

## APPENDIX 1 – FORESTRY RIGHTS INFORMATION REPORT

The following Appendix outlines information on Forestry Rights sent to the Panel from the Tasmanian Land Titles Office on 4 November 2011.

### Forestry Rights Registration Act 1990

- A forestry right created under the *Forestry Rights Registration Act 1990* (the Act) is defined in section 3 as being the ownership of trees, and a right to establish, maintain or harvest, or maintain and harvest trees.
- Forestry rights are private agreements entered into freely by all parties.
- Section 5(1) of the Act provides that a forestry right is a profit `a prendre. A profit `a prendre is a right for a person to go onto the land in the ownership of another and to take from that land some part of its substance. As regards the Act, the substance in this instance being timber.
- Forestry rights can be registered under the *Land Titles Act 1980* against the title of the owner of the land over which it relates.
- The Land Titles Office's (LTO) role in relation to a Forestry Right is to register the right in accordance with the Act.

### Extinguishment of a Forestry Right

- The *Forestry Rights Registration Act 1990* does not provide for the extinguishment of a forestry right. A profit à prendre can be extinguished under section 108 of the *Land Titles Act 1980*.

#### Section 108

- Under section 108(1) a person who has the benefit of the forestry right (profit `a prendre) can apply for the forestry right to be extinguished.
- Applications for extinguishment of a forestry right by persons who own land burdened by a forestry right have generally been under section 108(2) of the *Land Titles Act 1980*.
- Under section 108(2) a landowner burdened by a forestry right can apply for the forestry right to be extinguished. There are 3 circumstances upon which an application can be made under section 108(2) being:
  - a) the period of time for which it was intended to subsist has expired; [This is the time period indicated on the Instrument granting the Forestry Right].
  - b) the event upon which it was intended to determine has occurred; or Generally, the event is the harvesting of the trees.
  - c) it has been abandoned. [Abandonment is when the profit has not been used or enjoyed for a period of at least 20 years].
- Previously applications had been accepted by the LTO with the "event" claimed being monetary default that is where the person with the benefit of the forestry right has failed to pay money for the right to the person who owns the land with the burden of that right.

- In light of an objection to an application and further investigation it has been determined that 'monetary default' is not the 'event' referred to in section 108(2)(b). This is an issue related to the deed of agreement and the personal covenants contained therein that requires consideration by a court.

### **Deeds of Agreement**

- The LTO has no authority to determine if a deed of agreement has been breached or terminated. The deed contains covenants that are personal to the parties to the deed. The appropriate body to examine these and other associated issues relative to the rights of the parties is the Supreme Court of Tasmania.
- The Supreme Court has the powers to adequately establish the rights that exist, and to instruct the LTO accordingly.
- The LTO cannot be seen to give legal advice to parties to a forestry right. If legal advice is required this should be obtained from an independent 3<sup>rd</sup> party (i.e. a solicitor). The LTO cannot provide legal advice as it may be a conflict of interest.