LEVELLING THE PLAYING FIELD:

REFORMING FORESTRY GOVERNANCE IN TASMANIA

A WHITE PAPER SUBMITTED TO
ENVIRONMENT TASMANIA BY CSDEV ASSOCIATES

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Foreword

Tasmania, the land mass which has wandered across the globe from the Equator to the Antarctic over millions of years, is our home. The locals have been here for over 35,000 years. Some of us, the boat people, have settled here only in the last 200 years as a consequence of the traumas of war, policies of nation states, and the desire of people to lead a better life. From the refuse of the English prisons, the turbulence of Ireland, the displaced from Europe, and, more recently, the turmoil of Asia, the Middle East and Africa, we have formed a community with common pride and identity as Tasmanians, Australians and citizens of the world. Our activities have spanned the gamut of human endeavour, from firestick farming to globalisation. We have lived with and struggled against our environment. But we have loved where we live.

We have seen or participated in a range of discourses about our home. Early lovers of nature fought for Cradle Mountain, Hastings Caves and the like. A later generation, encouraged by an unlikely alliance of the middle class and the construction workers of the unions, fought for our colonial heritage under the banner of the Green Bans. That process was followed by an impetus to plan our cities, to regulate the use of resources, and to retain wild lands for future generations.

But there was a price. My generation – I am now aged 66 – was required to pay for the sins of the past and the hopes of the future. The Italian Left, in analysing the political future, posed the question succinctly in the European context: 'The Greens ask all the right questions, but what is the answer?'

This paper, *Levelling the Playing Field,* commissioned by Environment Tasmania, is an attempt to answer that question. Dr Wynne Russell and her colleagues have produced an analysis of both where we are and where we wish to go. It is about self governance as citizens and recognition of modern economics. We might be proud Tasmanians and care for our families but we have limited resources. One of those resources is forestry.

This paper recognises the sometimes competing needs of protecting our home and generating income to provide for our families. It accepts the need of a nation state to function within the global economy. It sets out a series of decisions and procedures whereby we can reconcile human needs, legal processes and the response of government for our future. The paper is not one of rhetoric, special pleading or modern spin. It compiles research, case studies, public opinion and a detailed analysis.

Levelling the Playing Field is a recognition of reality. It is not judgmental. It accepts both the interests of those who work within the forest industries and of the community as a whole.

The slogan 'Think globally, act locally' has served us well. It took us away from despair and made us believe that what we did mattered. It has generated positive actions and achievements for a sustainable future. But the slogan had had limitations. Sometimes it was hijacked for self-interest by people who contrived to equate localised personal agendas with broader issues. It led to the NIMBY – or 'not in my back yard' – syndrome. The slogan remains valid, but only if it recognises the interconnected complexities of the modern world. This paper – an unfinished discourse – does that.

Critics might seek to meet the paper by arguing that it seeks to end the use of a natural resource. They would be wrong. It does no such thing. A consequence of its recommendations is the reform of the legislative and administrative processes through which we as Tasmanians shape our community. It recognises the interests of those within the forestry industry and those public officers charged with regulating the industry who need to know that they are asked to do. We, as a community, have served each badly. *Levelling the Playing Field* is not a moral judgment but a statement of necessity.

An outcome of the report might be, as some critics might claim, a change in the aims and duties of a public authority, Forestry Tasmania, and, if so, it would be a desirable outcome. Some critics might claim that the report's recommendations would be harmful to the long-term interests of an important corporation, Gunns. They would be wrong. The corporation has already—and commendably—changed direction, moving towards plantation farming.

No one is presently gaining advantage through the present system. Local government is not properly informed; logging contractors have no certainty or profit; and the community is confused. Both natural resources and taxpayer subsidies are being lost.

Critics may contend that the paper does no more than argue for the end of logging oldgrowth forests. The paper does not—it seeks the speeding up of the transition to other resources. Logic tells us that continual misuse will destroy those forests eventually. Logic tells us that if we are to cater for future generations then we need to conserve their inheritance. Logic is at the heart of this discourse.

This paper does not prevent Tasmania from wandering across the globe, either by tectonics or through economics. But it is a guide to how we can keep wandering but remain a wonderful and cohesive community.

The Honourable Justice Pierre Slicer
January 2010

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EXECUTIVE SUMMARY

The debate over the fate of Tasmania's forests and the role of the forest industry in Tasmanian politics remains one of the state's most lasting divides. According to a random survey of 600 Tasmanians conducted by Essential Research in October 2009 for Environment Tasmania, a not-for-profit conservation council, 72% of respondents felt that "the logging of native forests is an ongoing conflict in our community that I want solved."[1] Two main sources of dispute are evident.

- Tasmanians are concerned about the logging of high conservation value forests—especially those popularly known as 'old-growth forests,' which most Tasmanians associate with mature tall eucalypt forests. For instance, according to a survey funded by the Australian Research Council (ARC) with contributions by Forestry Tasmania and the Forest Practices Authority, almost 68.1% of respondents agreed that old-growth forests should not be logged at all.[2] These findings are in keeping with earlier studies; for example, an August 2007 poll of 400 residents of the state's Bass district found that 65% of respondents favoured "all areas of old growth forest in Tasmania being protected from logging."[3] In fact, almost 34% of the respondents to the ARC study agreed that native forests, regardless of age, should not be logged at all, and over 70.7% thought that native forests should not be clearfelled.[4]

- Tasmanians have serious concerns about the governance of the forestry sector in the state. The Essential Research survey cited above found that 60% of respondents thought that there was an unhealthy relationship between the timber industry and politicians in Tasmania. Again, these findings are consonant with other poll findings. A 2006 Roy Morgan poll also found that 60% of Tasmanians said that their state government was "not effective" in the fight against corruption. Indeed, 11% said that they thought that the government not only did not fight corruption, but also encouraged it—the highest levels of distrust in the nation.[5]

Rather than focusing on shooting the messenger, all parties to the forestry debate should be asking themselves what factors feed these concerns and perceptions, and what can be done not only to address them, but also to bring the best possible governance standards to forestry in the state. Governance simply means "the process of decision-making and the process by which decisions are implemented (or not implemented)."[6] Good governance, according to a model widely used in the international environment, has eight major characteristics: it is consensus-oriented, participatory, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. It also seeks to minimise the abuse of power, including but not limited to corruption.

The forestry industry has taken some positive steps in recent years towards establishing good community relations, liaising and cooperating with other industry sectors, addressing public concerns, increasing transparency, and improving governance in the forestry sector overall. However, Tasmania's forestry governance environment remains a tilted playing field.

- At the policy as well as philosophical levels, forestry governance is skewed towards a particular extractive model of use of State forests, to the disadvantage not only of conservation but also of existing and potential non-extractive users.

- At the government body level, bureaucratic power is skewed towards Forestry Tasmania.

- At the industry level, an unhealthy bias appears to remain in the political and institutional environment towards the corporate expansion plans of Gunns Ltd.

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1 Essential Research, October 2009.

2 Ford, Rebecca et al. (2009), "Social acceptability of forest management options: landscape visualisation and evaluation." http://www.warra.com/documents/publications/Ford_etal_2009b.pdf, p. 11: e-mail, Rebecca Ford, 30 January 2010

3 The figure rises to 69% if taken on a two-answer preferred basis. A further 53% (60% two-answer preferred) opposed the construction of a pulp mill in the Tamar Valley. www.wilderness.org.

4 Ford *et al*. 2009 (note 2), p. 11.

5 http://www.roymorgan.com/news/polls/2006/4070/

6 United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (2009), "What is good governance?" http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

- At the legal and regulatory level, the web of exemptions and special legislation surrounding forestry creates an impression among many of "one law for forestry, one law for the rest of us."

- At the level of debate, suspicion towards conservationists and those advocating non-extractive uses still appears to persist in many parts of government.

Researchers for the project were struck by the number of individuals who feared adverse personal or professional consequences if their criticisms of forestry practices or governance became known—a finding that does not augur well for the possibility for robust discussion of these issues in government or elsewhere. This situation is particularly problematic given that the Tasmanian community as a whole—as the Tasmanian government and Forestry Tasmania correctly emphasise—is the major intended beneficiary of State forest uses. However, the concept of "optimum community benefit" is an issue into which, by definition, the full range of the community must have input, and which must be open to redefinition as community values change.

This tilted playing field results from three factors. First, it stems from a legal knot that:

- Sets up an inherent conflict of priorities for Forestry Tasmania between management for wood production and management for non-wood values such as biodiversity or carbon storage, as well as between the corporation's commercial interest in keeping information confidential and its duty, as a body controlled by government, to make information available to all.

- Creates inconsistencies in Forestry Tasmania's obligations, for instance in relation to the corporation's joint ventures, which appear to be exemptable from, for example, the corporation's obligations under the *Forestry Act 1920* to take local jobs into account when making decisions about wood allocation.

- Imposes an annual minimum quantity—300,000 cubic metres (m^3)—of saw and veneer logs that Forestry Tasmania must make available to industry, a move that intensifies the tension between Forestry Tasmania's commercial mission and its responsibility to the environment, as well as making it harder for planners to respond to changing community attitudes towards forests.

Second, it stems from a regulatory system with a policy void at its centre—a regulatory doughnut, as it were—that:

- Removes forestry operations from the governance, sustainability and environmental objectives of the state's Resource Management Planning System, as well as from Commonwealth environmental protection legislation.

- Lacks a statewide overarching policy statement setting out clear objectives and measurable outcomes for sustainable management of native forests and plantations.

- Leaves the regulatory agency, the Forest Practices Authority, without clear authority when natural and cultural values, for instance biodiversity conservation, come into conflict with commercial interests.

- Makes it possible for the Tasmanian Government to drag its feet or turn its back on its commitments to biodiversity protection under the Tasmanian Regional Forest Agreement (RFA) and Tasmanian Community Forest Agreement (TCFA).

Third, it stems from a political environment characterized by:

- Lack of clear differentiation between the major political parties.

- Lack of robust debate within government on forestry issues.

- Forestry Tasmania's political and bureaucratic muscle.

- Over-identification by government with the corporate expansion plans of Gunns Ltd.

Taking these points together, the level of political commitment in Tasmania to the interests of the forestry industry often appears to meet the definition of "legislative capture," a situation which occurs when "officials inappropriately identify with the interests of a client or industry" at the expense of good governance.[7]

The effect of this tilted playing field is to perpetuate conflict, not to resolve it.

- The lack of a coherent state-level forest policy leaves proponents of production forestry and forest conservation to fight it out amongst themselves.

- The mechanism behind which the State and Commonwealth Governments align themselves—the RFA/TCFA—was not effective as a conflict breaker, either in the way in which it reached decisions or the way in which those decisions have been implemented.

- As the production forest resource gets tighter, the annual minimum quantity of 300,000 m^3 will simply exacerbate this conflict.

- While Gunns Ltd. itself has announced changes to the pulp mill's operation—notably, that the mill's wood stock will be 100% plantation-based from the outset—the government still faces a challenge in overcoming the damage to public trust caused by the scandal surrounding the fast-tracking of the assessment process.

- In all of this, a lack of transparency makes the debate more bitter and harder to adjudicate.

With a state election due on 20 March 2010, the time is ripe for Tasmania's politicians to take the initiative in seeking solutions to the continuing debate over forestry—which, all indications are, has taken up and will continue to take up an enormous amount of creative, intellectual, and emotional energy in the state.

This evaluation offers four core recommendations. First:

1. Tasmanian political leaders must show the political will to devise a clear, strategic forest policy.
Tasmania needs a clear policy laying out what the state is attempting to achieve with its forests. Such a policy requires explicitly stated biodiversity, environmental, social, and economic objectives, and ways of measuring success in achieving them. The process of formulating such a policy should be an open one, moving beyond a narrowly consultative model to an actively participatory one. While the Tasmanian community considers the strategic direction for its forests, the Tasmanian government should announce a moratorium on the logging of high conservation value forests, the area of greatest community and scientific concern.

Next, to make it possible for the Tasmanian community to arrive together at a fully-elaborated forest policy, the forest governance playing field needs to be levelled, through at least three steps. These are:

2. The Tasmanian government should separate Forestry Tasmania's land management responsibilities from its wood production responsibilities in order to reduce conflicts of priorities.
This disaggregation should be informed by a review by an independent body, such as the Tasmanian Planning Commission, of the comparative advantages of different national and international models for the relationship between land management and production forestry. Such a disaggregation will not necessarily end the conflict of priorities. However, separation of these functions will allow conflicts to be dealt with openly and in an accountable fashion by government.

3. The Tasmanian Government should commission an independent review of Forestry Tasmania's 300,000 m^3 annual minimum supply obligation, with input from all relevant stakeholders, including conservation groups, industry groups, and the general public.
The obligation creates a disincentive for Forestry Tasmania to propose or accept new reserves; distorts forest harvesting practices; sets up a tension between Forestry Tasmania and other existing and potential non-extractive commercial users of the state's forests; pushes Forestry Tasmania towards continuing to open up mature tall eucalypt forests for logging; and limits the ability of Forestry Tasmania and the Tasmanian government to respond to future economic opportunities for the state's forests, such as emerging carbon markets. So far, the obligation has only been assessed from the point

7 For a seminal discussion, see Laffont, Jean-Jacques and Jean Tirole (1991) "*The politics of government decision-making: a theory of regulatory capture,*" *Quarterly Journal of Economics, 106(4)*.

of view of availability; a new review should consider biodiversity conservation, carbon sequestration, preservation of old growth forests, impact on forestry practices (including harvesting regimes), governance, innovation, socio-economic impact, and potentials for alternative supply, starting from the objective of achieving the best possible balance of interests, rather than from the objective of providing a certain supply level.

4. All government bodies involved in forestry, particularly Forestry Tasmania, should increase the provision of information to the public.
Adequate environmental, economic and social data will be critical to the formulation of a state forest policy. In the meantime, without information on such issues as forest structure, forest management history, and carbon storage, it is impossible for other government agencies or the community to make informed recommendations or policy or to gain an informed opinion about the impact of forestry operations on issues such as biodiversity, ecosystem progression, or carbon sequestration and release. To this end, there is a need for greater transparency in a number of areas. These include Forestry Tasmania's financial information; scientific information held and generated by Forestry Tasmania; and government support for the timber industry overall.

The evaluation also offers a suite of additional recommendations to improve transparency and accountability in the forest governance sector; to improve public interaction with, and trust in, the forest practices system; to address key areas of strategic and public concern such as water quality and quantity, regeneration burns, and the Protection of Agricultural Lands policy; to achieve equal access for all to the economic benefits of State forests; to promote participation in forest governance; to promote civil cohesion; and to improve the rule of law in the forestry sector.

This evaluation and its accompanying recommendations represent the start of a conversation, not the end of it. There will be those who believe that its findings and recommendations have gone too far; there will be others who believe that it has not gone far enough. We have presented it as a white paper in order to stimulate discussion. Environment Tasmania will be seeking public and stakeholder comment, which will be discussed in a follow-up report.

RECOMMENDATIONS

Core recommendations

Recommendation 1: Tasmanian political leaders must show the political will to devise a clear strategic forest policy.

- *Accompanying Recommendation 1a: Until a forest policy is elaborated, the Tasmania government should announce a moratorium on the logging of high conservation value forests, the area of greatest community and scientific concern.*

- *Accompanying Recommendation 1b: The process of formulating a state-level forest policy must be supported by adequate and accurate social, economic and environmental data.*

- *Accompanying Recommendation 1c: The Tasmanian government should set up multi-stakeholder processes to draw up of Codes of Conduct for all participants in the various settings in which the forestry debate is played out.*

Recommendation 2: The Tasmanian government should separate Forestry Tasmania's land management responsibilities from its wood production responsibilities in order to reduce conflicts of priorities.

Recommendation 3: The Tasmanian Government should commission an independent review of Forestry Tasmania's 300,000 m^3 annual minimum supply obligation, with input from all relevant stakeholders, including conservation groups, industry groups, and the general public.

Recommendation 4: All government bodies involved in forestry, particularly Forestry Tasmania, should increase the provision of information to the public.

To improve transparency

Recommendation 5: In the general interest of transparent governance, all government bodies should post more information about their organisations, and about forest governance procedures, on their websites.

Recommendation 6: In keeping with other review processes, Forestry Tasmania and the Forest Practices Authority (FPA) should make the results of public consultation processes available to the public.

To improve accountability in the forestry sector

Recommendation 7: The Tasmanian Parliament should clarify Section 12A(1) of the Forestry Act 1920 *and draw up measures for establishing compliance.*

Recommendation 8: Either the Tasmanian Parliament should bring Forestry Tasmania's joint ventures and lease arrangements into line with the corporation's obligations under the Forestry Act 1920*, including the employment consideration requirement, or there should be public consultation as to whether their exemption from this requirement is appropriate.*

To improve public interaction with, and trust in, the forest practices system

Recommendation 9: The FPA should implement a series of changes in the way Forest Practices Plans are handled to improve transparency as well as public participation, accountability, and effectiveness.

Recommendation 10: The public should have more opportunity for involvement in long-term biodiversity planning, including through collection of natural- and cultural values-related data for long-term forestry planning as well as through input on biodiversity issues.

Recommendation 11: The FPA needs better monitoring capacity to be able to identify Forest Practices Officers (FPOs) who put their employers' commercial concerns above natural and cultural values, as well as to protect FPOs from pressure from their employers.

To address key areas of strategic and public concern

Recommendation 12: The Tasmanian government must act to create mechanisms for assessing and managing the impact of forestry on water quality (in terms both of turbidity and chemical content) and quantity.

Recommendation 13: The Environment Protection Agency (EPA) should address the impacts of high-intensity regeneration burns on air quality and carbon emissions.

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Recommendation 14: The Tasmanian Planning Commission must respond to public concerns raised by the State Policy on the Protection of Agricultural Land 2007.

To create equal access for all to the economic benefits of State forests

Recommendation 15: The Department of Economic Development, Tourism and the Arts (DEDTA) should provide more models and support for those who wish to engage in non-extractive businesses on State forest.

Recommendation 16: DEDTA should be responsible for the granting of licenses for non-extractive businesses on State forests to help overcome perceptions of potential conflicts of interest for Forestry Tasmania.

To improve participation in forest governance

Recommendation 17: The Forest Practices Board should provide councils with a formal role in the Private Timber Reserve approval process, with greater weight given to their public interest objections.

Recommendation 18: The Tasmanian Planning Commission should not block councils from gazetting forestry and plantation operations as "prohibited" or "discretionary."

Recommendation 19: The Forest Practices Tribunal should grant interested third parties the right to appeal against decisions to certify a Forest Practices Plan.

Recommendation 20: The Tasmanian government should enact legislation barring strategic lawsuits against public participation (SLAPPs).

To improve the effectiveness of the Forest Practices System

Recommendation 21: Forestry Tasmania and Private Forests Tasmania should incorporate input on natural and cultural values from the FPA and DPIPWE into longer-term and broader-scale planning processes and into the PTR application process.

Recommendation 22: Beyond the ongoing review of the Forest Practices Code*, the FPA should commission an independent review of the Forest Practices System.*

Recommendation 23: The FPA should adopt the Biodiversity Review*'s recommendations for increasing the effectiveness of the forest practices system in addressing biodiversity issues.*

To improve the rule of law in the forestry sector

Recommendation 24: The Tasmanian Parliament should repeal Section 11 of the Pulp Mill Assessment Act 2007.

Recommendation 25: The Tasmanian Ombudsman should set up an independent Forestry Ombudsman to handle all forestry-related complaints.

Recommendation 26: The Tasmanian Government should introduce legislation to protect whistleblowers.

LIST OF ACRONYMS, ABBREVIATIONS AND COMMONLY USED TERMS

300,000 m^3 MAQ	Annual minimum aggregate (combined) quantity of Category 1 and 3 eucalypt sawlogs and veneer logs to be made available by Forestry Tasmania from State forest to the sawmilling industry
AFS	Australian Forestry Standard
ASX	Australian Stock Exchange
CALM	Department of Conservation and Land Management (WA)
CAR	Comprehensive Adequate and Representative
CSOs	community service obligations
EMPCA	Tasmanian *Environment Management and Pollution Control Act 1994*
EPBC	Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
FOI	Freedom of Information
Forestry Act	*Forestry Act 1920*
FP Act	*Forest Practices Act 1985*
FPA	Forest Practices Authority
FPO	Forest Practices Officer
FPP	Forest Practices Plan
FSC	Forest Stewardship Council
GBE Act	*Government Business Enterprise Act 1995*
Ha	Hectares
LUPAA	*Land Use Planning and Approvals Act 1993*
M^3	Cubic metres
NCA	*Nature Conservation Act 2002*
NRM	Natural Resource Management
PFT	Private Forests Tasmania
PMAA	*Pulp Mill Approvals Act 2007*
PNFEP	Permanent Native Forest Estate Policy
PTR	Private Timber Reserve
RFA	Regional Forest Agreement
RMPS	Resource Management Planning System
RPDC	Resource Planning and Development Commission
TCFA	Tasmanian Community Forest Agreement
TSPA	*Threatened Species Protection Act 1995*
TT	Tasmania Together
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
VR	Variable-retention (harvesting)

Box 1: Who's who in Tasmanian forestry governance and the Tasmanian timber industry

Forestry Tasmania is a Government Business Enterprise established under the Forestry Act 1920. Forestry Tasmania manages 1,492,000 hectares of State forest—39% of the state's forests.[1] The total area in formal and informal reserves in 2008-2009 was 520,100 ha: 222,100 ha in formal reserves (a decrease of 100,000 hectares since 2006-2007) and 298,000 ha in informal reserves (an increase of 5,600 ha since 2006-2007).[2] Of the 971,900 ha of State forest not in either formal or informal reserve, 107,000 ha are plantation and 864,900 ha are native forest. Of this 971,900 ha, 685,000 ha are available for logging; of this figure, 580,000 ha are native forest.[3]

Forestry Tasmania has significant hardwood plantings and a 50% joint venture partnership with GMO Renewable Resources of the softwood plantations on State Forest in the North-east and North-west of the State. Approximately 60% of Forestry Tasmania's sales go to Gunns Ltd.[4]

The Forest Practices Authority (FPA) is an statutory body that administers the forest practices system that regulates forestry in Tasmania on both public land (mainly State forest) and private land. Since 2007, the FPA also regulates non-forest threatened native vegetation as well as forest vegetation.

Private Forests Tasmania is a government-funded authority established to promote, foster and assist the private forest sector to sustainably manage native forests and to encourage the expansion of plantations and the use of trees in land management.

Gunns Limited is Australia's largest hardwood producer, operating five sawmills (softwood and hardwood) throughout the State. Gunns also operates a veneer factory and four processing facilities. Loading ports are operated at three locations around Tasmania: Burnie, Bell Bay and Triabunna. With 200,000 ha of plantations, Gunns is one of Australia's largest private plantation owner/managers.

Forest Enterprises Australia (FEA) manages approximately 42,000 hectares of forest areas in Tasmania, New South Wales and Queensland. In February 2008 FEA opened its new $72 million sawmill at Bell Bay, producing EcoAsh and BassPine (branded sawn timber products).

Taswood Growers is a joint venture between Forestry Tasmania and GMO Renewable Resources which owns 46,000 hectares of radiata pine forest. Timberlands Pacific Pty Ltd is the manager for Taswood Growers. Taswood's pine forest estate provides around 800,000 tonnes of wood products annually, with Tasmanian mills processing around 80% of this resource.

Norske Skog is a world leading producer of newsprint and magazine paper. The Boyer Paper Mill near New Norfolk uses plantation radiata pine, plantation eucalypt and recycled fibre to make around 290,000 tonnes of newsprint and related grades annually—about 40% of Australian consumption. Other products, such as sawlogs, export chip and veneer are also produced from the plantation and native forest estate managed by Norske Skog.

Ta Ann Holdings is a Malaysian based company with a large interest in plywood production. In 2007 Ta Ann Tasmania opened a veneer mill at Southwood near Geeveston. The veneer is exported to a plywood plant in Malaysia, which produces finished product for the Japanese market. A second mill at Smithton in the North-west of the State commenced production in December 2008.

Sources: http://www.iris.tas.gov.au/resource_industry/forestry/supply/tasmanian_plantation_companies, http://www.gunns.com.au/about-us/, www.forestenterprise.com.au, www.forestrytas.com.au, www.fpa.gov.au, www.privateforests.tas.gov.au, www.tasmania.gov.au/tasmaniaonline

1 Forestry Tasmania (2009), Stewardship Report 2008-2009, p. 5. Thanks to Hans Drielsma, Managing Director, Forestry Tasmania, for his assistance with the figures in this section.

2 The decrease in formal reserves is due to the transfer of Forest Reserves on State forest to National Park, Nature Reserve and related tenures managed by the Park and Wildlife Service following the decisions of the Regional Forest Agreement in 1997, and the Tasmanian Community Forest Agreement in 2005. E-mail, Hans Drielsma, Managing Director, Forestry Tasmania, 12 January 2010.

3 E-mail, Hans Drielsma, Managing Director, Forestry Tasmania, 12 January 2010.

4 E-mail, Hans Drielsma, Managing Director, Forestry Tasmania, 12 January 2010.

I. INTRODUCTION

The debate over the fate of Tasmania's forests and the role of the forest industry in Tasmanian politics remains one of the state's most lasting divides. While forests and forest governance are not a part of most Tasmanians' everyday lives in the same way as health or other key issues of public concern, few other high-profile issues have sparked such bitter disagreements. As one polling expert interviewed for this evaluation put it, "Forestry is not a 'top of mind' issue for most. But once it comes up, most people have lots to say." Indeed, according to a recent survey of 600 Tasmanians conducted by Essential Research for Environment Tasmania, a not-for-profit conservation council, 72% of respondents felt that "the logging of native forests is an ongoing conflict in our community that I want solved."[8]

The logging of native forests is an ongoing conflict in our community that I want solved.

In particular, many members of the Tasmanian population have lasting concerns about two major forestry-related issues: logging in high conservation value forests, and the pulp mill proposed by Gunns Ltd. (Tasmania's and Australia's largest forestry company) for the Tamar Valley in the north of the state.

Logging in high conservation value forests: Tasmanians are concerned about the logging of high conservation value forests—especially those popularly known as 'old-growth forests,' which most Tasmanians associate with mature tall eucalypt forests. Forestry Tasmania, the government business enterprise responsible for land management and wood extraction in State forests, acknowledges that old-growth logging is the largest area of public concern in relation to forestry, judging from the percentage (39%) of the total of 256 of letters to the Minister for Forests in 2008-2009 across forestry topics.[9] Indeed, 68.1% of respondents to a 2009 study funded by the Australian Research Council with contributions by Forestry Tasmania and the Forest Practices Authority agreed that old-growth forests should not be logged at all.[10] (see Box 2: The social acceptability of various forestry options.)

This finding is in line with other studies, for example an August 2007 poll of 400 respondents in Bass district which found that 65% of respondents favoured "all areas of old growth forest in Tasmania being protected from logging."[11] In fact, almost 34% of the respondents to the ARC study agreed that native forests should not be logged at all, regardless of age, and over 70.7% though that native forests should not be clearfelled.[12]

However, Forestry Tasmania has not committed itself to ending the logging of high conservation value forests, instead holding itself to the target set by the 2005 Tasmanian Community Forest Agreement (TCFA) to reduce clearfelling of old growth to 20% of the annual old-growth harvest from 2010.[13] The persistence of protest activity in the Florentine and Weld Valleys suggests that this issue will not vanish of its own accord.

The pulp mill. In August 2007, an opinion poll conducted by EMRS found that 64% of Tasmanians disapproved with the fast-track approval process applied by the Tasmanian Labor Government to a pulp mill project proposed by Gunns Ltd, the state's largest forestry company.[14] In early November 2008, 73% of Tasmanians agreed that the Bartlett government should hold to its promise of ending government involvement with the pulp mill if the project had not "gained real finance and made real progress" by 30 November 2008.[15]

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8 Essential Research, October 2009.

9 Forestry Tasmania (2009), *Stewardship Report 2008-2009*, p. 46.

10 Ford *et al.* 2009 (note 2), p. 11; e-mail Rebecca Ford 30 January 2010

11 The figure rises to 69% if taken on a two-answer preferred basis. A further 53% (60% two-answer preferred) opposed the construction of a pulp mill in the Tamar Valley. www.wilderness.org.

12 Ford et al. 2009 (note 2), p. 11.

13 Forestry Tasmania (2009), *Stewardship Report 2008-2009*; Forestry Tasmania (2009), *A New Silviculture For Tasmania's Public Forests,* p. 16, http://www.forestrytas.com.au/uploads/File/pdf/pdf2009/a%20new%20silviculture%20web%20version.pdf . The *New Silviculture* report further recommends that the figure available for clearfelling be set at 20% or 330 hectares (ha) per annum, whichever is greater, and that assessment of compliance should be based on a five-year average, aligned with RFA five-yearly reviews (p. 16). Forestry Tasmania representatives say that this matter has not yet been precisely settled and will probably be considered further in the *Stewardship Report 2009-2010.* E-mail, Hans Drielsma, Managing Director, Forestry Tasmania, 12 January 2010.

14 "Pulp mill survey shock," *The Mercury*, 9 August 2007.

15 "Poll pulps mill support," *The Mercury,* 18 November 2008.

According to the anti-mill citizens' action group Tasmanians Against a Pulp Mill (TAP), over 23,600 Tasmanian voters have pledged not to vote for any federal, state or local candidate who supports the proposed mill.[16] The issue has sparked large public demonstrations, with about 10,000 people rallying in Launceston in June 2007 and over 10,000 in Hobart in November 2007.[17]

Delays in securing funding for the project have kept recent protest action minimal, but a demonstration on the steps of Parliament in December 2009 still led to the arrest of 57 people. Pulp the Mill, the arm of the anti-mill movement committed to public protest, in fact says that the 69 different individuals arrested at three different actions to date are only a fraction of their database of people who have identified themselves as prepared to risk arrest—a fact that does not bode well for the construction process.[18]

16 www.tapvision.info. According to TAP, of the over 23,700 Australian voters who have signed the pledge, fewer than 100 are not Tasmania-registered (personal communication, TAP, 8 December 2009).

17 http://www.abc.net.au/news/australia/tas/northtas/200706/s1953239 "Its not over yet: thousands at anti-mill rally," *Sunday Tasmanian* 18 November 2007

18 Pulp the Mill representative, personal communication, 14 December 2009.

Box 2: The social acceptability of various forestry options

In November 2009, a paper was published that presented the findings of a study conducted by University of Melbourne researchers with Australia Research Council, Forestry Tasmania and the Forest Practices Authority.[1] The study examined the aesthetic responses of three groups—residents of the Huon Valley, a forestry area of Tasmania; other Tasmanian residents; and interstate visitors to Tasmania—to the visual simulations of different forms of forest harvesting, including clearfelling, variable retention harvesting, and selective harvesting. It also asked respondents about their normative beliefs about logging: "beliefs about how it should,or should not, be carried out."[2] In this regard, notably:

- 34.6% of respondents thought that native forests should not be logged at all, with 21.6% strongly agreeing.
- 65.8% thought that the only form of logging that should be allowed in native forests is selective logging, with 42.1% strongly agreeing.
- 68.1% thought that old-growth forests should not be logged at all, with 53.3% strongly agreeing.
- 70.7% thought that native forests, regardless of age, should not be clearfelled, with 54.1% strongly agreeing.
- 73.8% thought that native forests should not be converted to plantations, with 56.4% strongly agreeing.[3]

Taking these results together, the report is clear: at the normative level, "[t]hese beliefs that native forests should not be converted to plantations or clearfelled, that old growth forests should not be logged and that only selective logging [of native forests] should be allowed, are clearly commonly held in the general community, as 60-70% of people agree with them. Only about 20% of participants disagree with these beliefs, and therefore believe that clearfelling, old growth logging, and conversion to plantations are appropriate in native forests."[4] In fact, 34% of respondents believed that native forests should not be logged at all, and a further 14.3% were neutral -- a high finding for such a sweeping statement.

The report observes that when people are presented with detailed management options and information about their consequences, they appear to "consider the specific effects of the option in judging social acceptability, rather than their general views about management." Nevertheless, the most socially acceptable management option was one that "excluded harvesting from most native forests to maximise protection for the natural environment and cultural heritage," and the two most socially acceptable management options were the two that achieved "the highest environmental and amenity outputs, at the expense of wood, economic and safety output."[5] Interestingly, the report also noted that ratings of current management practices were more divided in the Huon Valley group than among others, suggesting that "[a] closer relationship to the forest appears to lead to greater polarisation of social acceptability judgements."[6]

1 Ford, Rebecca et al. (2009), "Social acceptability of forest management options: landscape visualisation and evaluation." http://www.warra.com/documents/publications/Ford_etal_2009b.pdf, p. 11: e-mail, Rebecca Ford, 30 January 2010

2 Ford *et al.* 2009, p. 3.

3 E-mail, Rebecca Ford 30 January 2010

4 Ford *et al.* 2009 , p. 11.

5 Ford *et al.* 2009, p. 1

6 Ford *et al.* 2009 (note 2), p. 12.

Meanwhile, a small but knowledgeable section of the Tasmanian community has voiced concern that forested environments in Tasmanian are suffering environmental threats. The Forest Practices Authority (FPA) has repeatedly warned that clearing of some forest types has reached levels where adverse consequences for regional biodiversity are imminent.[19] A recent review of the biodiversity provisions of the *Forest Practices Code* commissioned by the FPA found that Tasmania's primary biodiversity legislation did not contain clear, overarching objectives for the management of biodiversity in the state.[20] A court case mounted in 2005 by federal Senator Bob Brown against Forestry Tasmania found that current and planned forestry operations in Wielangta State Forest would have a "significant and unacceptable" impact on three priority threatened species—a finding that still stands despite an appeal overturning other elements of the case.[21] Meanwhile, conservationists remain frustrated that logging roads—which reduce wilderness quality, allow invasion by weeds, harm scenic qualities, and can affect watercourses—and associated logging operations are being pushed into areas with documented World Heritage values.[22]

The forestry industry itself is not well served by the current situation. A former ANZ Bank employee interviewed for this evaluation reported that public opposition played a role in ANZ's decision not to extend finance for the Gunns Ltd. pulp mill project and continues to be a factor in Gunns Ltd.'s difficulties in securing financing for the project, with potential investors concerned about questions of social licence and the clearing of native forest. At the same time, protest action in the forests as well as in urban areas has imposed costs on individual contractors and Gunns Ltd., as well as to Forestry Tasmania and Tasmania Police and, by extension, to the public.[23] State government agencies would add a list of costs of their own, including lost bureaucrats' time. Most of the major individual, institutional and corporate players in the forestry/pulp mill debate have also absorbed substantial direct costs in the form of legal fees.

Meanwhile, the national and international 'brand' of forestry in Tasmania has been damaged by negative publicity, jeopardising exports, investment and accreditation—an outcome that Tasmanians apparently do not associate with protest action alone, as 56% of the Essential Research survey respondents felt that "logging of native forests" (not protest action) is damaging Tasmania's image and reputation.[24] And all the while, federal funding aimed at resolving the problem through the Tasmanian Regional Forestry Agreement (RFA) and TCFA has failed to satisfy community concerns.

Underlying the forest debate in Tasmania is a general sense of public concern regarding governance of the forestry sector. The most immediate focus of public criticism has been the departure from established process that accompanied the state-level approvals process for Gunns Ltd.'s proposed pulp mill—a deviation of which, as noted above, 64% of Tasmanians disapproved. However, 60% of the respondents to the Essential Research survey cited above also agreed with the more general statement that "there is an unhealthy relationship between the timber industry and politicians in Tasmania."[25]

Governance issues have indeed been an issue of public concern in Tasmania in recent years. The Progress Board for the state-government-sponsored Tasmanian Together process (an effort to draw up a community-based twenty-year social, economic and environmental vision for the state), in its 2008 invitation for public comments on new and revised benchmarks for the process, cited a telephone survey of 2000 respondents which revealed that only 16.7% of Tasmanians were "satisfied that the State Government both listens to and acts on the wishes of the community."[26] In a 2006 Roy Morgan poll, 60% of Tasmanians in fact said that their state government was "not effective" in the fight against corruption, of whom 11% said that they thought that the government not only did not fight corruption, but also encouraged it—the highest levels of distrust in the nation.[27] These concerns appear to be accompanied by a general sense of political disempowerment: 60% of the respondents to the Essential Research survey cited above agreed with the

19 Forest Practices Authority (2008), *Annual Report 2008-2008*, p. 7.

20 *Biodiversity Review* Panel (2008), "Review of the biodiversity provisions of the Tasmanian *Forest Practices Code*." Unpublished report to the Forest Practices Authority, Hobart, Tasmania. http://www.fpa.tas.gov.au/fileadmin/user_upload/PDFs/Zoology_Ecology/Biodiversity_Review/Biodiversity_Review_ReportApril09.pdf

21 Environmental Defenders Office (Tas) Inc. (2008), *EDO Bulletin*, 26 (February), p. 4-5.

22 Hitchcock, Peter (2008), *World Heritage at the Crossroads: A Review and Evaluation of Critical Forest Issues Relating to the TWWHA*. The Wilderness Society.

23 Indeed, according to Tasmania Police interviewees, environmental protests, mostly related to old-growth logging and the pulp mill, have made up around 80% of the protests police have been required to attend in recent years.

24 Essential Research 2009.

25 Essential Research, October 2009.

26 The Board's modest goals for improvement were a rise to 20% by 2010, and 40% by 2020. Tasmania Together Progress Board (2008), "New and revised benchmarks for public comment." http://www.tasmaniatogether.tas.gov.au/reports_and_papers/documents/site_documents/021008_final_public_comment_paper.pdf

27 http://www.roymorgan.com/news/polls/2006/4070/

statement that "ordinary people don't have much opportunity to make a difference to politics in Tasmania"[28]

Against this backdrop, CSDev Associates was contracted by Environment Tasmania (ET) to undertake an evaluation of forestry governance in the state, with a particular focus on the structural (legal and regulatory) environment and government institutions. The evaluation was conducted by a team of three researchers, two with backgrounds in international governance-related evaluation (one with specific experience in forestry governance) and the other with a legal background. The evaluation has been intended to be non-partisan and constructive, taking into account the opinions of as wide a range of forest stakeholders as possible.

Methodology

The evaluation involved an examination of government structures, legislation, and political and social decision-making processes. To accomplish this and to inform the evaluation's analysis, researchers reviewed state- and federal-level legislation and policies, academic analyses, and relevant reports, publications and websites of government agencies and other major stakeholders in the debate. These included: Forestry Tasmania; Gunns Ltd.; the Forest Practices Authority; Private Forests Tasmania; the Forests section in the Department of Industry, Energy and Resources (DIER); the Department of Primary Industries, Water and the Environment (DPIPWE); the Forests and Forest Industry Council (FFIC); the Wilderness Society; Environment Tasmania; the Tasmanian Conservation Trust; Tasmanians Against a Pulp Mill; and Still Wild Still Threatened. The team also made efforts to talk with directly with representatives of major stakeholders, councilors and council employees, academics and other independent commentators, and individuals from the extractive as well as non-extractive sectors such as forestry contractors and tourism operators. All the individuals and organisations we contacted were helpful and courteous, and we thank all those who were generous with their time and expertise.

The research process was a revealing one. In particular, researchers were struck by the fact that, outside those major conservation groups whose criticisms of the forestry industry in Tasmania are well-known, most people interviewed were unwilling to be identified personally, organisationally or in some cases even by their area of residence in relation to comments criticising the forestry industry or raising forestry governance issues. Strikingly, these off-the-record critiques emerged from forest managers, regulators, industry representatives, and contractors, as well as from business operators, private individuals, and conservationists.

Some of those who asked either for anonymous citation or a complete freeze on their comments—particularly those who were in some way dependent on the industry's good graces—expressed concerns of some form of pressure or retribution if their critiques became known. Others simply indicated that being a known critic would not do their careers any favours. Overall, however, the impression gained from the research has been one of an environment that does not encourage an engaged, open and robust discussion of forestry-related issues, or of future directions for forestry in the state.

At the same time, researchers were struck by the extent of lasting personal and organisational bitterness that that the debate so far has engendered on all sides. Many individuals from many camps—forestry employees, conservationists, the police, protesters, forestry contractors—have clearly been deeply affected by their varying experiences. Some described verbal and sometimes physical abuse; some described threats and intimidation; some were embittered by what they felt to be conscious misrepresentation of their actions, or deliberate failure to acknowledge their achievements. Meanwhile, participants from all sides in the Salamanca Process and the original Forests and Forest Industry Council (FFIC) described atmospheres of bad faith and (particularly among conservationists) disempowerment due to breaches of agreed process.[29] The legacy will take active confidence-building measures to overcome.

In fact, positive signs towards a resolution of the conflict have begun to emerge. The forestry industry has taken a number of positive moves in recent years towards:

28 Essential Research, October 2009.

29 The 'Salamanca Process' refers to the negotiations between the logging industry (including the Forestry Commission, FIAT and the unions) and the conservation movement (the Tasmanian Conservation Trust, the Wilderness Society, and the Australian Conservation Foundation) established during the Labor-Green Accord in August 1989. The Forests and Forest Industries Council (FFIC) was established to formalise this process. The talks broke down in September 1990. According to interviewees, conservationists accused the other parties of breaking the understanding that decisions were to be made by consensus by combining to vote through a forests strategy unfavourable to conservation; industry players accused conservationists of being unwilling to compromise.

- Establishing good community relations;
- Liaising and cooperating with other industry sectors such as tourism and apiculture;
- Addressing public concerns such as clearfelling of old-growth forests and the use of the poison 1080 and triazine herbicides;
- Increasing transparency;
- Improving governance in the forestry sector overall.

These accomplishments, while sometimes still only first steps, deserve recognition and support. The decision of Forestry Tasmania and Gunns Ltd. to seek Forest Stewardship Council certification will also be an important move towards improving community confidence in forest management and governance in the state.

These positive steps notwithstanding, the overall picture that emerged from this evaluation of the structural and governmental governance environment is of a tilted governance playing field that, through its skew towards an extractive model of native forest and towards industry players in the debate, continues to stifle genuine public discussion over what the proper use of the state's native forests—including but not limited to old-growth forests—should be. To understand why this is the case, we must look at three underlying factors: a legal knot, a regulatory doughnut, and a political web. First, however, it is worth asking: what is good governance?

II. WHAT IS GOOD GOVERNANCE?

Although the term "governance" is used a great deal, there often appears to be very little understanding of what it might actually mean. Simply put, governance means "the process of decision-making and the process by which decisions are implemented (or not implemented)."[30] The term "governance" thus can be used in several contexts, such as corporate governance, international governance, national governance and local governance.

An analysis of governance focuses on the "formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision."[31] Government (state, local and national) is one of the actors in governance—but it should not be the only one. Governance should potentially involve input from all of society, whether through groups (such as trade unions; non-governmental organisations; community development organisations; religious groups; women's and men's groups; charities; businesses and business associations; social and sports clubs; cooperatives and community development organisations; environmental groups; professional associations; academic and policy institutions; lobbyists; or media outlets) or simply as individuals.

This evaluation draws on the model of good governance put forward by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP).[32] Under this model, good governance has eight major characteristics: it is consensus-oriented, participatory, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. It also seeks to minimise the abuse of power, including but not limited to corruption.

The attractive feature of the UNESCAP model is that it highlights that governance is about both process and results. In other words, good governance uses good processes to get good results according to the objectives set forward by all members of the community.

Good governance uses good processes to get good results according to the objectives set forward by all members of the community.

As noted above, to understand the structural and governmental aspects of forestry governance in Tasmania, we must look at three factors: a legal knot, a regulatory doughnut, and a political web.

30 Source: United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (2009), "What is good governance?" at http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

31 UNESCAP 2009

32 UNESCAP 2009

Box 3: The UNESCAP model of good governance

Characteristics of good governance

Participation
Participation by both men and women is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. Participation needs to be informed and organized. This means freedom of association and expression on the one hand and an organized civil society on the other hand.

Rule of law
Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

Transparency
Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media.

Responsiveness
Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.

Consensus oriented
There are several actors and as many view points in a given society. Good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community.

Equity and inclusiveness
A society's well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well being.

Effectiveness and efficiency
Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

Accountability
Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organisations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organisation or institution. In general an organisation or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.[1]

1 Source: United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (2009), "What is good governance?" at http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

III. HOW FORESTRY IS STRUCTURED: THE LEGAL KNOT

The structural environment of State forestry governance in Tasmania has a number of defining characteristics which stem from a legal knot created by the combined effects of the *Forestry Act 1920* (hereafter the Forestry Act) and the *Government Business Enterprise Act 1995* (hereafter the GBE Act). In particular:

1) The responsibilities for both land management and wood production are lodged by the Forestry Act in one body, Forestry Tasmania, which enjoys "exclusive management and control" of all State forest and all State forest products.[33] In Western Australia, for example, state forests and timber reserves are vested in the Conservation Commission of Western Australia and are managed by the Department of Conservation and Land Management (CALM), while the Forest Products Commission is responsible for the sale of timber products.[34]

2) Forestry Tasmania is a Government Business Enterprise (GBE) under the GBE Act. A GBE's characteristics are that:

- The government controls the body;
- The body is principally engaged in commercial activities;
- The body has a legal personality separate from the government.[35]

GBE status gives Forestry Tasmania the power to enter into a variety of profit-sharing arrangements, including partnerships and joint ventures, as well as to contract out any of its functions or powers.[36]

3) While the Forestry Act and the GBE Act both grant Forestry Tasmania sweeping powers, both Acts also saddle the corporation with several obligations.

- Under the GBE Act, a GBE's objectives include both commercial activities and the performance of any community service obligations (CSOs) that it may identify or be directed to perform.[37]
- Under the Forestry Act, Forestry Tasmania "must treat the level of employment deriving from the use of public forest resources as an important consideration when examining options for competing claims for Crown wood, including the provision of wood supply agreements."[38]
- Also under the Forestry Act, Forestry Tasmania must make an annual minimum aggregate (combined) quantity (MAQ) of 300,000 cubic metres (m^3) (hereafter 300,000 m^3 MAQ) of eucalypt sawlogs and veneer logs available each year from multiple use State forest for the veneer and sawmilling industries.[39] While other Australian states (New South Wales and Western Australia, for instance) have guaranteed supply for some sawmillers, quantities are smaller and specific to an area or region; furthermore, Tasmania is the only state to set a minimum figure, rather than a maximum.

33 *Forestry Act 1920*, s 8(1)(c)(i),(ii).

34 EDOWA Inc (2005) "Fact Sheet 10 – State forests and timber reserves," September. http://www.edowa.org.au/factsheets/bhpl_forests.pdf

35 Snell, Rick (1996), "Who needs FOI when market mechanisms will deliver accountability on demand?" Paper presented at INFO Two, 2nd National Freedom of Information Conference, 7-8 March, 1996.

36 *Government Business Enterprise Act 1995*, s. 9(1)(g), (h).

37 *Government Business Enterprise Act 1995*, s. 7(1). Forestry Tasmania's public literature currently refers to these as community service "activities," rather than "obligations" (see, for example, Forestry Tasmania (2009) *Stewardship Report 2008-2009*, p. 23). This evaluation will use the terminology of the GBE Act.

38 *Forestry Act 1920*, s.12A(1).

39 *Forestry Act 1920*, s. 22A(1), (2).

From a governance perspective, this legal knot has a number of implications and consequences.

1. Taken together, the Forestry Act and the GBE Act set up an inherent conflict of priorities for Forestry Tasmania between management for wood production and management for non-wood values such as biodiversity or carbon storage.

This is a conflict in which one side has the clear upper hand: while Forestry Tasmania's objectives under the Forestry Act are to optimize both the economic returns from its wood production activities and the benefits to the public and the State of the non-wood values of forests,[40] as a GBE, the first objective takes precedence. In fact, there is no implication in the wording of the Forestry Act that the two objectives must be balanced. Economic returns are clearly protected under the production policy as well as benchmarked under the specified minimum aggregate quantity; however, environmental and other non-wood values are not benchmarked—probably in part because they are difficult to quantify.[41]

The 300,000 m^3 MAQ makes every new reserve a liability, and every new management prescription for a threatened species a threat.

2. The 300,000 m^3 MAQ intensifies the tension between Forestry Tasmania's commercial mission and its responsibility to the environment, as well as making it harder for planners to respond to changing community attitudes towards forests, in a number of ways.

a) It makes every new reserve a liability, and every new management prescription for a threatened species a threat. For every new area that is placed in reserve, or species requiring habitat protection, managers are forced by legislation to find the 300,000 m^3 MAQ in a smaller and smaller area of remaining production forest. As Forestry Tasmania Managing Director Bob Gordon told the Tasmanian Legislative Council Government Business Scrutiny Committee in December 2009: "[E]very time an area of forest is removed from the managed estate and put into reserves, it has an impact on our capacity to supply that [300,000 m^3 MAQ]…it is getting to the limit where you just cannot squeeze any more out of the forests."[42]

b) It sets up an underlying tension between Forestry Tasmania and other existing and potential non-extractive commercial users of State forests. As then-Managing Director of Forestry Tasmania Evan Rolley told the Tasmanian Parliament in 2004 (in this case talking about leatherwood honey production), "We wake up with [the 300,000 m^3 MAQ] every day and we have to meet that commitment…it is a trade-off between eucalypt hardwood sawlog production and these [other forest uses]."[43]

c) It pushes Forestry Tasmania towards continuing to open up for logging mature tall eucalyptus forests, which are among the greatest focus of community concern but which also contain the highest proportion of sawlogs. According to a recent Forestry Tasmania report, mature eucalypt forests form nearly 30% of the current sawlog supply,[44] even though, calculating roughly from Forestry Tasmania's Stewardship Report 2008-2009, they make up only around 18% of the area of native forest harvesting last year.[45]

d) It complicates Forestry Tasmania's ability to alter its silviculture to respond to community sentiment against clearfelling old-growth and regeneration burns.

- In the first instance, according to a recent report on variable-retention harvesting, one of the strategies being considered by the corporation to replace clearfelling, "A key goal of [variable retention] is to maintain forest influence (the biophysical effects of residual trees retained for the next rotation) over the majority (more than 50%) of the harvested area…[However,] retention levels will need to be stabilised at about the 20% level to avoid an excessive impact on the sustainable sawlog supply…At 20% (and 30%) retention in old-growth coupes designated for variable retention, Forestry Tasmania can supply 300,000 cubic metres per year of high quality

40 *Forestry Act 1920*, s. 7.

41 *Forestry Act 1920*, s. 22(AA).

42 Legislative Council Government Business Scrutiny Committee A, 1 December 2009.

43 Legislative Council Government Business Enterprises and Government Corporations Scrutiny Committee, 5 March 2004.

44 Forestry Tasmania (2009), *A New Silviculture For Tasmania's Public Forests* (fn. 13), p. 67.

45 According to Forestry Tasmania's *Stewardship Report 2008-2009*, the total area of oldgrowth felled in 2008-2009 was 2270 ha, while the total area of native forest harvesting was 12,400 ha (*Stewardship Report*, p. 16, p. 4).

eucalypt sawlogs, but not at 50% retention."[46] In a similar vein, the social acceptability study cited above found that: "Generally management options with higher environmental and amenity outputs are more socially acceptable…The two options with the highest social acceptability ratings… do not meet sawlog supply levels consistent with current management."[47]

- In the second instance, the 300,000 m^3 MAQ creates the need to achieve optimal regeneration rates to ensure adequate future supply, thus pushing Forestry Tasmania towards high-intensity regeneration burns—another area of community dissatisfaction.

e) Where more socially acceptable harvesting options are used, the continued need to extract the 300,000 m^3 MAQ pushes forestry operations out into a larger area, leading to perverse ecological outcomes though, for instance, increased roading activities.

f) It will limit the ability of both Forestry Tasmania and the Tasmanian government to respond to future economic opportunities for Tasmania's forests—such as emerging carbon markets—that may require forests to remain intact.

Taken together, the Forestry Act and the GBE Act set up an inherent conflict of priorities for Forestry Tasmania.

3. Forestry Tasmania's GBE status creates a conflict of priorities between its commercial interest in keeping information confidential and its duty, as a body controlled by government, to make information available to all.

As a GBE, Forestry Tasmania has a rationale for arguing that it will suffer commercial disadvantage through the release of a wide range of information. This issue has obvious application to financial information such as the prices paid for Forestry Tasmania's wood. However, the corporation also guards scientific data on such issues as forest structure, forest management history, and carbon storage on commercial-in-confidence grounds, on the basis that the release of such data would expose the corporation to competitive disadvantage: for instance, Forestry Tasmania would no longer be able to use the information directly or in-kind towards its equity or influence in collaborative research programs or operational projects.[48] The corporation also can also invoke the involvement of third parties to withhold information: for instance, Forestry Tasmania's three year wood production plans do not appear to include information on planned operations for Taswood Growers, a softwood joint venture between Forestry Tasmania and Boston-based fund manager Grantham Mayo van Otterloo (GMO).[49]

At the same time, however, the Tasmania Government is moving towards a "right to information" strategy which treats government information as a public right and encourages government departments to provide as much information as possible about their activities as well as the issue areas under their jurisdiction. Forestry Tasmania thus faces a conflict of priorities between its commercial interests and its public obligations.

4. Forestry Tasmania's ability under the GBE Act to set up joint ventures creates inconsistencies in the corporation's obligations, for instance in relation to the corporation's joint ventures, which appear to be exemptable from the Forestry Act obligation to take local jobs into account when making decisions about wood allocation.

In the case of a conflict over resource allocation between rival companies Auspine and FEA, for instance, Forestry Tasmania's Managing Director Bob Gordon argued before a Parliamentary Standing Committee that when participating in a joint venture, the first loyalty of the Forestry Tasmania representatives had to be to the interests of the joint venture, and cited advice from the Solicitor General apparently to the effect that section 12A of the Forestry Act can be legitimately bypassed by the terms under which a joint venture is created (see Box 4: The Auspine/FEA story).[50] If this is the case—and the Parliamentary Standing Committee hearing Mr. Gordon's evidence accepted the argument until further clarification occurs—then the formation of a joint venture potentially releases Forestry Tasmania from its obligations without public notification or debate. This fact is notable given that only 5% of Forestry Tasmania's softwood plantation estate and 57.8% of its hardwood plantation estate are fully owned by the corporation, with the remaining managed

46 Forestry Tasmania (2009), *A New Silviculture* (fn. 13), p. 9-10, 11.
47 Ford *et al.* 2009 (note 2), p. 1.
48 See http://www.forestrytas.com.au/uploads/File/pdf/FOI2009/foi_0912.pdf
49 Forestry Tasmania (2009), "Three Year Wood Production Plans," p. 66, 2009-10 to 2011-12.
50 Parliamentary Standing Committee on Environment, Resources and Development, 19 March 2007.

through joint ventures and lease arrangements."[51]

Meanwhile, the structural environment of private forestry governance is substantially shaped by the Forest Practices Act 1985 (hereafter Forest Practices Act), and in particular by that Act's creation of a mechanism—the Private Timber Reserve (PTR)—to give private landholders long-term security by removing forest practices on land registered for forestry from local government planning schemes. In addition to this exemption (discussed further below), the Forest Practices Act stipulates that a landholder whose application for a PTR is entitled to compensation for the value of the timber crop growing on that land if the refusal stemmed from another Act (for instance, the Threatened Species Protection Act 1995) or if it would not be in the public interest to grant the application.[52] This provision creates an economic disincentive for refusing a PTR application on environmental grounds.

51 Forestry Tasmania (2009) *Stewardship Report 2008-2009*, p. 30; Timber Workers for Forests (2004), "Plantation small forestry in Tasmania," www.twwf.com.au/doucments/research/pfpt1.pdf

52 *Forest Practices Act 1985*, section 8(2)(d), 8(2)(e).

Box 4: The Auspine/FEA story

In 2004, Auspine was a publicly-listed softwood sawmilling company based in South Australia owning one Tasmanian sawmill based at Scottsdale, the Tonganah mill, which employed approximately 150 people directly. The resource relied on by Auspine consisted of some 46,000 ha of pine plantations on State forest in north-east Tasmania. These plantations, which were part-privatised in 1999, were owned by Taswood Growers, a joint venture between Forestry Tasmania and a US-based finance company, GMO. As well as selling sawlogs to Auspine and Frenchpine, another large softwood sawmiller based in Scottsdale, Taswood Growers was also selling softwood logs on the lucrative export market. During the 2004 federal election campaign, Auspine's Chief Operations Office Andrew Jakab earned the ire of the logging industry by suggesting that old-growth logging was no longer necessary for a viable forestry industry in the state. Jakab drew a harsh rebuke from Gunns head John Gay, who warned that Auspine's comments "have been extremely damaging to themselves and to their future in Tasmania;" Gunns subsequently changed its softwood supplier from Auspine to Frenchpine.[1]

In late 2005, after a tendering process for the resource from the State forest pine plantations was put in motion, Auspine purchased Frenchpine. The company now possessed both of the state's large softwood sawmills, both located in the heart of the plantation resource, employing over 300 people. Auspine continued in negotiations with Taswood Growers, seeking a 20-year contract.[2] In early 2006, in the run-up to the March state election, Auspine publicly expressed concern at the lack of progress in the tendering process. The company was backed by its workers and the CFMEU, who rallied in Burnie and Scottsdale in March 2006 to protest the export of whole logs.

In September 2006, Forest Enterprises Australia (FEA), a company managing approximately 42,000 hectares of forest areas in Tasmania, New South Wales and Queensland on behalf of growers, announced its intention to construct a softwood mill at Bell Bay, based on the same resource that Auspine's mills relied upon.[3] To the shock of the Scottsdale community, a 10-year contract between Taswood Growers and FEA was announced in January 2007. Auspine was completely excluded from the contract.[4]

The decision led to several months of heated public debate and protests. A socio-economic impact study was scathing of the decision, estimating losses to the community of up to 35% of local jobs, including $16 million pa worth of direct wages and a further $16.5 million pa indirectly, and flow-on impacts on services such as education and health.[5] In response, the state government cobbled together a short-term rescue package for Auspine, consisting of a 12-month supply of softwood logs from alternative sources, particularly from pine plantations on the West Coast, over 250 km away—a decision criticised by the mayor of the West Coast, who was concerned about the impact of heavier log truck traffic on local roads.[6]

In March 2007, the Tasmanian Parliamentary Standing Committee on Environment, Resources and Development examined the

1 "Gunns boss lays it on the line to sawmiller", *The Mercury,* 20 September 2004.

2 Joint Standing Committee, Environment, Resources and Development (2007), "Joint Venture Log Supply Deal," p. 8. http://www.parliament.tas.gov.au/Ctee/Joint/Archived/Reports/ERD/JOINT%20VENTURE%20LOG%20SUPPLY%20DEAL.pdf , p. 19.

3 http://www.iris.tas.gov.au/resource_industry/forestry/supply/tasmanian_plantation_companies,

4 Joint Standing Committee 2007, (note 113), p. 20.

5 Dorset Economic Development Group Inc. (2007), "Socio-economic impact assessment: Auspine mills, Dorset: Report," http://www.dorset.com.au/documents/SEIA_Report_Feb-2007.pdf

6 "Auspine wants Govt help to log west coast forests", ABC News, 2 April 2007, http://www.abc.net.au/news/stories/2007/04/02/1886954.htm?site=news ; Pippos, C. (2007), "Rushed trucking plan `less than ideal," *The Advocate*, 14 April; "Auspine deal will impact on smaller mill jobs: sawmiller", ABC News, 9 March 2007, http://www.abc.net.au/news/stories/2007/03/09/1867358.htm?site=news

issue of the joint venture's log-supply deal.[7] The committee heard evidence from all of the major players in the decision, including from Bob Gordon, both in his role as Managing Director of Forestry Tasmania and as a director of Taswood Growers. Gordon testified that: "Forestry Tasmania as a corporate body has no role in the recent softwood joint venture process. It only has a role as an owner that has nominated three people to be directors…once [people appointed by Forestry Tasmania to sit on the Taswood Growers board] are on the softwood joint venture board they are no longer Forestry Tasmania, they are directors of a company… Once you are a director of that entity your responsibility is to the entity, not to the shareholder that nominates you. And that is a matter of company law in Australia..."[8]

The lack of transparency surrounding the Auspine/FEA story, the apparent lack of accountability of a Forestry Tasmania joint venture to the *Forestry Act 1920*, and the widely held suspicion that retribution had been taken against a company that had criticized existing forest management raised significant community concerns about the deal. The General Manager of Dorset Council told the Parliamentary Standing Committee that "…there has continued to be an evasiveness and distinct lack of willingness to divulge answers to questions raised as to legality, fairness, objectivity or justification of the decision that was made. Mr Chairman, all we continue to hear is, 'It was in the best interests of the long-term sustainability of the industry,' or 'This information is commercial-in-confidence.'[9] The Mayor of Dorset Council similarly complained that "[the lack of transparency surrounding the decision] has seriously raised in the community the question of other/hidden agendas, subjectiveness, personality conflicts, or other information that may have contributed to that decision. There is, in my view, a great deal of uncertainty over the process' fairness and ultimate justice…"[10] Better governance practice could have gone some way towards assuaging these concerns.

7 Joint Standing Committee 2007, pp. 35,37
8 Joint Standing Committee On Environment, Resources and Development, Launceston, 19 March 2007, p. 1.
9 Joint Standing Committee On Environment, Resources and Development, Parliament of Tasmania, Launceston, 2 April 2007, p. 2.
10 Joint Standing Committee On Environment, Resources and Development, Parliament of Tasmania, Launceston, 2 April 2007, p. 2.

IV. HOW FORESTRY IS REGULATED: THE FOREST PRACTICES SYSTEM DOUGHNUT

The next structural arrangement of note for the governance of forestry in Tasmania is the Forest Practices System set up by the *Forest Practices Act 1985* (hereafter Forest Practices Act). The Forest Practices Act:

- Outlines a tenure-blind Forest Practices System designed to regulate the conduct of forestry in the state across both public and private land.

- Sets up a statutory body, now called the Forest Practices Authority (FPA), to administer the application of the principles of the system, codified in the *Forest Practices Code*.

The conduct of forestry operations on private land outside a PTR is subject to dual control through council approval (where the planning scheme requires it) as well as the operation of the Forest Practices System.

The Forest Practices System set up by the Forest Practices Act has a number of distinctive characteristics. Taken together, these lead to a system with a curious void at its centre—a sort of regulatory doughnut. In particular:

1. The regulatory system set up by the Forest Practices Act is one that is heavily predicated on cooperation between the FPA, the Department of Primary Industries, Water and the Environment (DPIPWE), and other government agencies, on the one hand, and the forestry industry on the other. Its smooth working depends substantially on good relations between the FPA and the employers (mostly Forestry Tasmania and the larger private forestry companies) of the Forest Practices Officers (FPOs) certified by the FPA to enforce the *Forest Practices Code*.[53]

2. The Forest Practices System exists in parallel to Tasmania's Resource Management and Planning System (RMPS) by removing forestry operations from parts of the RMPS's range of concern. The RMPS is an overarching planning system designed to provide a "whole of government approach" to the sustainable management of the State's resources, with the aim of promoting sustainable development and the maintenance of ecological processes and genetic diversity, as well as to provide for fair and sustainable use of air, land and water.[54] It has as its central legislation the *Land Use Planning and Approvals Act 1993 (LUPAA),* but also includes the *Environment Management and Pollution Control Act 1994 (EMPCA), the Nature Conservation Act 2002 (NCA), and the Threatened Species Protection Act 1995 (TSPA).*

In the interest of providing security for forestry, however, the Forest Practices System creates a series of exemptions from RMPS legislation for persons acting in accordance with a certified Forest Practices Plan issued in accordance with the Forest Practices Code by the FPA. In particular, LUPAA removes forestry operations on either State forest or Private Timber Reserves (PTRs) from local government planning schemes. The total area removed from local government jurisdiction is substantial: to use somewhat outdated figures, in 2003, 1.5 million hectares—22% of Tasmania's total area—was in use for forestry purposes.[55] Forestry activities carried out in accordance with a Forest Practices Plan are also exempt from the requirement to obtain a permit to take threatened species under section 51 of the TSPA.

In addition to these specified exemptions, section 22(c) of the Forestry Act provides that a forest management plan may "prohibit or restrict the exercise of a statutory power in respect of the land to which it applies," regardless of any other legislative provision; currently no approved forest management plan creates such an exemption, but the legislative power to do so remains.

3. The Forest Practices System also exists in parallel to Commonwealth environmental protection legislation, thanks to the Tasmanian RFA's exemptions for forestry activities from the federal Environment Protection and Biodiversity Conservation Act 1999 (hereafter the EPBC Act). The Tasmanian Regional Forest Agreement (RFA), signed in 1997, and its successor, the 2005 Tasmanian Community Forest Agreement (TCFA), represented efforts by the Commonwealth and state governments to address three objectives, common to all RFAs in Australia: "providing

53 A few FPOs are consultants employed by smaller operators.

54 http://soer.justice.tas.gov.au/2003/copy/15/index.php; Guide to the Resource Planning and Management System 2003 Resource Planning and Development Commission, Tasmanian Planning Commission http://www.planning.tas.gov.au/__data/assets/pdf_file/0013/63301/RPDC_RMPS_pdf_links.pdf

55 Dept. of Infrastructure, Energy and Resources (2003), "Rural land use trends in Tasmania 2003," http://www.dier.tas.gov.au/forests/rural_land2/background .

resource security, ensuring the conservation of important forest areas, and mediating the tension between different levels of government."[56]

To "ensur[e] the conservation of important forest areas," the RFA created a system of Comprehensive, Adequate and Representative Reserves (CAR Reserves) to preserve minimum stocks of the state's forest vegetation communities while ensuring industry access to non-reserve areas; the TCFA put additional areas of forest under reserve. Under the original clause 68 of the RFA, the Tasmanian government agreed to "protect [designated] Priority Species…through the CAR Reserve System or by applying relevant management prescriptions."[57]

To "provid[e] resource security," meanwhile, the EPBC Act exempts forestry activities in areas throughout Australia covered by an RFA from the provisions of the Act preventing "the taking of an action that does, will or is likely to

56 Lane, Marcus (1999) "Regional Forest Agreements: resolving resource conflicts or managing resource politics?" *Australian Geographical Studies*, 37(2), July, pp. 142-153, p. 143. RFAs exist between the Commonwealth and the governments of New South Wales, Victoria, Tasmania and Western Australia.

57 Tasmanian Regional Forest Agreement (2007), section 68. http://www.daff.gov.au/__data/assets/pdf_file/0003/49278/tas_rfa.pdf

Box 5: The Wielangta case

The Wielangta case was brought by Federal Green Senator Bob Brown against Forestry Tasmania in the Federal Court of Australia in 2005. Brown argued that Forestry Tasmania's existing and planned operations in the Wielangta State Forest on Tasmania's east coast posed a threat to three endangered species: the swift parrot, wedge-tailed eagle and the broad-toothed stag beetle. As a consequence, Brown argued, such operations were non-compliant with clause 68 of the Tasmanian Regional and Community Forest Agreements (RFA/TCFA), which at that time read:
'The State agrees to protect [designated] Priority Species [including all three of the species in question]…through the CAR Reserve System or by applying relevant management prescriptions.'

As a consequence of this non-compliance, Brown argued, forestry operations in the Wielangta area should not enjoy the exemption extended them under the RFA/TCFA from the Commonwealth *Environment Protection and Conservation of Biodiversity (EPCB) Act 1999,* whose objectives of protecting threatened species the RFA/TCFA were supposed to, but (he argued) had failed to, uphold.

In his judgment, handed down in December 2006, Federal Court Justice J. Marshall found that "forestry operations and proposed forestry operations of Forestry Tasmania in the Wielangta area [were] likely to have a significant impact on" all three threatened species.[1] Hence, he found such operations non-compliant with RFA clause 68, and a consequence, he found that Forestry Tasmania did not enjoy exemption from the EPBC Act in relation to the relevant Wielangta forestry operations[2]—and, potentially, state-wide.

The judgment was appealed by Forestry Tasmania in February 2007. Also in February 2007, the Tasmanian and Commonwealth Governments amended clause 68 of the RFA/TCFA to read:
"The Parties agree that the CAR Reserve System, established in accordance with this Agreement, and the application of management strategies and management prescriptions developed under Tasmania's Forest Management Systems, protect rare and threatened fauna and flora species and Forest Communities."[3]
Thus, as the report on the RFA ten-year review indeed noted, "Clause 68 is no longer a commitment but a statement of agreement by the parties."[4] A further amendment also gave both sides more flexibility in implementing Recovery or Threat Abatement Plans, whose implementation is now to be carried out "within [Plan] timelines…or as soon as possible afterwards" rather than "as a matter of priority."[5]

In November 2007, the full Federal Court held that, given that an RFA represented a compromise between environmental and economic considerations, clause 68 represented a warranty not that the State would *protect* threatened species, but that the States *would provide for the protection of* threatened species. In this regard, the Court held that the February amendment to clause 68 "clarified" the true intention of the RFA, which was to exempt forestry operations from EPBC approval provided that they fell under a management system that "had regard to" environmental and other values. However, the Court did not specifically overturn the finding that logging in Wielangta would have a "significant and unacceptable" impact on priority threatened species.[6]

1 Federal Court of Australia, Brown v Forestry Tasmania (no 4) [2006] FCA 1729, Judgement, 19 December 2006, para. 8.
2 Brown v Forestry Tasmania, para. 10.
3 Tasmanian Regional Forest Agreement (2007), section 68. http://www.daff.gov.au/__data/assets/pdf_file/0003/49278/tas_rfa.pdf
4 Ramsay, John (2008), *Report to the Australian and Tasmanian Governments on the Second Five Yearly Review of Progress with Implementation of the Tasmanian Regional Forest Agreement*, February, p. 51.
5 Tasmanian Regional Forest Agreement 2007 (note 57), s. 70 (amended).
6 Environmental Defenders Office (Tas) Inc. (2008), *EDO Bulletin*, 26 (February), p. 4-5.

significantly impact certain aspects of a matter of national environmental significance" without Federal approval. As a result of this exemption, RFA forestry operations are not subject to the EBPC Act impact assessment scheme, regardless of the potential impact on matters of national environmental significance.[58]

4. The commitment under the RFA to establishing management prescriptions notwithstanding, the Forest Practices System in fact lacks a backdrop of a statewide overarching policy statement setting out clear objectives and measurable outcomes for sustainable management of native forests and plantations.[59] State Policies are intended to provide clear strategic guidance to ensure a consistent, State-wide approach to resource management and sustainability issues. However, to date, the suite of State Policies is limited to issues of water quality, protection of agricultural land and coastal management. Beyond the Policy for Maintaining a Permanent Native Forest Estate, the state lacks an expression of objectives and outcomes related to forests on public and private land. The Sustainability Indicators against which the state of Tasmania's forests is regularly assessed, meanwhile, are broad indicators that, while they give information on trends, do not set out measurable objectives.[60]

As a consequence, as a recent review of the biodiversity provisions of the *Forest Practices Code* (hereafter the *Biodiversity Review*) put it, there are no "clear guidelines for achieving the off-reserve component of ecologically sustainable management [of Tasmania's forests]."[61] The other sustainability pillars—social and economic—similarly lack state-level guidelines. As a consequence, as Chief Forest Practices Officer Graham Wilkinson told the evaluation's researcher, the FPA "has to develop systems for regulating the application of policies that don't exist."

The Forest Practices Authority has to develop systems for regulating the application of policies that don't exist.

5. For their parts, the RFA and the TCFA appear to be heavily assertion-based in their approach to off-reserve protection for biodiversity or threatened species. Although the Comprehensive Regional Assessment (CRA) stage of the RFA process involved a review of forest management systems at the state level, the nature of the CRA assessment process was "system- or process-based, rather than performance-based. The system of forest management was assessed, but the 'on-ground' performance forest management practices and their conservation or economic outcomes did not form part of the assessment process."[62] Meanwhile, in the wake of the Wielangta court case (see Box 5: The Wielangta case), in February 2007 the Tasmanian and Commonwealth Governments amended clause 68 of the RFA/TCFA to read:

"The Parties agree that the CAR Reserve System, established in accordance with this Agreement, and the application of management strategies and management prescriptions developed under Tasmania's Forest Management Systems, protect rare and threatened fauna and flora species and Forest Communities."[63]

However, given that no Forest Management Systems exist for private land, it is difficult to know on what this assertion of successful protection is based. In fact, the 2007 *State of the Forests 2006* report conspicuously failed to report positive results for biodiversity or genetic variation between 2001 and 2006; the report simply notes that 25 forest-dwelling vertebrates and 259 species of forest-dwelling flora are considered threatened and that 270 forest-dwelling vertebrate species and vascular plants were potentially at risk of loss of genetic variation, of which 104 species were at high to moderate risk and 50 at unknown risk.[64] Meanwhile, the success in protecting biodiversity of Forestry Tasmania's new management systems, as laid out in its Sustainability Charter 2008, has not yet been assessed.

From a governance perspective, the regulatory doughnut has a number of implications and consequences.

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58 Thanks to Jess Feehely of the Environmental Defenders Office (Tas) for her clarification of many points in this section. See also Baxter, Tom (2009), "(Dis)Integrated assessment: the pulping of an integrated assessment process." http://www.ecoeco.org/anzsee09/cd_view_oral_by_author.php

59 Wilkinson, Graham (2009) "Shaping the *Forest Practices Code* for the future." *Forest Practices News*, 10(1), December, p. 4.

60 Forest Practices Authority (2007), *State of the Forests Tasmania 2006* and *Sustainability Indicators for Tasmanian Forests 2001-2006*. The criteria and indicators used by the reports are based on the 1995 Montreal Process Criteria and Indicators developed in 1995 by the 12 countries holding 90% of the world's temperate and boreal forests (*State of the Forests Tasmania 2006*, p. 3).

61 *Biodiversity Review* Panel (2008), "Review of the biodiversity provisions of the Tasmanian Forest Practices Code" (note 20), p. 46.

62 McDonald, Jan (1999), "Regional Forest (Dis)Agreements: The RFA process and sustainable forest management." *Bond Law Review*, 20, web version http://www.austlii.edu.au/au/journals/BondLRev/1999/20.html

63 Tasmanian Regional Forest Agreement (2007), section 68. http://www.daff.gov.au/__data/assets/pdf_file/0003/49278/tas_rfa.pdf

64 Forest Practices Authority (2007*) State of the Forests 2006:* p. 40.

1. The Forest Practices System through its exemptions removes forestry from the governance objectives of the Resource Management Planning System.
The RMPS is explicit in its pursuit of encouraging public involvement in resource management and planning, as well as promoting the sharing of responsibility for resource management and planning between the different spheres of government, the community, and industry in the state.[65] The Forest Practices System, however:

- Contains few opportunities for public involvement.

- Largely excludes local government from responsibility for planning and management of forestry operations.

- Has no explicit place for consideration of the public interest in relation to planning issues—a requirement of both LUPAA and the *Local Government Act 1993*.[66]

The effect of these exemptions, as several interviewees complained, is to create a system that sets up "one rule for forestry, one rule for the rest of us."

The effect of these exemptions is to create a system that sets up "one rule for forestry, one rule for the rest of us."

2. The lack of over-arching legislative objectives and policies:

- *Leaves the FPA without clear authority when natural and cultural values, for instance biodiversity conservation, come into conflict with commercial interests.*
  The FPA technically has the final say over the approval of Forest Practices Plans (FPPs), which dictate where and how forestry operations will be carried out in a particular area. However, Freedom of Information records as well as interviews for this evaluation suggest, in the case of biodiversity conservation for example, that the process of FPP approval is often one of negotiation between conservation goals articulated by the FPA and the Threatened Species Section of the Department of Primary Industries, Water and the Environment (DPIPWE) on the one hand and the industry's commercial and operational considerations on the other, with the latter sometimes taking precedence even when threatened species are concerned. For example, in 2006, advice from the FPA in relation to the Bornemisssza stag beetle was rejected by Forestry Tasmania, with the Forestry Tasmania Bass office requesting a re-evaluation of the FPA ecology advice based on the cost-effectiveness of harvesting the reduced area proposed by the FPA. New advice was then given in December 2006 by the FPA, "offered as a compromise between the minimum industry needs and a continued positive conservation outcome."[67] The *Biodiversity Review* indeed has noted that "there is no transparent dispute resolution mechanism to deal with situations where specialist advice is in conflict with other objectives."[68]

- *Leaves the FPA without clear authority to mandate changes to the provisions of the* Forest Practices Code*, for instance in relation to biodiversity conservation.*
  For example, according to a number of knowledgeable interviewees, an FPA-chaired process for reviewing guidelines for the management of swift parrot habitat in forestry areas has been underway for over three years, with the process slowed by significant industry reluctance.

- *Gives the FPA no clear standing in relation to long-term planning on either public or private land.*
  On public land, the FPA has no defined role in the formulation of Forestry Tasmania's three-year plans. On private land, Private Forests Tasmania (PFT) has the lead role in drawing up comparatively undetailed assessments of natural and cultural values for PTR applications, with only limited input from FPA specialists. As a consequence, on both public and private land natural and cultural values issues have to be negotiated primarily at the coupe level—very late in the process to begin to raise constraints.

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65 http://soer.justice.tas.gov.au/2003/copy/15/index.php

66 *Land Use Planning and Approval Act 1993*, Schedule 1, Part 1.

67 Natural and Cultural Values sheets, Coupe GC148A, 14 September 2006, 5 December 2006. For a description of some other such exchanges obtained through Freedom of Information requests, see Blakers, Margaret and Isobel Crawford (2008), "The Swift Parrot in Tasmania: its conservation status and the impact of logging on its breeding habitat," pp. 18-19. http://www.on-trial.info/Swift%20Parrot%20Report,%20October%202008%201.pdf

68 *Biodiversity Review* (note 20), p. 49.

The impression thus is of a regulatory body that has to choose its battles carefully.

3. The absence of a state-level policy has led to a divergence between management practices on public and private land.
Under the Forestry Act, Forestry Tasmania has responsibility for the "development, control and delivery of land use policy for State forest and sustainable forest management and forest produce production policy," although its environmental initiatives or management policies are not reviewed by other agencies in the Forest Practices System.[69] On private land, meanwhile—which as of 2006 made up 23% of Tasmania's native forest area, with a cumulative net gazetted area under PTRs of 458,032 ha in 2008-2009—the **Forest Practices System serves, by default, as an inadequate substitute for management policy.**[70]

This situation leads to differing biodiversity outcomes across the non-reserve forested landscape. For instance, as noted earlier, rates of conversion of native forest to plantation are now significantly higher on private than on public land, particularly in the case of companies that do not comply with the (voluntary) Australian Forestry Standard.[71] The situation also leads to other policy inconsistencies across state and private land. For example, Forestry Tasmania has ended the use of the poison 1080 to control browsing animals in State forests, but the poison is still used on private land; similarly, Forestry Tasmania does not use triazine herbicides such as atrazine, while private landholders do. Such issues can sometimes create public relations problems for Forestry Tasmania: for instance, the corporation is still often accused of using 1080 because it is still used by 'forestry,' if not by 'Forestry.'

4. *The lack of an overarching policy statement creates a situation in which the stated objectives of one agency can conflict with the stated objectives of others.*
For example, Private Forests Tasmania promotes plantation establishment in areas that the FPA might not consider to meet the intent of the Forest Practices Code.

5. *The lack of overarching legislative objectives and policy gives Forestry Tasmania no guidelines in relation to its role as the formulator of land use policy and sustainable forest management on State forest land, leaving it vulnerable to criticism from all sides.*

The lack of measurable conservation objectives further biases the outcome of the conflict of priorities between land management and wood production described above in favour of the latter. More generally, asking a commercial entity to set its own environmental constraints is poor governance practice. It is unreasonable and unrealistic to expect a commercial enterprise whose reason for existence and professional expertise are focused on wood production to put conservation on an equal footing with production. It is also unreasonable and unrealistic to expect a commercial enterprise to place precautionary principles, for instance in relation to biodiversity conservation, above its own profit—particularly when the corporation is answerable to state Parliament for its financial performance.

6. The current regulatory framework lacks mechanisms to assess and manage the key issue of the impact of forestry on water supplies. Water management is an issue of national-level as well as community-level concern. Many commentators have registered concerns about the impact of forestry—both in the form of native forest logging and in the form of plantation forestry—on water quality (in relation both to chemical content and to turbidity) and quantity across the state. However:

- In the absence of an Integrated Catchment Management Policy, there is no mechanism to determine the current or future impact of forestry-related activity on water quality or quantity, or to balance out competing demands for water allocation.

- The Tasmanian State Policy on Water Quality Management is not prescriptive and does not contain recommendations in relation to the Forest Practices planning system.[72]

- The Forest Practices Code has no provisions to restrict logging in catchment areas beyond a stipulation that no more than 5% of a catchment area can be logged in any one year—a provision that some observers allege is not rigorously enforced.[73]

- The Good Neighbour Charter, a voluntary charter aimed at promoting cooperation and increased

69 *Forestry Act 1920*, s 8(1)a(i),(ii).
70 Private Forests Tasmania (2008), *Annual Report 2007-2008,* p. 8; Forest Practices Authority (2009), *Annual Report 2008-2009*, p. 13.
71 Forest Practices Authority, *Annual Report 2008-2009*, p. 20.
72 State Policy on Water Quality Management 1997, http://www.environment.tas.gov.au/file.aspx?id=1715
73 Forest Practices Board (2000), *Forest Practices Code*, p. 48. http://www.fpa.tas.gov.au/fileadmin/user_upload/PDFs/Admin/FPC2000_Complete.pdf

communication by the forestry industry with stakeholders and neighbours, does not extend to information regarding the use of specific pesticides being shared with water users.[74]

In light of the critical importance of effective water management under conditions of climate change, this is a key failure of the existing framework.

V. HOW FORESTRY IS GOVERNED: THE POLITICAL WEB

The state level

Tasmania's forestry structure and regulatory system are the products of political decisions. How the industry operates therefore remains strongly linked to the state's political environment. However, opinion surveys show that in the public mind, this link is highly problematic. As noted above, according to the Essential Research survey, 60% of respondents thought that there is an unhealthy relationship between the timber industry and politicians in Tasmania. Just over half (51%), meanwhile, felt that the logging industry is a source of corruption in Tasmania. A similar figure (51%) thought that cleaning up corruption in the logging industry would go a long way to cleaning up the rest of the government.[75] And 48% agreed with the statement that "the Tasmanian government has concentrated on doing special favours for the forest industry instead of creating sustainable jobs for Tasmania's future. [76] These findings are entirely consonant with the findings on governance issues from other studies, for example the Tasmania Together and Roy Morgan findings cited in this evaluation's introduction.[77]

There are five major areas of relevance to governance that may play a role in the existence and perpetuation of these concerns. These include:

1. Lack of clear differentiation between the major political parties.
At the political party level, both the Tasmanian Labor and Liberal parties have historically been highly supportive of production forestry, which both see as a major provider of employment opportunities in the state. However, both parties also appear to feel a strong electoral need to distance themselves at all costs from the Tasmanian Greens, who have historically been critical of production forestry. As a consequence, both major parties have at times appeared to back themselves into positions that put them at odds with the Tasmanian public, or to have failed to take up opportunities for change—for instance in relation to ending old-growth logging.

From a governance perspective, another result of lack of differentiation appears to be a reduced commitment to genuinely probing legislative scrutiny of forestry issues—a role that, from an examination of the transcripts of GBE scrutiny hearings over the last several years, appears to be left largely to independent members of the Legislative Council, and in the Lower House to the Tasmanian Greens.[78] Indeed, 45% of respondents to an Essential Research study cited above thought that there was "little difference" between the policies of the two major parties on logging.[79]

74 Forestry Tasmania et al. (2008), "Good Neighbor Charter for Commercial Forestry in Tasmania," http://www.forestrytas.com.au/assets/0000/0552/FOT5958.pdf; see also Forestry Tasmania, "Good Neighbour Charter," http://www.forestrytas.com.au/forest-management/policies/good-neighbour-charter

75 Essential Research, October 2009.

76 Essential Research, October 2009.

77 As noted above, according to a Tasmania Together telephone survey, only 16.7% of Tasmanians were "satisfied that the State Government both listens to and acts on the wishes of the community;" also, 60% of Tasmanians told a Roy Morgan poll that they did not consider the State government effective in the fight against corruption and 11% thought that the government encouraged it.

78 See Legislative Council Government Business Scrutiny Committee A, 1 December 2009; House of Assembly Government Business Scrutiny Committee, 3 December 2008; House of Assembly Government Business Scrutiny Committee, 7 March 2007.

79 Essential Research, October 2009.

2. *A lack of robust debate within government on forestry issues.*
At his first media conference as Premier, David Bartlett promised to take a "deeply considered approach based on data, information and knowledge" on forest policy and old-growth logging.[80] It is not clear, however, to what extent such an approach can rely on a full exchange of views within government. At the ministerial level, the positioning of three key Departments/areas related to forestry—the Department of Industry, Energy and Resources, the Department of Primary Industries, Parks, Water and Environment, and Planning—under one Minister discourages vigorous representation of alternative points of view in Cabinet. Forestry Tasmania also keeps a tight grip on its data, putting other government agencies at a disadvantage. As noted above, researchers were struck by the fact that many government interviewees were unwilling to be identified personally or organisationally in relation to comments criticising the forestry industry or raising forestry governance issues, indicating that such views would not do their careers any favours. Overall, it appears to take strong and persistent individuals to stand up for non-commercial forest values.

Overall, it appears to take strong and persistent individuals to stand up for non-commercial forest values.

3. *Forestry Tasmania's bureaucratic and political muscle.*
No other government department or statutory body appears to enjoy the bureaucratic or political profile of Forestry Tasmania. To a certain degree, this is simply due to size. In 2008-2009 Forestry Tasmania employed 547 staff and 1,228 contractors, with a salary budget alone in 2008-2009 of $25,668,000.[81] Meanwhile, the total budget for resource management and conservation within the Department of Primary Industries, Parks, Wildlife and the Environment was $25,927,000 in 2008-2009; the Threatened Species Unit, for instance, has a total staff (full- and part-time) of under ten people.[82] The Forest Practices Authority for its part had twenty-six long-term staff and six short-term staff in 2008-2009, with a total budget in the same period of $2,954,000.[83] And the Forests section of the Department of Infrastructure, Energy and Resources has a staff of three.

Meanwhile, as the main player in the elaboration and implementation of the Regional Forest Agreement and the Tasmanian Community Forestry Agreement, Forestry Tasmania is disproportionately involved in government decision-making related to forestry. At the parliamentary level, the corporation is also a powerful advocate of its own model, in contact with political candidates (for instance, former-Tasmanian-Green-candidate-turned independent-candidate Andrew Wilkie) as well as sitting parliamentarians and other opinion-makers.

4. *Government identification with the corporate expansion plans of Gunns Ltd.:*
In recent years, the Tasmanian Government has shown a high level of identification with the corporate expansion plans of Gunns Ltd., and in particular with the proposal for a pulp mill, first floated by Gunns in 2004. As media coverage over the last six years has already suggested, and interviewees for this research confirmed, the pulp mill—the largest private investment project ever proposed for Tasmania—rapidly turned for many in government from "the biggest thing ever for Tassie" into "the only thing for Tassie," with many seeing potential for the project to bring political gains to the government as well as economic gains to the proponent.

Extensive questions pertaining to governance and due process have already been raised in relation to the state-level approvals process for the pulp mill.[84] [See Box 6: Governance-related critiques of the state-level approvals process and the Pulp Mill Assessment Act 2007.] Two areas of continuing concern remain.

- The Bartlett government has continued to provide a level of support for the project that not only appears to surpass that ordinarily extended to private projects, but that contradicts the Premier's assertion in June 2008 that his government would be spending no more government money after November 2008 on promoting the mill's development. For instance, in September 2009, State Treasurer Michael Aird spent part of a week-long,

80 Brand Tasmania (2008), "Bartlett, 40, starts his watch." Brand Tasmania Newsletter, Issue 83, June. http://www.brandtasmania.com/newsletter.php?ACT=main&issue=83

81 Forestry Tasmania (2009), *Stewardship Report 2008-2009*, p. 1 and Appendix 1, p. 17. The salary figure appears to include wages for contractors as well as Forestry Tasmania employees.

82 Department of Primary Industries, Parks, Water and the Environment Budget 2008-2009, section 11.7

83 Forest Practices Authority (2009), *Annual Report 2008-2009*, p. 44.

84 See Baxter, Tom and Roland Browne (2009), "Probity issues connected with the Tasmanian pulp mill," paper presented to the Australian Public Sector Anti-Corruption (APSAC) Conference 2009, http://www.apsacc.com.au/2009conference/papers09/Day2_30July09/StreamA2/ProbityIssuesTasmanianPulpMill_Baxter_Browne.pdf ; Stokes, Michael and Tom Baxter (2007), "Comments on the Pulp Mill Assessment Bill 2007," 26 March, http://tasmaniantimes.com/index.php?/weblog/article/comments-on-pulp-millassessment-bill-2007/; also the pieces cited in Box 6.

$50,000 trip to Europe lobbying for the mill—an aspect of the Treasurer's trip that appears to have come at his initiative, and that had not been publicly known prior to a public statement by Gunns Ltd. thanking him for his support.[85] Chairman of the Gunns Board of Directors John Gay indeed joined Aird for part of the trip.[86]

- The government has continued to use fast-track legislation in relation to the process.[87] The permit issued to the mill expired in August 2009, and no immediate action was taken to see it extended or renewed. However, Gunns Ltd. continued to engage in land clearing operations for the mill, with the entire footprint cleared by late October—action potentially in breach of permit conditions.[88] In November 2009, at the end of the Parliamentary sitting year, the Government introduced a hastily crafted clarification bill—debate on which it guillotined in the Lower House—that had the effect of changing the permit's expiry date from August 2009 to August 2011, and decreed the permit not to have lapsed since August.[89]

85 After the Gunns media release appeared, Mr Aird "condeded [to reporters] that he had phoned Gunns management once he knew he was travelling to Europe to offer to meet any companies it thought might be useful." "Gunns thanks Aird for mill help," The Mercury, 17 September 2009. http://www.ffic.com.au/index.php?option=com_content&view=article&id=275:gunns-thanks-aird-for-mill-help&catid=42:Media%20Releases&Itemid=158

86 "Still in the game," *The Advocate*, 26 September 2009.

87 See Baxter, Tom (2009), 'Recent developments: Tasmania,' *National Environmental Law Review*, 4 (forthcoming).

88 Paul Oosting (2009), "Government must investigate potential illegal vegetation clearance at pulp mill site," The Wilderness Society, media release, 9 November, http://tasmaniantimes.com/index.php?/pr-article/government-must-investigate-potential-illegal-vegetation-clearance-at-pulp-.

89 Pulp Mill Assessment Act, s 8(4), 8(5), 8(6); ABC News, 'Green light for pulp mill permit', 12 Nov 2009 at http://www.abc.net.au/news/stories/2009/11/12/2741123.htm?site=news.

Box 6: Governance-related critiques of the state-level approvals process and the *Pulp Mill Assessment Act 2007*

The basic facts of the controversy surrounding the state-level approvals process of a proposal for a pulp mill advanced by Gunns Ltd. for the Tamar Valley, in the north of the state, have already been well-documented.[1] In 2004, following reports that Gunns Ltd. was considering building a pulp mill in Tasmania, the Resource Planning and Development Commission (RPDC) drew up a set of guidelines for such a mill, and was tasked with the process of assessing the proposal for the mill by virtue of the project being declared a Project of State Significance. In June 2005, Gunns submitted a detailed proposal to the RPDC. Meanwhile, the government formed a Pulp Mill Task Force under the Department of Economic Development to promote the mill to the Tasmanian public. The task force published 57 newsletters promoting the project between October 2004 and December 2006,[2] and its information bus toured northern Tasmanian communities promoting the project.

However, by mid-2006 it had become evident that the proposal was not going to enjoy smooth sailing, with then-Executive Commissioner of the RPDC Julian Green requesting supplementary information from Gunns on a range of matters of public and specialist concern. Green also complained of interference from the Pulp Mill Task Force, an issue over which he and another member of the assessment panel eventually resigned in December 2006. In February 2007, then-Premier Paul Lennon met with the new chair of the assessment panel, Christopher Wright, to discuss options for speeding up the RPDC's assessment process—an action which Wright considered an inappropriate attempt to pressure him to hasten and weaken the RPDC process to meet Gunns' preferred timeline. [3] When the RPDC's acting Executive Commissioners Simon Cooper drafter a letter to inform Gunns that the proposal was in critical non-compliance with its requirements under the RPDC assessment, Secretary of the Department of Premier and Cabinet Linda Hornsey requested that the letter not be sent, and allegedly informed Gunns of its contents. Gunns withdrew from the RPDC process on 14 March.[4] In response, the Lennon Government hastily created legislation setting up an alternative approvals process for the mill, which passed both houses of Parliament with only minor amendments in April to become the *Pulp Mill Assessment Act 2007*.

Governance-related critiques of the state-level approvals process for the pulp mill and the Pulp Mill Assessment Act 2007 have arisen from a variety of quarters, including the Auditor General and academic analysts.

The Auditor General, in a special report focusing on communications by government, was critical of the Pulp Mill Task Force's materials and activities promoting the project. The Task Force's brief was to provide factual information on the proposal, including the standards to which it would be held and information on the operation of pulp mills elsewhere in the world. The Auditor General, however, found that "the only objective that we could see to the bulk of advertising and bus content was to 'win hearts and minds' in favor of a

1 For and overview see Gale, Fred (2008), "Tasmania's Tamar Valley pulp mill: a comparison of planning processes using a good environmental governance framework." *Australian Journal of Public Administration*, 67(3): 261-282.

2 See http://www.pulpmill.tas.gov.au/Newsletters.htm

3 Matt Denholm, "Premier under the gun in Tasmania," *The Australian*, 21 March 2007; Philippa Duncan, "Pulp claims rock Premier," *The Mercury,* 21 March 2007.

4 "Damning evidence suggests we were all conned," *The Australian* 20 November 2008; "Pulping the truth," *The Australian* 19 November 2008

prominent government policy. We could not identify an intended action or improved understanding for the public. It should also be noted that the majority of advertising expenditure was committed during the RPDC process and ran the risk of compromising normal government decision making processes." [5]

University of Tasmania lecturer in politics Fred Gale, in a comparative evaluation of the decision-making process towards Gunns Ltd.'s pulp mill proposal under the Project of State Significance assessment by the Resource Planning and Development Commission (RPDC) versus the process set up by the *Pulp Mill Assessment Act 2007* (PMAA), found the latter process deficient in its governance standards. Gale found the RPDC process superior on almost every criterion of environmental governance he proposed (transparency, accountability, openness, balance, deliberation, efficiency, as well as the incorporation of science and risk analysis).

- *Transparency:* While the RPDC fostered transparency, under the PMAA the Tasmanian government "took back control over the flow of information through the consultancy process" set up to assess the mill, establishing terms of reference for consultants, exercising control over the choice of consultants, and scrutinizing the consultants' draft reports prior to their release. No opportunities were provided to test the claims of the consultants.

- *Accountability:* While the RPDC was able to hold Gunns Ltd to account for its proposal, under the PMAA process Gunns became directly accountable to the government; since the latter was a major supporter of the project, "this vertical accountability relationship actually placed very few burdens on Gunns." Furthermore, the PMAA process eliminated horizontal accountability, usually exercised through consultations with other affected interests, written submissions and/or public hearings.

- *Openness and balance:* While the RPDC public consultation process offered a voice to other interests, the PMAA process "re-established the ascendance of the forest lobby in the public policy decision-making process" by narrowing the range of matters to be assessed and lowering the benchmarks against which they were to be measured.

- *Deliberation:* While Gunns Ltd would have argued that the RPDC process was excessively deliberative, the PMAA process veered to the opposite extreme, putting the project's future in the hands of private consultancies whose internal deliberations, and discussions with the government over the drafts of their reports, occurred outside the public view.

- *Efficiency:* While the PMAA process was unquestionably more streamlined than the RPDC process, RPDC officials claimed that Gunns Ltd. failed to provide required information in a timely fashion, making it difficult to apportion responsibility for the pace of progress to the RPDC alone.

- *Science-based decision-making:* While the RPDC process was "science-rich," the PMAA process set consultants with skewed mandates (an examination of the potential social and economic benefits, but not costs, for example) based on documentation that the RPDC had already deemed "seriously deficient."

- *Risk-based decision-making:* While the RPDC process went some way towards requiring that claims by the proponent be subjected to a robust assessment of the project's costs, benefits and risks, under the PMAA risk analysis was replaced with benefit modeling exercises that began from the explicit assumption that the pulp mill would impose "no costs on others in the Tamar Valley or elsewhere." [6]

University of Tasmania lecturer in law Michael Stokes observed that the consultant for the assessment process, SWECO PIC, appears not to have assessed the proposal for compliance with all the guidelines of the Pulp Mill Assessment Act.[7]

University of Tasmania lecturer in corporate governance Tom Baxter has strongly criticized the Pulp Mill Assessment Act's Section 11. As Baxter has written: "While privative clauses such as section 11(1) are not unknown in current Tasmanian project assessment/approval legislation, subsection 11(4) is most extraordinary in preventing even review for criminal conduct from delaying issue of the Pulp Mill Permit or any action authorised by that permit. The Bill, and section 11 in particular, were strongly criticised before the Bill was passed and remain a source of much consternation in Tasmania." [8]

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5 Tasmanian Audit Office (2009), "Communications by Government and the Tasmania Brand Project," Special Report no. 83, October. p. 33-34.

6 Gale 2008.

7 Stokes, Michael (2009), "Opinion on the validity of the Pulp Mill Permit under the Pulp Mill Assessment Act," 13 May, http://tasmaniantimes.com/index.php/article/validity-of-the-pulp-mill-permit

8 See Baxter, Tom (2009), 'Recent developments: Tasmania,' *National Environmental Law Review*, 4 (forthcoming).

Taking all these factors together, the level of political commitment in Tasmania to the interests of the forestry industry often appears to meet the definition of *legislative* or *regulatory capture*, a situation which occurs when "officials inappropriately identify with the interests of a client or industry" at the expense of good governance.[90] Regulatory capture does not need to involve spectacular examples of misconduct; it may involve simply a "hearts, minds and emotions" capture that results in subtly favourable discretionary decisions, tardiness or reluctance to implement certain regulations, or "adopting an advocacy role for the regulated industry or person."[91]

It is this kind of subtle and not-so-subtle favouritism on the part of the Tasmanian government that lies behind the accusations by many of "corruption" in relation to the forestry industry. It is clear that the subject of "corruption" is a painful one for many individuals on the government and industry side of the forestry debate; several interviewees expressed a sense of insult and outrage that the term is used in conjunction with the industry. These sentiments are understandable when one considers that many people think that "corruption" only exists when money has changed hands or when criminal law has been broken.

However, it is important for participants on all sides of the debate to absorb that this definition does not correspond with best-practice governance thinking. Integrity specialists and anti-corruption bodies worldwide increasingly use a broader definition of corruption as the abuse of entrusted power for illegitimate goals—goals that may not be limited to financial gain, but can include enhancing personal or organisational reputation or political power. By this definition, "corruption" encompasses not only favouritism towards individuals—for instance, cronyism in recruitment practices—but also structural biases such as legislative and regulatory capture.[92] As governance standards are steadily raised worldwide, and as public interest and literacy in governance issues continue to grow, such definitions are likely to gain more and more public currency, including in Tasmania. It thus is important for all actors to consider whether they wish to be associated with practices that could earn this label.

"Corruption" encompasses not only favouritism towards individuals but also structural biases such as legislative and regulatory capture.

An environment of poor governance creates a climate in which it is difficult for the public to tell the unexceptionable from the sinister. For instance, Gunns Ltd. has been a steady contributor to both major political parties, donating approximately $50,000 to the Tasmanian Labor Party in 2002/3; approximately the same amount to the Tasmanian Liberal Party in 2004/5 and to the national-level Liberal Party in 2005/6; and approximately $40,000 to the Tasmanian Liberal Party in 2007/8, as well as approximately $25,000 to the national-level Liberal Party in the same year.[93] There is nothing illegal, or even unusual, about a company making political donations. In the existing environment, however, it is not surprising that many believe that such donations have the effect of buying public policy. Notably, 58% of the respondents to the Essential Research study agreed with the statement that "I don't always agree with environmental groups, but it's time we stopped the forest industry from having so much influence over governmental policies in Tasmania."

The federal level

The conduct of forestry in the individual states has at various points been an issue of Commonwealth concern. However, the effect of the RFA has been to remove the Commonwealth from the picture, in two ways.

- First, the provision of resource security has involved not only "a positive role by state governments in providing long-term access," but also "a negative role by the Commonwealth in refraining from exercising its environmental powers" through the exemptions from the EPBC Act described above.[94] In this regard, Federal Environment Minister Peter Garrett has repeatedly stressed his limited remit in relation to Tasmania's

90 For a seminal discussion, see Laffont, Jean-Jacques and Jean Tirole (1991) "*The politics of government decision-making: a theory of regulatory capture,*" *Quarterly Journal of Economics, 106(4*). For a more recent discussions see, for example, *Overseas Development Institute and Transparency International (2008), "Preventing corruption in humanitarian assistance,"* http://www.odi.org.uk/hpg/papers/hpgcommissioned-corruption-TI.pdf.

91 Adams, Gary et al. (2007) "Regulatory Capture: Managing the Risks." Paper presented to the Australian Public Sector Anti-Corruption Conference, Sydney, 24 October. http://www.apsacc.com.au/papers07/day1_24oct07/StreamA2/RegulatoryCaptureManagingTheRisks_JohnBoyd.pdf.

92 For a wide-ranging definition of corrupt conduct in the Australian context, see Section 8 of the *Independent Commission Against Corruption Act 1988 (NSW).*

93 Australian Electoral Commission Funding and Disclosure Annual Returns, http://fadar.aec.gov.au/arwDefault.asp?SubmissionID=8

94 McDonald, Jan (1999), "Regional Forest (Dis)Agreements" (note 62).

production forests. [95] Indeed, Garrett's recent intervention to extend emergency National Heritage listing to the Tarkine rainforest appears to have been possible primarily due to the fact that the road proposed for the area is classified as a tourist route, rather than a forestry operation.[96]

- Second, the discontinuing of the export licenses system has removed an important mechanism for Commonwealth intervention.[97]

The Commonwealth level shows no inclination to push for greater involvement in protection of Tasmania's production forests in the immediate future. For example, a recent independent review of the EPBC Act reported significant community concern that the environmental outcomes from RFAs are not being delivered, and recommended that the Act be amended to make the existing exemptions "conditional on better, more independent systems of performance assessment to ensure that the terms of the RFA are being followed and the desired outcomes are being achieved."[98] However, Garrett rejected the recommendation, saying that the Commonwealth government is already committed to "working with state governments to improve the review, audit and monitoring arrangements for RFAs, including their timely completion, clearer assessment of performance against environmental and sustainable forestry outcomes, and a greater focus on compliance of RFAs in the intervening years." [99]

Under these conditions, since the TCFA was signed in 2005 the Commonwealth has in effect renounced any protective role in relation to production forests in favour of one of encouraging the timber industry. The Rudd government's support for greater downstream processing of forest products in Tasmania, for instance in federal Forestry Minister Tony Burke's ministerial statement of June 2009 in support of the Gunns Ltd. pulp mill proposal, has not been able to be counterbalanced by an assessment of the project's possible impact on native forests.[100]

Furthermore, at the same time that the federal government has moved away from responsibility for forestry-related environmental issues, it has encouraged the dramatic expansion of plantation forestry in support of a goal of trebling commercial tree crops from their 1997 levels by 2020. [101] This has been achieved in large part by taxation incentives to establish plantations, including encouraging investment in longer rotation plantations. These taxation arrangements have been favourable to Managed Investment Schemes (MIS), which have been responsible for a significant number of new plantations established; for instance, in 2006 MIS schemes funded 86% of all new plantations.[102] In particular, MIS investors, MIS companies, and non-MIS private plantation growers can claim 100% of their eligible expenditure as a tax deduction in the year they incur the expenditure.[103]

While a full examination of the impact of MIS plantations is outside the scope of this evaluation, critics of these arrangements have alleged that they have led to full-scale clearance of native forests, often in areas that have proved unsuitable to the successful establishment of plantations; have moved agricultural land out of food production; have damaged the viability of rural communities; have had a negative impact on water quality and availability; and have expanded the use of poisons and chemicals.[104] As a consequence, some rural Tasmanians appear to feel not only abandoned (through the EPBC Act exemption) but actively assaulted by Federal policy.

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95 For example, pressed on the issue of federal support for protection of the swift parrot, Garrett stressed: "under the RFA Act it is the responsibility of the Tasmanian government to ensure that those management prescriptions that have been identified as necessary are undertaken and it's our expectation that that would be the case. The EPBC Act does not apply, and hasn't for some time, to over-ride or to provide any necessary or additional actions over the RFA." Garrett, Peter (2008), ABC Breakfast program, 22 October 2008, cited in Blakers, Margaret (2009), "The swift parrot in Tasmania: update." http://www.on-trial.info/Swift%20Parrot%20update%201,%20January%202009.pdf

96 http://www.environment.gov.au/minister/garrett/2009/tr20091211a.html

97 Hollander, Robyn (2004) "Changing Places? Commwealth and state government performance and Regional Forest Agreements." Refereed paper presented to the Australasian Political Science Association Conference, 29 September-1 October, http://www.adelaide.edu.au/apsa/docs_papers/Pub%20Pol/Hollander.pdf

98 Hawke, Allan (2009) *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*. October, paras. 157-161. http://www.environment.gov.au/epbc/review/publications/pubs/final-report.pdf

99 Garrett, the Hon. Peter (2009) "Release of the Hawke Report," media release, 21 December, http://www.environment.gov.au/minister/garrett/2009/mr20091221.html

100 http://www.maff.gov.au/transcripts/transcripts/2009/june/preparing_our_forest_industries_for_the_future .

101 Plantations 2020 (1997), *Plantations for Australia: The 2020 Vision. An Industry/Government Initiative for Plantation Forestry in Australia,* p. 5. http://www.plantations2020.com.au/vision/index.html

102 NSW Farmers Association (nd), "Managed Investment Schemes." http://www.nswfarmers.org.au/__data/assets/pdf_file/0020/3845/FS_Managed_Investment_Schemes_0208.pdf

103 http://www.daff.gov.au/forestry/plantation-farm-forestry/taxation. See also Plantations 2020 (no date),"Plantations and Tax." http://www.plantations2020.com.au/assets/acrobat/Plantations%20and%20Tax%20Fact%20Sheet.pdf

104 See for example submissions to the Review of Taxation Treatment of Plantation Forestry, www.treasury.gov.au/contentitem.asp?NavId=066&ContentID=1000

Box 7: Why hasn't the RFA ended the conflict?

The RFA process has been described as "the most ambitious, expensive and comprehensive resource planning exercise ever undertaken in the country."[1] Many academic commentators have noted that the Regional Forest Agreement was and is fundamentally a political agreement between the Commonwealth and the States to end conflict over forestry activities between those two levels of government, by creating "a mechanism by which State and Federal governments could agree on the long-term management and use of forests, providing secure industry access while protecting environmental and cultural values."[2] However, the RFA process was also intended to defuse conflict within the states through a consultative, scientific approach to the allocation between industry and conservation needs of forest resources.[3] If a degree of resource security is to be provided to the timber industry, both of these levels of conflict need to be satisfactorily addressed.

In fact, the RFA clearly did not defuse the conflict at the state level. To some extent, this is simply because the signing of the agreement, and the resultant lifting of federal controls on woodchip exports, led to an explosion of broad-scale, high-speed conversion of native forest to plantations. As then-federal Environment Minster Ian Campbell told an ABC reporter in 2004, "[I]t is common knowledge that the Tasmanian government are fighting protection of forests, tooth and nail. One of the Regional Forest Agreement outcomes in Tasmania, which I've gone on the record as saying is a perverse outcome, is that they're actually slashing native forests to replace them with plantations, and the Commonwealth has made it quite clear that we regard that as an obscene outcome of that agreement."[4] This outcome has led to considerable cynicism about the RFA, and lends credence to the argument that the process favoured the timber industry.[5]

Beyond this outcome, however, the failure of the RFA process can be traced to a series of governance issues—issues that will be worth keeping in mind when the time comes to formulate a Tasmanian forest policy. In particular:

- The process did not involve adequate scoping to identify the full range of social values that needed to be addressed. The process of formulating the RFA included a Comprehensive Regional Assessment (CRA) stage, which was designed to bring together the economic, social, heritage and environmental information necessary for the development and selection of options.[6] However, the Tasmanian CRA, and the social assessment process it included, apparently did not include planning tools such as decision analysis or multi-criteria analysis to identify and quantify social values that would need to be addressed by the process. [7] As a consequence, as one CSIRO analyst has noted, "the definition of the [CRA] research program carried out as part of the [CRA] resource assessment tended to neglect or de-emphasize certain forest values. [In particular, the] non-use values of forests, for example spiritual or aesthetic appreciation, were barely addressed in the assessments."[8]

- The process lacked the full range of information necessary to evaluate non-extractive forest use. For example, virtually no information existed about the economic valuation of forest uses other than timber extraction—not only other employment-generating activity such as tourism and alternative wood products, but also non-employment economic values such as the value of water catchments.[9]

- The process lacked both the information and the processes to sustain its stated legitimating principle, that of 'science' over 'politics.' The credibility of the RFA process depended heavily on its claims to be basing decisions on sound science.

- The process of reaching scientific consensus is one that is data-based and deliberative, with all sides having the opportunity to test competing claims. However, the data on which the RFA process was based was considered by many to be debatable or incomplete.[10] Meanwhile, the opaque nature of the final decision-making and the lack of justification for decisions taken went against the scientific principle of deliberation.

1 Ananda, Jayanath (2004), "Implementing participatory approaches in formulating regional forest policy." *International Journal of Sustainable Development*, 7(4), 398-409.

2 McDonald, Jan (1999), "Regional Forest (Dis)Agreements: The RFA process and sustainable forest management." *Bond Law Review*, 20, web version http://www.austlii.edu.au/au/journals/BondLRev/1999/20.html

3 McDonald 1999; Lane, Marcus (1999), "Regional Forest Agreements: Resolving resource conflicts or managing resource politics?" *Australian Geographical Studies*, July, 142-153; Dargavel, John (1998), "Politics, policy and process in the forests," *Australian Journal of Environmental Management*, 5, pp. 25-30.

4 De Blas, Alexandra (2004) "The Green end of the wedge," Earthbeat, Radio National, 25 September, http://www.abc.net.au/rn/science/earth/stories/s1203658.htm

5 See for example Kirkpatrick, J. (1998), "Nature conservation and the Regional Forest Agreement Process," *Australian Journal of Environmental Management*, 5, pp. 31-37.

6 McDonald 1999, Dargavel 1998.

7 Ananda 2004, p. 407.

8 Lane, Marcus (2003), "Decentralization or privatization of environmental governance? Forest conflict and bioregional assessment in Australia," *Journal of Rural Studies*, 19, pp. 283-292, p. 290.

9 McDonald 1999.

10 See Hollander, Robyn (2004) "Changing Places? Commwealth and state government performance and Regional Forest Agreements." Refereed paper presented to the Australasian Political Science Association Conference, 29 September-1 October, http://www.adelaide.edu.au/apsa/docs_papers/Pub%20Pol/Hollander.pdf , Dargavel 1998, McDonald 1999.

- The final decision-making process lacked transparency. Research into public participation mechanisms suggests that satisfaction with participatory mechanisms depends substantially on perceptions of fairness and impartiality, evidence that concerns have been heard, and the existence of inclusive and transparent decision-making processes.[11] The lack of transparency in the RFA's final decision-making stage, however, threw all of these criteria into doubt. The RFA's key decision-making moments, such as the development of scoping agreements and of the draft agreements and the final decision-making process were, in the words of one academic analyst, "opaque," both in the sense of a lack of transparency of process and in the sense of a lack of transparency of thinking.[12]

- The decision-makers were largely anonymous. As a "senior scientist working within the forestry industry" interviewed for an academic thesis on the RFA process described it, "In the end, the decisions were made by several people that I know, in a non-smoke-filled room…They were bureaucrats from the Commonwealth or from the state and they were high level bureaucrats. They weren't necessarily ones that knew about the forest values and they weren't in fact."[13]

- The outcomes from these anonymous meetings, as an interviewee for the same thesis described as a "high ranking bureaucrat working within the forestry industry" noted, were implemented with no publicly stated "reason as to why certain areas were protected whereas others were not…There was very little explanation as to the reserve design which was eventually chosen."[14] The consequence of this non-transparent approach has been to leave many mystified and suspicious of the decisions that resulted.

- The process pushed civil society groups and average Tasmanians to one side. For all that the RFA process was presented as seeking a multi-stakeholder consensus, the agreement was signed between the Commonwealth and State governments, without civil society signatories. More generally, the scientific focus of the process may have been intimidating and alienating for the general public; one CSIRO analyst has noted that "[w]hen public policy deliberations are dominated by scientific discourse, the participation of a broader citizenry can be impeded and the role of other knowledge in decision-making restricted." [15]

- The entire process lacked dispute resolution mechanisms. The RFA consultative process does not appear to have included adequate—if any—conflict resolution mechanisms for addressing differences between stakeholders and the government or between stakeholders themselves. Indeed, elements of the decision-making process—including the different types of power and authority among governments and stakeholders, bureaucratic rules that restrict consensus decision-making, and lack of transparency in government decision-making—appear to have effectively constrained conflict resolution. [16] (Ironically, the RFA itself contains a dispute resolution mechanism—for disputes between the Commonwealth and the State only.[17]) Meanwhile, the process provided no opportunities for dialogue and social learning as called for by proponents of deliberative processes.[18]

As a consequence of these governance shortcomings, the RFA and subsequent TCFA "did not produce settlements that were widely regarded as sufficient or legitimate, and were neither broadly deliberative nor democratic."[19]

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11 Ananda 2004, p. 399-401.

12 Dargavel 1998: 29.

13 Majewski, Ula (2007), "The Regional Forest Agreement and the use of publicly owned native forests in Tasmania: an investigation into key decision making processes, policies, outcomes and opportunities," M.A. thesis, School of Geography and Environmental Studies, University of Tasmania, pp. 43-44.

14 Majewski 2007, p. 44.

15 Lane, Marcus (2003), p. 292.

16 Ananda 2004, p. 406.

17 Tasmanian Regional Forest Agreement (2007), section 68. http://www.daff.gov.au/__data/assets/pdf_file/0003/49278/tas_rfa.pdf , clauses 12-15.

18 Lane 2003 p. 291.

19 Lane 2003, p. 291.

VI. GOVERNANCE CONSEQUENCES

Taken together, the legal, regulatory and political environments surrounding forestry have a number of governance consequences beyond those already outlined above. The following discussion considers only a few, arranged around the eight UNESCAP good governance principles outlined above: consensus-orientation, participation, accountability, transparency, responsiveness, effectiveness and efficiency, equitability and inclusivity, and adherence to the rule of law.

1. Consensus-oriented quality

At the most fundamental level, the Tasmanian forestry debate both stems from, and reflects, an overall lack of public mechanisms designed to promote community participation, comment and consensus over forestry issues. To date, the answers to the questions of what State forests exist for, and how they should be used, have been dominated by the extractive forestry industry and its associated forestry bureaucracy. The 1995-1997 RFA process, while starting from the intention to create a consensus-based outcome, ended up undercutting public confidence in its outcomes through a series of procedural failures; the 2005 Tasmanian Community Forest Agreement was merely a continuation of the process. Consequently, neither of these agreements has led to long-term consensus in Tasmania about forestry and its governance. (See Box 7: Why hasn't the RFA ended the conflict?) The state-level Tasmania Together Process, meanwhile, has been effectively sidelined, with no indication that its targets play a significant role in setting forestry objectives: Forestry Tasmania, for instance, does not even refer to the process in its Stewardship Report.

This situation is particularly problematic given that the Tasmanian community as a whole—as the Tasmanian government and Forestry Tasmania correctly emphasise—is the major intended beneficiary of State forest uses. Forestry Tasmania's Statement of Corporate Intent, for example, identifies the corporation's main business as "the sustainable production and delivery of forest products and services for optimum community benefit."[105] However, the concept of "optimum community benefit" is an issue into which, by definition, the full community must have input, and which must be open to redefinition as community values change.

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2. Transparency

Transparency is an area in which significant improvement and commendable developments have occurred across the forestry bureaucracy and forestry industry in recent years. To note a few prominent examples:

- Most forestry-related agencies publish informative and accessible annual reports.
- The Forest Practices Authority has added a map of all certified FPPs to its website, as well as providing information in its Annual Report on the monitoring of the Permanent Native Forest Estate.
- Forestry Tasmania, once exempt from Freedom of Information requirements, now posts many responses—both positive and negative— to FOI requests on its website.

These accomplishments are all significant and deserve recognition. Nevertheless, as will be explained below, some obvious transparency deficits remain.

2a. Transparency and State forests

Information is necessary for informed public discussion.

In recent years, Forestry Tasmania has steadily and commendably increased the amount of financial, scientific, and tech-

105 Forestry Tasmania (2008), *Annual Report 2008*, p. 93.

nical information that it releases to the public. However, in some instances it remains difficult for the public—and even other government agencies—to obtain information necessary for informed public discussion and/or scientific assessment, including:

- *Financial information*: Specialists in accounting have noted that Forestry Tasmania's 2008-2009 financial statements did not provide "the results of segments that are significant to the understanding of the business as a whole," as it would be required to do were Forestry Tasmania an Australian Stock Exchange (ASX)-listed company.[106] While previous reports have provided partial segment information, the published information has provided little assistance in addressing debates over the relative importance to the corporation's financial returns of woodchips vs sawlogs or native forestry vs plantations. In particular, reporting has lacked information on:
    - The native forest segment of the business, which even in previous annual reports lumped woodchip timber together with higher value sawlogs and veneer logs.
    - Segment revenue results, to include quantities sold.
    - A separate segment report for Forestry Tasmania tourism ventures.
- The true costs of Forestry Tasmania's Community Service Obligations (CSOs) also remain opaque. While the 2008-2009 Stewardship report sets CSO obligations at $5 million, the letter from the Minister to the parliamentary GBE committee further lays out Forestry Tasmania's estimates of costs resulting from the effects of public ownership, the constraints of the Forestry Act, and the statutory commitment to long-term sustainability.
- *Scientific data*: Forestry Tasmania also remains reluctant to release to the public scientific data related to carbon storage, for example plot data for carbon storage or wood volumes in State forests or the raw data on carbon emission and sequestration from the 3000 sites on State forest used for the preparation of a report by Melbourne firm MBAC Consultation on carbon sequestration in State forests. Even interviewees from other government agencies complained that Forestry Tasmania withholds forest structure and forest management history data. This information is required for independent monitoring of FPPs; it is also needed for advice provision to FPOs by the FPA and for the development of planning tools to help with decision-making, for example, the habitat range of threatened species. Meanwhile, information related to carbon emissions and sequestration is critical to informed public debate on climate change, a key issue facing the nation as a whole.[107]

On the broader issue of information provision, Ombudsman Tasmania is still examining a complaint lodged against Forestry Tasmania in March 2008 by Tasmanian Greens parliamentarian Tim Morris for what Morris has argued was a systematic pattern of misapplication of the *Freedom of Information Act 1991* to ensure the delay or denial of the provision of information.[108]

A difficult issue related to that of transparency is that of measuring sticks and definitions. For instance, Forestry Tasmania's 2008-2009 *Stewardship Report* measures the "area of native forest harvesting" in 2008-2009 (12,400 ha, according to the Report's figures) against the total State forest area of around 1.5 million ha, or 0.08% of total State forest area.[109] However, when calculated against the total area of State native *production* forest (in other words, excluding areas that are not available for logging) of 580,000 ha (see Box 1: Who's who in Tasmanian forestry governance and the Tasmanian timber industry), then the figure rises to around 2%—a range that rings alarm bells for some conservationists concerned with the sustainability of logging rates.

2b. Transparency and Forest Practices Plans

Forest Practices Plans (FPPs) are the functional equivalent of Development Applications: they identify where and how forestry operations will be conducted in a particular location. As in the case of Development Applications for any other industrial activity, neighboring landholders and the general public have the right, as upheld by the Tasmania Ombudsman, to obtain non-commercial-in-confidence information related to the where and how of operations.

106 We thank John Lawrence, independent accountant and business adviser, for his assistance with these points.

107 See, for instance, Boyer, Peter (2010), "Funny business over forests," 26 January, Climate Tasmania, http://climatetasmania.com.au/

108 Letter from Tim Morris, Member for Lyons, Tasmanian Greens, to Simon Allston, Ombudsman Tasmania, 28 March 2008.

109 Forestry Tasmania (2009), *Stewardship Report 2008-2009*, p. 9.

Box 8: The importance of accuracy

One of the most curious questions encountered during the research for this evaluation was that of conversion of native forest to plantation by Forestry Tasmania. This was an issue that, to researchers fresh to the issue in late 2009, seemed reasonably cut and dried. Forestry Tasmania's 2008-2009 Stewardship Report says that:
"On 1 June 2007, in line with the requirements of the Australian Forestry Standard, we announced an end to the practice of converting native forests to plantations. This statement was in the context of:

- native forest production areas that were commenced (that is road work completed, harvesting commenced) before 31 December 2006 being completed and planted over the next two years; and

- native forest production areas that had commenced after 1 January 2007 being returned to native forest.

This year, a total of 2,191 hectares of plantation was established on land that met the above criteria."[1]
These statements are clear and detailed, and appear unobjectionable.

However, it appears that the history of Forestry Tasmania's public statements on the issue is far less straight-forward. The corporation's first public statements on the issue were un-nuanced in their description of the new policy, which was set off against the Tasmanian Community Forest Agreement as a benchmark. A press release of 1 June 2007 said that: "Forestry Tasmania today (1 June 2007) announced an end to the broad scale conversion of State-owned native forests to plantations…[T]he major policy, effective from today, followed a long period of discussions between Forestry Tasmania, the forest industry and conservation interests…[and] exceeds the target set by the Tasmanian Community Forest Agreement to phase out conversion of native forests on public land by 2010."[2] Forestry Tasmania's public literature continued throughout 2007 and 2008 to state unequivocally both that clearing had ended, and that this step exceeded the target set by the TCFA.[3] Meanwhile, claims by conservation groups that conversion appeared to be continuing were strongly countered in the public arena. For instance, a September 2008 Forestry Tasmania press release, republished in the corporation's newsletter Branchline, stated that: "The results of an EMRS poll commissioned by Forestry Tasmania…uncovered a startling array of urban myths that we believe can be traced back to public comments made by the Wilderness Society and their supporters… [As one instance,] Two out of every three Tasmanians think state forest is being converted to plantation. **The truth is no state forest is being converted to plantation. The practice of conversion ceased in December 2006** (bold in the original)."[4]

However, in December 2008, in his report to the Lower House GBE Scrutiny Committee, Resources Minister David Llewellyn painted a more nuanced picture. Specifically, he said that, in line with commitments under the Tasmanian Community Forestry Agreement to end broadscale conversion of native forest to plantations on public land by 2010: "[Forestry Tasmania] voluntarily ended its conversion program early, with no broadscale clearing of native forest and State forest to be initiated after 31 December 2006. 'Initiation' in this context means roading completed and harvesting commenced… It takes some time for coupes to be fully harvested, windrowed and ploughed for seedlings to be planted, usually in spring. Most plantings [under the backlog] will be completed in spring 2008, with a small carryover into spring next year… [The carry-over included] about 3500 hectares of land to be planted in 2008-2009 which was previously harvested and windrowed."[5]

It is this clearer description that is now found in Forestry Tasmania's public literature. The corporation, and the Tasmanian community, would have been better served had this clear detail been provided in all public statements from the beginning. Also, it frankly is difficult to describe an approach that involved continuing conversion of about 3500 ha through 2008-2009 as significantly "exceeding" the TCFA target of ending conversion by 2010—a point implicitly conceded by the corporation's reference in the 2009 Stewardship Report to the Australian Forestry Standard requirements, rather than the TCFA.

1 Forestry Tasmania (2009), *Stewardship Report 2008-2009*, p. 30.
2 Forestry Tasmania (2007), "End of conversion of native forests to plantations," media release, 1 June, http://www.forestrytas.com.au/news/2007/06/end-of-conversion-of-native-forests-to-plantations-1st-june-2007
3 See Forestry Tasmania (2007) *Annual Report 2007*, p. 33, Forestry Tasmania (2007) *Stewards of the Forest,* p. 11; *Forestry Tasmania (2008) Annual Report 2008*, p. 72; Forestry Tasmania (2008) *Sustainability Charter: Forest Management Plan,* p. 13. The issue does not appear to have been raised in the 2007 Lower House Government Business Scrutiny hearings.
4 Bold in the original. Forestry Tasmania, *Branchline*, 9 September 2008, http://www.forestrytas.com.au/branchline/branchline-9th-september/is-the-last-tree-about-to-be-cut-down
5 House of Assembly Government Business Scrutiny Committee, 3 December 2008, pp. 52-53.

However, unlike Development Applications, few formal public notification mechanisms for proposed FPPs exist; in fact, a number of obstacles face members of the public, and local government bodies, seeking to obtain this information.

First, there is nowhere where FPPs are centrally held. FPPs are currently held by individual FPOs with copies provided to the landholder for whom they are drafted and other parties associated with the operation, such as contractors and the timber processing company. In the case of large landholders, such as Forestry Tasmania and Gunns, the public and councils have obvious points of call when seeking information about draft and finalised plans. Where operations are on private land, however, it is often difficult to find out to whom one should apply for information. Furthermore, the varying responses from different landholders and companies obtained by councils and members of the public to requests for information in relation to draft and finalized FPPs contribute to the atmosphere of public mistrust surrounding many forestry operations. Recommendation 4.1 of the 2002 Resource Planning and Development Commision review of the RFA indeed called for better public access to information about FPPs "through a central access point." [110]

Second, there is a perception that local governments are not adequately notified of impending forestry operations. Local government is the first point of inquiry and complaint for many individuals who are concerned about upcoming forestry operations. Forest Practices Officers are currently required under the *Forest Practices Code* to *consult* with councils before certifying FPPs that involve areas with landscape protection provisions in planning schemes, operations which potentially affect water quality, or construction of new access or major upgrading of existing access for timber harvesting onto local government roads.[111] Nevertheless, council planners interviewed for this project—whether they wished to be more involved in the FPP approvals process or not—frequently expressed frustration that councils only receive automatic notification of upcoming forestry operations in this limited set of circumstances. FPA interviewees expressed some surprise when hearing of this complaint, pointing out that FPOs are required to notify council of all FPPs, whether or not they require consultation,[112] and that FPA monitoring has found compliance with this requirement to be sound;[113] the issue thus requires further investigation.

2c. Transparency and private forests

Of all the forestry bureaucracies, Private Forests Tasmania provides the least information to the public, either through its website or through its annual report (a fact, a PFT interviewee said, that reflects staffing issues). This is a particular problem given that operations on private land are more likely to lead to conflict within communities, as private forests are part of a mosaic of diverse landholdings.

3. Accountability

An assessment of the accountability of a system of governance can focus on a number of levels.

3a. Accountability and legislative requirements

As noted above, the accountability of various aspects of Forestry Tasmania's business ventures to the Forestry Act is not clear, for instance in relation to the requirement to consider the employment implications of commercial deals. The Parliamentary Standing Committee on Environment, Resources and Development looking into the Auspine/FEA case indeed subsequently recommended that Section 12A be amended to clarify the definition of employment "consideration" and how it should be demonstrated; this recommendation does not appear to have been acted on.[114]

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110 Resource Planning and Development Commission (2002), "Inquiry on the Progress With Implementation of the Tasmanian Regional Forest Agreement (1997)," p. 9.

111 *Forest Practices Code*, p. 5.

112 *Forest Practices Code,* p. 5.

113 Forest Practices Authority (2009), *Annual Report 2008-2009,* p. 74.

114 It should be noted that some legal scholars disagree with the interpretation that joint ventures are exempt. For example, University of Tasmania lecturer in law Michael Stokes, in a statement presented to the Parliamentary Standing Committee, argued that: 'Allowing a joint venture arrangement to deal with the disposal of forest produce does not, in my opinion, allow Forestry to disregard employment implications in determining how to dispose of joint venture produce because the power to enter into a joint venture is one of its powers of management and is subject to the limits of those powers of management. If that were not the case, Forestry could ignore all statutory limits on its powers, including those imposed by section 12 of the act, dealing with the duty to consult with the Director of Environment Management and on avoiding environmental harm as well as 12A when entering into a joint venture. So the obligation under 12A to consider employment implications applies where the timber comes from crown land regardless of any joint venture. It does not apply to timber from private land.' Joint Standing Committee, Environment, Resources and Development (2007), "Joint Venture Log Supply Deal," p. 8. http://www.parliament.tas.gov.au/Ctee/Joint/Archived/Reports/ERD/JOINT%20VENTURE%20LOG%20SUPPLY%20DEAL.pdf

3b. Accountability and legal rights

Third party appeal rights are generally recognized as an important way of safeguarding the accountability of decisions. However, as also discussed further below, third parties currently lack appeal rights in relation to a range of forestry areas. For instance, although forestry operators have a right of appeal to the Forest Practices Tribunal against a decision not to certify a Forest Practices Plan, third parties do not currently have the right to appeal a decision to certify a Forest Practices Plan or to challenge provisions of a plan.

3c. Accountability and government policy direction

It is not clear to what extent Forestry Tasmania, as a GBE, is accountable to government policy direction where commercial decisions are concerned. For example, in June 2008, newly appointed Premier David Bartlett announced that the Tasmanian government was drawing "a line in the sand" in relation to its support for Gunns Ltd.'s proposal for a pulp mill in the Tamar Valley, and that the mill's future was now in the hands of its proponent.[115] In August 2008, however, Forestry Tasmania extended its agreement with Gunns Ltd. for wood supply to the mill. Bartlett's initial sharp response that he would want to see "good commercial reasons" for Forestry Tasmania's decision suggest that the Premier's office had not been adequately engaged in the decision to extend—a decision with significant political implications for the government.

4. Responsiveness

In recent years, Forestry Tasmania and the Tasmanian government and forestry bodies have responded, or are beginning to respond, to public concern over a number of forestry-related issues.

- The poison 1080 is no longer used in State forests.
- A list of planned forestry regeneration burns is available on Forestry Tasmania's website, and the Forest Practices Authority has a web-based system for registering complaints related to forestry burns.
- While many conservationists still have concerns about the biodiversity impact of some of the alternatives proposed to clearfelling, such as variable-retention approaches, at least alternatives are being discussed and trialed.

These accomplishments are all significant and deserve recognition.

However, despite these improvements, in addition to the concerns of conservation groups over the protection of high conservation value forests, biodiversity, and World Heritage values, the system is still not responsive to local government and to some strong community concerns.

4a. Responsiveness and local government

The need for a degree of security for landholders contemplating using their land for forestry is widely recognised, including among council staff. At least among interviewees for this review, many council staff also confirm that councils do not have the time, budget or skills to take on full responsibility for regulating forestry operations. Nevertheless, as democratically elected bodies, councils provide an important opportunity for public participation in planning issues.

However, the overall picture that has emerged from interviews with councillors, council staff, and consultants to councils was one of disempowered bodies lacking both the ability to demand their rights from state-level government bodies and the finances to take on legal clashes with a powerful industry. The greatest area of disempowerment encountered by researchers for this review was among council planners in relation to the establishment of Private Timber Reserves and plantations. Councils are among the prescribed persons who are permitted to lodge an objection to an application for a PTR.[116] However, over the period 01/07/2003 to 30/06/2009, according to PFT staff, councils mounted objections to

115 http://www.abc.net.au/news/stories/2008/07/02/2291861.htm

116 Other prescribed persons are neighbors within 100 metres of the boundary of the reserve, persons who have legal or equitable interest in the land or timber to which the application relates, or State authorities. *Forest Practices Act 1985*, Part 2, Section 7.

eight PTR applications; of these objections, six were rejected.[117] Taken together, interviewees said, these statistics create a powerful disincentive for councils to take on the financial and logistical burden of mounting an objection in the first place; and indeed, no council has appealed a PTR application since January 2007.[118] As a consequence, the above figures are probably significantly under-representative of levels of council concern with PTR applications.[119]

Beyond the PTR system, although councils in principle retain the discretion to disapprove forestry activities on land not covered by a PTR, many interviewees in fact argued that this right is difficult to exercise. Councils shy away from attempting to block forestry operations, interviewees complained, because the RMPAT, to which developers have right of appeal, has relied on extremely narrow legal interpretations of, and loopholes within, planning schemes; as a consequence, councils nearly always lose, incurring significant costs in the process. One council planner put it starkly: "The Resource Management and Planning Appeals Tribunal (RMPAT) won't permit councils to block forestry." "If forestry is zoned 'discretionary,' council objections are ignored or overruled. 'Discretion' is viewed as de facto permission," said another interviewee. Said a third, "Councils are cowed into approving [forestry operations], in the sense that they don't want to waste their money; if they refuse, and the developer appeals, the council can't win."

4b. Responsiveness and air pollution

A recent report by the EPA finding that planned burns contribute seventeen to twenty times more particulate pollution to the Tasmanian airshed as domestic woodheaters may make it increasingly difficult to justify such practices and may require a review of the *Tasmanian Air Quality Strategy 2006*.[120]

117 In one case, the FPA denied the PTR application; in another case, the application was withdrawn. Thanks to Peter Taylor of Private Forests Tasmania for collating these statistics (e-mail, 20 December 2009).

118 E-mail, Peter Taylor, Private Forests Tasmania, 20 December 2009.

119 Substantial confusion even existed among council staff as to whether or not councils have the right to exercise their power of entry to examine land that has been proposed for gazetting as a PTR; landowners reportedly have refused council staff entry to such properties on the grounds that councils are not the bodies providing approval for PTR status. For power of entry, see *Local Government Act 1993*, Part 2, section 20a.

120 DPIPWE/EPA (2009?), "A preliminary reassessment of the relative contribution of PM10 particle pollution from forest industry burns and domestic wood heating to the Tasmanian airshed in 2008." http://www.environment.tas.gov.au/file.aspx?id=7609

Box 9: The Protection of Agricultural Land (PAL) Policy 2009 and Forestry

The State Policy on the Protection of Agricultural Land 2009 (PAL) has, as its name suggests, the objective of fostering "agriculture"—which since 2000 has been defined to include plantation forestry. It seeks to do so in at least two fashions:
It seeks to ensure that subdivision and other forms of development do not result in the undue fragmentation or loss of productive agricultural land.
It seeks to "enabl[e] the sustainable development of agriculture by minimizing conflict with or interference from other land uses."[1] Residential use of neighboring land is not inconsistent provided that it does not "confine or restrain agricultural use on or in the vicinity of that land."[2] From the draft of the policy, the potential to "confine or restrain" appears to mean having the potential to lay residential amenity claims against "agricultural practices causing noise, light, odour, dust, spray and other nuisances."[3]
In relation to subdivision, the 2008 PAL Model Provisions suggest that, in order to ensure that subdivision and other forms of development do not result in the undue fragmentation or loss of productive agricultural land, all new lots formed from agricultural land should be at least 50 ha in area.[4] In relation to fettering, the Model Provisions suggest that all sensitive uses—primarily but not exclusively residential use—be required to be separate from all existing or potential agricultural activities by at least 100 m measured from the boundary, or 200 m measured from the curtilage of the sensitive use.[5] Some councils have already begun to amend their planning schemes to incorporate these changes. However, council staff and private individuals, both in the course of the research for this review and in submissions to the RPDC during the period of public comment on the draft policy in 2008, have raised concerns that setback requirements may make it impossible to build on some small blocks adjoining plantation forestry, and difficult to position a house in the best location on others—an outcome which some consider fundamentally inequitable. Many have also called for a reconsideration of whether plantation forestry should be considered "agriculture" in the first place.

1 State Policy on the Protection of Agricultural Land 2009, Section 2 (Objectives).

2 State Policy on the Protection of Agricultural Land, Section 3 (Principles), para. 5.

3 Department of Justice (Tasmania) (2008) Revised Draft State Policy on the Protection of Agricultural Land 2007: Background Paper, July s. 2.2.1.1. http://www.justice.tas.gov.au/__data/assets/pdf_file/0011/105959/Background_Paper_PAL_2007_v4.pdf

4 Department of Justice (Tasmania) (2008) PAL Model Provisions, May, s. 18.4.1, A1, http://www.justice.tas.gov.au/__data/assets/pdf_file/0019/107641/PAL_Model_Provisions_May_2008.pdf

5 Department of Justice (Tasmania) 2008, PAL Model Provisions (note 227), s. 18.3.1, A1.

4c. Responsiveness and the Protection of Agricultural Land (PAL) Policy

Under the State Policy on the Protection of Agricultural Land, the definition of "agriculture" extends to plantation forestry. Some commentators have raised concerns that the Policy may hinder subdivision of land or make it impossible to build on some small blocks adjoining plantation forestry—outcomes which, they argue, are fundamentally inequitable. The Policy has also been criticised for allowing monoculture plantation forestry to be established on prime agricultural land, potentially restraining future productivity of the land. (See Box 9: The Protection of Agricultural Land (PAL) Policy and forestry)

5. Equity and inclusion

As a public resource currently used for income and employment generation, State forests should be potential sources of income and employment for all Tasmanians. At the moment, however, the ability to earn a living off of State forests is heavily biased towards those who wish to engage in eucalypt sawlog and pulpwood extraction, both because such activity is the default economic mode and because non-extractive businesses face extensive licensing requirements. Under the combination of the Forestry and GBE Acts, Forestry Tasmania in fact appears to be under no obligation to permit other businesses to operate on State forest, and does not appear to have clear guidelines for engaging with others who wish to use State forests. For example, it is not clear if Forestry Tasmania has drawn up eligibility criteria and obligations required to obtain a license or permit—without which it is difficult to ensure that the process of granting licenses, permits, or leases is transparent and fair. Indeed, researchers for this review heard repeated concerns that access to the economic benefits of State forests is not available to those who express positions critical of existing forest practices or policy, Forestry Tasmania, or Gunns Ltd.

- Forest contractors said that critics will be given bad coupes or will be the first to be told that no coupes are available.
- Tourism operators said that expressing criticism would jeopardize getting a new license or renewing an existing one.

Some interviewees who reported bad experiences said that they and their businesses had no trouble until they "made the mistake" of criticising forestry practices, policy or players.

Beyond the issue of access, some forest-based industry groups have also expressed concerns about the equity of existing forest management practices. For example, the group Timber Workers for Forests, which represents craft workers, artisans, boat builders and some timber getters, fears that the forests' ability to sustainably provide these industries with slow-growing timbers such as celery top pine is being harmed by what they consider to be excessively short rotation cycles.[121]

On the issue of inclusion, we acknowledge that this evaluation has not been able to reach an adequate understanding of the issue of Aboriginal inclusion in forest policy.

6. Participation

The value of public participation in forestry-related decision-making and management is broadly recognized in Australia. Both the vision and goals of the National Forest Policy Statement recognise that public participation (including in decision-making) and management approaches that are responsive to communities are key to ecologically, economically and socially sustainable forest management.[122] The suite of Resource Management and Planning System legislation has as one of its common objectives "to encourage public involvement in resource management and planning."[123] Many forestry-related policies and their reviews—including the RFA and the CFA—have been open to public comment. Forestry Tasmania has also increased community consultation on local and district management plans. However, a number of problems remain in relation to local government participation in forestry planning.

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121 http://www.twff.com.au/intro.pdf

122 Commonwealth of Australia (1992, 1995) "National Forest Policy Statement: A New Focus for Australia's Forests," pp. 3, 5. http://www.daff.gov.au/__data/assets/pdf_file/0007/49732/nat_nfps.pdf

123 *Natural Resource Management Act 2002*, Schedule 1(1)(c).

6a. Participation and local government issues

Council disempowerment extends beyond the level of approvals to the level of formulation of planning schemes—policies which provide the opportunity to reflect community concerns and wishes over local forms of development. As several interviewees observed, a key step by local governments to gain control over forestry activities would be though changes to planning schemes in order to gazette non-urban areas where forestry operations are 'prohibited,' not merely discretionary. However, the State Policy on the Protection of Agricultural Land 2009 requires councils to classify plantation forestry—which is considered to be "agriculture" under the Policy—as permitted, rather than even 'discretionary,' on land zoned for rural purposes, with only a few exceptions. (See Box 9: The Protection of Agricultural Land (PAL) Policy and forestry). Beyond the specific issue of plantation forestry, furthermore, in the past councils reportedly have faced significant obstacles obtaining approval to limit forestry operations from the Resource Planning and Development Commission (now the Tasmanian Planning Commission). One highly experienced former local planner, for instance, said: "The RPDC's job is to ensure sustainable development, but in practice it nitpicks planning schemes in forestry's favour. When a planning scheme is under preparation, it is put on public exhibition for submissions. At this stage, Forestry Tasmania, the Forest Practices Authority, and Private Forests Tasmania arrive with detailed maps, "scientific evidence," etc., and the RPDC rejects that aspect of the planning scheme. The RPDC process is closed door, there is no external scrutiny, and its judgment is final." It remains to be seen whether the new Planning Commission will take a similar approach.

6b. Public participation in forest management

In contrast to the Resource Management Planning System, the Forest Practices System has virtually no mechanisms for public involvement in forest management.
For example, LUPAA requires applications for discretionary use and development to be available for public comment and allows for third parties to appeal against a decision to grant a permit. In contrast:

- While a forestry proponent can appeal to the Forest Practices Tribunal against the terms of a FPP (or a decision not to issue an FPP), there are no appeal rights for a third party to challenge an FPP, regardless of the impacts on neighbours, threatened species or water resources.

- Only immediate neighbours within 100m and Council can object to or appeal against the declaration of a PTR. The grounds on which neighbours can appeal are restricted to 'material disadvantage' to their property – not general conservation grounds. Grounds for objection are also restricted to the impact of the declaration of the PTR (that is, the removal from the planning scheme), rather than the specific impacts of the proposed forestry operations.

The lack of third-party rights to be consulted in relation to forestry decisions, or to appeal against them, results in a lack of independent scrutiny. This limits the capacity of the forest practices system to implement ecologically sustainable forest management.

Meanwhile, LUPAA and EMPCA also both provide for civil enforcement actions by interested parties where activities are being carried out without approval, or in breach of a permit condition. These civil-enforcement provisions provide a useful option for third parties to take action to ensure compliance where the planning authority has failed to act. However, under the Forest Practices Act 1985, the only person who can take action to enforce a FPP or the Forest Practices Act is an FPO. There are no equivalent civil-enforcement provisions to allow interested third parties to enforce compliance with the terms of a FPP or the provisions of the Act where the FPO has failed to take appropriate action.

6c. Public participation and legal action

The social landscape surrounding forestry issues changed in 2004 when Gunns Ltd. brought a civil suit against 20 conservationists and conservation organisations. The "Gunns 20" suit, as it is popularly known, is widely considered to have been a SLAPP (strategic lawsuit against public participation) designed to raise the costs of engaging in dissent against forestry policy and operations.[124] While the impact of the suit on public participation is hard to measure, observers have

124 Political commentator Greg Barns has observed that elements of the suit which relate to protest action may not fall under the usual definition of a SLAPP as being primarily focused on stifling freedom of speech. However, the inclusion of individuals, including Tasmanian and federal parliamentarians, who were never linked to protest action certainly conforms to the usual definition. See Darby, Andrew (2009), "Missing their mark," *The Age*, 19 March, http://www.theage.com.au/national/missing-their-mark-20090318-9279.html?page=-1

said that:

- Potential publishers have refused to accept material critical of Gunns.
- Some people pulled out of protest activity against the proposed mill.
- Others said that they were "afraid even to put submissions in to government assessment processes in relation to the mill."[125]

Perversely, however, the suit may also have had the effect of making the police's job more difficult: knowledgeable interviewees have observed hat since the suit, groups of protesters are less likely to nominate a leader (a role that opens the individual up to a similar suit), making it harder for police at demonstration sites to negotiate with groups of protesters on rules of conduct, duration of protests, etc. The Tasmanian government has yet to pass anti-SLAPP legislation, as has occurred in the Australian Capital Territory and several states in the United States, although the state has already changed its laws to exclude companies from those eligible to sue for defamation.

In general, the environment of the forest conflict has become more litigious in recent years, including some cases that clearly fly in the face of good governance principles. For example, in 2007 Tasmania Police lodged an application against forest protester Allana Beltran for $2870.14 in lost staff time in relation to her May 2007 Weld Angel protest on the Arve Road, on the way to Forestry Tasmania's Tahune Airwalk—a highly unusual step which provoked sharp criticism from many sides. The police later dropped the application after receiving advice by the acting Solicitor-General that the case was not well founded in law.[126] Under its authority under the Forestry Act to declare areas of State forest closed to public access, Forestry Tasmania has also brought trespass charges against conservationists—a situation that raises the hackles of those who defend the public's right to protest on public land.

In general, the environment of the forest conflict has become more litigious in recent years.

7. Effectiveness and efficacy

As noted above, the current Forest Practices System is not one that focuses on evaluating and monitoring effectiveness. For instance, at the practical level, the *Biodiversity Review* notes that "there are a number of systems in place to monitor the performance of the *Forest Practices Code*, but these mostly determine levels of compliance with process rather than the effectiveness of biodiversity conservation measures put in place."[127] As a consequence, in the context of a lack of an overarching policy and regulatory framework setting out clear objectives and measurable outcomes for sustainable forest management across both public and private land, the current Forest Practices System is hard pressed to deliver good results for biodiversity.

On this issue, the *Biodiversity Review* is blunt: "Currently the primary objective of the *Forest Practices Act 1985* [to achieve sustainable management of Crown and private forests with due care for the environment] cannot be met because the forest practices system is a regulatory rather than a forest management system."[128] To take only one problem area, in its annual reports for the last five years, the FPA has reported that "a small number of forest communities have been subjected to very high rates of conversion to plantations, with the area of some communities being reduced by over 30 percent within some bioregions…[S]uch high levels of conversion have potentially long-term ramifications for the maintenance of regional biodiversity." Even though Forestry Tasmania and some private companies say they have ceased conversion on new coupes (see Box 8: The importance of accuracy), the FPA has indeed reported that the 95 percent threshold for the cessation of all broad-scale conversion will be reached during 2011 if the current rate of conversion is maintained—a particularly disturbing statement given that similar warnings were issues in the Authority's previous two *Annual Reports*.[129]

125 Ogle, Greg (2009), *Gagged: The Gunns 20 and Other Law Suits*, Envirobook, p. 66.

126 "Police drop bid to recover costs from Weld Angel," ABC News, 28 September 2007, http://www.abc.net.au/news/stories/2007/09/28/2046697.htm

127 *Biodiversity Review* (note 20), p. 49.

128 *Biodiversity Review* (note 20), p 47.

129 Forest Practices Authority (2009), *Annual Report 2008-2009*, p. 22; see also Forest Practices Authority (2007), *Annual Report 2006-2007*, p. 25, Forest Practices Authority (2008), *Annual Report 2007-2008*, p. 20.

Currently sustainable management of Crown and private land with due care for the environment cannot be met because the forest practices system is a regulatory rather than a forest management system.

8. Adherence to the rule of law

The hold of the rule of law on Tasmanian forestry sometimes appears tenuous. For example, as noted above, the state-level approvals process for the Gunns Ltd. pulp mill project shows every evidence of having violated due process. Researchers anticipated highly critical attitudes towards the pulp mill approval process from the conservation and academic communities. What we did *not* anticipate was the extent to which interviewees within the forestry bureaucracy and industry acknowledged that good governance principles had been violated. Whether one uses the term 'regulatory capture' or 'corruption,' all evidence suggests that the pulp mill approval process represented a significant violation of due process. It is sobering to reflect that were the same chain of events that occurred in Tasmania in 2007—the abrupt midstream exemption from an established regulatory process of a dominant industry player enjoying overt government support—to occur in Azerbaijan or in Indonesia, the World Bank and other major development assistance donors would take note. In the Australian context, the episode warrants fuller investigation by the new Integrity Commission or a Royal Commission.

Beyond this point, Section 11 of the Pulp Mill Assessment Act 2007 remains highly troubling. In particular, sub-section 11(4) prevents even review for criminal conduct from delaying the issue of the Pulp Mill Permit or any action authorized by that permit. Meanwhile, the Supreme Court of Tasmania held in July 2009 that sub-section 11(1)(b) barred affected land owners from obtaining any orders under the *Judicial Review Act 2000* (Tas), including statements of reasons for the conditions imposed on the Pulp Mill Permit.[130]

Beyond these issues, concerns exist at many levels that the Tasmanian government has dragged its feet or simply turned its back on many of its commitments under the RFA/TCFA.

In particular, according to the Tasmanian Conservation Trust, the government:

- Has failed to develop and implement recovery plans or even listing statements for many RFA Priority threatened species.
- Has not met its obligations to protect threatened vegetation communities. For instance, the governement ended a programme to secure reservation of threatend vegetation comuntities on private land, despite the fact that the programme had met less than half of its target of 45,600 ha.
- Has weakend controls over vegetation clearance on private land.

Notably, concerns about implementation of the RFA/TCFA were raised by the Tasmanian RFA ten-year review, which stated baldly that while in many areas significant progress in implementation had occurred, "a number of commitments that underpin systemic change have not been fully completed or cannot be reported on;" for example, at that time, statutory management plans remained to be completed for "many" reserves. [131] The question of what commitments have or have not been met is related to the adequacy of monitoring provisions; significantly, the 2009 review of the EPBC Act found that "…the current process for review and auditing RFAs is neither independent nor transparent, and more importantly, in most cases, required reviews are not being undertaken."[132] Clearly an environment in which parties can turn their back on commitments is not one of good governance, nor is it one that breeds trust.

130 Baxter, Tom (2009), "Pulp Mill Assessment Amendment (Clarification) Act 2009 (Tas," *National Environmental Law Review,* 4, pp.14-17, p.16. See also Baxter, Tom, (2009) "(Dis)Integrated Assessment: the pulping of an integrated assessment process" (note 58).

131 Ramsay, John (2008), *Report to the Australian and Tasmanian Governments on the Second Five Yearly Review of Progress with Implementation of the Tasmanian Regional Forest Agreement*, February, p. 2, 4.

132 Hawke, Allan (2009) Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, October, paras. 157-161. http://www.environment.gov.au/epbc/review/publications/pubs/final-report.pdf

VII. THE TILTED PLAYING FIELD

As noted above, the forestry industry has taken significant steps towards establishing better community relations, addressing public concerns, and improving governance in the forestry sector.

- Forestry Tasmania and Gunns Ltd. have certification via the Australian Forestry Standard, which has as one of its criteria that "Forest management shall provide for public participation and foster on-going relationships to be a good neighbour."[133]

- Forestry Tasmania and Gunns Ltd. have both begun discussions with the Forest Stewardship Council (FSC) in relation to the process of gaining FSC certification—a step that would increase public confidence in the environmental and social dimensions of forest management practices as well as bring commercial advantage.[134]

- Forestry Tasmania and the major forestry companies are signatories to the Good Neighbour Charter for Forestry in Tasmania, which lays out a series of responsibilities and commitments to landholders adjoining forestry operations as well as to local government, the tourism industry and recreational users of forests.

- Forestry Tasmania has Community Liaison Officers in all of its district officers.

- The Tourism-Forestry Protocol Agreement 2009 addresses issues of concern to the tourism industry such as the timing of planned burns and planning of forestry activities to minimize visual impact along tourism routes.

- Forestry Tasmania and Gunns Ltd. sit on a variety of local initiatives, including Natural Resource Management committees, and have pursued better understandings with local government: for instance, Gunns Ltd. has signed a memorandum of understanding with Glamorgan-Spring Bay Council to discuss water issues.

- As noted above, greater transparency is evident everywhere in the forestry sector, and issues of public concern such as the use of 1080, the impact of forestry regeneration burns, and clearfelling have been, or have begun to be, addressed.

Meanwhile, on the political side of the governance ledger, the Tasmanian parliament has passed government-introduced legislation creating an independent Integrity Commission, which will begin operations in mid-2010. The Bartlett government also took steps in August 2008 to address public perceptions of bad governance through its Ten Point Plan to Strengthen Trust. Of particular interest to forest governance, the Plan heralded a review of the Freedom of Information and Public Interest Disclosures Acts, improvements in the governance and accountability of GBEs, the creation of a register of political lobbyists in the state, and training and education in ethical standards for all parliamentarians, ministers and staff.[135]

These commendable undertakings notwithstanding, however, the compound effect of the legal knot, the regulatory doughnut, the political web, and accompanying governance issues is to create a governance environment that is heavily skewed.

1. At the policy as well as philosophical levels, forestry governance is skewed towards a particular extractive model of use of State forests, to the disadvantage not only of conservation but also of existing and potential non-extractive forest users.
The Forestry Act and the RFA and the TCFA all start from the premise that production forestry is the appropriate use for State forest. Other examples of forest management—the New Zealand case, for example—demonstrate that in fact there are many different ways of thinking about potential uses for native forests (see Box 10: The New Zealand model). The lack of genuine debate over the direction of Tasmania's forests has not permitted the Tasmanian public to come to a fully informed understanding of other models of native forest use, or to a fully informed conclusion about how Tasmania's forests should be used.

133 http://www.forestrystandard.org.au/files/Standards/4708.pdf
134 http://www.forestrytas.com.au/branchline/branchline-december-18-2009/forest-stewardship-council-certification
135 http://www.media.tas.gov.au/print.php?id=24540

Box 10: Management of native forests in New Zealand

The New Zealand example provides an interesting counterpoint to the approach to forest use taken in Tasmania, and illustrates that the diversity of existing thinking about sustainable forest use. As the information pages of the New Zealand Ministry of Agriculture and Forestry lay out:

New Zealand's forest resource can be divided into two distinct types. The first is large areas of natural forest made up of species indigenous (and often endemic) to New Zealand and including both virgin and regenerating forest. The second type is a smaller, but still extensive, area of forest that has been planted with mainly non-native, coniferous species.

The plantation industry

The New Zealand forest industry is almost entirely based on planted forests, which cover 1.8 million hectares, or 6.6 percent of New Zealand's land area…Much of the planted forest area is young, with 59 percent being 15 years old or younger, so production will increase substantially over the next ten years. Sixty-seven percent of the planted forest has been pruned to produce high quality timber. Most of the trees are within a few large forests, but there are also many small holdings. Most of New Zealand's plantation forests are owned by private companies. The government now owns only 6 percent of plantation forests through Timberlands West Coast and Crown Forests, which manages forests planted on Maori leasehold land. Smaller private owners hold nearly 30 percent of total planted forest.

Native forests

New Zealand's 6.4 million hectares of indigenous forest (24 percent of the total land area) is located mainly in the mountains and hill country, and on the West Coast of the South Island. Public opinion favours the preservation of our indigenous forests, and approximately 77 percent of New Zealand's indigenous forest is in national parks and reserves, covering 18.2 percent of the total land area. New Zealand's national parks are a major tourist attraction, offering a wide range of walking tracks and other activities, and containing many unique wildlife species.
The Forests Act 1949 (Forests Act) was amended in 1993 to bring an end to unsustainable harvesting and clearfelling of private indigenous forest. The amendment, Part 3A, covers the sustainable management of private indigenous forests. It provides owners options for managing their forests in order to harvest and mill timber, and it places controls on the milling and exporting of timber from indigenous forests.
Currently there are approximately 50,000 hectares of indigenous forest being managed under nearly 50 management plans, with an allowable annual harvest of 78,000 m3 standing volume. The number of permits changes, but typically there are about 400 registered permits at one time. They produce a range of timbers for use in furniture and speciality areas. Approximately 250,000 hectares of indigenous forests have the potential to be sustainably managed.
…Under the Forests Act, indigenous timber can only be produced from forests which are managed in a way that maintains continuous forest cover and ecological balance. Management systems must ensure that the forests continuously provide a full range of products and amenities, in perpetuity, while retaining the forests' natural values. Only single trees and small groups of trees can be felled for timber production. There are also provisions for milling minor quantities of timber where a plan or permit is not in place e.g. naturally dead, windthrown or salvaged timber, or timber approved for harvesting and milling for an owner's personal use. Controls on sawmills mean they may only mill logs of indigenous species sourced from forests managed according to sustainable management plans or permits, or other approved sources.

Carbon forestry options for new indigenous forests

As a part of a suite of government initiatives to combat climate change, there are three carbon forestry schemes designed to encourage the establishment of new forests (both indigenous and exotic…Two of the carbon forestry schemes provide the opportunity for landowners to earn revenue from the carbon sequestered by their forest (the NZ Emissions Trading Scheme and the Permanent Forest Sink Initiative). [For example,] the Permanent Forest Sink Initiative (PFSI) promotes the establishment of permanent forests on previously unforested land. It offers land owners the opportunity to earn Kyoto Protocol compliant emission units (Assigned Amount Units or AAUs) for carbon sequestered in permanent forests established after 1 January 1990. To be eligible the forest must be "direct human induced .... through planting, seeding and/or the human-induced promotion of natural seed sources". PFSI participants will have a covenant registered against their land titles for a minimum of 50 years. Limited harvesting is allowed, on a continuous forest canopy cover basis.

Source: New Zealand Ministry of Agriculture and Forestry
http://www.maf.govt.nz/mafnet/rural-nz/overview/nzoverview015.htm
http://www.maf.govt.nz/forestry/indigenous-forestry/

2. At the government body level, bureaucratic and policy power is skewed towards Forestry Tasmania.
Between its legislatively mandated exclusive management and control of the State forest resource, its role as the setter of sustainable forest management policy on that resource, and its control over the proceeds from that resource, and its strong public relations profile, Forestry Tasmania wields exceptional power in the bureaucratic and policy environment. As a consequence, knowledgeable observers said, the corporation appears to at least attempt to dominate many government settings, including scientific meetings—in some cases effectively. "Because [FPA and DPIPWE] can't do anything about it, it's presented as approval," one interviewee complained. More broadly, Forestry Tasmania representatives sometimes appear to treat the corporation, rather than the Tasmanian public, as the owner of Tasmania's forests—a characterization not just acknowledged, but often actually volunteered by other forestry agencies. As one senior forestry-related figure put it, "Forestry Tasmania's attitude is 'They're our forests, and we'll tell you what we're going to do with them. And if the public disagrees, the public is wrong'."

3. At the industry level, an unhealthy bias appears to remain in the political and institutional environment towards the corporate expansion plans of Gunns Ltd.
It is concerning to see the extent to which, as noted above, "the biggest thing for Tasmania" remains in the minds of many politicians "the only thing for Tasmania." For example, in May 2009 Premier Bartlett provided a letter of support to Gunns Ltd. for use in soliciting financing for the mill which asserted that the government views the mill as a "critical" initiative; in November 2009, Resources Minister David Llewellyn similarly asserted that the mill was "essential" for the Tasmanian economy.[136] At a time when, in the mill's absence, Tasmania's economy is outperforming that of much of the rest of Australia, such statements inevitably raise concerns of legislative capture. Indeed, they contradict other government assessments, for instance by Treasurer Michael Aird, who told Parliament in June 2008 that the mill was not the "be all and end all" for the state economy, noting that Tasmania enjoyed the highest growth rates in the country without the mill and that the mill would have only a marginal impact on the government's finances.[137]

4. At the legal level, the web of exemptions and special legislation surrounding forestry operations and initiatives creates an impression among many of a situation of "one law for forestry, one law for the rest of us."
The perception that forestry exists in its own legal sphere is wide-spread. As one Hobart City alderman recently said in relation to a PTR application, the legislation governing PTRs is "brilliantly efficient legislation but is, in my view, corrupt. It is corrupt because the rules that apply to everyone else do not apply on private timber reserves."[138] The perception of corporate interference in the legal drafting process is also wide-spread, fed by allegations that, for instance, lawyers from Gunns Ltd. were involved in the drafting of the Pulp Mill Assessment Act. "It's a great place—for them," said one interviewee. And another interviewee said sourly, "Gunns isn't above the law; they write it."

5. At the level of debate, suspicion towards conservationists still appears to persist in many parts of government.
In particular, opponents of old-growth logging—an area that disproportionately affects Forestry Tasmania, which controls the bulk of the proportion of the state's old-growth forests that are available for wood production—have been met with hostility. The suspicion towards conservationists indeed sometimes crops up in strange situations. For example, while Tasmania Police stress that they are wish to treat all parties impartially, they have sometimes played into efforts to frame environmental activists as socially dangerous, for example creating a storyboard for a routine anti-terrorism exercise that posited an extremist environmental group flying a plane into the pulp mill, and requesting inappropriate bail conditions for individuals arrested in relation to environmental activism.

In the face of this tilted playing field, researchers frequently encountered a general sense of disempowerment in other government bodies, at the local level of government, and among private individuals. Members of other government bodies described themselves as frustrated with the ability of Forestry Tasmania and forestry industry representatives to slow or circumvent processes or reforms that might affect the commercial value of forestry operations. At the council level, planners said that councils do not even bother mounting objections, for instance to PTR applications, because they know they will lose. Private individuals spoke of withdrawing from the forestry debate from concern about the prospect of lawsuits. Disturbingly, private individuals told researchers stories that should have been the basis of complaints, but that they were reluctant to take to the head of the organisation in question, to the Ombudsman, or even to Members of Parliament for fear of retribution. As one interviewee tersely put it, "If we complain, we're ***ked."

136 "State's full backing for mill," *The Mercury*, 18 September 2009.

137 "State rush to help Gunns," *The Mercury*, 5 November 2009; ABC News, "Pulp mill not 'be all and end all'," 23 June 2008.

138 Alderman Philip Cocker, quoted in Giblin, Margot (2010) "Timber talks, heightened sensitivities," Tasmanian Times, 26 January, http://tasmaniantimes.com/index.php?/weblog/article/hcc-timber-talks-heightened-sensitivities/

VIII. CONCLUSION

The findings of this evaluation suggest that the current governance structure of forestry in the state has the effect of maintaining and potentially intensifying, rather than ameliorating, conflict. That this is so is not surprising. The fields of conflict studies and development studies widely recognize that bad governance can play at least an exacerbating factor in social conflict, in particular by harming social capital—the "web of cooperative relations between citizens that facilitates resolution of collective action problems."[139]

Bad governance can erode or inhibit the development of social capital in a wide variety of ways. For instance, when people feel that the rule of law is not upheld, or that it is applied unequally, they are more likely to go outside the law. When governance structures are perceived as unresponsive or biased, people become cynical and apathetic towards them, but also are more likely to personalize conflict, for instance through clashes with neighbours. A lack of transparency in decisionmaking or adjudication leads people to reject outcomes. A lack of accountability and impunity breed cynicism and a culture of taking the law into one's own hands.

Elements of all of these points are visible in Tasmania's forest debate. In particular:

- The lack of a coherent state-level forest policy leaves proponents of production forestry and forest conservation to fight it out amongst themselves.

- The mechanism behind which the State and Commonwealth Governments align themselves—the RFA/TC-FA—was not effective as a conflict breaker, either in the way in which it reached decisions or the way in which those decisions have been implemented.

- As the production forest resource gets tighter, the 300,000 m^3 MAQ will simply exacerbate this conflict.

- While Gunns Ltd. itself has announced changes to the pulp mill's operation—notably, that the mill's wood stock will be 100% plantation-based from the outset—the government still faces a challenge in overcoming the damage to public trust caused by the scandal surrounding the fast-tracking of the assessment process.

- In all of this, a lack of transparency makes the debate more bitter and harder to adjudicate.

With a state election coming up soon, the time is ripe for Tasmania's politicians to take the initiative in seeking solutions to the continuing debate over forestry—which, all indications are, has taken up and will continue to take up an enormous amount of creative, intellectual, and emotional energy in the state. Encouragingly, 58% of the respondents to the Essential Research poll cited above believe that "a solution to the conflict over forestry in Tasmania is possible," and an overwhelming 90% agreed with the statement that "I think it's possible that we can both protect our native forests and maintain jobs in the timber industry and that is the policy I want the next Tasmanian government to implement."[140]

Reforming forestry governance will be an important step in this process.

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139 For example, see Overseas Development Institute and Transparency International (2008), "Preventing Corruption in Humanitarian Assistance" (note 89); Brehm, John and Wendy Rahm (1997) "Individual-level evidence for the causes and consequences of social capital," *American Journal of Political Science,* 41(3), 999-1023.

140 Essential Research, October 2009.

IX. RECOMMENDATIONS

Core recommendations: Levelling the playing field

In line with the discussion above, this evaluation offers four core recommendations.

Recommendation 1: Tasmanian political leaders must show the political will to devise a clear, strategic forest policy.
It is evident that from a social, economic and environmental point of view, Tasmania is in need of a fully-elaborated forest policy, with clearly stated biodiversity, environmental, social, and economic objectives and ways of measuring success in achieving them. The process of formulating such a policy should be an open one, moving beyond a narrowly consultative model (where, for instance, a draft is formulated prior to public involvement) to an actively participatory one, including:

- A call for public submissions and the holding of public forums before the drafting process begins in order to ensure that the full range of issues of interest and concern are identified and incorporated in the draft;
- Inclusion of a representative range of stakeholders in the decision making process.
- The inclusion throughout the process of dispute resolution measures.

The process should be informed by a review by an independent body, for example the Tasmanian Planning Commission, of existing forest policies in other Australian states and internationally, as well as best-practice suggestions for a new policy.

Accompanying Recommendation 1a: Until a forest policy is elaborated, the Tasmanian government should announce a moratorium on the logging of high conservation value forests, the area of greatest community and scientific concern.
Such a moratorium will ensure that forest values of importance to the community, to biodiversity and to ecological services are not lost while the Tasmanian community considers the strategic direction for its forests.

Accompanying Recommendation 1b: The process of formulating a state-level forest policy must be supported by adequate and accurate social, economic and environmental data.
Efforts to build consensus have been complicated in many instances by an inability of opposing sides to agree on basic facts—a situation that in turn frequently appears to stem from a simple lack of data. For instance, in 2007 the 10-year RFA review complained about the state of core data on direct and indirect employment by all sectors of the forestry industry, and noted that "[w]ithout data at a suitable scale, it remains difficult to determine and review the benefits or otherwise of government initiatives in the forestry sector. The absence of these data also limits the ability of all sectors of the community to adequately understand the industry and make informed representations about any further development or proposed policy changes."[141]

The process of formulating a forest policy thus must be supported by adequate and accurate social, economic and environmental data, both quantitative and qualitative. Such data will need to be sourced from Forestry Tasmania, state- and federal-level government departments, local government, Gunns Ltd. and other significant industry players, conservation groups, academics, other independent analysts, and community groups.

Quantitative data should include:

- Direct and indirect employment, investment and profit in all sectors of the extractive forest industry, including specialty timbers and the portion of the industry directly or indirectly tied to the logging of old growth/high conservation value forests.
- The value of all sectors of the extractive industry to the Tasmanian economy.
- Direct and indirect employment, investment and profit from non-extractive industries/businesses drawing on forests, including apiculture and tourism.

141 Ramsay 2008 (note 131), p. 128. Recommendation 43 of the review indeed noted that the need for such data had already been flagged in the 2002 five-year review, and hinted that the lack of such information could affect the decision of the next five-year review "whether or not to extend the RFA."

- The value of all forest-related sectors of non-extractive industry/business to the Tasmanian economy.
- The impact of forestry operations on water catchments, including on quantity and quality, as well as a valuation of water catchment as an alternative forest use.
- A preliminary assessment and estimated value of Tasmanian forests' potential for carbon sequestration.
- The contribution of forestry operations on State forest and on private land (disaggregated) to the status, predicted future, and possibility for recovery of RFA-listened threatened species.
- An assessment of forest structure—the condition of forests and the habitats they contain—across State and private forests.

Qualitative data should include social attitudes data related to:

- Environmental values of forests, including general views on forest preservation, old-growth forestry, biodiversity, and global warming/carbon issues.
- Plantations and water catchment issues.
- Proposals for potential non-extractive forest-based businesses, in order to gain an idea of what sorts of non-extractive economic activities might be possible under different land management systems, licensing arrangements etc.
- Employment intentions and wishes of existing forest contractors.

The full range of stakeholders should be involved in drawing up both quantitative and qualitative data collection instruments.

Accompanying Recommendation 1c: The Tasmanian government should set up multi-stakeholder processes to draw up of Codes of Conduct for all participants in the various settings in which the forestry debate is played out.
The confrontational environment that has characterised many forestry-related exchanges serves no one, and will complicate progress towards the formulation of a state forest policy. Multi-stakeholder processes to draw up Codes of Conduct have the potential to act as a confidence-building measure between all sides, and to set a civilized tone for future discussion. Codes should be drawn up for all parties for direct action, for public engagement, and for the policy negotiation process. All government bodies should also reaffirm their intention to abide by the State Code of Conduct and the Department of Premier and Cabinet's Whole-of-Government Communications Policy. In particular, all government bodies and GBEs should adhere to the Auditor-General's recommendations in relation to the avoidance of political advertising, of political content on government/agency websites, and of derisive comments, including in relation to civil society groups such as conservation groups, in government/agency media releases.[142] All groups involved in the forestry debate also have a responsibility to ensure that their literature and public statements put accuracy and clarity above self-promotion.

To make it possible for the Tasmanian community to arrive together at a fully elaborated forest policy, the forest governance playing field needs to be leveled through at least three steps. These are:

Recommendation 2: The Tasmanian government should separate Forestry Tasmania's land management responsibilities from its wood production responsibilities in order to reduce conflicts of priorities.
Such a disaggregation will not necessarily end the conflict of priorities, but separation of these functions will allow conflicts to be dealt with openly and in an accountable fashion by government. The disaggregation should be informed by a review by an independent body, such as the Tasmanian Planning Commission, of the comparative advantages of different national and international models for the relationship between land management and production forestry. One possible model would be that proposed by Environment Tasmania, which would place high conservation land under the formal protection of the *National Parks and Reserves Management Act 2002*; create conservation areas to combine ecological services with non-extractive activities such as apiculture, tourism, and recreation; and place potential production forest under the management of a government agency independent of these areas' commercial use—possibly a composite Department of Land Management incorporating National Parks and parts of DPIPWE. Others have suggested a variation on this model where existing plantations would remain under a GBE.

142 Tasmanian Audit Office (2009), "Communications by Government and the Tasmania Brand Project," Special Report no. 83, October.

Recommendation 3: The Tasmanian Government should commission an independent review of Forestry Tasmania's 300,000 m^3 annual minimum supply obligation, with input from all relevant stakeholders, including conservation groups, industry groups, and the general public.

The 300,000 m^3 MAQ is problematic from a governance point of view as well as an environmental one. It has so far only been assessed from the point of view of availability under existing management prescriptions. A review should consider the obligation from the perspective of biodiversity conservation, carbon sequestration, preservation of old growth forests, impact on forestry practices (including harvesting regimes), governance, innovation, socio-economic impact, and potentials for alternative supply, starting from the objective of achieving the best possible balance of interests, rather than from the objective of providing a certain supply level.

Recommendation 4: All government bodies involved in forestry, particularly Forestry Tasmania, should increase the provision of information to the public.

As noted above, adequate environmental, economic and social data will be critical to the formulation of a state forest policy. To this end, there is a need for greater transparency in a number of areas.

Forestry Tasmania's financial information.

In recent years Forestry Tasmania has steadily and commendably increased the amount of financial information that it releases to the public. This trend should continue. In particular:

- In line with ASX requirements for segment reporting to enhance understanding of a business, Forestry Tasmania's annual financial report should include a more detailed segment report detailing the figures for native forests and hardwood and softwood plantations, including joint ventures, plus data on tourism operations. These figures should show not only the usual segment information such as revenue, gross profit, and assets employed, but also employment, harvesting costs, and physical data such as log categories, hectares logged, and tonnes harvested.

- As also recently recommended by the Auditor General, Forestry Tasmania's reporting should also include the true costs of its Community Service Obligations, taking into account issues such as any revenue from tourism. The Auditor General has also recommended reporting "other costs not directly associated with forestry operations." [143]

- Even though accounting standards do not require the inclusion of the cost of timber in any calculation of operating profit, in the interest of transparency and to be able to reconcile quantity figures in the Sustainability Report with dollar figures in the Financial Report, more explanation is needed with regard to the valuation of opening and closing standing timber, in both dollar and physical quantity terms, so that readers can tell what timber has been disposed of to achieve the operating profit result and what remains for sustainable future operations.

- The corporation should also release its public relations budget. [144]

Forestry Tasmania's scientific data.

Without information on such issues as forest structure, forest management history, and carbon storage, it is impossible for other government agencies or the community to make informed recommendations or policy or gain an informed opinion about the impact of forestry operations on issues such as biodiversity, ecosystem progression, or carbon sequestration and release. Given this strong public interest argument, the release of such information should be considered one of Forestry Tasmania's core community service obligations, and be accounted for as such.

Government support for the timber industry.

Debates over the extent of subsidisation that the timber industry in Tasmania enjoys—an issue that is outside the scope of this evaluation—cannot be properly resolved until a full accounting is available of government support for all aspects of the timber industry, including assistance to individual players.

Beyond these core recommendations, we offer a suite of additional recommendations.

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143 Tasmanian Audit Office (2009), *Report of the Auditor-General, No. 2 of 2009: Government Departments and Other State Entities 2009-2009*, v. 2, p. 9.

144 Thanks to John Lawrence, independent accountant and business adviser, for assistance with these points.

Aim: To improve transparency in the forest governance sector

Recommendation 5: In the general interest of transparent governance, all government bodies should post more information about their organisations, and about forest governance procedures, on their websites.
It would be helpful if Forestry Tasmania provided additional information on its website such as its corporate plan, its ministerial charter (which specifies "the broad policy expectations of the Portfolio Minister and Treasurer for the Government Business Enterprise and its subsidiaries" [145]), and information about its statutory obligations, community service obligations and joint ventures. Meanwhile, Private Forests Tasmania should post its 2008-2009 annual report on the web and should increase its provision of information related to PTRs in the state, including informing users where information on the location of PTRs is now available (on Tasmania's Land Information System, at www.thelist.tas.gov.au). For its part, to help the general public understand the relationship between the FPA and DPIPWE where the management of threatened species is concerned, the FPA should post the inter-agency Agreed Procedures on the web, as already recommended by the *Biodiversity Review*.[146]

Recommendation 6: In keeping with other review processes, Forestry Tasmania and the Forest Practices Authority should make the results of public consultation processes available to the public.
As noted above, Forestry Tasmania has commendably increased public consultation in relation to local management plans, and the FPA will be seeking public comment on its ongoing review of the *Forest Practices Code*. In the absence of information on the number and nature of public submissions, however, it is difficult to assess the extent to which such consultation has an effect on decision-making. The RFA review process provides an admirable model by providing summaries of submissions as well as a discussion of the issues they raised.[147]

Aim: To improve accountability in the forestry sector

Recommendation 7: The Tasmanian Parliament should clarify Section 12A(1) of the Forestry Act 1920 and draw up measures for establishing compliance.
As noted above, at the moment Section 12(1) requires that Forestry Tasmania "treat the level of employment deriving from the use of public forest resources as an important consideration" when making commercial decisions. However, the Forestry Act does not set out how 'consideration' is defined or demonstrated, or how it should be incorporated into the decision-making process. As noted above, the Joint Standing Committee for Environment, Resources and Development has already recommended that "Section 12A of the [Act] be amended to clarify the definition of 'consideration' and how it should be demonstrated;" this recommendation should be acted on.[148] Possible measures for demonstrating compliance would include conducting best-practice socio-economic impact assessments prior to decision-making.[149] A redrafting of Forestry Tasmania's ministerial charter may also be required to clarify the situation.

Recommendation 8: Either the Tasmanian Parliament should bring Forestry Tasmania's joint ventures and lease arrangements into line with the corporation's obligations under the Forestry Act, including the employment consideration requirement, or there should be public consultation as to whether their exemption from this requirement is appropriate.
However the issue of "consideration" is resolved, joint ventures and lease arrangements draw on a public resource; therefore, their relationship to Forestry Tasmania's other statutory requirements needs to be broadly publicly understood, and there should be an opportunity for public input as to whether or not any exemptions are appropriate. If joint ventures and/or lease arrangements are deemed to be exempt from Section 12a(1), then new joint ventures should require ratification by Parliament.

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145 *Government Business Enterprise Act 1995,* s. 37(1), 38.

146 *Biodiversity Review* (note 20), p. 93.

147 Ramsay 2008 (note 131).

148 Joint Standing Committee 2007 (note 113), p. 6.

149 For a comprehensive overview of the issues that a best-practice socio-economic impact assessment of the Auspine decision would have considered, for example, see Dorset Economic Development Group Inc. (2007), "Socio-economic impact assessment: Auspine mills, Dorset: Report," http://www.dorset.com.au/documents/SEIA_Report_Feb-2007.pdf

Aim: To improve public interaction with, and trust in, the forest practices system

Recommendation 9: The FPA should implement a series of changes in the way Forest Practices Plans are handled to improve transparency as well as public participation, accountability, and effectiveness.

The exemption of forestry operations from the public notification formalities of the Development Application approval process—the analogous local government process under LUPAA—is an unnecessary bone of contention between concerned members of the community, many council staff, and the forestry industry. In fact, restricting public access to draft FPPs—in particular the natural and cultural heritage evaluations, as well as information on where harvesting is likely to occur—is counterproductive, in a variety of ways.

- It gives the impression that forestry planners have something to hide. The FPP approval process is in fact an impressive assessment process, which frequently ends up excluding substantial areas of any coupe from harvesting due to concerns relating to natural and cultural values. Seeing what is actually proposed to happen on a coupe, as well as reading the advice provided by planners on natural and cultural values, will often go a long way to assuaging public concerns about the approvals process, and head off time-consuming and contentious exchanges between the public and forestry planners.

- It cuts the forestry industry off from considerable community expertise. As the *Biodiversity Review* has noted, the forest practices system currently relies heavily on good desk-top (GIS/database) approaches which in turn are reliant on good information.[150] Even in the short course of this evaluation, researchers encountered instances where community input helped identify important natural values on proposed coupes—values that forestry planners, once notified, were happy to incorporate into their plans for the coupes. Greater community involvement in the planning process has the potential to improve assessments natural and cultural values assessments while saving the FPA money and staff time.

- It makes it less likely that either genuine human error or misconduct on the part of forestry planners will be detected. It is unrealistic to expect FPA staff to be able to visit all coupes during the approvals process; community involvement has the potential to play a valuable monitoring role.

- It highlights the democratic deficit created by the exemption of forestry operations from LUPAA, as well as making more work for council staff. Few council staff interviewed for this review wanted greater involvement in the forestry operations planning process at the coupe level, with the exception of coupes directly affecting water catchments or landscape values. Many, however, noted the frustration of their constituents that the forestry industry does not have to go through the public notification formalities stemming from council planning schemes—frustration, many said, that leads to hassles for council staff who have to patiently explain that their opportunity for input into the approvals process is limited. The current situation thus creates a public relations problem for the forestry industry with councils and the community alike.

These concerns can be addressed through a series of nested changes, namely:

1) FPPs, both in their draft and finalised form, should be centrally held by the FPA.

The current system, whereby FPPs are held by individual FPOs, leads to inconsistencies in treatment received by different members of the public requesting information. The FPA, as the regulatory body for forestry operations, already ends up receiving many inquiries in relation to proposed and ongoing operations; it is the logical body to act as a "one-stop shop" for FPP-related information. A side benefit of such a step is that it would make it easier for the FPA to set up and maintain data bases on site-specific requirements for the conservation of natural and cultural values, as currently required by the *Forest Practices Code* "to aid in future decision making and ensure continuity of management," as well as to establish a centralized recording system for the location of vulnerable land, as recommended by the *Biodiversity Review*.[151]

2) The FPA should consult with councils to seek out solutions in relation to the vexed issue of notification of FPPs.

Councils may need to work out mechanisms to ensure that all staff are made aware of FPP notifications as they come in.

150 *Biodiversity Review* (note 20), p. 40.

151 *Forest Practices Code*, para. 51, dot point 9; *Biodiversity Review* (note 20), p. 14.

3) Key elements of draft FPPs, including proposed harvesting maps and natural and cultural values sheets, should be posted on the FPA website for at least 14 days prior to finalisation for public comments, at a set point in the approval process (best determined by the FPA) that allows for the most useful public input.

As noted above, keeping draft FPPs from the public fosters a lack of confidence, cuts the forestry industry off from community expertise and monitoring, creates a democratic deficit, and adds to the workload of councils. The posting of key elements of all draft FPPs—including proposed harvesting maps and natural and cultural evaluations sheets—on the FPA's website at a set point in the approvals process for a period of time commensurate with the LUPAA-mandated Development Application process (14 days) will go a long way to addressing all of these issues. Furthermore, it will ensure that public engagement comes at a time that fits best into the approvals process. Public notification of the existence of an FPP for comment should, as with DAs, take the form of a posted sign on the access road to the coupe and a newspaper advertisement, as well as notification by mail or e-mail of neighboring landholders.

Recommendation 10: The public should have more opportunity for involvement in long-term biodiversity planning, including through collection of natural- and cultural values-related data for long-term forestry planning as well as through input on biodiversity issues.

Beyond the issue of public involvement in the formulation of FPPs, it is more efficient from forestry planners' perspective to gather data earlier rather than later. In particular, the FPA and DPIPWE should encourage public input into the Natural Values Atlas and the databases associated with the Threatened Flora and Fauna Manuals. DPIPWE should institute a formal process for public input on biodiversity issues and Listing Statements for RFA priority species, as per the recommendations of the *Biodiversity Review* and the *Tasmanian RFA Second Five Yearly Review Report.*[152]

Recommendation 11: The FPA needs better monitoring capacity to be able to identify FPOs who put their employers' commercial concerns above natural and cultural values, as well as to protect its FPOs from pressure from their employers.

The FPA currently has neither the budget nor the staff numbers to be able to monitor more than a small percentage of coupes. In addition, the FPA Annual Report should include numbers and estimated cost to offenders of orders for remedial work (as is already the case for fines and legal action) as a way of raising public confidence in the regulator.[153]

Aim: To address key areas of strategic and public concern

Recommendation 12: The Tasmanian government must act to create mechanisms for managing the impact of forestry on water quality (in terms both of turbidity and chemical content) and quantity.

Urgent measures are required to incorporate measures related to forestry into integrated catchment management plans. The Tasmanian government should:

- Continue, in collaboration with other research organisations and independent experts, to invest in research on the impact of forestry practices on hydrological cycles in Tasmanian catchments, and to make the results of this research readily available.

- Ensure that its Water Management Planning Framework appropriately provides for a risk-based approach to the management of water interception, including from plantations.

- Add recommendations to the Tasmanian State Policy on Water Management in relation to the Forest Practices planning system.[154]

- The review of the Forest Practices Code should introduce provisions for assessing catchment impact in the FPP approvals process. The Forest Practices Authority should also rigorously enforce limits on logging in catchment areas.

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152 *Biodiversity Review* (note 20), p. 65; Ramsay 2008 (note 131), p. 56.

153 In addition to its ability to levy fines against individuals and corporations found to have violated provisions of the Forest Practices Code or individual FPPs, the FPA can order extensive (and often expensive) remedial work to be carried out; in 2008-2009, 12 remedial actions were ordered, with an estimated cost to offenders of $180,000 (e-mail, Mick Schofield, Compliance Manager, FPA, 21 December 2009).

154 Many of these points have already appeared in Ramsay 2008 (note 131), recommendations 19-24, p. 18.

Recommendation 13: The Environment Protection Agency (EPA) should address the impacts of high-intensity regeneration burns on air quality and carbon emissions.
A recent report by the EPA finding that such burns contribute seventeen to twenty times more particulate pollution to the Tasmanian airshed than domestic woodheaters may make it increasingly difficult to justify such practices close to population centres and may require a review of the *Tasmanian Air Quality Strategy 2006*.[155]

Recommendation 14: The Tasmanian Planning Commission must respond to public concerns raised by the State Policy on the Protection of Agricultural Land 2007.
In particular, the Commission must take steps to address public concerns over the potentially inequitable impact of the Policy on the Protection of Agricultural Land on small landholders adjacent to plantation activity.

Aim: To create equal access for all to the economic benefits of State forests

Recommendation 15: The Department of Economic Development, Tourism and the Arts (DEDTA) should provide more models and support for those who wish to engage in non-extractive businesses on State forest.
In the interest of expanding non-extractive income from Tasmania's forests, the Department of Economic Development, Tourism and the Arts (DEDTA) should conduct a desk review of the way in which State forests in other Australian states and overseas (for example, in New Zealand and Europe) have been used to generate non-extractive employment. DEDTA should appoint a policy officer for non-extractive uses of forests, to whom businesses that wish to use State forests for non-extractive purposes can refer for information and support.

Recommendation 16: DEDTA should be responsible for the granting of licenses for non-extractive businesses on State forests to help overcome perceptions of potential conflicts of interest for Forestry Tasmania.
Putting the licensing process under DEDTA will add transparency to the process and increase confidence that proposals and projects will be treated on their business merits.

Aim: To improve participation in forest governance

Recommendation 17: The Forest Practices Board should provide councils with a formal role in the PTR approval process, with greater weight given to their public interest objections.
Given the general sense of disempowerment expressed by council staff, it is not enough to rely on councils to come forward with opinions on potential PTRs. Requiring councils to actively sign off on PTR applications, rather than taking silence as assent, would be a re-empowering step. Public interest objections raised by councils should be given the same weight by the Forest Practices Board as they are in a Development Application process.

Recommendation 18: The Tasmanian Planning Commission should not block councils from gazetting forestry and plantation operations as "prohibited" or "discretionary."
The ability to respond to changing public perceptions of and requirements for land use is a critical part of the democratic mission of councils. The Tasmanian Planning Commission should not stand in the way of councils gazetting forestry and plantations operations as 'discretionary' or 'prohibited.' In particular, Cause 11 of the Policy for the Protection of Agricultural Lands, which permits council discretion in the approval of plantation forestry in order to protect certain agricultural uses, should be extended to include social and environmental as well as economic objectives.

Recommendation 19: The Forest Practices Tribunal should grant interested third parties the right to appeal against decisions to certify a Forest Practices Plan.
As noted above, while forestry operators currently have the right of appeal against decisions related to FPPs, interested third parties such as conservation groups currently have no such ability. To maintain faith in the forest practices system, the public need to know that decisions are based on sound information, that all the relevant issues have been considered and that these issues have been subject to a systematic and transparent assessment—all points that will be furthered by the right to appeal.

Recommendation 20: The Tasmanian government should enact legislation barring strategic lawsuits against public participation (SLAPPs).
One of the advisors for the defendants in the Gunns 20 case has set out one set of possible principles for such legislation: "Whatever the particular mechanism, the basic parameters for protection of the public's rights and ability to participate in public debate and political protest are clear:

155 DPIPWE/EPA 2009 (note 120).

- It requires purpose-built legislation.

- The legislation must go beyond defamation law and include all potential civil litigation.

- The legislation must be framed around a positive right to public participation, not around a question of whether the case is an abuse of process (although outlawing such abuses may be part of the legislation).

- The right to public participation must be paramount so long as it is exercised genuinely, not actuated by malice or personal gain, and is within the broad parameters of being non-violent and respectful of property and race, sex, religion and sexuality."[156]

Aim: To improve the effectiveness of the Forest Practices System

Recommendation 21: Forestry Tasmania and Private Forests Tasmania should incorporate input on natural and cultural values from the FPA and DPIPWE into longer-term and broader-scale planning processes and into the PTR application process.
At the moment, the assessment of natural and cultural values by FPA and DPIPWE specialists takes place predominantly at the coupe planning level—very late in the planning process. As a consequence, commercial and conservation objectives come into sharper clashes. Landholders can also feel understandably aggrieved at finding unanticipated constraints on the yields from their PTRs if, during the PTR application process, they have not received realistic assessments of what proportion of their proposed PTR may be harvestable. Incorporating specialist advice from the FPA and, where necessary, DPIPWE earlier in the planning process and in particular at the landscape scale—especially into Forestry Tasmania's three year plans and into the PTR application process—would help ward off such clashes.

Recommendation 22: Beyond the ongoing review of the* Forest Practices Code*, the FPA should commission an independent review of the Forest Practices System.
Such a review should include assessments of the effectiveness of the system's self/co-regulatory approach; its capacity for strategic planning; its strategies and tactics, as well as its division of roles and responsibilities across government, for protecting biodiversity outside of reserves; its principle of part-self-funding; and its strategies and processes for dealing with emerging issues such as the effects of climate change.

Recommendation 23: The FPA should adopt the* Biodiversity Review*'s recommendations for increasing the effectiveness of the forest practices system in addressing biodiversity issues.
The *Review* contains a number of recommendations specific to increasing effectiveness. These include:

Formulation of clear, clearly apportioned objectives and outcome-based monitoring in relation to biodiversity in the state's forests.
The Review notes that there are no stated objectives in the *Forest Practices Code* in relation to management of biodiversity values to provide suitable context for monitoring.[157] In line with the panel's recommendations, the FPA and other relevant government agencies should draw up a program specifically setting out "how biodiversity outcomes are to be achieved; how the responsibility for their achievement at the different scales is to be allocated; and how success/effectiveness of this planning is to be measured."[158] The review notes that such effectiveness monitoring is already part of the system in Western Australia.[159]

Training of FPOs. Effective implementation of the Forest Practices Code and its biodiversity protection provisions is heavily dependent on the skills of individual Forest Practices Officers, who face an exploding volume of scientific information in addition to significant innovations and changes in operational practice. As already recommended by the Biodivesity Review, the FPA, with the support of industry, should upgrade training in the implementation of biodiversity aspects of the Forest Practices Code for operators and contractors.[160] The FPA should also have the ability to de-certify FPOs who do not demonstrate the ability to keep up with the complex range of natural and cultural values-related information that the job requires.

156 Ogle, Greg (2009), *Gagged: The Gunns 20 and Other Law Suits*, Envirobook, p. 5.
157 *Biodiversity Review* (note 20), p. 100.
158 *Biodiversity Review* (note 20), p. 54.
159 *Biodiversity Review* (note 20), p. 40.
160 *Biodiversity Review* (note 20), p. 79

Aim: To improve the rule of law in the forestry sector

Recommendation 24: The Tasmanian Parliament should repeal Section 11 of the **Pulp Mill Assessment Act 2007.**
The multiple breaches of good governance principles during the state-level approval process of the Gunns Ltd. pulp mill have left a stain on the Tasmanian record that will be difficult to expunge. The repeal of Section 11, with its potential to curtail civil suits, is a minimum recommendation, which many will feel does not go far enough. It will be the business of the new Integrity Commission to decide if further steps are needed to investigate breaches of due process during the debacle.

Recommendation 25: The Tasmanian Ombudsman should set up an independent Forestry Ombudsman to handle all forestry-related complaints.
The general cynicism, fear, and sense of disempowerment that has emerged in the course of this review will be difficult to combat. The establishment of a fully independent Forestry Ombudsman has the potential to begin to address these concerns, as well as to prevent essentially procedural complaints from overloading the new Integrity Commission.

Recommendation 26: The Tasmanian Government should introduce legislation to protect whistleblowers.
Given the fear of going public displayed by many people interviewed for this report, protections are needed to ensure an adequate flow of information in civil society. Whistleblowers are a key source of public-interest information which would otherwise be withheld by Governments or corporations. One means of protecting that source of information is to enact whistleblower legislation, for example based on Democrat Senator Andrew Murray's Public Interest Disclosures Bill 2007. The legislation should include compensation provisions for whistleblowers, and should be broad enough to cover employees of consulting firms engaged in tasks required by government processes, such as Environmental Impact Statements. Public Interest Disclosures should be investigated by the new Integrity Commission; protection of the whistleblower from discrimination by his/her employer should be provided by the Anti-Discrimination Commission.