

**FOREST INDUSTRIES ASSOCIATION OF TASMANIA**

**SUBMISSION**

**TO**

**The Review of the Permanent Forest Estate Policy**

Our submission is organised in the following manner;

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## **EXECUTIVE SUMMARY**

The Forest Industries Association of Tasmania welcomes this opportunity to provide comment to the review of the Permanent Forest Estate Policy. This review is of crucial interest to FIAT and its membership.

Our submission traces a number of the historical perspectives which are analysed along with the most current data available to us to identify both the current extent of the permanent forest estate and therefore forest conversion that has been undertaken within the life of the Tasmania Regional Forest Agreement since 1996.

The analysis of this background material produces a number of concerning factors for FIAT and these are commented upon within the various sections of our submission.

We have also considered and had due regard for the Bi-Lateral Agreement between the Federal Government and the State of Tasmania to deliver the National Heritage Trust, the CAR Scientific Advisory Group (CARSAG) report, the first 5 year review of Tasmania's RFA by the Resources, Planning and Development Commission and the background presentation made to FIAT by representatives of DPIWE and the Forest Practices Board.

In broad terms we put forward the following issues, details of which are to be found in the relevant sections of our submission proper: -

- We do not believe that any increase in the Statewide protection threshold of 80% of the 1996 extent of the permanent forest estate is necessary or appropriate;
- There is a significant shortfall of suitable land for plantation establishment within Tasmania. A highly restrictive permanent forest estate policy will stifle this highly valuable industry and the investment in downstream processing it is designed to foster;

- Any increase in the permanent forest estate threshold will exacerbate an imbalance already present between forest and biodiversity protection in Tasmania and other states given the comparative extent of clearing since European settlement.
- An unrealistic and overly restrictive permanent forest estate policy will adversely impact on the States economic wellbeing including employment and will, in particular, seriously undermine the confidence of the investment community who have already invested \$325 million in private sector plantation development in the first 6 years of the RFA;
- Any decision that stifles the further development of the plantation sector in this State will have a negative impact on the potential investment of \$1.5 billion into the development of a world class pulp mill that would add significantly to the downstream processing of our forest resource within Tasmania;
- The permanent forest estate threshold for protection of forest vegetation on public land of 95% of the 1996 extent as enunciated in the Bi-lateral agreement really only amounts to a protection threshold of 90% of State forest as the 95% figure includes all of the existing reservation on public land which are already protected at the rate of 100%. This factor produces an unreasonable pressure for the private sector to match a threshold that has little realistic meaning;
- An effective compensation scheme must be established to accompany any upward adjustment of the permanent forest estate policy on private land. That compensation must include reasonable, fair and adequate compensation for any immediate forgone income from a prospective harvesting operation, further compensation calculated to compensate future foregone earnings to a minimum of 3 rotations of forest, a component to compensate for any loss of amenity to the landholder, reasonable amounts to compensate for any additional cost associated with management of any area not available for

productive use by virtue of the operation of the policy along with any other reasonable amount.

In this context and to avoid costly litigation a compensation formula must be established simultaneously with any change in the policy that must permit speedy, cost free access for any private landholder to an independent, impartial assessment by mediation and/or arbitration;

- Priority for the maintenance of a permanent forest estate must be from the protection of public land with impact on private land being activated only once all available public land has been utilised for this purpose as the PFE is a statement of the “public good” which is a clear responsibility of the Government;
  
- As the maintenance of the permanent forest estate is a statement of the “public good” it is incumbent upon Government to bear the substantive burden of its maintenance both by way of the priority for the land upon which it is established and for fair and reasonable compensation for any affected private land.

## **1. Overview of FIAT**

The Forest Industries Association of Tasmania (FIAT) is an industry association formed in 1983 to represent the interests of processors of Tasmanian forest products and is a successor to the Tasmanian Timber Association. Our members' activities are diverse and include the production of veneers, hardwood and softwood timber, pulp and paper, woodchip production harvesting and plantation forestry.

FIAT's 18 member businesses include all of the State's larger processors of forest products, including a significant proportion of the crown sawlog output, as well as all of the veneer produced in the State. FIAT Members' activities account for more than 75% of the gross value of production in the forest and wood products industry in Tasmania.

## 2. Analysis of History of PFE Policy

Under the RFA, a commitment was made to maintaining a nominated minimum level of total native forest area, to meet the requirements of the National Forest Policy Statement for the protection of regional conservation values and catchment objectives.

Attachment 9 of the RFA prescribes that the area of native forest will be retained above minimum thresholds, expressed as a percentage of the native forest estate assessed in 1996. The statewide retention level for the Permanent Forest Estate that has been used since 1997 is 80 per cent of the native forest estate.

This requirement was developed by the Woodchip Export Licence Advisory Group (WELAG). This group carried out an extensive analysis of Tasmania's forest resource by forest community and IBRA region and modelled the amount of conversion that could be carried out

Since 1997 these thresholds have been:

- Statewide level: 80% of the 1996 native forest estate to be maintained.
- Bioregional level: Interim Biogeographic Regionalisation for Australia (IBRA 4).

Current proportion of native forest in reserves	Proportion of native forest to be maintained
0-30%	>80%
30-60%	>60%
>60%	current reserve area

- Forest communities: - At least 50% of the current (1996) area in each bioregion to be maintained.

### **3. RFA Provisions**

The Tasmanian RFA contained a provision requiring the State to adopt a policy position requiring it to implement various provisions contained in Attachment 9 to maintain and protect an extensive and permanent native forest estate which in addition to the provisions relating to the CAR Reserve System was said to represent the parties satisfaction of the requirements of the National Forestry Policy Statement (NFPS).

The actual provisions of the RFA relevant to this provision are found at clauses 60 and 61 of the RFA and are as follows: -

#### ***“Maintaining a permanent forest estate***

*60. The State agrees to adopt the broad policy framework specified in Attachment 9 which is designed to maintain an extensive and permanent Native Forest Estate and to maintain the sustainability of the total Forest Estate.*

*61. The Parties agree that the policy framework referred to in clause 60, together with the CAR Reserve System and other improvements in the Forest Management Systems as part of this Agreement, meet the requirements of the NFPS for the protection of regional conservation values and catchment management objectives.”*

(Extract from the Tasmanian RFA)

The policy framework that was to be adopted by the State through the implementation of clauses 60 and 61 was contained at Attachment 9 and was expressed as follows: -

#### ***“Attachment 9***

##### ***Maintaining a Permanent Forest Estate***

*In recognition of the State’s undertakings in relation to intensive forest management, in particular expanded plantation development, and the limited availability of land for plantation establishment, the State has developed a policy and arrangements to maintain a permanent Forest Estate on a state-wide basis.*

- 1. The State will maintain an extensive and permanent Native Forest Estate with the objective of increasing the sustainability of the total Forest Estate.*

2. *The State has developed a policy and arrangements to maintain Native Forest on a state-wide basis including maintaining a nominated minimum level of total Native Forest area, to meet the requirements of the NFPS for the protection of regional conservation values and catchment objectives.*
3. *The policy includes maintaining the area of Native Forest at a nominated minimum level within each IBRA region. This level is determined taking account of the proportion of the Native Forest area in each IBRA region which is not subject to forestry operations.*
4. *The State will monitor changes and collate information on the total area of Forest Communities within each IBRA region. This will include monitoring harvest levels, planned harvest and reforestation activity through the Forest Practices System. The State will, as a priority, amend the Forest Practices Act 1985 (Tas) as necessary to achieve this.*
5. *Appropriate action will be taken by the State if the area of any Forest Community within an IBRA region decreases to a level approaching the nominated minimum level for that region. The State will conduct a formal review of the area of Forest Communities within each IBRA region on a five yearly basis and report on the findings in the 5 yearly review of the Agreement.*
6. *The State will, in respect of public land, ensure that the existing extent of forest cover is maintained through the operation of the Forestry Act 1920 (Tas) which provides for reforestation on all areas harvested for State Forest in accordance with Forest Management Plans issued under that Act.*
7. *The State will, in respect of Private Land, ensure that:*
  - (i) *where clearfall harvesting of Native Forest occurs, for each hectare harvested, one hectare is to be reforested to Native Forest or a minimum of half a hectare of plantation established.*
  - (ii) *where non clearfall harvesting of Native Forest occurs, for each hectare harvested one hectare is to be reforested to Native Forest.*
  - (iii) *Native Forest regeneration will occur within the IBRA region of harvest.*
  - (iv) *plantations may be established in any region.*
8. *The State will, in addition, in respect of Private Land introduce by the year 1999 mechanisms to encourage native vegetation retention and management including the protection of riparian vegetation, consistent with the agreed outcomes of the National Vegetation Initiative as set out in the Tasmanian Partnership Agreement.*
9. *The State in pursuing this policy on a state-wide basis will aim to ensure that no further Forest Communities become endangered.*



10. *Reforestation following harvesting on both Public and Private Land will meet the appropriate stocking standard. Naturally regenerated areas including reseeded areas are to maintain as far as is practicable the Native Forest tree species composition of the area.*
11. *The State agrees that the policy will be reviewed as part of the ongoing review of the Forest Practices Code and in accordance with the provisions for public comment and review set out in the Forest Practices Act 1985.”*

(Extract for the Tasmanian RFA)

The actual policy position adopted by the State in conformity with these provisions of the RFA is set out in more detail in section 2 of this submission and which details reservation levels established on both a State and bioregional basis to protect both the statewide forest estate and ensure the protection of individual forest communities.

#### **4. RFA Review recommendation by RPDC**

As part of the first 5 Year Review of the RFA the Resources, Planning and Development Commission (RPDC) was required to determine the extent to which the parties to the RFA had met the timelines and targets identified within the RFA.

In its Final Recommendations Report published in December 2002 the RPDC made two recommendations that are germane to the issue of the maintenance of a permanent forest estate in Tasmania those recommendations were identified as 4.14 and 4.15

##### ***“Proposed Recommendation 4.14***

*“That the State completes the review of the policy on maintaining a Permanent Forest Estate taking into account public comment. That, subsequent to the review and before the end of May 2003, the State amends the policy to increase the levels of retention of native forest, and specifically to ensure that no further forest communities become threatened and that there is no deterioration in the status of any existing threatened forest community.”*

and

##### ***“Proposed Recommendation 4.15***

*“That, subsequent to the review of the policy on maintaining a Permanent Forest Estate, the State implements the policy through a legislative framework.”*

Whilst FIAT raise no formal objection to a review of the permanent forest estate policy we fundamentally object that such a review proceeds from the position that there is a presupposition that such a review will lead to an increase in the threshold established by the permanent forest estate policy. Any such presupposition almost entirely negates the purpose of having a review that by its very nature should entail an objective assessment of the existing levels of protection and their potential to achieve the objective of the policy which in brief form was “designed to maintain an extensive and permanent Native Forest Estate and to maintain the sustainability of the total Forest Estate” (RFA clause 60).

We say that any review must commence from the perspective of determining objectively whether or not the existing policy adopted by the State meets this purpose and if it can be determined that it does not, only then should it conclude that additional protective regimes be put in place. The current review does not have these hallmarks and is in our view unreasonably directed in its eventual outcome by the manner in which it has been scoped from its commencement.

In our view there is little if any available evidence that dictates the requirement for a change in the permanent forest estate policy protection thresholds.

The RPDC found that the existing PFE level of 80% continues to be exceeded by a considerable margin and that as at the date of their review the actual level of the PFE was approximately 98 to 99%. The presentation by G Wilkinson and A Schaap as part of this review suggests that the current PFE rate is approximately 97.5%. The RPDC further commented that this measurement is likely to be pessimistic given the manner of data collection by the Forest Practices Board.

We also note that the RPDC in their report on the 5 year review of the RFA commented at a number of places that the policy should adopt mechanisms to “encourage conservation of native vegetation on private land” (see for example pps 64 and 65). We agree that this should be the approach adopted to securing the agreement of private land holders to the retention of native vegetation i.e. that imposed outcomes are inappropriate.

## **5. Analysis of DPIWE and Forest Practices Board Presentation**

The presentation by Graham Wilkinson and Alex Schaap gave an overview of the concept of the permanent forest estate, its history, the current extent of clearing, the overall impact that could be expected from various percentage thresholds and the issues that need to be considered in the review of the PFE policy.

Clarification was given indicating that PFE is not the same as forest reservation rather it is about the maintaining existing land uses whilst protecting biodiversity.

Issues identified included: -

- Current clearing rates are noticeable and have raised concerns within the community;
- Clearing rates of rare, endangered or vulnerable communities has been a significant issue. This issue has now been addressed by changes to the Forest Practices Act in 2002;
- The Australian Forestry Standard does not appear to permit land clearing or conversion to be identified as a certifiable practice; and
- The timeframe for completion of the permanent forest estate review process.

The presentation suggested that the review required submitters to address the issue of what level of clearing is likely to be sustainable both scientifically and socially.

## 6. Analysis of provisions of Bi-lateral Agreement

The Bi-lateral Agreement between the Federal Government and the State of Tasmania to deliver the National Heritage Trust included provisions that impact directly on the review of the permanent forest estate policy. Those provisions are as follows: -

### *“Vegetation Management – Forest Communities*

115. *The Parties acknowledge that Tasmania is currently undertaking a Review of the Permanent Forest Estate Policy with an intent to increase the levels of retention of the 1996 native forest estate, including increasing the retention of rare, vulnerable and endangered forest communities. Tasmania agrees to complete the Review within 6 months of the day this Agreement commences, and:*
  - a. *to include a representative from the Commonwealth on the steering committee for the Review; and*
  - b. *to seek comments from the Commonwealth on the recommendations of the Review before a decision is made on the recommendations; and*
  - c. *to make every reasonable effort to accommodate the comments of the Commonwealth in any decisions on the Review; and*
  - d. *to advise the Commonwealth, prior to taking or announcing any decision on the Review, of its response to the Commonwealth’s comments.*
116. *In undertaking the Review of the Permanent Forest Estate Policy, Tasmania agrees to amend the Policy to:*
  - a. *prevent the clearance and conversion of all rare, vulnerable and endangered forest communities on private and public land, except as provided for in clause 119; and*
  - b. *maintain at least 95% of the 1996 native forest estate on public land.*
117. *For the purposes of clauses 116 and 123, ‘public land’ includes State Forests and land vested in Government Business Enterprises and State Owned Companies.*
118. *The Parties acknowledge that prevention of ‘clearance and conversion’ does not preclude existing uses undertaken in such a manner that the structure and species composition of the forest community are maintained in the long-term. Existing uses include harvesting followed by regeneration of the forest community, under the Forest Practices System.*
119. *The Parties agree that the Permanent Forest Estate Policy will provide for the exercise of discretion by the Forest Practices Board to approve conversion of rare, vulnerable and endangered forest communities in exceptional circumstances, where the conversion will not substantially detract from the conservation of that forest community or conservation values within the immediate area.*
120. *Tasmania agrees to introduce, within 12 months of the day this Agreement commences, amendments to the Forest Practices Act 1985 to:*
  - a. *provide that the Forest Practices Code must include a requirement that, in approving Forest Practices Plans, the Forest Practices Board is to implement the Permanent Forest Estate Policy; and*

- b. outline the process for future reviews of the Permanent Forest Estate Policy, including the participation of the Commonwealth in such reviews.*
- 121. *Tasmania agrees that the process for future reviews of the Permanent Forest Estate Policy will encompass the following:*
  - a. Tasmania to seek comments from the Commonwealth on the terms of reference, structure and process of a Review; and*
  - b. Tasmania to establish a steering committee which will include a representative from the Commonwealth; and*
  - c. Tasmania to seek comments from the Commonwealth on the recommendations of a Review before a decision is made on the recommendations; and*
  - d. Tasmania to make every reasonable effort to accommodate the comments of the Commonwealth in any decisions on a Review; and*
  - e. Tasmania to advise the Commonwealth, prior to taking or announcing any decision on a Review, of its response to the Commonwealth's comments*

(Bi-Lateral Agreement – Tasmania)

Section 116 of this agreement clearly dictates the outcome of this review and severely prejudices an impartial and objective assessment of the existing policy and therefore significantly predetermines the outcome of this review. This is resented by FIAT as it impinges directly on our capacity to play a significant role in the determination of a policy setting that has the potential to impact significantly on our members. In many respects this review is reduced to the status of a sham as a direct result of this pre-emptive directing of the outcome of the review.

We note the agreement of the State Government to a level of protection of the permanent forest estate on public land at 95% of its 1996 extent and we provide greater commentary on this aspect at Section 9 of our submission.

We are disappointed that the Bi-lateral Agreement does not facilitate the release of an expose draft of any proposed policy flowing from this review that might be commented upon by interested stakeholders. We are strongly of the view that such a process would be beneficial and would ensure that all stakeholders have adequate opportunity to view, analyse and comment upon any proposed alteration to the existing policy prior to it being submitted to any Government, Federal or State for formalisation.

## 7. Analysis of CARSAG report

In February 2001, a report was prepared by the CAR Scientific Advisory Group (CARSAG) at the request of the Chief Forest Practices Officer, which reviewed current mapping and thresholds for clearing or conversion to plantations for certain forest communities as set out in the Permanent Forest Estate Policy.

With respect to the 80% statewide retention level for the Permanent Forest Estate, the CARSAG report states that *“CARSAG believes that a Statewide retention level of 95% of the 1996 RFA area of native forest is more appropriate and reflects Tasmania’s commitments to retention of native vegetation whilst still providing potential for plantation development.”*

With respect to forest retention at the bioregional level CARSAG recommends “maintain 50% of the current area of each RFA community in each region” should be replaced with a set of principles that ensure that there is no downgrading of forest community status, no threatened (rare, endangered, vulnerable) community becomes more threatened, the ability to meet RFA targets is not compromised and, for non threatened communities, at least half the forest community area outside the RFA CAR reserve target area is managed sustainably as native forest. When these principles have been applied in an integrated manner, a permissible level of conversion of 410,000ha results. This area is equivalent to a Permanent Forest Estate retention limit of 87%.

Tasmania could achieve a statewide combined permanent forest estate threshold target of 90% by maintaining the 95% threshold that has been declared on Public Land and leaving the current Private Property threshold at 80%. This is well in excess of the 87% identified in the CARSAG report.

This outcome is strongly preferred by FIAT as it ensures that the greater contribution to the “public good” is from the public forest estate rather than through imposed restrictions on the operations of freehold landholders. Put another way the PFE should not result in any stifling of the productive capacity of the private sector.

## 8. Analysis of 1996 and 2004 PFE situation

FIAT have undertaken an analysis of the existing situation in respect to the permanent forest estate as best we are able but have been unable to discover any reliable data to utilise to breakdown the data by land tenure. In our view this is a significant weakness in the data that might otherwise inform this review and should be data that is sourced prior to any conclusions being reached in respect to any outcome by way of policy revision. Our analysis is set out in the following table: -

### Permanent Forest Estate

	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
PFE			98.4%	98.0%	97.7%	97.5%

### CONVERSION

	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	TOTAL
Public			8,300	6,990	5,320	3,330	
Private			7,500	6,460	3,960	5,090	
<b>TOTAL</b>	*	*	<b>15,800</b>	<b>13,450</b>	<b>9,280</b>	<b>8,420</b>	<b>46,950**</b>
<b>Forest land use</b>	*	*	13,400	11,810	7,660	5,720	38,590
			84.8%	87.8%	82.5%	67.9%	<b>82.2%</b>
<b>Non forest land use</b>	*	*	2,400	1,640	1,620	2,700	8,360
			15.2%	12.2%	17.5%	32.1%	<b>17.8%</b>

\*We do not have conversion figures for 1997/98 and 1998/99

\*\*The difference between the Total PFE figure in 2002/03 (79,980ha) and the conversion figure (46,950ha) is 33,030ha. This is equivalent to an average of 16,500ha/year over 1997/98 and 1998/99

Source: Forest Practices Board Annual Reports

The previous table demonstrates a PFE statewide retention of 97.5% but given that the data from which this is computed relies on Forest Practices data that is based on forecast harvesting intentions it is likely to produce a pessimistic view of the actual situation.



Significantly the conversion data demonstrates a slowing of conversion activity over each year of the entire period of the RFA with conversion for the establishment of plantations having fallen considerably over this period. Conversely clearing of native forest for non-forestry uses has remained relatively constant over this period with a significant upward spike during 2002/03.

This data does not demonstrate any pressing case for a revision of the current PFE policy and we say it is not good public policy to revise a policy setting simply because its thresholds are not approaching a level of being reached rather this provides useful data to suggest that the policy, whilst conservative does not require any adjustment

## 9. Analysis of Public Forest Commitment

As noted elsewhere in this submission, the Bi-Lateral Agreement between the Federal Government and the State of Tasmania to deliver the National Heritage Trust includes an agreement in the following terms:

122. *In undertaking the Review of the Permanent Forest Estate Policy, Tasmania agrees to amend the Policy to:*
  - a. *prevent the clearance and conversion of all rare, vulnerable and endangered forest communities on private and public land, except as provided for in clause 119; and*
  - b. *maintain at least 95% of the 1996 native forest estate on public land.*
123. *For the purposes of clauses 116 and 123, 'public land' includes State Forests and land vested in Government Business Enterprises and State Owned Companies.*

The establishment of a PFE maintenance level of 95% of public land in Tasmania produces a distorted view of the extent to which forests that are ostensibly available for multiple uses and are controlled by the State are actually impacted by this revised policy threshold. As multiple use forests controlled by Forestry Tasmania only constitute approximately half of all forested public land, the actual threshold for maintenance of the PFE is 90% not the 95% that the policy appears to provide.

The remaining public forest is contained within areas reserved through the RFA and other enactments and is reserved at a level of 100%. In our view it is misleading to use the reserved public land in any comparison with private land and any comparison should be between multiple use State Forest and forest located on private land and that is available for productive uses.

Any attempt to apply pressure to private land owners using the agreed threshold applying to public land will be based on a misleading reference that does not provide for true comparability and will therefore create an inequitable outcome.

## **10. Outline of FIAT Position**

The evidence in the RFA 5 Year Review Background Report is that the native forest reduction during the term of the RFA has been between 1.2% and 2% with the actual level being somewhere between those parameters (more recent data indicates that this clearance rate may be of the order of 2.5% over the past 6 years since the RFA was signed although this could suffer from the same inaccuracy that is commented upon by the RPDC in the 5 year review of the RFA). Given that this level has been achieved during a period where the intensive forest management process has permitted greater levels of native forest harvesting for plantation establishment, we say no review of existing policy is warranted.

FIAT have endeavoured to obtain detailed updated material in the preparation of this submission from the Forest Practices Board and Private Forests Tasmania, but we have been unable to find a detailed analysis of the current PFE situation with a breakdown between public and private land retention levels. This material should be analysed and provided prior to any determination on the PFE through this review.

This review must proceed only with the full participation in the process of all relevant private sector stakeholders. The review must consider the prospect of differential levels of retention between reserves, public land and private land and full detailed information must be made available to enable participants an opportunity for full participation in the review.

There is considerable data that is not currently discoverable by stakeholders and consideration must be given to obtaining this information and allowing participants in this review to comment upon it prior to any formal policy position being determined as a result of this review.

It must be a feature of any amendment to the Permanent Forest Estate policy that compensation is payable in the event any private land owner is prevented, through the application of the policy, from harvesting forested areas for any reason.

The review must also focus some attention on the entire Forest Estate and not simply focus on the native forest estate, as to ignore the non-native forest estate is to suggest that plantations make no contribution whatsoever to biodiversity. In this context we note that the forest estate actually increased during the life of the RFA by 10,700 hectares or 0.3%. In this context we say that some regard in respect to biodiversity protection must be provided to plantations and certainly plantations of endemic Tasmanian species such as *Eucalyptus globulus*.

We are aware that a similar observation has been made by the FFIC of which FIAT is an Executive Member and we note particularly the following paragraphs from their submission to this review by the FFIC: -

*“(sic) should still be possible to achieve an expanding plantation resource and meet the objective of protection of conservation values by weighting plantation, particularly where it is formed from native species such as Eucalyptus globulus, a food source of Swift’s Parrot, above land clearing where other crops or infrastructure result.*

*It would not be difficult to devise a sliding scale where E. globulus managed over a long rotation sawlog regime was recognised as of greater value than E. nitens, which in turn rates above pine, and potatoes, poppies or the like. Hardwood plantation should not be judged in the same absolute terms as these other crops.*

*The adoption of a sliding scale for qualifying plantation meets the ‘exercise of discretion’ aspect of your policy issue number 5.*

Extract from FFIC Submission to PFE Review 30 April 2004

These views are consonant with those of FIAT and we include them as part of our submission to the review.

FIAT does not believe there is any case for an upward adjustment in the minimum retention level of the permanent forest estate policy. No cogent and compelling reasons have been identified to warrant any upward adjustment of the permanent forest estate threshold and in the absence of any such reasons, there is no warrant for any higher level of regulation.

In comparative terms the protection of forest communities and their inherent biodiversity are at an extremely high level in Tasmania vis a vis mainland states.

By any comparative observation, Tasmania already has very substantive protection of our native vegetation through 40% of both our land mass and forests, 95% of our high quality wilderness and 69% of our old growth forests being in reserves.

The existing statewide threshold of 80% in all of these contexts is reasonable and allows for a high level of retention of biodiversity whilst not unreasonably inhibiting the aspirations of both industry and the public.

We note the provision of the Bi-lateral agreement that “all threatened (rare, vulnerable and endangered) forest communities” is to be maintained on public and private land. We say that a provision allowing for exemption to be provided in compelling or special circumstances is necessary in the context of this provision along with a provision for compensation for any land owner affected by this change. (This aspect is dealt with in more detail in section 11 of this submission.). We note that the provision for an exemption does exist within the Bi-lateral Agreement at clause 119 as follows; -

*124. The Parties agree that the Permanent Forest Estate Policy will provide for the exercise of discretion by the Forest Practices Board to approve conversion of rare, vulnerable and endangered forest communities in exceptional circumstances, where the conversion will not substantially detract from the conservation of that forest community or conservation values within the immediate area.*

Extract from the Bi-lateral Agreement

We say that this provision is fine as far as it goes however it might reasonably provide a right of appeal against any refusal of this discretion by the Forest Practices Board and a provision providing for the compensation of any landowner who ultimately is refused permission to undertake productive utilisation of their land.

We have had due regard to the recommendation of the CARSAG report for a 95% retention level but note in this respect that no scientific quantification is provided in

support of that threshold rather the scientific evidence in the CARSAG analysis does not support a level any higher than 87% (410,000 ha).

The public land commitment to a 95% threshold along with retention of an 80% threshold for private land will produce an overall retention level of approximately 90% well in advance of the CARSAG scientifically derived 87%. We say such an outcome is consistent with the principles in the Forest and Forest Industry Strategy that “*wherever possible, forests in public ownership should provide the basis for secure protection for the range of natural values of Tasmanian forests.*”

The adoption of an overall retention rate equivalent to 90% of the 1996 permanent forest estate should permit the reasonable aspirations of land holders to be met along with the potential for growth of plantations for sawlog production and for wood fibre production as a potential resource for a pulp mill in Tasmania.

We are aware that Gunns Ltd has a target of a plantation estate of 200,000 ha whilst at present they have only 100,000 ha. Given the shortage of suitable land available for further plantation establishment this target could be frustrated unless some further conversion is permitted.

The aspirations of Gunns are reflective also in plans for expansion by Forest Enterprises Australia and other plantation companies, and the potential requirement for Forestry Tasmania to expand its plantation estate to compensate for any loss of resource from a policy decision relating to the cessation of clear fell logging in old growth forests (estimated 30-50,000 ha).

We further say that the existing provision relating to bio-regional protection adequately provides for the retention of forest communities at a bioregional level and that further regulation is not required. The existing protective mechanism applied through the Forest Practices Board has been effective in ensuring that bio-regional protection of forest communities has been achieved. Again we say no substantive basis for amendment to this policy has been identified.

We say an appropriate datum point for any comparison with other Australian states is the date of European settlement and in that case it is apparent that considerably more land clearing has been undertaken in States other than Tasmania. That being the case, Tasmania will be placed at considerable disadvantage by any policy setting that inhibits our capacity to at least achieve the average position of the other states. It is both unfair and discriminatory for any such policy setting to be adopted

The following table demonstrates the comparative data for those areas covered by RFA's as we have not been able to locate more complete data sets in the timeframe for this review. We have included data showing the estimated pre 1750 forest extent, the measured RFA forest cover and calculated from that data the clearance that has occurred since settlement both as to quantum and expressed as a percentage of the pre 1750 cover.

We believe that the RFA regions comparison provides a conservative benchmark for the purpose of this analysis as many areas outside of the RFA regions in other States have been subjected to wholesale clearing for agricultural pursuits and the inclusion of data for those areas would be likely to significantly increase the clearing rates for those States e.g. the wheat belt in West Australia.

We suggest that collection of comprehensive data of this type should be a necessary precursor to the finalisation of any policy setting as a result of this review especially given the keen interest by the Commonwealth in the policy setting process underpinning this review.

The table demonstrates that Tasmania engaged in considerably less clearance and/or conversion than other States and therefore less than the average of the other RFA regions. It is against this data that we put the proposition that a meaningful measure to use is that Tasmania ought not be required to contribute more comprehensively to the nationwide PFE than other States simply because we have not practiced the same level of broad scale conversion as other States.

<b>RFA Region</b>	<b>1750 forest cover estimate</b>	<b>RFA current forest cover estimate</b>	<b>Cleared Area</b>	<b>Cleared area as % of 1750 estimate</b>	<b>Source</b>
Tasmania	4,822,210	3,203,720	1,618,490	33.6%	Table 3.2 Options for the Tasmania - Commonwealth RFA 1997
Victoria - Western Region	5,669,159	1,131,448	4,537,711	80.0%	West Victoria Regional Forest Agreement - Attachment 1
Victoria - North East Region	2,317,730	1,279,480	1,038,250	44.8%	North East Regional Forest Agreement - Attachment 1
Victoria - East Gippsland Region	1,210,445	1,050,368	160,077	13.2%	
Victoria - Gippsland Region	2,676,284	1,591,909	1,084,375	40.5%	Gippsland Regional Forest Agreement - Attachment 1
Victoria - Central Highlands Region	1,129,953	710,999	418,954	37.1%	Central Highlands Regional Forest - Attachment
NSW - Eden Region	809,027	551,629	257,398	31.8%	Regional Forest Agreement - Eden - Attachment 1
NSW - North East Region - Lower NE	5,288,211	2,909,420	2,378,791	45.0%	North East NSW RFA - Attachment 1
NSW - North East Region - Upper NE	3,391,133	1,981,334	1,409,799	41.6%	North East NSW RFA - Attachment 1
NSW - Southern Region	4,490,706	2,558,172	1,932,534	43.0%	Southern NSW RFA - Attachment 1
WA - South West Region	4,062,650	2,633,506	1,429,144	35.2%	South West WA Regional Forest Agreement - Attachment 1

<b>RFA Region</b>	<b>Areas included in cleared area calculations</b>
Tasmania	Pre 1750 estimate - Current Forest Cover Estimate
Victoria - Western Region	Plantation softwood, Cleared/severely disturbed, Plantation-hardwood, Plantation-Undefined, Cleared/severely disturbed due to power easement, Water Body-Salt, Water Body-Fresh, Cleared area/unknown, Cleared Areas.
Victoria - North East Region	Conifer plantation, Cleared/severely disturbed, Non-treed area, Water body
Victoria - East Gippsland Region	Pre 1750 estimate - Current Forest Cover Estimate
Victoria - Gippsland Region	Cleared Severely disturbed, Plantation, Non vegetated/Non treed, Waterbody - Natural or man made
Victoria - Central Highlands Region	Cleared Land, Water Bodies
NSW - Eden Region	Pre 1750 estimate - Current Forest Cover Estimate
NSW - North East Region	Pre 1750 estimate - Current Forest Cover Estimate
NSW - Southern Region	Pre 1750 estimate - Current Forest Cover Estimate
WA - South West Region	Pre 1750 estimate - Current Forest Cover Estimate



We are of the strong view that the current Permanent Forest Estate policy is adequate to meet its purpose and further review and increased levels of retention of native forest estate is not warranted.

FIAT would support legislation to enshrine a properly formulated Permanent Forest Estate policy as recommended by the RPDC in the RFA 5 year review.

## **11. Compensation requirement**

There will be a significant potential economic impact of any regulatory imposition on the right of a private landowner to utilise their private freehold land in any manner that the land holder may wish.

It is neither reasonable nor appropriate to impose a level of regulation without adequate consideration of compensation to private landowners for loss of income and amenity of their property. Considerations should extend beyond the immediate loss of utilisation rights and must consider longer term foregone income potential, reduced asset value on eventual sale and increased management costs.

In addition to the extensive formal and informal CAR reserve system and the Private CAR Reserve Programme, some measures already exist to require private landholders to provide for the public good. For example the Forest Practices Code provides that some level of ‘duty of care’ exists, however, beyond such defined, reasonable limits, the concept of “community benefit” or “common good” requires that a publicly funded compensation program should ensure landowners are not disadvantaged without consideration of loss of amenity to their property.

A recent enquiry by the Joint House Standing Committee on Environment, Resources and Development of the Tasmanian Parliament made a number of findings in respect to the issue of compensation that might be payable in the event of any mandated requirement for a land owner to contribute to the public good :-

### ***Executive Summary***

*The adverse economic impact caused by legislation protecting natural and cultural values appears to have prompted almost all submissions to address financial issues of one sort or another.*

*A major concern was the need for fair and reasonable or adequate compensation for landowners disadvantaged by the need to preserve natural and cultural values on their land. The Forest Practices Act 1985 and the associated Forest Practices Code provide a compensation mechanism for those landowners unable to harvest timber for conservation reasons. The Threatened Species Protection Act 1995 also has provision for landowners to be compensated in cases of financial loss from measures to protect threatened species.*

*Evidence presented to the Committee indicated that the compensation processes were lengthy and there were disputes over the calculation of the amount of money offered to the landowner. Complicating the issue of compensation was the limited funding available to meet the expectations of landowners.*

### **Recommendations**

*The Committee recommends that: -*

- 1. The Tasmanian Government establish a rolling or revolving fund for the purpose of funding the conservation of natural and cultural values on private land by means of purchase, covenant and re-sale of parcels of land identified as worthy of protection.*

*The Tasmanian Government negotiate with the Commonwealth Government to secure matching funds for this rolling or revolving fund and tax deductibility for corporate and private donations to the fund.*

- 2. The Premier's Local Government Council investigate amending the Local Government Act 1993 to enable municipal councils to compensate private landowners for any financial losses resulting from actions of councils to protect natural and cultural values on private land.*

And at pages 41 and 42: -

#### **3.2.1 Financial Matters**

*As this report has shown repeatedly, funding issues were often at the heart of the concerns of landowners and other witnesses who appeared before the Committee or made written submissions. Most prominent were compensation for financial losses as a result of conservation measures imposed on landowners and the need to meet the costs of ongoing maintenance of areas of land set aside for conservation.*

*It was suggested by more than one witness that an effective means of dealing with the first of these issues would be the setting up of a revolving or rolling fund to enable the purchase of land with a view to placing a conservation covenant on the title and then re-selling the property. The funds raised by the sale of the property would be paid into the fund for the process to begin again. Such funding mechanisms have already been shown to be effective by the Australian Bush Heritage Fund and the Tasmanian Land Conservancy, with the latter providing evidence to the Committee of its successful implementation in this State, albeit in a limited way.*

*The immediate difficulty is the provision of the initial seed funding and this is compounded to some extent by the prospect that, at least in the early stages, there could be great demands placed on the fund. The competing demands for State Government funds would seem to favour a joint arrangement with the Commonwealth in providing the one-off allocation necessary to establish the*

*fund. The principle of the revolving fund is that it becomes self-sustaining over time so further imposts on government would be very unlikely.*

*Given earlier comments about the need for the Tasmanian community to help bear the cost of such conservation measures, the State Government should be encouraged to consider an allocation from land tax contributions to set up this project. To minimise the impact on the land tax contributions, the allocation could be scheduled over a three to four year period. When combined with matching Commonwealth funds, such an approach would allow the setting up of a substantial financial resource to compensate landowners for costs incurred.*

(Joint Standing Committee Environment, Resources and Development - Conservation on Private Land)

Whilst the terms of this enquiry may not be entirely on all fours with this review we say that the general principles discussed and established by this Committee Report are apposite to the general question of compensation for any imposed limitation on a private landowner in favour of the public good. We further say that the public good must constitute a contribution from the community as a whole and this can only be effectively achieved through the agency of elected Government. To ensure protection against drawn out and expensive litigation, a tribunal should be established to resolve disputes over the proper level of compensation that should be payable to any land owner in the event of any imposition of restrictions on the full enjoyment of their freehold property.

This debate must of necessity proceed from a basis that a landowner, provided they act within the law, has a general right to utilise property in the most productive means possible and any imposed restrictions must lead to reasonable compensation. If private landowners are required to contribute to the “common good” the cost of that contribution must be borne by those who impose such a requirement whether it be Commonwealth, State or Local Government.