesting of timber, that the licensee shall, in relation to harvesting timber, comply with this Act and the subsidiary legislation made under this Act other than the requirements under the code of logging practice to have an annual harvesting plan and an annual coupe plan;
- (d) if the licence authorises the licensee to clear natural forest –
  - (i) that the licensee shall, in relation to the clearing of natural forest, comply with this Act and the subsidiary legislation made under this Act other than the code of logging practice; and
  - (ii) that, while the licence is in force, the licensee shall plant merchantable species of trees on all of the area of land cleared under the licence;
- (e) the prescribed conditions (if any).

**38.** (1) A local harvesting licence has effect –

**Term of local  
harvesting licence**

- (a) for the period not exceeding 5 years specified in the licence; and
- (b) unless its operation is suspended or it is cancelled under Part 7.

(2) The term of a local harvesting licence cannot be extended.

## **PART 6 – COMMERCIAL HARVESTING LICENCES**

### *Division 1 – General controls*

**39.** (1) There shall only be in force, at any one time, in respect of an area of registered land –

**Controls relating to  
grant of  
commercial  
harvesting licence  
in respect of  
registered land**

- (a) one forest access agreement; and
- (b) one commercial harvesting licence.

(2) A person shall not negotiate and enter into a forest access agreement in relation to registered land unless there is a determination of permitted forest uses in force in respect of the land.

(3) A person shall not apply for a commercial harvesting licence in respect of an area of natural forest on registered land, and the Commissioner shall not grant a commercial harvesting licence in respect of an area of natural forest on registered land, unless –

- (a) there is a determination of permitted forest uses in force in respect of the land; and
- (b) there is a forest access agreement applying to the land.

**40.** (1) There shall only be in force, at any one time, in respect of an area of customary land –

- (a) one statement of customary ownership;
- (b) one forest access agreement; and
- (c) one commercial harvesting licence.

(2) A person shall not negotiate and enter into a forest access agreement in relation to customary land unless –

- (a) there is a determination of permitted forest uses in force in respect of the land; and
- (b) there is a statement of customary ownership for the land.

(3) A person shall not apply for a commercial harvesting licence in respect of an area of natural forest on customary land, and the Commissioner shall not grant a commercial harvesting licence in respect of an area of natural forest on customary land, unless –

- (a) there is a determination of permitted forest uses in force in respect of the land;
- (b) there is a statement of customary ownership for the land; and
- (c) there is a forest access agreement applying to the land.

**41.** (1) Section 241 of the Land Titles Act does not operate to prohibit or invalidate the carrying out of any forestry activity or forestry related activity authorised by a licence on customary land.

Controls relating to grant of commercial harvesting licence in respect of customary land

Section 241 of Land and Titles Act not to apply to customary land in respect of which licence has effect.  
(Cap 133)

(2) Subsection (1) operates despite section 241 of the Land Titles Act and, to the extent that there is an inconsistency between subsection (1) and that section, subsection (1) prevails.

***Division 2 – Statement of customary ownership***

**42.** The purpose of a statement of customary ownership is to—

**Purpose of  
statement of  
customary  
ownership**

- (a) identify the customary owners who belong to the customary land holding group owning an area of customary land;
- (b) identify the customary representatives who will act on behalf of the customary land holding group; and
- (c) set out the wishes of the customary owners belonging to the customary land holding group regarding the use of the natural forests on their land.

**43.** (1) At least 5 persons who claim to be customary owners of customary land, and who require a statement of customary ownership in relation to that land for the purpose of negotiating and entering into a forest access agreement, may apply to the relevant provincial secretary to arrange a meeting of customary owners of the land in accordance with sections 44 and 45.

**Application to  
arrange meeting of  
customary owners**

(2) The application shall be —

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee (if any).

(3) The application shall describe the area of customary land for which the applicants require a statement of customary ownership.

**44.** (1) Within one month after receiving an application under section 43, the relevant provincial secretary shall give notice of the meeting of the customary owners belonging to the customary land holding group owning the customary land described in the application in accordance with subsections (2) and (3).

**Notice of meeting of  
customary owners**

(2) The relevant provincial secretary shall give 3 months notice of the meeting by —

- (a) displaying a written notice of the meeting in the relevant provincial government offices and at appropriate places in villages within and near the land;
- (b) publishing notice of the meeting in a newspaper circulating nationally; and
- (c) broadcasting for 2 consecutive days a service message over a national radio station.

(3) The provincial secretary may give notice of the meeting by any other means he considers effective to bring the notice to the attention of all customary owners of the land.

(4) The notice of the meeting shall –

- (a) describe the area of customary land for which the applicants require a statement of customary ownership, specify the name of the area (if any) and, if the notice is given under subsection (2)(a), indicate the area on an approved map by a red line;
- (b) specify the date (which shall be 3 months after the date the relevant provincial secretary first gave notice of the meeting under subsection (2)) and time when, and place where, the meeting will be held; and
- (c) invite all customary owners belonging to the customary land holding group owning the customary land to attend the meeting to decide how the natural forest on the land will be used.

Meeting of  
customary owners

45. (1) At the meeting, the customary owners shall –

- (a) identify the customary owners who belong to the customary land holding group owning the customary land described in the notice under section 44(4)(a);
- (b) identify the customary representatives who will act on behalf of the customary land holding group; and
- (c) decide –
  - (i) how they want the natural forest on the customary land to be used (including, but not limited to, whether they want the natural forest to be harvested and, if so, what areas of the natural forest they want to harvest and what areas they



want to protect and conserve or retain for traditional and domestic use);

- (ii) whether they want to enter into a forest access agreement authorising the harvesting of the forest; and
- (iii) the conditions of the forest access agreement and of the commercial harvesting licence to be granted in accordance with the agreement.

(2) Subject to subsection (3), the meeting shall be conducted, and decisions made at the meeting, in accordance with the customs of the customary land holding group.

(3) The decisions at the meeting relating to ownership of the customary land shall be consistent with –

- (a) the determination of permitted forest uses applying to the land; and
- (b) the binding decisions, judgments or orders relating to the ownership of the land (if any) made by a court or other body that is authorised under a law in force in Solomon Islands to determine or record the ownership of the customary land.

(4) The relevant provincial secretary, or a person authorised by him to do so, shall observe the meeting.

(5) The person authorised by the relevant provincial secretary shall not be a customary owner of the customary land.

(6) The relevant provincial secretary or the person authorised by him shall make a report, in writing, on the deliberations and decisions of the meeting.

(7) The report shall at least specify –

- (a) the customary owners identified at the meeting;
- (b) the customary representatives identified at the meeting; and
- (c) the decisions made at the meeting as to –

- (i) how the customary owners want the natural forest on the customary land to be used (including, but not limited to, whether they want the natural forest to be harvested and, if so, what areas of the natural forest they want to harvest and what areas they want to protect and conserve or retain for traditional and domestic use);
- (ii) whether they want to enter into a forest access agreement authorising the harvesting of the forest; and
- (iii) the conditions of the forest access agreement and of the commercial harvesting licence to be granted in accordance with the agreement.

(8) The relevant provincial secretary shall give a copy of the report to the Commissioner and the relevant provincial government.

**Duties of customary  
representatives**

**46.** (1) For the purposes of this Part, the duties of the customary representatives are to, on behalf of the customary land holding group they represent –

- (a) complete, sign and date a draft statement of customary ownership;
- (b) negotiate and enter into a forest access agreement in accordance with the decisions of the customary owners at the meeting under section 45; and
- (c) deal with the licensee holding any commercial harvesting licence granted in accordance with the forest access agreement.

(2) In carrying out his duties, a customary representative shall –

- (a) not profit from his position of trust;
- (b) account to the customary land holding group he represents for all the money he receives in his capacity as a customary representative;
- (c) exercise his obligations and duties as a customary representative in accordance with the customs of the customary land holding group he represents;

- (d) act in the best interests of the customary land holding group;
- (e) endeavour to ensure that the quality of the physical and social environment of the customary land holding group is sustained for present and future generations; and
- (f) distribute as soon as practicable any payments received under a forest access agreement or for any other purpose in connection with forestry activities or forestry related activities carried out on the customary land directly to those persons in the customary land holding group who are, in accordance with the custom of the group, entitled to receive the payments.

47. (1) After the meeting under section 45, the customary representatives shall, with the assistance of the relevant provincial secretary or the person authorised to observe the meeting by him, complete a draft statement of customary ownership.

Completion of draft  
statement of  
customary  
ownership

(2) The draft statement of customary ownership shall comply with section 48.

(3) When the draft statement of customary ownership is completed, the customary representatives shall, in the presence of the relevant provincial secretary or the person authorised by him, sign and date the draft statement on behalf of the customary land holding group he represents.

(4) After the customary representatives have signed and dated the draft statement of customary ownership, the relevant provincial secretary or the person authorised by him shall certify on the draft statement that a meeting of the customary owners of the customary land was held in accordance with section 45, that the statement accords with this Division and that it is a true and correct record of the decisions made at the meeting.

(5) After complying with subsection (4), the relevant provincial secretary shall keep the draft statement of customary ownership in his custody.

48. (1) A draft statement of customary ownership shall be in the prescribed form.

Form and content  
of draft statement  
of customary  
ownership

- (2) A draft statement of customary ownership shall –
- (a) describe the area of customary land to which it applies, specify the name of the area (if any) and indicate the area on an approved map by a red line;
  - (b) contain a copy of the determination of permitted forest uses that applies to the customary land;
  - (c) identify the customary land holding group owning the land and the customary owners belonging to the group;
  - (d) identify the customary representatives in respect of the customary land;
  - (e) specify –
    - (i) how the customary land holding group want the natural forest on the customary land to be used;
    - (ii) whether they want to enter into a forest access agreement authorising the harvesting of the forest; and
    - (iii) the conditions they want to be included in the forest access agreement and the commercial harvesting licence granted in accordance with the agreement; and
  - (f) contain a copy of the binding decisions, judgments or orders relating to the ownership of the land (if any) made by a court or other body that is authorised under a law in force in Solomon Islands to determine or record the ownership of the customary land.

**49.** (1) The relevant provincial secretary shall, as soon as practical after certifying the draft statement of customary ownership –

- (a) place a copy of the draft statement for inspection by members of the public in the offices of the relevant provincial government and at appropriated places in the villages within and near the area of customary land to which the draft statement applies; and
- (b) publish a summary of the draft statement –
  - (i) in a newspaper circulating nationally;
  - (ii) by a service message broadcast on 2 consecutive days over a national broadcasting service; and

Relevant provincial secretary to publish draft statement of customary ownership

(iii) by any other means he considers effective to bring the draft statement to the attention of all customary owners of the land.

- (2) The summary under subsection (2)(b) shall –
- (a) describe the area of customary land to which it applies, specify the name of the area (if any) and, if the summary is published under subsection (2)(b)(i), indicate the area on an approved map by a red line;
  - (b) advise that copies of the draft statement are available for inspection at the offices of the relevant provincial government; and
  - (c) state that a person who objects to any matter in the draft statement may, within the period specified in the notice for making objections (which shall not be less than 3 months after the date the notice was first published under subsection (2)), make an objection to the Local Court.

**50.** (1) A Local Court has jurisdiction to hear and determine an objection to a draft statement of customary ownership referred to in section 49(2)(c).

**Objections to draft  
statement of  
customary  
ownership**

(2) A person who wishes to object to a draft statement of customary ownership may make his objection within the period specified under section 49(2)(c) to the Local Court that has jurisdiction over the customary land described in the draft statement.

(3) If a person makes an objection, the person shall as soon as practical after doing so, provide the relevant provincial secretary with a copy of the objection.

- (4) An objection shall –
- (a) be in writing;
  - (b) set out the reasons for objecting to the draft statement of customary ownership; and
  - (c) contain a copy of the draft statement of customary ownership it relates to.

(5) For the purposes of a Local Court hearing and determining an objection –

(Cap 19) (a) sections 12 and 13 of the Local Courts Act apply but with the following modifications:

(Cap 19) (i) sections 12 and 13 of the Local Courts Act apply as if the reference in them to a customary land dispute, land dispute or dispute is a reference to an objection;

(Cap 19) (ii) section 12 of the Local Courts Act applies as if subsection (1) were omitted;

(Cap 19) (iii) section 12(2) and (3) of the Local Courts Act apply as if the reference in them to a certificate is a reference to the draft statement of customary ownership to which an objection relates;

(Cap 19) (iv) section 13 of the Local Courts Act applies as if the references in it to chiefs are references to customary owners of the customary land to which the draft statement of customary ownership applies;

(Cap 19) (v) section 13 of the Local Courts Act applies as if the references in it to decisions of chiefs are references to the decisions of the customary owners set out in the draft statement of customary ownership;

(Cap 19) (vi) section 13 of the Local Courts Act applies as if paragraph (b) were omitted and the following substituted in its place:

“(b) hear evidence from the witnesses called by the person making the objection or call and hear evidence from any other witnesses it thinks appropriate;” and

(Cap 19) (vii) section 13 of the Local Courts Act applies as if paragraph (d) and (e) were omitted; and

(Cap 19) (b) section 14 of the Local Courts Act does not apply.

(6) In determining the objection, the Local Court may –

- (a) determine that there are no grounds on which to base the objection and make an order dismissing the objection; or
- (b) determine that there are grounds on which to base the objection and make orders varying the statement of claim accordingly.

**51.** The period within which a person may apply to the Local Court to make the objection shall not be extended.

**Period for making  
objection not to be  
extended**

**52.** The orders the Local Court may make to vary the draft statement of ownership to which an objection relates includes (but is not limited to) the following orders:

**Orders that Local  
Court hearing  
objection may  
make**

- (a) an order varying the area of customary land to which the draft statement applies;
- (b) an order that a person identified as a customary owner in the draft statement is not a customary owner;
- (c) an order identifying as a customary owner a person not identified as a customary owner in the draft statement;
- (d) an order that a person identified as a customary representative in the draft statement is not a customary representative;
- (e) an order identifying as a customary representative a person not identified as a customary representative in the draft statement;
- (f) an order amending or omitting a provision of the draft statement specifying, or inserting a new provision in the draft statement that specifies –
  - (i) how the customary land holding group want the natural forest on their land to be used;
  - (ii) whether they want to enter into a forest access agreement authorising the harvesting of the forest; and
  - (iii) the conditions they want to be included in the forest access agreement and any commercial harvesting licence granted in accordance with the agreement.

**53.** (1) This section operates despite any provisions to the contrary in the Land and Titles Act, the Local Courts Act or any other Act.

**Appeals against  
order of Local  
Court**  
(Cap 133)

(2) There is no appeal to the Magistrates Court or the customary land appeal court against an order of the Local Court made under section 50(6).

(3) The High Court has jurisdiction to hear and determine an appeal against an order of the Local Court made under section 50(6) on the ground of an error of law.

(4) A person may apply for an appeal within 3 months after the date of the order of the Local Court.

(5) The period within which a person may apply for an appeal shall not be extended.

(6) In determining the appeal, the High Court may make orders varying the draft statement of customary ownership to which the appeal relates.

**Endorsement of  
draft statement of  
customary  
ownership**

**54.** (1) If no objection is made under section 50 to a draft statement of customary ownership, the relevant provincial secretary shall file a copy of the draft statement in the Local Court for endorsement.

(2) If a person objects under section 50, or makes an appeal under section 53, and the court determining the objection or appeal makes orders varying the draft statement of customary ownership to which the objection or appeal relates, the relevant provincial secretary shall file a copy of the draft statement as varied by the order of the Local Court and, if there is an appeal, the order of the High Court in the Local Court for endorsement.

(3) The Local Court shall endorse the draft statement of ownership as soon as practical after it is filed.

**Effect of endorsed  
statement of  
customary  
ownership**

**55.** A statement of ownership that is endorsed by the Local Court –

- (a) subject to section 56, is conclusive as to the matters set out in it; and
- (b) shall not be subject to any proceeding, challenge, review or appeal in any court or tribunal or before any person acting judicially.



56. (1) A customary land holding group may replace a representative identified in a statement of customary ownership.

(2) The procedure by which a customary land holding group may replace a customary representative is the procedure set out in sections 43, 44 and 45 but with the following modifications:

- (a) sections 43, 44 and 45 apply as if the reference in them to land is a reference to land in respect of which a statement of customary ownership has effect;
- (b) section 43(1) applies as if the reference in it to customary owners who require a statement of customary ownership is a reference to customary owners who seek to replace a customary representative identified in a statement of customary ownership;
- (c) sections 43, 44 and 45 apply as if the reference in them to the application under section 44 is a reference to the application made by customary owners who seek to replace a customary representative;
- (d) sections 43, 44 and 45 apply as if the reference in them to a meeting is a reference to a meeting to decide whether to replace a customary representative and, if so, to identify the customary representative who will replace him;
- (e) section 45 applies as if subsection (1)(a), (b) and (c) were omitted and the following were substituted in their place:
  - "(a) decide whether they want to replace the customary representative identified in the application; and
  - (b) if they decide to do so, identify the customary representative who will replace him.";
- (f) section 45 applies as if subsection (3) were omitted; and
- (g) section 45 applies as if subsection (7)(a),(b) and (c) were omitted and the following were substituted in their place:
  - "(a) whether the customary owners decided to replace the customary representative; and
  - (b) if they decided to do so, specify the customary representative who replaces him.".

(3) If a customary representative is replaced under this section, the statement of customary ownership has effect as if the name of that customary representative were omitted and the name of the customary representative who replaced him were substituted in its place.

***Division 3 – Forest access agreements***

Purpose of forest  
access agreement

**57.** A forest access agreement is an agreement between the owner of land on which there is natural forest and another person allowing the other person to enter and remain on the land to carry out forestry activities and forestry related activities on the land and setting out the rights and obligations of each party to it in relation to the carrying out of the forestry activities on the land.

Commissioner may  
authorise person to  
commence  
negotiating forest  
access agreement

**58.** (1) The owner of an area of natural forest may notify the Commissioner that he wishes to negotiate a forest access agreement with another party to enable the other party to carry out forestry activities and forestry related activities in the natural forest.

(2) If the land is customary land, the owner of the land shall not notify the Commissioner under subsection (1) unless there is a statement of customary ownership for the land.

(3) The notification shall be in writing.

(4) After receiving the notification, the Commissioner shall, by notice in a newspaper circulating throughout Solomon Islands, invite persons to apply to become authorised parties to negotiate with the owner for carrying out forestry activities in the natural forest.

(5) The notice shall specify the period within which persons shall apply to the Commissioner.

(6) A person who applies to become an authorised party shall provide the Commissioner with the information he considers necessary to determine whether to authorise the person.

(7) If the person is a body corporate, the person shall give the Commissioner the information he considers necessary about its membership, the character of its officers and employees and its management.

(8) The Commissioner shall not authorise the person unless he is satisfied that the person –

- (a) has the capacity (including, but not limited to, sufficient capital, assets and expertise) to conduct timber harvesting on a commercial scale;
- (b) has a history of conducting business operations in a sound manner or can demonstrate that he has the capacity to do so;
- (c) is not bankrupt, has not applied to take relief under a law for the relief of bankrupt or insolvent debtors or has not compounded his debts or entered into an arrangement with his creditors; and
- (d) is a fit and proper person to hold a commercial harvesting licence.

Negotiations etc.  
for forest access  
agreement

**59.** (1) An owner of registered land may negotiate and enter into a forest access agreement in relation to an area of natural forest on the registered land.

(2) After a statement of customary ownership is endorsed under section 54, the customary representatives of the customary land holding group owning the customary land to which the statement applies may, on behalf of the customary land holding group, negotiate and enter into a forest access agreement in relation to an area of natural forest on the customary land.

(3) If the forest access agreement relates to registered land, the agreement shall be consistent with the determination of permitted forest uses applying to the land.

(4) If the forest access agreement relates to customary land –

- (a) the agreement shall be consistent with the determination of permitted forest uses and the statement of customary ownership applying to the land; and
- (b) during the negotiations the customary representatives or a customary owner belonging to the customary land holding group, may obtain the following advice:
  - (i) advice from a legal practitioner on any aspect of the agreement;

- (ii) advice from the Commissioner on any matters relating to forestry and forest resources.

(5) If the customary representatives or customary owner obtains legal advice from the Public Solicitor, the representatives' or customary owner's entitlement to legal aid is determined under the Public Solicitor's Act.

(Cap 30)

**Form and content  
of forest access  
agreement**

**60.** (1) A forest access agreement shall be in the prescribed form.

(2) The forest access agreement shall specify –

- (a) a description of the area of land to which the agreement applies and the name of the area (if any), and shall indicate the area on an approved map by a red line;
- (b) the forestry activities and forestry related activities the owner of the land is agreeing to allow the other party to the agreement to carry out on the land;
- (c) the rights and obligations of each party in relation to the forestry activities;
- (d) the date on which the agreement takes effect; and
- (e) the prescribed conditions (if any and which may have been modified in accordance with section 61).

(3) If the agreement relates to customary land, the agreement shall –

- (a) contain a copy of the statement of customary ownership applying to the customary land; and
- (b) be signed and dated for and on behalf of the customary land holding group by the group's customary representatives.

**Modification of  
prescribed  
conditions of forest  
access agreements  
during negotiations**

**61.** (1) A prescribed condition of a forest access agreement shall not be modified except in accordance with this section.

(2) If the parties to negotiations for a forest access agreement want to modify a prescribed condition, they shall jointly apply, in writing, to the Commissioner for approval of their proposed modification to the condition.

(3) Before the Commissioner decides whether to approve or refuse to approve the proposed modification, the Commissioner shall obtain the following advice from the Attorney-General:

- (a) if the land the subject of the negotiations is registered land, advice whether the prescribed condition would, if modified as proposed, accord with the wishes of the owner of the land;
- (b) if the land the subject of the negotiations is customary land, advice whether the prescribed condition would, if modified as proposed, accord with the intent of the decisions of the customary land holding group set out in the statement of customary ownership;
- (c) advice whether the interests of the owner of the land would, if the modification is approved, be prejudiced by the modification.

(4) Subject to subsection (5), the Commissioner shall consider the application and the Attorney-General's advice and shall, in writing, approve or refuse to approve the modification to the prescribed condition.

(5) The Commissioner shall not approve the proposed modification if the Attorney-General advises that –

- (a) the prescribed condition, if modified as proposed, would not accord with the wishes of the owner of the registered land or the intent of the decisions of the customary land holding group set out in the statement of customary ownership (as the case requires); or
- (b) the interests of the owner would be prejudiced by the modification.

(6) If the Commissioner refuses to approve the modification, the Commissioner shall specify his reasons for the refusal in the notice.

**62.** (1) A party to forest access agreement shall not –

- (a) transfer his rights under the agreement to another person; and
- (b) be substituted by another person as a party to the agreement.

No transfer of rights under forest access agreement and manner in which forest access agreement may otherwise be varied

(2) The parties to a forest access agreement shall not vary the agreement in any other way except in accordance with this section.

(3) If the parties to a forest access agreement want to vary the terms and conditions of the agreement, they shall jointly apply, in writing, to the Commissioner to approve their proposed variation.

(4) Before the Commissioner decides whether to approve or refuse to approve the variation, the Commissioner shall obtain the following advice from the Attorney-General:

- (a) if the land the subject of the agreement is registered land, advice whether the agreement would, if varied as proposed, accord with the wishes of the owner of the land;
- (b) if the land the subject of the agreement is customary land, advice whether the agreement would, if varied as proposed, accord with the intent of the decisions of the customary land holding group set out in the statement of customary ownership;
- (c) advice whether the interests of the owner of the land would, if the variation is approved, be prejudiced by the variation.

(5) Subject to subsection (6), the Commissioner shall consider the application and the Attorney-General's advice and shall, in writing, approve or refuse to approve the variation.

(6) The Commissioner shall not approve the variation if the Attorney-General advises that –

- (a) the agreement, if varied as proposed, would not accord with the wishes of the owner of the registered land or the intent of the decisions of the customary land holding group set out in the statement of customary ownership (as the case requires); or
- (b) the interests of the owner would be prejudiced by the variation.

**63.** (1) The parties to a forest access agreement may terminate the agreement.

(2) The termination of the agreement shall be by agreement in writing between the parties.

(3) Subsections (1) and (2) apply despite anything to the contrary in a forest access agreement.

64. On the termination of a forest access agreement, both the statement of customary ownership and the commercial harvesting licence that relate to the agreement cease to have effect.

Effect of  
termination of  
forest access  
agreement

***Division 4 – Application for and grant of commercial  
harvesting licence***

65. (1) The purpose of a commercial harvesting licence is to authorise a person to carry out forestry activities and forestry related activities, on a commercial scale, on land on which there is natural forest.

Purpose of  
commercial  
harvesting licence

(2) Logs harvested under a commercial harvesting licence may be exported.

66. (1) A person who has entered into a forest access agreement with the owner of land on which there is natural forest may apply to the Commissioner for a commercial harvesting licence to carry out forestry activities and forestry related activities in the natural forest as specified in the forest access agreement.

Application for  
commercial  
harvesting licence

(2) The application shall be –

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee (if any).

(3) The Commissioner may request the applicant to provide further information to enable him to determine whether to grant or refuse to grant the licence.

(4) In this section –

"owner of land" means –

- (a) if the land is registered land, the registered owner of the land;

- (b) if the land is customary land, the customary land holding group owning the land; or
- (c) if the land is public land, the Commissioner of Lands.

**Grant or refusal to grant commercial harvesting licence**

**67.** (1) The Commissioner shall as soon as practicable after receiving the application or, if he requests further information under subsection 66(3), after receiving that information, consider the application and any information received under section 66(3) and, subject to this section –

- (a) determine whether the applicant is a fit and proper person to hold a commercial harvesting licence; and
- (b) decide whether to grant or refuse to grant the commercial harvesting licence.

(2) The Commissioner shall investigate and obtain information on –

- (a) if the applicant is a natural person, the character of the applicant; and
- (b) if the applicant is a body corporate –
  - (i) the membership of the body corporate;
  - (ii) the character of the officers and employees of the body corporate; and
  - (iii) the management or proposed management of the body corporate;
- (c) the capacity of the applicant (including, but not limited to, financial capacity) to carry out forestry activities on a commercial scale;
- (d) whether the applicant has a history of conducting business operations in a sound manner or can demonstrate that he has the capacity to do so; and
- (e) any other matter conveying the character and capacity of the applicant to perform in relation to carrying out forestry activities on a commercial scale.

(3) The Commissioner shall not grant the licence unless –



- (a) the applicant has obtained all authorisations required under other Acts or provincial ordinances in respect of the conduct of forestry activities and forestry related activities in the area of natural forest specified in the application;
- (b) where the applicant is a foreign investor, the applicant has complied with the law relating to foreign investment;
- (c) granting the licence is consistent with the national forest policy;
- (d) granting the licence is consistent with the provincial forest policy statement;
- (e) granting the licence is consistent with the determination of permitted forest uses and statement of customary ownership (if any) applying to the area of natural forest identified in the application;
- (f) the applicant is a party to a forest access agreement and the forestry activities and forestry related activities that will be carried out under the licence accord with the forest access agreement;
- (g) the Commissioner believes on reasonable grounds that the applicant is a fit and proper person to grant the licence to (for example the Commissioner believes that the applicant will comply with the conditions of the licence);
- (h) the applicant has the capacity (including, but not limited to, sufficient capital, assets and expertise) to carry out forestry activities on a commercial scale;
- (i) the applicant is not bankrupt, has not applied to take relief under a law for the relief of bankrupt or insolvent debtors or has not compounded his debts or entered into an arrangement with his creditors;
- (j) if the land specified in the application is registered land, the owner of the land has granted a profit in favour of the applicant under section 181 of the Land Titles Act;
- (k) if the land specified in the application is public land, the Commissioner of Lands has consented, in writing, to the carrying out of forestry activities and forestry related activities on that land; and
- (l) granting the licence complies with this Act.

(4) The Commissioner shall, by notice in writing to the applicant, grant or refuse to grant the licence.

(5) If the Commissioner refuses to grant the licence, the notice shall specify his reasons for the refusal and advise the applicant of his rights of review and appeal under Part 12.

**Form and content  
of commercial  
harvesting licence**

**68.** (1) A commercial harvesting licence shall be in the prescribed form.

- (2) The licence shall –
- (a) specify the name and address of the licensee;
  - (b) describe the area of land in respect of which the licence is granted, specify the name of the area (if any) and indicate the area on an approved map by a red line;
  - (d) specify the forestry activities and forestry related activities the licensee is authorised to carry out on the land;
  - (e) specify the volume of logs that the licensee is authorised to harvest under the licence each year;
  - (f) specify the volume of logs harvested under the licence that must be processed in Solomon Islands (if any);
  - (g) specify the performance bond the licensee shall enter;
  - (h) specify the term of the licence and the date it takes effect; and
  - (i) specify the conditions of the licence.

**Conditions of  
commercial  
harvesting licence**

**69.** A commercial harvesting licence is subject to the following conditions:

- (a) that the licensee shall comply with the conditions of the licence;
- (b) that the licensee shall comply with this Act and the subsidiary legislation made under this Act;
- (c) that the licensee shall not conduct his activities under the licence in a manner that is inconsistent with the national forest policy statement, provincial forest policy statement, determination of permitted forest uses or forest access agreement applying to the area of land in respect of which the licence has effect;
- (d) the prescribed conditions (if any).

**70.** (1) A commercial harvesting licence has effect –

**Term of  
commercial  
harvesting licence**

- (a) for the period specified in the licence; and
- (b) unless its operation is suspended or it is cancelled under Part 7.

(2) The term of a commercial harvesting licence cannot be extended.

**71.** (1) A licensee holding a commercial harvesting licence shall pay the owner of the land in respect of which the licence has effect a royalty for the timber harvested on the land that is at least the amount determined in accordance with this section.

**Minimum royalty  
payable by holder  
of commercial  
harvesting licence  
to owners of land  
for timber  
harvested**

(2) The royalty the licensee pays to the owner shall be at least the greater of the following amounts:

- (a) 10 per cent of the determined value of the timber;
- (b) the amount fixed by the Commissioner by notice in the Gazette.

(3) For the purposes of subsection (2)(b), the Commissioner shall, by notice in the Gazette, fix the minimum dollar amount payable by a licensee holding a commercial harvesting licence or a class of licensees holding commercial harvesting licences for timber harvested.

(4) The Commissioner shall calculate the minimum amount of royalty he fixes under subsection (3) in accordance with the prescribed method (if any).

(5) The licensee shall pay the royalty in cash.

(6) A licensee who contravenes this section commits an offence.

**Penalty:** If the offender is a natural person – \$100,000 or imprisonment for 2 years or both.

If the offender is a body corporate – \$500,000.

**72.** (1) On the expiry or cancellation of a commercial harvesting licence, the statement of customary ownership (if any) and forest access agreement to which the licence relates cease to have effect.

**Effect of expiry or  
cancellation of  
commercial  
harvesting licence**

(2) On the expiry or cancellation of a commercial harvesting licence, the person who was the licensee ceases to be a licensee but remains liable for –

- (a) an act or omission done, caused or permitted or made by him as the licensee prior to the expiry or cancellation; and
- (b) a liability incurred by him as the licensee under this Act prior to the expiry or cancellation.

***Division 5 – Harvesting plans and coupe plans***

**73.** (1) A licensee holding a commercial harvesting licence shall not carry out any forestry activities or forestry related activities authorised by his licence unless he has, in accordance with the code of logging practice –

- (a) an annual harvesting plan that has been approved by the Commissioner; and
- (b) a coupe plan that has been approved by the Commissioner.

(2) In this section –

"annual harvesting plan" has the same meaning as in the code of logging practice;

"coupe plan" has the same meaning as in the code of logging practice.

***Division 6 – Performance bonds***

**74.** (1) A licensee holding a commercial harvesting licence shall enter into a performance bond before commencing carrying out any forestry activities or forestry related activities authorised by the licence.

(2) The licensee shall maintain the performance bond until he receives from the Commissioner a written release from the bond (which may be after the licence has expired or been cancelled).

Licensee shall have  
number harvesting  
plan and coupe  
plan before  
commencing  
operations

Licensee required  
to enter into and  
maintain  
performance bond

75. A performance bond provides security for –

- (a) payment of taxes, duties, levies, fees and other charges that may be payable to the Government or the relevant provincial government under this Act or a provincial ordinance by the holder of a commercial harvesting licence;
- (b) payment of royalties, rent, compensation and other amounts that may be payable to one or more customary owners, or the registered owner, of the land in respect of which a commercial harvesting licence has effect in accordance with the forest access agreement applying to the land, the conditions of the licence or any other law in force in Solomon Islands;
- (c) payments arising from a contravention of the conditions of the licence, this Act and subsidiary legislation made under this Act; and
- (d) the payment of a penalty imposed under this Act.

Purpose of  
performance bond

76. (1) A performance bond shall be in the form of a bank guarantee or equivalent instrument acceptable to the Central Bank of Solomon Islands.

Form and amount  
of performance  
bond

(2) The amount of the performance bond shall be calculated –

- (a) on the volume of timber that the licensee is authorised to harvest under the licence to which it relates;
- (b) on the area of land in respect of which the licence has effect; or
- (c) both the volume of timber the licensee is authorised to harvest and the area of land in respect of which the licence has effect.

(3) The regulations may prescribe the manner in which a performance bond shall be calculated or imposed.

77. (1) If a licensee holding a commercial harvesting licence fails to pay a sum secured by the performance bond, the Commissioner may enforce the bond against the issuing bank, insurance company or other authority in accordance with this section.

Enforcement of  
performance bond

(2) If the Commissioner intends to enforce a performance bond, the Commissioner shall give written notice of his intention to the licensee.

(3) The notice shall –

- (a) state the amount and nature of the sum the Commissioner intends to enforce against the bond; and
- (b) invite the licensee to make representations to him as to why the bond should not be enforced within one month after the date of the notice.

(4) On the expiry of the one month period, the Commissioner shall consider and take into account the representations (if any) received under subsection (3)(b) and decide whether to enforce the bond.

(5) The Commissioner shall, in writing, notify the licensee of his decision to enforce the bond or not to enforce the bond.

**Cancellation of  
performance bond**

**78.** (1) After the expiry or cancellation of a commercial harvesting licence, the Commissioner shall, on being satisfied that no payments secured by the bond remain outstanding or that nothing remains left undone by the former licensee, cancel the bond and give written notice of the cancellation to the former licensee and to the issuing bank, insurance company or other authority.

(2) If a commercial harvesting licence has expired or been cancelled and the Commissioner has not cancelled the performance bond entered into by the licensee under the licence, the person who had held the licence may apply to a court of competent jurisdiction for release from the performance bond on the ground that the licence has expired or been cancelled.

***Division 7 - Subcontracting***

**Controls relating to  
subcontracting by  
commercial  
harvesting licensee**

**79.** (1) A licensee holding a commercial harvesting licence shall not subcontract the conduct of forestry activities or forestry related activities authorised by the licence unless the Commissioner has consented under section 80 to the subcontracting.

(2) A licensee who contravenes subsection (1) commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

(3) If a licensee subcontracts the conduct of activities, the liability of the licensee and the subcontractor for the subcontractor's actions is determined in accordance with section 117.

**80.** (1) The Commissioner shall not consent to the subcontracting of forestry activities and forestry related activities by a licensee holding a commercial harvesting unless he is satisfied that –

Consent of  
Commissioner to  
subcontracting

- (a) the licensee will not subcontract the whole or the predominant part of the forestry activities or forestry related activities authorised by the licence; and
- (b) the person to whom the forestry activities or forestry related activities will be subcontracted will have all authorisations required under other Acts or provincial ordinances to carry out the forestry activities or forestry related activities before commencing carrying them out.

(2) The Commissioner's consent shall be in writing.

## **PART 7 – DISCIPLINARY PROCEDURES AGAINST LICENSEES**

**81.** (1) This Part applies if a licensee –

Application of part

- (a) contravenes or refuses to comply with his licence;
- (b) contravenes or refuses to comply with this Act or subsidiary legislation made under this Act; or
- (c) in carrying out forestry activities or forestry related activities under the licence causes, or is likely to cause, damage, harm, loss or injury to a person, real or personal property or the environment.

(2) This Part applies in addition to any proceeding or other action that may be taken in respect of an act or omission of a licensee.

Action  
Commissioner may  
take under this  
Part

- 82.** Subject to this Part, the Commissioner is authorised to –
- (a) vary the terms and conditions of a licence;
  - (b) issue directions to a licensee;
  - (c) suspend a licence for a specified period or until the licensee complies with the conditions of the suspension to the satisfaction of the Commissioner;
  - (d) cancel a licence.

Procedure for  
variation,  
suspension and  
cancellation of  
licence

- 83.** (1) Subject to sections 84 and 85, if a licensee –
- (a) contravenes or refuses to comply with his licence;
  - (b) contravenes or refuses to comply with this Act or subsidiary legislation made under this Act; or
  - (c) in carrying out forestry activities or forestry related activities under the licence, acts without reasonable care and causes, or is likely to cause, damage, harm, loss or injury to a person, real or personal property or the environment,

the Commissioner shall give the licensee a notice in accordance with subsection (2).

- (2) The notice shall –
- (a) be in writing;
  - (b) specify the reasons for giving the notice to the licensee;
  - (c) specify which action specified to in section 82 the Commissioner proposes to take because of the action of the licensee;
  - (d) invite the licensee to submit reasons to the Commissioner why he should not take the action; and
  - (e) specify the period of not less than 14 days within which the licensee shall submit the reasons to the Commissioner.

(3) The Commissioner shall consider the reasons (if any) submitted to him by the licensee.

(4) If, after considering the licensee's reasons, the Commissioner is satisfied that he should take the action specified in the notice, the Commissioner may take the action.



(5) If, after considering the licensee's reasons, the Commissioner is satisfied that he should not take the action specified in the notice but he should take another action from amongst the actions specified in section 82(a) or (b), the Commissioner may take that action.

(6) If, after considering the licensee's reasons, the Commissioner is satisfied that he should not take the action specified in the notice but he should take another action from amongst the actions specified in section 82(c) or (d), the Commissioner shall give the licensee another notice in accordance with subsection (2) specifying that action as the action he proposes to take and deal with the matter again in accordance with subsections (3), (4) and (5) and this subsection.

(7) After complying with subsections (3), (4), (5) and (6) and before taking the action, the Commissioner shall give notice in writing to the licensee specifying –

- (a) the action;
- (b) the reasons for taking the action; and
- (c) the licensee's rights of review and appeal under Part 12.

(8) The notice given under subsection (7) takes effect on the date it is received by the licensee or on the later day (if any) specified in the notice.

(9) If the licensee contravenes or refuses to comply with the notice given under subsection (7), the licensee commits an offence.

Penalty: If the offender is a natural person – \$100,000.

If the offender is a body corporate – \$500,000.

**84.** (1) If the Commissioner is satisfied that an action of a licensee –

- (a) is causing damage, harm, loss or injury, or an immediate and serious threat of damage, harm, loss or injury, to persons, real or personal property or the environment; or

**Powers to give  
direction and  
immediately  
suspend licence**

- (b) is a contravention of his licence, or this Act or subsidiary legislation made under this Act, in such a manner that requires urgent remedial work,

Commissioner may, by notice in writing, direct the licensee to do one or both of the following:

- (c) to immediately cease carrying out the action;
- (d) to, within the period specified in the notice, carry out work to rectify the damage, harm, loss or injury or the contravention.

(2) If the licensee does not comply with the direction under subsection (1), the Commissioner shall, by notice in writing, do one or both of the following:

- (a) authorise another person to enter on the land subject to the licence and carry out work to rectify the contravention or damage caused by the licensee;
- (b) suspend the licensee's licence.

(3) The cost of carrying out the work under subsection (2)(a) is a debt due and payable to the Government by the licensee.

(4) If the Commissioner suspends the licence under subsection (2)(b), the notice shall specify –

- (a) that the suspension is effective immediately on the licensee's receipt of the notice;
- (b) the period of the suspension; and
- (c) the conditions relating to the suspension (if any).

(5) If the licensee contravenes or refuses to comply with the notice given under subsection (2), the licensee commits an offence.

Penalty: If the offender is a natural person – \$100,000.

If the offender is a body corporate – \$500,000.

(6) If the Commissioner suspends the licence under subsection (2)(b), on the suspension of the licence taking effect section 83 applies and the Commissioner shall proceed to issue a notice in accordance with section 83(2) and deal with the matter under section 83.

85. (1) If a licensee holding a local harvesting license that authorises the harvesting of timber contravenes the code of logging practice (other than the requirement to have an annual harvesting plan or a coupe plan) the Commissioner shall, by notice in writing, suspend the licensee's licence.

Power to immediately suspend licence on contravention of certain conditions

(2) If a commercial harvesting licensee contravenes the code of logging practice or fails to enter into and maintain a performance bond in accordance with Division 7 of Part 6, the Commissioner shall, by notice in writing, suspend the licence.

(3) The notice under subsection (1) or (2) shall specify –

- (a) that the suspension of the licence is effective immediately on the licensee's receipt of the notice;
- (b) the reason for the suspension; and
- (c) the conditions relating to the suspension (if any).

(4) If the licensee contravenes or refuses to comply with the notice, the licensee commits an offence.

Penalty: If the offender is a natural person - \$100,000.

If the offender is a body corporate - \$500,000.

(5) On the suspension of the licence taking effect, section 83 applies and the Commissioner shall proceed to issue a notice in accordance with section 83(2) and deal with the matter under section 83.

## PART 8 – TIMBER PLANTATIONS

86. A person does not require a licence to harvest timber from a timber plantation.

No licence required for timber plantations

## PART 9 – EXPORT

87. Subject to section 91, timber harvested from a timber plantation may be exported.

Export of timber from timber plantations

Export of timber from natural forests shall be authorised by commercial harvesting licence

**88.** (1) Subject to sections 90, logs harvested from a natural forest shall not be exported unless the logs were harvested under a commercial harvesting licence.

(2) A person who exports logs harvested under a local harvesting licence commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

Termination of value of timber for export

**89.** (1) The Minister responsible for the administration of the Customs and Excise Act shall, by notice in the Gazette, determine the value for each grade and each size of timber of a species of tree that is exported.

(2) The value that Minister determines shall be based on the international market prices for the species, size and grade of timber.

Protection of species of timber from harvest and export

**90.** (1) This section does not apply to timber that is harvested from a timber plantation.

(2) The species of trees specified in Schedule 1 are protected.

(3) The timber of the species of tree specified in Schedule 2 may only be exported as processed timber.

(4) The Minister may, by notice in the Gazette, prescribe –

(a) other species of protected trees; and

(b) other species of trees of which the timber shall only be exported as processed timber.

(5) A person who harvests timber of a species of tree specified in Schedule 1 or prescribed under subsection (4)(a) commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years of both.

If the offender is a body corporate – \$1,000,000.

(6) It is a defence to a prosecution of an offence against subsection (5) if the person proves that the person was harvesting the timber for traditional or domestic purposes.

(7) A person who exports timber of a species of tree specified in Schedule 1 or prescribed under subsection (4)(a) commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years or both.

If the offender is a body corporate – \$1,000,000.

(8) A person who exports timber of a species of tree specified in Schedule 2 or prescribed under subsection (4)(b) other than as processed timber commits an offence.

Penalty: If the offender is a natural person – \$200,000 or imprisonment for 5 years of both.

If the offender is a body corporate – \$1,000,000.

91. A person who exports timber, including processed timber, shall obtain the authorisations and comply with the requirements for export specified in the regulations before exporting the timber.

Prescribed  
authorities and  
other requirements  
for exporting  
timber

## PART 10 – NATIONAL FORESTS

92. The Minister may, by notice in the Gazette, declare any of the following land to be a national forest:

Declaration of  
national forest

- (a) public land;
- (b) land in which the Commissioner of Lands holds a perpetual estate or a fixed term estate.

93. (1) Only land that is public land or land in which the Commissioner of Lands holds a perpetual estate or a fixed term estate may be declared to be a national forest.

Limitation of  
declaration of  
national forest

(2) On land the subject of a declaration of a national forest, or part of the land subject to a declaration of a national forest, ceasing to be public land or land in which the Commissioner of Lands holds a

perpetual estate or a fixed term estate, the declaration ceases to have effect to the extent that it applies to that land, and that land ceases to be a national forest.

**Restrictions on  
grant of interests in  
national forest**

**94.** (1) The Commissioner of Lands shall not grant an interest in land that is subject to a declaration of a national forest unless the Commissioner consents in writing to the grant.

(2) The Registrar shall enter this restriction on the land register in respect of the parcels of land comprising the national forest.

(3) The Registrar may register an interest in land that is a national forest or part of a national forest only after receiving the Commissioner's consent to the grant of the interest.

(4) In this section –

(Cap 133)

“Registrar” has the same meaning as in the Land and Titles Act;

(Cap 133)

“land register” has the same meaning as in the Land and Titles Act.

**Control of conduct  
in national forests**

**95.** (1) A person shall not do any of the following in a national forest unless he is authorised to do so under section 96 or 97:

- (a) fell, cut, tap, damage, burn, remove, work or sell a tree;
- (b) cause any damage, harm, loss or injury by felling a tree, dragging timber, lighting a fire or doing any other act;
- (c) clear or break up land for cultivation or any other purpose;
- (d) reside or erect a building, shelter or structure;
- (e) graze livestock;
- (f) have in his possession any machinery, equipment or implement for cutting, taking, working or removing any forest produce without being able to show that it is in his possession for a lawful purpose;
- (g) construct or re-open a road, saw-pit or work-place.

(2) A person who contravenes subsection (1) commits an offence.

**Penalty:** If the offender is a natural person – \$50,000 or imprisonment for one year or both.  
If the offender is a body corporate – \$250,000.

96. (1) A person may apply to the Commissioner for a permit to do an act specified in section 95.

Permits to do acts specified in section 95

(2) The application shall –

- (a) specify the information the Commissioner requires to determine whether to grant the permit; and
- (b) be accompanied by the prescribed fee (if any).

(3) The Commissioner may grant the permit subject to the conditions he considers appropriate.

97. (1) If a person had, immediately before a declaration of a national forest takes effect, a right which enabled him to do an act specified in section 95, that person's right continues to have effect, unaffected by the declaration, on and after the declaration takes effect.

Authorisation by pre-existing right

(2) The onus of proving that a person is authorised do to an act specified in section 95 by a right existing immediately before the declaration of a national forest lies on the person claiming that the act was authorised by the right.

## PART 11 – FOREST RESERVES

98. (1) Subject to this Part, if the Minister is satisfied that it is necessary or desirable to protect an area of forested land, he may declare, by notice in the Gazette, the area or part of the area to be a forest reserve.

Declaration of forest reserve

(2) The Minister shall, in the same notice, identify, and specify the extent to which, the rights and interests existing in the land immediately before the declaration takes effect which, on the declaration taking effect, will continue to have effect in relation to that land.

99. (1) Before declaring a forest reserve, the Minister shall –

Minister to give notice etc. before makes declaration

- (a) publish notice of his intention to do so in a newspaper or other publication circulating within Solomon Islands, and (in particular) within and near the area that he intends to be the forest reserve, in a manner that will bring the intended declaration to the attention of the persons likely to be affected by it;

- (b) display copies of the notice within and near the area that he intends to be the forest reserve in a manner that will bring the intended declaration to the attention of the persons likely to be affected by it;
- (c) request persons wishing to make comments about the intended declaration to make representations to him about it at the address specified in the notice before the date specified for that purpose in the notice (which shall be a date at least 3 months after the day on which the notice is first published in accordance with paragraph (a)); and
- (d) make the inquiries he considers appropriate to ascertain –
  - (i) existing rights and interests in the land and the extent to which they are exercised;
  - (ii) the extent to which those rights and interests could be exercised without prejudicing the forest reserve if it is declared; and
  - (iii) to the extent those rights and interests could not be exercised because they would prejudice the forest reserve, the compensation that would have to be paid in respect of those rights and interests.

(2) If the land, or part of the land, the Minister intends to be the forest reserve is customary land –

- (a) the Minister must also conduct prior negotiations with the customary land holding group owning the customary land that will be affected by the declaration;
- (b) any customary owner of the land may obtain advice from a legal practitioner on any matter relating to the declaration; and
- (c) the forest reserve the Minister declares over the land should, as far as is practicable, be a fixed term interest within the meaning of Part VIII of the Land Titles Act.

(Cap 133)

(3) If a customary owner of the land obtains legal advice from the Public Solicitor, the customary owner's entitlement to legal aid is determined under the Public Solicitor's Act.

(Cap 30)

(4) When determining whether to make the declaration of the forest reserve, the Minister shall consider and take into account each representation made to him under subsection (1)(c).



**100.** (1) A person shall not do any of the following in a forest reserve unless he is authorised to do so under section 101 or 102:

- (a) fell, cut, tap, damage, burn, remove, work or sell a tree;
- (b) cause any damage, harm, loss or injury by felling a tree, dragging timber, lighting a fire or doing any other act;
- (c) clear or break up land for cultivation or any other purpose;
- (d) reside or erect a building, shelter or structure;
- (e) graze livestock;
- (f) have in his possession any machinery, equipment or implement for cutting, taking, working or removing any forest produce without being able to show that it is in his possession for a lawful purpose;
- (g) construct or re-open a road, saw-pit or work-place.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: If the offender is a natural person – \$50,000 or imprisonment for one year or both.

If the offender is a body corporate – \$250,000.

**101.** (1) A person may apply to the Commissioner for a permit to do an act specified in section 100.

Permits to do acts  
specified in  
section 100

(2) The application shall –

- (a) specify the information the Commissioner requires to determine whether to grant the permit; and
- (b) be accompanied by the prescribed fee (if any).

(3) The Commissioner may grant the permit subject to the terms and conditions he considers appropriate.

**102.** (1) If a person has a right specified in a declaration of a forest reserve under section 98(2) that enables him to do an act specified in section 100, that person is authorised to do that Act despite the declaration.

Authorisation by  
pre-existing right

(2) The onus of proving that a person is authorised do to an act by a right referred to in paragraph (a) lies on the person claiming that the act was authorised by the right.

## PART 12 – REVIEWS AND APPEALS

### Review

**103.** (1) A person who is dissatisfied with a decision of the Commissioner, a provincial forest manager or the relevant provincial secretary under this Act may apply to the Commissioner to review the decision.

(2) The application shall –

- (a) be in writing, in a form approved by the Commissioner; and
- (b) set out the grounds on which the application is made.

(3) The Commissioner shall conduct the review in a manner that is fair and expeditious and shall give proper consideration to the issues.

(4) In determining the review, the Commissioner shall, by notice in writing to the applicant –

- (a) affirm the decision reviewed;
- (b) vary the decision reviewed; or
- (c) revoke the decision reviewed and substitute for that decision another decision that may be made under this Act regarding the subject matter of the decision reviewed.

(5) The Commissioner shall specify the reasons for his decision in the notice.

### Appeal

**104.** (1) A person who is dissatisfied with the Commissioner's decision under section 103(4) may, within a month after receiving the notice under that subsection, appeal against the decision to the Magistrate's Court.

(2) The appeal is by hearing de novo.

(3) In determining the appeal, the Magistrate's Court may –

- (a) confirm the decision appealed against;
- (b) vary the decision appealed against;
- (c) quash the decision appealed against; or
- (d) remit the matter the subject of the appeal to the Commissioner for reconsideration, either generally or in respect of specified matters, and for substitution of another decision.

(4) The Magistrate's Court may make any other orders, including orders as to costs, it considers just.

(5) If the Magistrate's Court remits the matter to the Commissioner, the Court shall advise the Commissioner of its reasons for doing so and give directions to the Commissioner for the reconsideration of the whole or part of the matter.

**105.** A decision that is the subject of a review under section 103 or an appeal under section 104 continues to have effect until the determination of the review or appeal.

Operation of  
decision pending  
review or appeal

## **PART 13 – GENERAL OFFENCES AND PROCEDURAL MATTERS**

### *Division 1 – General offences*

**106.** A person commits an offence if, without the authority of the Commissioner, he does any of the following:

Offences relating to  
use of timber  
brands, stamps or  
marks etc.

- (a) makes or causes to be made a brand, stamp or mark used by forestry officers in the course of performing their functions;
- (b) uses, fixes to or marks on timber, or causes to be used, fixed to or marked on timber, a brand, stamp, mark, figure, word or document used by forestry officers in the course of performing their functions;
- (c) alters, defaces, obliterates or removes a brand, stamp, mark, figure, word or document used, or affixed to or marked on any document or timber, by a forestry officer in the course of performing his functions.

**Penalty:** If the offender is a natural person – \$50,000 or imprisonment for 12 months or both.

If the offender is a body corporate – \$250,000.

Person not to alter  
etc. boundary  
marks

**107.** A person who removes, damages or destroys a survey mark placed in or on forested land by a forestry officer commits an offence.

Penalty: If the offender is a natural person – \$50,000 or imprisonment for 12 months or both.

If the offender is a body corporate – \$250,000.

Offence relating to  
lighting fires

**108.** A person who ignites an open fire on or near forested land commits an offence if the person fails to take proper precautions to control the fire and the fire damages or destroys trees on the forested land.

Penalty: If the offender is a natural person – \$50,000 or imprisonment for 12 months or both.

If the offender is a body corporate – \$250,000.

Requirements  
relating to keeping  
records

**109.** (1) A person who is a licensee, a permittee, the subcontractor of a licensee or a person who sells or exports timber shall keep the prescribed records, in the prescribed manner, as required in relation to his operations under this Act.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: If the offender is a natural person – \$50,000.

If the offender is a body corporate – \$250,000.

(3) A forest officer may, at any time, request a person referred to in subsection (1) to –

- (a) provide him with information the person has recorded under subsection (1); or
- (b) produce the records he is required to keep under subsection (1).

(4) A person who refuses or fails to comply with the forest officer's request commits an offence.

Penalty: If the offender is a natural person – \$50,000.

If the offender is a body corporate – \$250,000.

**110.** A person commits an offence if the person knowingly makes a statement that is false or misleading in a material particular –

**Offence of providing false information**

- (a) in connection with an application, report, record, form, certificate or other document made, filled in or kept, under this Act; or
- (b) otherwise in connection with the operation of this Act or subsidiary legislation made under this Act.

Penalty: If the offender is a natural person – \$50,000 or imprisonment for 12 months or both.

If the offender is a body corporate – \$250,000.

**111.** (1) If a licensee changes his name or principal business address in Solomon Islands, the licensee shall, in writing, notify the Commissioner of the change not later than 28 days after the change occurs.

**Licensee shall notify change of address etc.**

(2) A person who contravenes subsection (1) commits an offence.

Penalty: If the offender is a natural person – \$50,000.

If the offender is a body corporate – \$250,000.

**112.** (1) A person who, in the course of the administration of this Act or subsidiary legislation made under this Act, acquires information about another person's affairs or has custody of or access to a document about another person's affairs, commits an offence if the person –

**Offence to disclose information**

- (a) removes a record of, or a copy of a record of, the information;
- (b) communicates the information to another person; or

- (c) shows or gives the record, or a copy of the record, of the information to another person.

Penalty: If the offender is a natural person - \$200,000 or imprisonment for 5 years of both.

If the offender is a body corporate - \$1,000,000.

(2) Subsection (1) does not apply if the person does an act specified in that subsection because he is required to do so for the purposes of this Act, subsidiary legislation made under this Act or another Act or for the purposes of an investigation or prosecution of an offence against this Act or subsidiary legislation made under this Act.

### *Division 2 – Procedural matters*

Who may  
commence  
proceedings

**113.** Any of the following persons may commence proceedings for the prosecution of an offence against this Act or subsidiary legislation made under this Act:

- (a) the Commissioner;
- (b) the Director of Public Prosecutions;
- (c) a police officer;
- (d) a relevant provincial secretary;
- (e) a legal practitioner who is a legal officer of a relevant provincial government.

Offences by bodies  
corporate

**114.** (1) If a body corporate commits an offence against this Act or subsidiary legislation made under this Act, each person who is a director of the body corporate or an officer concerned in the management of the body corporate is taken to have committed the offence to the same extent as the body corporate unless the court is satisfied that –

- (a) the commission of the offence occurred without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
- (c) the person used all due diligence.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions

of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

(3) A proceeding may be brought against a person, and an order or conviction may be made in respect of the person by virtue of subsection (1), whether or not the body corporate has been or is being proceeded against or an order or conviction has been or will be made in respect of the body corporate.

(4) This section does not affect a body corporate's liability in relation to an offence committed against this Act or subsidiary legislation made under this Act or against another Act.

**115.** (1) If the actions of an employee of a licensee constitute or allegedly constitute an offence against this Act or subsidiary legislation made under this Act, the licensee may be prosecuted for the offence as if he had personally performed those actions.

Liability of  
employers

(2) The licensee may be prosecuted for the offence whether or not the employee is prosecuted.

(3) It is not a defence to the prosecution of the licensee that the licensee did not authorise (either expressly or by implication) the actions of the employee constituting the offence.

(4) In this section –

“employee” includes a person whose services are provided to a licensee under a contract with that person or another person.

**116.** (1) Subject to subsection (2), it is not a defence to a prosecution of a person in the capacity of an employee or agent for an offence against this Act or subsidiary legislation made under this Act that the defendant was, at the time of the commission of the offence, an employee or agent of another person.

Liability of  
employees and  
agents

(2) It is a defence to a prosecution of a person referred to in subsection (1) for an offence against this Act or subsidiary legislation made under this Act that the person was, at the time of the commission of the offence, under the personal supervision of another person.

**117.** (1) If the actions of a subcontractor, or the employee of a subcontractor, constitute or allegedly constitute an offence against this Act or subsidiary legislation made under this Act, the licensee or the subcontractor, or both the licensee and subcontractor, may be prosecuted for the offence.

(2) It is not a defence to a prosecution of the subcontractor that, at the time of the commission of the offence, the person was a subcontractor to the licensee.

(3) In any proceeding for an amount of damages for any action of a subcontractor or the employee of a subcontractor in the course of carrying out forestry activities or forestry related activities, the licensee and subcontractor are jointly and severally liable for the amount.

**118.** (1) If a person is convicted of an offence against this Act or subsidiary legislation made under this Act, the court may, in addition to the penalty the court may impose or other order the court may make in relation to the offence, order that property seized under section 19(3)(g) in respect of the offence is forfeited to the Government.

(2) The Commissioner may take possession of and sell or otherwise dispose of property forfeited under subsection (1) in the manner he considers appropriate.

#### **PART 14 – MISCELLANEOUS**

**119.** (1) The Minister may, by notice in the Gazette, prescribe the fees payable in relation to matters under this Act.

(2) The fees that the Minister may prescribe include, but are not limited to, fees relating to making an application for a licence or permit and fees payable periodically by licensees or the holders of permits.

**120.** A document that is required under this Act to be given to or lodged with a person may be given to or lodged with the person personally or by registered mail.



**121.** (1) This section applies to a person who requires approval of an investment under section 5, 6, 7, or 8 of the Investment Act for the purposes of carrying out forestry activities or forestry related activities which are required to be authorised by a licence or a permit.

**Investment Board  
approvals**  
(Cap 142)

(2) When the person makes an application for the approval under the Investment Act, the person shall give a copy of the application to the Commissioner.

(Cap 142)

(3) On receiving the application, the Commissioner shall make a report to the Investment Board, within the meaning of the Investment Act, regarding the application.

(Cap 142)

(4) The report shall –

(a) state the opinion of the Commissioner regarding –

- (i) the investment proposed in the application;
- (ii) if appropriate, any proposed change in the share holding or beneficial ownership of the applicant set out in the application; and
- (iii) any other matter the Commissioner considers relevant;

(b) comment on the relevance of the expertise and experience of the applicant to the forestry industry and, if appropriate, the likely effect any proposed change of ownership and control of the applicant will have on the forestry industry; and

(c) state whether the Commissioner consents to the approval of the investment.

(5) The Investment Board shall not approve the investment unless the Commissioner consents to the approval of the investment.

**122.** (1) A person who is or was the Commissioner, a provincial forestry officer, a relevant provincial secretary or a forest officer is not civilly or criminally liable for an act done, or omitted to be done, by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

**Protection from  
liability**

(2) Subsection (1) does not affect any liability that the Government would, apart from that subsection, have for the act or omission.

**Jurisdiction of High Court to hear matters relating to customary law**  
(Cap 133)

**123.** The High Court may exercise its jurisdiction under the Land and Titles Act to hear and determine an issue relating to customary law or customary land arising from the application of this Act or subsidiary legislation made under this Act, other than the ownership of customary land.

**Compensation for compulsorily taking possession of or acquiring property**

**124. (1)** If, because of an action taken under this Act, a person's property is compulsorily taken possession of or acquired, reasonable compensation shall, subject to this section, be paid to the person for taking possession of the property or acquiring the right or interest in the property.

(2) The compensation may take the form of cash or another form and is payable by lump sum or by instalments.

(3) The amount of compensation or, if the compensation is payable by instalments, at least the first instalment of the compensation shall be paid to the person within 3 months of the acquisition taking place.

(4) If property that is compulsorily acquired is land referred to in section 111 of the Constitution, the amount of compensation that shall be paid to the person shall be determined by taking account of –

- (a) the price the person paid for the land;
- (b) the value of improvements made to the land between the date the person purchased the land and the date it is acquired;
- (c) the current use value of the land; and
- (d) if it the person has abandoned the land or the land is in a state of dereliction, the fact of its abandonment or dereliction.

(5) A person whose property is compulsorily taken possession of or acquired may apply to the Magistrate's Court to determine –

- (a) his interest or right in the property and whether compensation is payable to him;

- (b) the legality of the taking possession or acquisition of the property, interest or right;
- (c) the amount of compensation that should be payable to him;
- (d) the reasonableness of the compensation that has been or is intended to be paid to him; and
- (e) the period of time within which the compensation should be paid

(6) There is a right of appeal on an error of law from the determination of the Magistrate's Court to the High Court.

**125.** (1) The Minister may, having consulted with the Commissioner and having the approval of Cabinet, impose moratoria on the granting of, or receiving of applications for, a licence or permit under this Act.

**Moratoria**

(2) Moratoria imposed under subsection (1) –

- (a) shall be by notice in the Gazette; and
- (b) may apply to the whole of Solomon Islands or a part only of Solomon Islands, as specified in the notice.

**126.** A statement or implication in the reasons for a decision, judgment or order of a court that the Forest Resources and Timber Utilisation Act codifies the laws dealing with logging, or is by nature a code, does not apply to this Act.

**Dicta that Act a code do not apply**

(Cap 40)

**127.** This Act does not apply to or in relation to the New Georgia lands, within the meaning of the North New Georgia Timber Corporation Act, until the Corporation, within the meaning of that Act, is wound up in accordance with section 13 of that Act.

**Application of Act to New Georgia lands**

(Cap 43)

**128.** (1) The Minister may make regulations, not inconsistent with this Act, prescribing matters that are –

**Regulations**

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for –

- (a) the forms to be used in connection with this Act;
- (b) the terms and conditions of forest access agreements or licences and, in so providing, may prescribe terms and conditions to which all forest access agreements or licences are subject or terms and conditions to which a forest access agreement or licence belonging to a specified class of forest access agreements or licences is subject if the terms or conditions are specified in the agreement or on the licence;
- (c) the form and manner in which returns of timber harvested, transported, scaled or disposed of shall be made;
- (d) the books, records, accounts and other documents relating to forestry activities or forestry related activities to be kept and produced when required under this Act and the manner in which those books, records, accounts and documents shall be kept and produced;
- (e) the procedures for negotiating forest access agreements;
- (f) the circumstances when licensees may be required to process in Solomon Islands timber harvested under their licences and the size, type and volume, and the manner in which, such timber shall be processed in Solomon Islands;
- (g) the payment of an amount to the Government, a relevant provincial government or a statutory authority for timber harvested on or removed from land that is under the care or control of or is managed by the Government, relevant provincial government or statutory authority;
- (h) the payment by a licensee of an amount for wastage of timber harvested and the method for calculating the amount payable by the licensee;
- (i) scaling of timber for export and sale;
- (j) prohibiting or regulating export of timber which is not of merchantable quality;
- (k) the requirements for exporting timber;
- (l) regulating the carriage of logs or timber, including providing for installing and maintaining equipment in or on vehicles for monitoring the carriage of timber;
- (m) requiring licensees or permittees to –
  - (i) undertake natural forest or timber plantation management;

- (ii) undertake measures to protect the environment against erosion and land degradation;
  - (iii) construct, repair and maintain roads, pathways and bridges for accessing areas where timber is or will be harvested; or
  - (iv) close the roads, pathways and bridges referred to in subparagraph (iii) to members of the public or prescribed persons or classes of traffic;
- (n) regulating the carrying out of forestry activities and forestry related activities;
  - (o) the safety of persons employed in the timber industry;
  - (p) prescribing training programmes and certificates and other awards on completion of training programmes for persons who work in the forestry industry;
  - (q) prohibiting or regulating conduct that affects the management of, or exploits, non-timber biological matter on forested land; and
  - (r) providing for penalties not exceeding \$50,000 for offences against the regulations.

## PART 15 – REPEAL AND SAVINGS AND TRANSITIONAL PROVISIONS

**129.** In this Part –

**Definitions**

“Commissioner of Forest Resources” has the same meaning as in the first repealed Act.

“felling licence” means a licence granted under section 5 of the first repealed Act;

“first repealed Act” means the Forest and Timber Resources Utilisation Act;

(Cap 40)

“milling licence” means a licence granted under section 18 of the first repealed Act.

**130.** (1) The Forest and Timber Resources Utilisation Act 1969 (Act No. 9 of 1969) is repealed.

**Repeal**  
(Cap 40)

(2) The Forests Act 1999 (Act No 3 of 1999) is repealed.

Savings:  
appointments

**131.** (1) The person who, immediately before the commencement of this Act, was the Commissioner of Forest Resources is, on and after that commencement, the Commissioner of Forests until the period for which his appointment as the Commissioner of Forest Resources would, but for that commencement, expire.

(2) A person who, immediately before the commencement of this Act, was a forest officer under the first repealed Act is, on and after that commencement, a forest officer under this Act until the period his appointment under the first repealed Act would, but for that commencement, expire.

(3) This Act and subsidiary legislation made under this Act applies to and in relation to a person referred to in subsection (1) or (2) as if that person were appointed under this Act.

(4) A reference in an Act or subsidiary legislation, or in an agreement, contract, licence, permit, authority or any other document, to the Commissioner of Forest Resources or a forest officer is, on and after the commencement of this Act, taken to be, and has effect as if it were, a reference to the Commissioner or a forest officer appointed under this Act, as the case may require.

(5) Nothing in this section limits the power of the Commissioner to appoint other forest officers under section 17.

**132.** (1) A declaration of a state forest made under section 20 of the first repealed Act that was in force immediately before the commencement of this Act continues in force on and after that commencement, and this Act and subsidiary legislation made under this Act applies to it and it shall be dealt with under this Act, as if it were a declaration of a national forest.

(2) A declaration of a forest reserve made under section 24 of the first repealed Act that was in force immediately before the commencement of this Act continues in force on and after that commencement, and this Act and subsidiary legislation made under this Act applies to it and it shall be dealt with under this Act, as if it were a declaration of a forest reserve under this Act.

Savings: state  
forests and forest  
reserves

133. (1) On and after the commencement of this Act, a felling licence that was in force immediately before the commencement of this Act continues in force until the day it would, but for that commencement, expire under the first repealed Act, and this Act and subsidiary legislation made under this Act applies to it and it shall be dealt with under this Act as if it were a commercial harvesting licence.

(2) Despite any provision of this Act to the contrary, any lawful subcontracting arrangements of the holder of a felling licence entered into and having effect immediately before the commencement of this Act continue, on and after that commencement, to have lawful effect until the licence expires in accordance with subsection (1) or is cancelled under this Act.

(3) A timber rights agreement that relates to a licence continued in force under subsection (1) continues in force to the extent that it relates to carrying out forestry activities and forestry related activities until the day the licence expires in accordance with that subsection, or is cancelled or terminated under this Act, and this Act applies to the timber rights agreement, and it shall be dealt with under this Act, as if it were a forest access agreement.

(4) On and after the commencement of this Act, a milling licence that was in force immediately before the commencement of this Act continues in force to the extent that it authorises the holder of the licence to carry out forestry activities and forestry related activities until the day it would, but for that commencement, expire under the first repealed Act, and this Act applies to it and it shall be dealt with under this Act as if it were a local harvesting licence.

134. (1) This section applies if, before the commencement of this Act, a person made an application to the Commissioner of Forest Resources for the grant of a felling licence and, on that commencement, the application had not been withdrawn or the applicant has not been granted or refused a felling licence.

Transitional:  
timber rights  
agreements and  
applications for  
felling licences

(2) If, before the commencement of this Act, a person made an application to the Commissioner of Forest Resources for the grant of a felling licence in accordance with section 5 of the first repealed Act and had complied with sections 7, 8 and 9(2) of that Act, on that commencement –

- (a) the certificate of customary ownership issued under section 9(2) of the first repealed Act in respect of the application is taken to be and has effect, and this Act applies to it and it shall be dealt with under this Act, as if it were a draft statement of customary ownership and, in particular, sections 49 to 55 (inclusive) apply to and shall be complied with in relation to the certificate of customary ownership; and
- (b) having complied with sections 49 to 55 (inclusive), the person may enter into a forest access agreement in accordance Division 3 of Part 6 and then apply for a commercial harvesting licence in accordance with Division 4 of Part 6.

(3) If, before the commencement of this Act, a person made an application to the Commissioner of Forest Resources for the grant of a felling licence in accordance with section 5 of the first repealed Act but, on that commencement, had not complied with section 7, 8 or 9(2) of that Act –

- (a) that application has no effect; and
- (b) the person shall make a new application under Part 6.

Savings: dealings  
with things seized  
under first repealed  
Act

**135.** Property seized under Part VIII of the first repealed Act but which, on the commencement of this Act, has not been sold, forfeited or claimed by a person interested in the property shall, on or after that commencement, be dealt with under that Part as if that Part were, but for that commencement, in force.

Continued  
application of  
section 43 of first  
repealed Act  
(Cap 43)

**136.** Section 43 of the first repealed Act continues, as if it were not repealed, to apply to the New Georgia lands, within the meaning of the North New Georgia Timber Corporation Act, on and after the commencement of this Act until the Corporation, within the meaning of that Act, is wound up in accordance with section 13 of that Act.

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**SCHEDULE 1**

Section 90(2), (5) and (7)

**SPECIES OF TIMBER PROTECTED FROM HARVESTING  
AND EXPORT**

<b>Scientific name</b>	<b>Common name</b>
Xanthostemon sp	Tubi – tree
Rhizophora spp and all o ther mangrove species	Maguru – tree
Artocarpus communis	Breadfruit – tree
Artocarpus atilis	Breadfruit – tree
Manifera indica	Mango – tree
Mangifera minor	Mango – tree
Mangifera mucronulata	Mango – tree
Mangifera salomonensis	Mango – tree
Terminalia solomonis	To'oma – tree
Terminalia kernaebachii	

**SCHEDULE 2**

Section 90(3) and (8)

**SPECIES NOT TO BE EXPORTED EXCEPT AS PROCESSED  
TIMBER**

<b>Scientific name</b>	<b>Common name</b>
Agathis macrophylla	Kauri tree
Disopyros ebenun	Ebony tree
Cordia subcordata	Kerosene wood tree
Calophyllm obscurum	
Canarium indicum	Big Ngali nut tree
Canarium salomenense	Small Ngali nut tree
Gmelina molucanna	Canoe tree
Intsia bijuga	Kwila tree
Pterocarpus indicus	Rosewood tree
Vitex cofassus	Vasa

## **Forests Bill, 2004**

### **Objects and Reasons**

The Forest Resources and Timber Utilisation Act (Cap.40) (FRTU Act) came in to force in 1969. A number of policy reviews dating from the early 1990s have agreed that it is outdated and in particular its application has given rise to the current situation where the natural forest is being utilised at an unsustainable rate. Furthermore it does not reflect current best practice in forestry and environmental management and it lacks mechanisms for facilitating and encouraging small-scale timber plantation establishment and small-scale sawmilling by landowners. The original intention of the FRTU Act was to facilitate logging on government land and therefore it does not properly recognise landowner interests.

The Forest Act 1999 was passed by Parliament and received Royal Assent; however it was not gazetted and therefore did not become law.

Both the FRTU Act and the Forest Act 1999 will be repealed by the Forests Bill 2004.

In 2002 a detailed examination of forest policy was undertaken by a Forest Policy Working Group comprising forest policy stakeholders including officials, the timber industry, NGOs, and most provincial premiers. It developed a draft National Forest Policy based on the following 5 objectives:

- \* long term view of the forestry sector
- \* basis for sustainable economic growth
- \* increased local level participation
- \* environmental protection
- \* market-based domestic processing

Cabinet approved the National Forest Policy which formed the framework for the Bill.

The Bill is broadly based on the 1999 Act but has significant changes. A number of mechanisms have been deleted from the 1999 Act, including the Forestry Board, the Forest Trust, the National Timber Industry Policy, the National Forest Resource Management Strategy, Timber Processing Licences, Forest Development Levies, Timber Supply Quotas, Land Clearing Permits and Community Forestry Scheme Licences. These were considered to be either too difficult to administer or for industry to comply with, overly bureaucratic and costly, vulnerable to corruption, or unnecessary.

The Bill aims to balance the needs of landowners, the timber industry, national and provincial governments, and the environment, ensuring that a sustainable forest resource remains for future generations. Plantations will increasingly be a major part of this resource and the Bill takes account of this.

The Bill will significantly improve revenue collection and it will be difficult for timber companies to avoid duty, royalty and other payments to national and provincial governments and to landowners.

Landowners will be also be protected through better means of identifying them and by requiring that royalties and other payments be made immediately to them.

Environmental protection and best practice logging techniques will be enforced through a codes of practice and codes of logging practice.

The Bill is divided into fifteen parts.

#### Part 1 Preliminary

This deals with preliminary matters common to all bills and importantly, in Clause 3, details the objects of the Bill.

#### Part 2 Forestry Administration

This Part sets out the powers and functions of the Commissioner of Forests, his deputy and forest officers. Certain important functions are devolved to provincial governments and it requires the Public Services Commission, in consultation with the Commissioner of Forests, to appoint provincial forest officers who will conduct enforcement, carry out locally-based forest extension work and other activities in close coordination with the provincial governments. Most of the powers conferred by the Bill are vested in the Commissioner and provincial secretaries.

#### Part 3 Planning for the Use of Forest Resources

This Part requires the Minister (with the approval of Cabinet) and Provincial Executives to develop and publish forest policies that will conserve, protect, and develop forest resources. Administrators are responsible for executing that policy.

Before any natural forest is modified, other than for a domestic or traditional use, there must be a determination of permitted forest uses. In making such a determination the Commissioner must take into account commercial, environmental and social factors and he must ensure that the determination is consistent with the relevant provincial forest policy.

#### Part 4 General Controls of Conduct of Forestry Activities in Natural Forests.

This Part requires that timber harvesting in natural forests be carried out in accordance with a licence. Licences are required for harvesting natural trees on both registered and customary land. Timber plantations are covered by the Bill but different conditions apply. No licence is required to fell trees for a traditional or domestic purpose.

There are two types of licence covering the harvesting of natural forests. The first is the Local Harvesting Licence. This is a simplified procedure designed for landowners who want to clear small areas to establish forest plantations or to cut small quantities of natural trees to produce sawn timber for sale. The second is the Commercial Harvesting Licence which is required where natural trees are felled for export or large scale domestic processing.

#### Part 5 Local Harvesting Licences

Local harvesting licences are required for small-scale projects involving the harvesting of up to 500 cubic metres of natural logs or the clearing of up to 5 hectares of natural forest for forest plantation establishment and are granted by the relevant provincial government and issued to landowners only. When the licensed volume or area has been cut a landowner can apply for a further licence. This will be granted if it is acceptable on environmental grounds and is consistent with the provincial policy. Where a licence is issued to allow the clearing of natural forest for plantation establishment then the area cleared must be planted before a further licence will be issued. Logs harvested under the local licence may only be exported in processed form. In the majority of cases this will be as sawn timber. Local licences allow for a shortened process of customary ownership determination if there is no apparent controversy over ownership. Where ownership is contested then this will need to be resolved by a court before the licence can be issued.

#### Part 6 Commercial Harvesting Licences

The most common form of timber harvesting operation is likely to remain the transfer of forest access rights by landowners to a logging company under a Commercial Harvesting Licence. Landowners can log their land themselves under a Commercial Harvesting Licence if they have adequate capital, assets and expertise to do so.

Commercial Harvesting Licences are required for large scale commercial operations where the logs are exported or supplied to a local processing plant (or plants) in quantities exceeding 500m<sup>3</sup> per annum.

Once commercial harvesting has been determined as a permitted use (see Part 3) then logging on customary land by a logging company which is not the landowner is a three-stage process -

### 1. Statement of Customary Ownership:

If commercial scale logging is a permitted forest use, the customary owners lodge a Draft Statement of Customary Ownership with the provincial government. In this process, the landowners identify themselves, hold a meeting according to their custom, and lodge the results of the meeting with the Local Court for endorsement. The meeting will be covered by or at the direction of the provincial government and include an independent observer to record their deliberations. At the meeting they appoint customary representatives from within their group. They also specify how they want their forest to be used, whether or not they want commercial logging and if so under what conditions. These details are made public and subject to appeal. If after 3 months there is no objection, then the Statement of Customary Ownership will be endorsed by the Local Court. If there is a dispute then the matter will be decided by a Local Court, with limited appeal rights to the High Court. The aim of this process is to provide clear title and to settle disputes before negotiations begin. Once the draft statement of customary ownership is endorsed the appointed representatives can negotiate and execute a Forest Access Agreement. Customary representatives cannot create a company for this purpose and are therefore directly responsible to their customary group.

Customary representatives have a number of duties under the Bill. They shall not profit from their role as representatives; must account for moneys received; must act in the landowners' interests; must distribute payments directly to all customary owners, according to custom; and must endeavour to preserve the timber resource and environment for future generations.

### 2. Forest Access Agreement:

A Forest Access Agreement is the standard form of contract between the land owners and the licensee. After the Statement of Customary Ownership has been endorsed by the Local Court, the customary representatives can invite timber harvesting operators to negotiate with them. They can, if they wish, enlist the help of the Commissioner to assist them to choose a suitable operator. The Forest Access Agreement sets out rights and obligations of both parties and including details of all payments and other benefits to be provided to landowners.

### 3 Commercial Harvesting Licence

Once a Forest Access Agreement is executed the logging company may apply to the Commissioner for a Commercial Harvesting Licence. The licence specifies the area of land on which logging is permitted, the annual permitted quota, the performance bond that the logging company must provide and other conditions that the commercial operator must comply with. There may be a requirement for the licensee to process a proportion of the

total cut in the Solomon Islands. The Commissioner can only issue a licence if he is satisfied that the logging company has the equipment and expertise necessary to do the job, has met all statutory obligations, and has paid all monies due to the Government and landowners from previous operations. It also requires logging companies to pay landowners a minimum royalty for logs harvested (10% of the determined value or a minimum dollar amount, set by the Commissioner, whichever is the higher). This must be paid in cash.

Once the licence is granted annual timber harvesting and coupe plans must be approved before timber harvesting may start.

The Commissioner may approve the subcontracting of logging activities under a Commercial Harvesting Licence only if the subcontracting does not involve the whole or main part of the logging operation. If subcontracting is allowed subcontractors are liable for offences, duties and other responsibilities as if they were licensees. As part of the transitional arrangements, existing subcontracting arrangements will be permitted to remain intact.

#### Part 7 Disciplinary Procedures Against Licensees

This Part sets out the conditions under which a licence can be varied, suspended, with or without warning, or cancelled. Appropriate safeguards are provided to protect the rights of licensees.

#### Part 8 Timber Plantations

A licence is not required to harvest a forest plantation. However a licence is required to establish a plantation. In the case of small-scale developments (5ha blocks or less) a Local Harvesting Licence is required to clear land for plantation establishment. In the case of larger-scale developments permission must be obtained under the Environment Act 1998 after a full environmental impact assessment. The permission to establish a timber plantation must necessarily include permission to harvest it; for that is the reason it was planted in the first place.

#### Part 9 Export

All timber (both logs and sawn timber) require approval for export. This is to ensure, in the case of natural forest logs, that the harvesting has been authorised by a commercial harvesting licence and that in all cases duty and royalties (where applicable) have been paid. Duty and royalty payments are based on determined prices. These are world prices and not the actual sale price. This system is designed to make sure that amounts due to the Government and landowners are not reduced by artificially low prices. There is a prohibition on the export of the species listed in Schedule 1 because these are endangered or reserved for cultural purposes. The species in Schedule 2 can only be exported as sawn timber. The Minister can add species to these two lists by notice in the Gazette.

#### Part 10 National Forests

The Bill provides for the Minister to declare forested land owned by the State to be a National Forest for the purposes of protecting environmental values.

#### Part 11 Forest Reserves

The Bill provides for the Minister to declare privately or traditionally owned forested land as a Forest Reserve for the purpose of protecting environmental values. Owners are to be compensated for any reduction in their rights to the use of such land.

#### Part 12 Reviews and Appeals

The Bill is highly prescriptive and sets out in great detail what the Commissioner can and cannot do. Little is left to the Commissioner's discretion. If, however, a party feels that he has been disadvantaged by the Commissioner not correctly following a statutory procedure or not properly applying a discretionary power then he may require the Commissioner to review his decision. That review may amend or uphold the original decision. As part of the review the Commissioner must give the reason or reasons for his decision. If this does not satisfy the party he can appeal to the Magistrates Court for a ruling.

#### Part 13 General Offences and Procedural Matters

This Part deals with a general offences not covered in other parts of the Bill. It also details procedures for prosecuting offences, the liability of various parties, and dealing with confiscated property.

#### Part 14 Miscellaneous

This Part deals with a number of administrative procedures including fees, giving and lodging documents, Investment Board approvals and compensation for compulsory acquisition of property. It also includes provisions that enable the Minister to make regulations and declare moratoria on the granting of licences and permits.

#### Part 15 Repeal, Savings and Transitional Provisions

This Part deals with the repeal of the FRTU Act and the Forest Act 1999 and specifies savings and transitional arrangements. Provision is made to save the appointment of the Commissioner and forest officers and the declaration of state forests and forest reserves under the FRTU Act. Felling licences and milling licences are saved and continue in force as if they were commercial harvesting licences and local harvesting licences respectively. Timber rights agreements continue in force as if they were forest access agreements and certain applications for felling licences made before the Bill commences are saved as applications for commercial harvesting licences.



MINISTER OF FORESTS, ENVIRONMENT  
AND CONSERVATION

