

FOREST BILL 2016
(BILL NO. 13 OF 2016)

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BILL NO. 13 OF 2016**A BILL****FOR AN ACT TO PROVIDE FOR THE MANAGEMENT OF FIJI'S FORESTS
AND OTHER RELATED MATTERS**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Forest Act 2016.

(2) This Act comes into force on the date or dates appointed by the Minister by notice published in the Gazette.

Interpretation

2. For the purposes of this Act, unless the context otherwise requires—

“afforestation” means the direct human-induced conversion of land that has not been forested for a period of at least 50 years to forest land through planting, seeding and/or the human-induced promotion of natural seed sources;

“alienated land” means—

- (a) land, the ownership of which is held by a person other than the State;
or
- (b) State and iTaukei land which has been leased to a person other than the State;

“annual cut area” means the area of land from which timber is harvested annually;

“beat” means a geographic area as defined in the Fiji Forest Beat map drawn and maintained by the Department of Forests;

“biomass” means the total amount of live and inert organic matter above and below ground expressed in tons of dry matter per unit area;

“Board” means the Forestry Board established under section 6 of this Act;

“carbon” means chemical element present in all organic matter which contributes in the form of various greenhouse gases, for example carbon dioxide and methane to climate change;

“carbon credit” is a generic term for any tradable certificate or permit representing the right to emit one tonne of carbon dioxide or the mass of another greenhouse gas with a carbon dioxide equivalent (tCO₂e) to one tonne of carbon dioxide;

“carbon stock” means the amount of carbon stored in the forest ecosystem;

“Clean Development Mechanism” means the mechanism provided under the Kyoto-Protocol and designed to assist developing countries in achieving sustainable development by permitting industrialised countries to finance projects for the reduction of greenhouse gas emissions in developing countries and receive carbon credits in exchange;

“Conservator” means the Conservator of Forests appointed in accordance with section 4 of this Act;

“damage” means loss or detriment caused by hurt or injury affecting estate, condition, or circumstances, or injury, harm, especially physical injury to a thing so as to impair its value or usefulness;

“deforestation” means the direct human-induced conversion of forested land to non-forested land;

“Department of Forests” means all sections, units, and personnel included under the Department of Forests and headed by the Conservator of Forests;

“development activity or undertaking” includes—

- (a) any activity likely to alter the physical nature of the land in any way;

- (b) the construction of buildings or works;
- (c) the deposit of wastes or other material from outfalls, vessels or by other means;
- (d) the removal of sand, coral, shells, natural vegetation, sea grass or other substances; and
- (e) dredging, filling, land reclamation, mining or drilling for minerals,

but does not include fishing as outlined under the Environment Management Act 2005;

“emission” means the release of greenhouse gases or their precursors into the atmosphere over a specified area and period of time;

“Fiji Forest Harvesting Code of Practice” means the prevailing forest harvesting guideline that prescribes and governs all forest harvesting operations in Fiji;

“fire hazard area” means an area especially prone to fire due to its type and status of vegetation;

“fire hazard period” means either the period between 1 July and 31 December in any year or a period announced by the Conservator and by notice in the Gazette;

“Fire Licence” means a licence issued under section 36(3) of this Act;

“forest” includes but is not limited to—

- (a) land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ;
- (b) areas with bamboo and forest palms provided that height and canopy cover criteria are met; forest road, fire breaks and other small open areas;
- (c) areas defined by both the presence of trees and the absence of other predominant land uses; and
- (d) excluding tree stands in agricultural production systems;

“forest biomass” means all organic matter in a forest, such as leaves, branches, trunks, roots, litter, and soil organic matter, irrespective if dead or alive;

“forest carbon” means carbon stored in forest biomass;

“forest management inventories” means the measurement and assessment of the current forest resource, for the purpose of sustainable resource management;

“forest management standards” means the level of performance expected in the execution of a range of management functions and operational activities comprising of ethical, social, ecological and economic dimensions of sustainable forest management;

“forest officer” means any officer in public service appointed to serve in the Department of Forests as the deputy conservator of forests, principal forestry officer, senior forestry officer, forestry officer, forester, forest ranger or forest guard;

“forest owner” means the title holder of the land on which the forest grows;

“forest plantations” means forest stands established by planting or seeding in the process of afforestation or reforestation which are either of introduced species (all planted stands) or intensively managed stands of indigenous species;

“forest products” includes wood and non-wood forest products or by-products harvested from the forest for either commercial or subsistence purposes;

“forest reserve” means a forest area declared by the Minister in accordance with section 14 as a forest reserve for the protection of forest biodiversity and the national interests;

“forest resource user” means a person or legal entity making use of wood or non-wood forest products;

“forest sector” comprises of all actors involved in and all activities undertaken on forests and forest products;

“indigenous species” means any species that originated naturally in or that are endemic or common only to Fiji;

“invasive species” means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health and biodiversity;

“iTaukei customary rights” means rights, which are acquired by custom by iTaukei, they being rights of individuals, independent of their place of residence;

“iTaukei land” means land which is neither State land nor the subject of a State or iTaukei grant, but includes land granted to a mataqali under section 18 of the iTaukei Land Trust Act (Cap. 134);

“landowner” includes—

- (a) the Fiji Government for State land; or
- (b) the owner or titleholder of freehold land; and

(c) “iTaukei land owners” has the same meaning as iTaukei owners in section 2 of the iTaukei Land Trust Act (Cap. 134);

“licence” means any licence issued under this Act;

“licensee” means a person or business that holds an approved licence under this Act;

“licensing officer” means the officer authorised to issue a licence under this Act;

“livestock” includes but is not limited to horses, mules, cattle, sheep, pigs, goats and poultry;

“mangrove forest” means a forest type predominantly made up of tree and shrub species that grow in saline and tidal tropical and subtropical coastal habitats;

“Minister” means the minister responsible for forests;

“multiple use forests” means forests to be maintained under permanent forest cover for the production of wood and non-wood forest products, and the provision of environmental and social services including climate change adaptation;

“National Forest Policy” means the prevailing Fiji Forest Policy endorsed by the Minister responsible for forests;

“national forest resources assessment” means an assessment of forest resources at the national level;

“National Heritage Site” means any site considered to have outstanding universal value to the World Heritage List and declared as such by the Government of Fiji in accordance with the National World Heritage Policy for Fiji;

“natural forest” means a forest composed of indigenous trees and not classified as forest plantation;

“nature reserve” means forest areas designated by the Minister responsible for forests, which possess outstanding or representative ecosystems that must be managed for the exclusive purpose of permanent conservation of their environment, including, flora, fauna, soil and water;

“non-commercial forest use” means the utilisation of wood and non-wood forest products that does not involve formal commercial transactions;

“non-wood forest products” means all forest products except woody materials such as timber, fuel wood, charcoal, woodchips, wood pulp and small wood items such as carvings, including but not exclusively, fibres, leaves, fruits, nuts, roots, resins and latexes, honey, bees wax, all types of fungi, minerals, stones and clay;

“officer” means any forest officer, police officer, or biosecurity officer;

“Permanent Secretary” means the permanent secretary responsible for forests;

“pests” includes organisms—

- (a) that are undesirable or detrimental to the interests of humans, and
- (b) capable of causing injury or damage;

“protection forests” means forest areas which are maintained under permanent forest cover, especially dedicated to the protection and maintenance of biological diversity and ecological integrity together with values such as water supply, soil conservation, cultural, heritage, or other historical significance, or scenic appeal, where forest use, if any, is restricted to harvesting or non-wood forest products, eco-tourism, carbon storage, and research;

“REDD” means Reducing Emissions from Deforestation and Forest Degradation;

“REDD+” means REDD including—

- (a) reducing deforestation;
- (b) reducing forest degradation;
- (c) forest conservation;
- (d) sustainable forest management; and
- (e) enhancing forest carbon stocks;

“royalty” means a payment reserved by the grantor of a lease or similar rights and payable proportionately to the use made of the right by the grantor;

“species” means any species or subspecies whether or not geographically separate population of the species or subspecies;

“stakeholder” means a person, group or organisation that has direct or indirect interest in an organisation or activity whether from government, civil society or the private sector;

“State land” has the same meaning under section 2 of the State Lands Act (Cap. 132);

“sustainable forest management” means a concept which aims to maintain and enhance the economic, social and environmental value of all types of forests for the benefit of present and future generations;

“timber” means any tree, which is ready to fell, has been felled or has fallen, which will be or is sawn or split for further conversion, and includes timber felled under a timber licence; and

“un-alienated land” means land not under any formal leasing or customary arrangement.

Objective

3. The objective of this Act is to ensure the protection, sustainable management and use of Fiji's forests and to provide social, economic and environmental benefits to Fijians for the current and future generations.

PART 2—FOREST ADMINISTRATION

Conservator of Forests

4.—(1) The Permanent Secretary must, with the approval of the Minister, appoint a Conservator of Forests who shall administer the Department of Forests and the forest sector.

(2) Subject to the directions of the Permanent Secretary, it must be the duty of the Conservator to—

- (a) direct Fiji's Department of Forests;
- (b) enforce the provisions of this Act and its regulations;
- (c) periodically review forestry regulations, fees, levies, and services;
- (d) develop, coordinate and facilitate the implementation of the National Forest Policy;
- (e) advise the Minister on forest policy and the implementation strategies;
- (f) be responsible to and liaise with the Permanent Secretary;
- (g) supervise, advise and liaise with the Deputy Conservator and principal officers;
- (h) promote negotiation on external financial and technical assistance;
- (i) approve forestry programmes and projects including those on forest carbon;
- (j) represent or cause to be representing Fiji's interest in international forest related conferences, meetings and forums; and
- (k) exercise such other functions and authorities as may be prescribed and directed by the Permanent Secretary and the Minister.

(3) The Conservator must, from time to time, advise the Permanent Secretary and the Minister on issues regarding the administration and enforcement of this Act.

Department of Forests

5. The Department of Forests under the direction of the Conservator must perform the following duties—

- (a) plan, monitor and control the—
 - (i) sustainable management and conservation of all forest resources in all types of forests for the provision of wood and non-wood products and services; and

- (ii) conservation of protected areas in collaboration with Department of Environment, Ministry of Lands and the iTaukei Land Trust Board;
- (b) carry out the national forest resources assessment, collect other important information about forest resources, and make these data publicly available;
- (c) ensure that all forest-related regulations and guidelines reflect sustainable forest management practices and that they are developed in a multi stakeholder approach;
- (d) approve utilisation agreements, forest management and harvesting plans in all forest types, both natural and planted and monitor their proper implementation;
- (e) identify and promote reforestation and afforestation on suitable sites and rehabilitation of degraded forest areas;
- (f) promote and provide technical advice to and for community forestry programs and agro-forestry schemes;
- (g) develop and implement research, protection, and conservation programs for forest resources and wildlife, in collaboration with other agencies;
- (h) promote value-added processing of forest products;
- (i) take appropriate measures to investigate, prevent, and suppress forest destruction, forest degradation, forest fires and forest clearings;
- (j) promote public education programs and train forest owners on sustainable forest management;
- (k) promote international cooperation to strengthen the capacity to protect and develop forest resources; and
- (l) advise Government on forest-related matters under international agreements and conventions, in close collaboration with the Department of Environment.

Forestry Board

6.—(1) This section establishes the Forestry Board for the purposes of advising the Minister and the Permanent Secretary on matters relating to forests and forest-related policies.

(2) The Board must include the following members—

- (a) the Conservator of Forests as the chairperson;
- (b) the director of town and country planning or his or her representative;
- (c) the director of environment or his or her representative; and

- (d) 7 other persons appointed by the Minister and must consist of—
- (i) a representative from the iTaukei Land Trust Board;
 - (ii) a representative from the department of agriculture; and
 - (iii) 5 other persons not being public officers, each being a representative of land owners, forest owners, forest users, forest industry and the public interest.

Invited members

7. The Board may invite persons who are experts in their fields to provide advice to the Board on specific issues during the meetings of the Board.

Administration

8.—(1) A member of the Board appointed by the Minister under section 6(2)(d) shall hold office for a term of 2 years from the date of the appointment and shall be eligible for re-appointment.

(2) If a member of the Board appointed under section 6(2)(d) is prevented by illness or other cause from exercising his or her functions on the Board, the Minister may appoint a person to act in his or her place during his or her inability to perform those functions.

(3) The Minister may remove any member from office for any reason appearing to him or her to be sufficient.

Meetings

9.—(1) The Board must meet at least twice a year to advise on the revision of a National Forest Policy and at such other times as the chairperson considers necessary in order to advise on any other matter.

(2) At least 5 members of the Board shall form a quorum at all meetings of the Board.

(3) The office of a member of the Board becomes vacant if that member is absent without the Board's leave and without reasonable excuse for 3 consecutive meetings of the Board.

Forestry and licensing committees

10. The Board may appoint forestry and licensing committees for matters relating to forests, the processing of forest products, forest carbon trading, and the scrutinising of licence applications made under this Act and any other forest-related matters.

Functions of the forestry and licensing committee

11.—(1) The function of a forestry and licensing committee is to advise the Board on the matter for which the committee is appointed.

(2) Members of a forestry or licensing committee must be appointed by the Board on the basis of their expertise in the matter for which the committee is appointed.

PART 3—NATIONAL FOREST POLICY AND FOREST CLASSIFICATION

National Forest Policy

12.—(1) The forest sector must be administered in accordance with the National Forest Policy and associated plans and policies of the Department of Forests.

(2) The Conservator must after consultations with the Board and relevant agencies, organisations and other forest stakeholders, ensure that the National Forest Policy is revised every 5 years.

Forest classification

13.—(1) The Department of Forests must classify forests based on forest functions, ecological characteristics and management regimes in the following categories—

- (a) multiple use forests;
- (b) forest plantations; and
- (c) protection forests which may also include—
 - (i) mangrove forests;
 - (ii) National Heritage Sites; and
 - (iii) nature reserves.

(2) Any person, who damages, alters, shifts, removes or interferes in any way whatsoever with any beacon, boundary mark or fence, notice or notice board erected by the Department of Forests for the purposes of subsection (1) commits an offence.

Declaration of nature reserves and forest reserves

14.—(1) The Minister may by notice in the Gazette, upon recommendation of the Board, and in consultation with the Director of Lands, declare any of the following classes of land already reserved for another public purpose to be a nature reserve or a forest reserve—

- (a) un-alienated State land;
- (b) land leased to the State;
- (c) un-alienated iTaukei land, with the prior consent of the iTaukei land owners and of the iTaukei Land Trust Board or the Land Use Unit in relation to designated land; and
- (d) any land reverted to the State.

(2) The Minister may, upon recommendation of the Board and the Director of Lands, declare any nature reserve or forest reserve or part thereof to cease to be a nature reserve or a forest reserve.

(3) The Minister may, upon recommendation of the Board, cause alienated land to be acquired for a public purpose and compensation be given in accordance to the provisions of the State Acquisition of Lands Act (Cap. 135) and may thereafter, declare it to be a forest reserve or a nature reserve.

(4) Any nature reserve or forest reserve declared under the Forest Decree 1992 must remain as such under this Act.

Management of nature reserves and forest reserves

15.—(1) Forest reserves must be managed sustainably for the purposes of ensuring their protection and securing long term benefits for the future generations.

(2) Nature reserves must be managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water.

(3) Any buildings, fences or enclosures erected in or maintained on a forest reserve or in a nature reserve without the permission of the Conservator shall be deemed to be the property of the State and may be disposed of in such manner as the Conservator thinks fit.

National Forest Resource Assessment

16.—(1) At the commencement of this Act the Department of Forests must undertake a National Forest Resource Assessment to collate data for the purposes of—

- (a) implementing sustainable forest management for the supply of timber on a sustainable basis; and
- (b) forest resource monitoring at national level.

(2) Notwithstanding subsection (1) the National Forest Resource Assessment must be conducted periodically at 10 year intervals.

(3) The Conservator taking into account data from the National Forest Resource Assessment must identify areas where forest conditions would allow timber harvesting.

(4) The Conservator must require all licence holders of those areas identified in accordance with subsection (3) to conduct their own forest inventory known as Forest Management Inventory to a standard approved by the Department of Forests before any timber harvesting approved by the Conservator can commence.

(5) All owners of forest plantation resources must undertake periodic Forest Management Inventories at an interval of 3 years.

PART 4—LICENSING

Prohibited activities

17.—(1) Unless authorised by a licence issued by the Conservator in accordance with this Act, no person shall—

- (a) in a forest reserve or a nature reserve—
 - (i) without a Special Harvesting Licence issued under section 18, fell or extract timber;
 - (ii) take other wood or non-wood forest products;
 - (iii) take peat, rock, sand, shells and soil other than minerals as defined in the Mining Act (Cap. 146);

- (iv) clear land;
 - (v) cut, burn, uproot, damage or destroy vegetation;
 - (vi) erect any buildings or livestock enclosures;
 - (vii) graze or allow any domestic animal to enter therein;
 - (viii) plant any crops or trees;
 - (ix) construct or obstruct any roads, paths or waterways;
 - (x) hunt or fish; or
 - (xi) set any trap, snare or net or use or to be in possession of any gun, poison or explosive substance;
- (b) on State land not being alienated land—
- (i) without a Special Harvesting Licence issued under section 18, fell or extract timber for the purposes of sale or for other commercial reasons;
 - (ii) take other wood or non-wood forest products; or
 - (iii) clear land;
- (c) on iTaukei land not being alienated land—
- (i) without a Special Harvesting Licence issued under section 18, fell or extract timber;
 - (ii) take other wood or non-wood forest products; or
 - (iii) clear land;
- (d) on alienated land, without a Special Harvesting Licence issued under section 18, fell or extract timber for the purposes of sale or for other commercial purposes.

(2) In the case of a forest or nature reserve, the Conservator may authorise by written notice activities otherwise prohibited under subsection (1)(a)(ii-xi) where such activities are consistent with the principles in section 15(1).

(3) An authorisation issued under subsection (2) must include such terms and conditions as the Conservator deems appropriate.

(4) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$40,000 or a term of imprisonment not exceeding 5 years, or to both.

Special Harvesting Licence

18.—(1) Any person intending to fell or extract timber on—

- (a) a forest or nature reserve;
- (b) State land not being alienated land;

- (c) iTaukei land not being alienated; or
- (d) alienated land,

must make an application in writing to the Conservator in the approved form for a Special Harvesting Licence.

(2) An application made in accordance with subsection (1) must be accompanied by any such fees and information required by the Conservator.

(3) Upon receipt of an application made in accordance with subsections (1) and (2), the Conservator may issue a Special Harvesting Licence subject to such terms and conditions as the Conservator deems appropriate.

(4) A person must not operate or conduct activities relating to the felling and extracting of timber for any purpose whatsoever within the areas listed under subsection (1) except with a Special Harvesting Licence issued under this section.

(5) Any person granted a Special Harvesting Licence under this section must only conduct activities approved within the licence, for the duration and on areas specified within the licence by the Conservator.

(6) Any person who contravenes this section commits an offence and shall be liable upon conviction in the case of a—

- (a) natural person, to a fine not exceeding \$40,000 for the first offence and \$10,000 for the second and subsequent offences or to imprisonment for a term not exceeding 5 years, or to both; and
- (b) body corporate or unincorporate, to a fine of \$80,000 for the first offence and \$160,000 for the second and subsequent offences or to imprisonment for a term not exceeding 10 years, or to both.

Duration of Special Harvesting Licence

19.—(1) The Conservator may issue a Special Harvesting Licence for a term of up to 5 years.

(2) The Conservator may revoke a Special Harvesting Licence where the holder of the licence has subsequently failed to perform up to the standards prescribed by this Act, particularly the Fiji Forest Harvesting Code of Practice and the iTaukei Land Forest Regulations.

Existing licences

20. All existing licences issued under the Forest Decree 1992 for the purposes of felling or extracting timber shall remain valid under this Act until its expiry, suspension or revocation in accordance with section 26 of this Act.

Forest Management Licence

21.—(1) The Conservator shall issue Forest Management Licences for the purposes of creating long term tenures for persons, organisations or companies which can demonstrate a commitment to sustainable forest management in the planting and harvesting of trees within a forest plantation.

(2) A person may apply for a Forest Management Licence in the approved form accompanied by any such fees or information required by the Conservator.

(3) The duration of a Forest Management Licence may coincide with the term of the applicable land tenure.

(4) The Forest Management Licence may contain such terms and conditions as the Conservator deems appropriate.

(5) A person must not operate or conduct activities for the purposes of maintaining a forest plantation except with a Forest Management Licence issued under this section.

(6) Any person who contravenes this section commits an offence and shall be liable upon conviction in the case of a—

- (a) natural person, to a fine not exceeding \$40,000 for the first offence and \$10,000 for the second and subsequent offences or to imprisonment for a term not exceeding 5 years, or to both; and
- (b) body corporate or unincorporate, to a fine of \$80,000 for the first offence and \$160,000 for the second and subsequent offences or to imprisonment for a term not exceeding 10 years, or to both.

Import and Export Licence

22.—(1) The Conservator shall issue Import and Export Licences for the purposes of monitoring the movements of all forest products in terms of quality, quantity, volumes, values and other important information for future management decisions.

(2) Any person seeking to import or export forest products must make an application in the approved form accompanied by any such fees and information required by the Conservator.

(3) An Import and Export Licence may be issued on such terms and conditions the Conservator considers necessary.

(4) A person must not operate or conduct activities for the purposes of importing or exporting forest products except with an Import and Export Licence issued under this section.

(5) Any person who contravenes this section commits an offence and shall be liable upon conviction in the case of a—

- (a) natural person, to a fine not exceeding \$40,000 for the first offence and \$10,000 for the second and subsequent offences or to imprisonment for a term not exceeding 5 years, or to both; and
- (b) body corporate or unincorporate, to a fine of \$80,000 for the first offence and \$160,000 for the second and subsequent offences or to imprisonment for a term not exceeding 10 years, or to both.

Wood Processing Mills Licence

23.—(1) The Conservator shall issue licences for the operation of any wood processing mills such as sawmills, chip mills, ply mills, veneer mills and any other type of mill which falls under this category.

(2) The Conservator shall issue licences for the operation of wood processing mills based on evidence that the applicant has secured a satisfactory supply of wood.

(3) A licence issued in accordance with subsection (2) must be accompanied by such terms and conditions as the Conservator deems appropriate.

(4) The Conservator may, revoke a licence issued under this section if the holder of the licence has subsequently failed to meet the terms and conditions of the licence or to perform up to the standards prescribed by this Act, particularly the Fiji Forest Harvesting Code of Practice.

(5) A person must not operate or conduct activities for the purposes of operating a wood processing mill except with a Wood Processing Mills Licence issued under this section.

(6) Any person who contravenes this section commits an offence and shall be liable upon conviction in the case of a—

(a) natural person, to a fine not exceeding \$40,000 for the first offence and \$10,000 for the second and subsequent offences or to imprisonment for a term not exceeding 5 years or both; and

(b) body corporate or unincorporate, to a fine of \$80,000 for the first offence and \$160,000 for the second and subsequent offences or to imprisonment for a term not exceeding 10 years, or to both.

Log scaling

24.—(1) All logs extracted from iTaukei and planted forests including minor forest produce such as pine chips, sandalwood, firewood and any logs intended for a commercial purpose, must be measured and weighed as approved by the Conservator as outlined in the respective regulations on log scaling.

(2) The Conservator must appoint suitably trained persons as certified licenced scalars for the purposes of measuring and grading logs in accordance with the standards set by the Department of Forests.

(3) Any person who—

(a) fraudulently reports on log measurements during scaling; or

(b) tampers with treated or specially engineered logs or timber where the intended standard of the timber is compromised and its quality misrepresented,

commits an offence.

Transfer of licences or rights conveyed by licences

25.—(1) A licence issued under this Act, must not be transferred except with the prior written approval of the—

- (a) landowner;
- (b) iTaukei Land Trust Board; or
- (c) Land Use Unit; and
- (d) Conservator.

(2) The employment or sub-contracting by any licensee of any other parties to carry out any logging or related operations must be subject to the prior written approval of the Conservator.

(3) Any activities carried out on any land during the time for which a licence is in force in relation to that land is deemed to be carried out under the authority of the holder of the licence, unless the holder of the licence proves the contrary.

(4) Any person who contravenes this section commit an offence and shall be held liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years, or to both.

Power of the Conservator to suspend or revoke licences

26.—(1) The Conservator may, by written notice, suspend in whole or in part operations carried out under a licence issued under this Act where a breach of the terms or conditions of the licence has occurred or is likely to occur.

(2) The written notice must specify reasons for the suspension of those operations or part thereof and require the licensee to take all necessary measures to remedy or prevent the breach and allow a reasonable period of time for the licensee to take the required measures.

(3) Following such period of time set out under subsection (2), where the Conservator is not satisfied that the required measures have been taken, the Conservator may revoke or suspend the licence, provided that before any revocation or suspension, the Conservator allows the licensee an opportunity to be heard.

(4) A licensee aggrieved by the decision of the Conservator to suspend or revoke their licence may appeal in writing to the Minister within 28 days from the date the licence was revoked or suspended.

Enforcement of a licence

27.—(1) The licensee shall be liable for any damage caused by lack of compliance with any terms or conditions of a licence issued under this Act.

(2) Where it is alleged a licensee has whether by breach of a licence condition or otherwise caused any damage, an independent third party accepted by the landowners, the licensee and the Conservator must assess and value and damage and the aggrieved party may apply to the Court for relief.

(3) Any person who—

- (a) makes a material misrepresentation, omission or misstatement of fact in an application for a licence issued under this Part;
- (b) without lawful authority alters, obliterates, removes or defaces any stamp, mark, sign, licence or other document lawfully issued under the authority of this Act; or
- (c) counterfeits or issues any licence or document purporting to be a licence or document issued under the provisions of this Act,

commits an offence.

(4) Any person who upon being issued a licence under this Part fells or extracts any trees beyond a licenced area commits an offence and may be charged with theft under section 294 of the Crimes Decree 2009.

PART 5—FEES, ROYALTIES AND CUSTOMARY RIGHTS

Fees

28. The Department of Forests must, at the commencement of this Act review its fees every 5 years and may with the approval of the Minister increase or decrease such fees.

Royalties

29.—(1) Royalties relating to iTaukei land must be paid to—

- (a) the iTaukei Land Trust Board; or
- (b) Ministry of Lands, where the iTaukei land has been designated under the Land Use Decree 2010.

(2) The rate of royalty shall be determined by the Department of Forests and payment of royalties must be made in accordance with the class of logs scaled.

(3) The Department of Forests must review the rate of royalties every 5 years according to publicly available assessment standards, based on consultation with all stakeholders without affecting existing agreements, licences or contracts.

(4) Where any royalty or fee are due and payable in respect of any produce under a licence, the amount thereof shall be a first charge on it, and may be seized by the Conservator and may be retained by him or her subject to a duty to preserve them in good condition until such amount has been paid.

(5) If such amount is not paid within 7 days of such seizure, the Conservator may sell the said produce by public auction and proceeds of sale shall be directed toward the recovery of any expenses incurred in the seizure and sale.

(6) The surplus of a sale under subsection (5) shall, subject to notice having been given to the person entitled or his or her authorised representative, if not claimed within 2 months of the sale by the person entitled thereto, be forfeited to the State.

iTaukei customary rights

30.—(1) Subject to the terms and conditions of a licence by the Conservator under this Act or lease and the provisions of subsections (3), (4) and (5) nothing in this Act shall be deemed to prohibit or restrict on—

- (a) iTaukei reserve the exercise of any rights established by iTaukei custom to hunt, fish, or collect fruits, vegetables, wood and other plants and animals; or
- (b) alienated iTaukei land, with the consent of the lessee of such land, the cutting or removal in accordance with iTaukei custom of forest products which may be necessary for the purposes specified in paragraph (a).

(2) Fees or royalties shall not be payable by any iTaukei landowner in respect of any forest products cut or removed in accordance with subsection (1).

(3) The Minister may, by notice in the Gazette prohibit the felling or removal of timber of a class, description or dimension specified in such notice in any area of iTaukei land and for such a period of time as specified in the notice.

(4) Nothing in this section shall be deemed to authorise any person to set fire to grass or undergrowth.

(5) iTaukei landowners must not cut, fell or remove any plantation trees on plantation land upon which a licence has been issued by the Conservator in accordance with this Act.

(6) The Conservator must consider iTaukei customary land tenure when implementing requirements under international conventions and agreements.

PART 6—FOREST PROTECTION

Forest associations

31.—(1) Forest owners, stakeholders in the forestry industry and professional foresters may form an association for the purposes of representing their interests and lobbying for their issues.

(2) The Department of Forests must recognise the respective associations formed in accordance with subsection (1) and may recommend them to the Minister as representing their respective members.

Endorsement of forest management policies and certification

32.—(1) The Conservator must endorse and issue forest management policies to ensure sustainable forest management and the marketing of forest products in accordance with standards set by the Department of Forests for resource owners and forest users.

(2) The certification of timber according to national or international standards of forest management, chain of custody, and fair trade must remain voluntary.

(3) Certification must be done by independent third parties approved by the Conservator according to standards established and approved by the Department of Forests.

Forest carbon trading

33.—(1) Any person setting up or seeking to implement projects, programs and activities in the Fijian forest sector that involves the transfer of forest carbon property rights, under the Clean Development Mechanism, REDD or REDD+, shall be required to—

- (a) make an application in writing to the Conservator prior to the—
 - (i) implementation of the project, program or activities;
 - (ii) settlement of any contractual arrangements between buyers, sellers or brokers of carbon units; and
 - (iii) actual transfer of carbon property rights in a carbon market transaction; and
- (b) ensure compliance with the Fiji REDD+ Policy.

(2) The Conservator shall have the power to approve or revoke all applications made in relation to subsection (1).

(3) In granting approval for the implementation of a project or programme for Carbon Trading the Conservator must take into consideration guidelines, standards and procedures provided for under international agreements, conventions or treaties of which Fiji is a party.

(4) The licensing, generation, validation, verification and registration of Fiji forest carbon certificates, standards and procedures for project implementation and approval under REDD+ will be covered by way of regulations under this Act.

(5) Until the REDD+ Regulations mentioned under subsection (4) has come in force, all of Fiji's forest carbon projects under REDD+ must be dealt with by a Forestry Committee established under the Board.

Endangered and protected forest species

34. There shall be a Committee under the Board that must update and review, at least every 5 years, the list of forest species in the Endangered and Protected Species Act 2002 or any other related laws.

Forest health

35. Forest owners, forest users or any person operating or in charge of a forest plantation must protect forests against outbreaks of harmful organisms, as well as other harmful impacts.

Forest fires

36.—(1) Unless authorised by a licence issued under subsection (3), no person shall light or cause to be lit a fire in any forest including plantation forests which includes areas, which are prepared for forest plantations and trees that have not been planted.

(2) The Conservator may, where he finds that the hazard of forest fire warrants such action, declare any area a Fire Hazard Area by Notice in the Gazette for such time as the fire hazard persists.

(3) Upon application, the Conservator may issue a Fire Licence for any area where the lighting of fires is prohibited under subsection (1).

Appointment of fire rangers

37.—(1) The Permanent Secretary on the recommendation of the Conservator may appoint fire rangers with respect to specified forest reserves, nature reserves or fire hazard areas.

(2) A fire ranger may, subject to the written instructions of the Conservator, issue fire licences for the area in respect of which they have been appointed.

(3) All forest officers and police officers must be *ex officio* fire rangers and may exercise the powers under subsection (2) with respect to any forest area in Fiji.

Liability for damage caused by fire

38.—(1) Any person who lights a fire in contravention of section 36(1) commits an offence and shall be liable upon conviction for any damage caused by the fire, notwithstanding any efforts they may have made to prevent such damage.

(2) Where fire escapes from an area owned or occupied by any person, that person shall be liable for any damage caused by that fire unless they prove that neither they nor anyone under their employment lit the fire and that they took all possible measures to prevent such damage.

(3) Any person who is in the vicinity of and is aware of a fire which is causing damage or is likely to spread must assist to the best of their possibilities in extinguishing the fire.

(4) For the purpose of subsection (3) that person may enter upon any land where the fire may be or to which there is reason to believe the fire may spread and may do such things as are reasonably necessary to control or extinguish the fire.

(5) Any person who—

(a) unreasonably refuses to assist in extinguishing a fire in accordance with subsection (3); or

(b) lights a fire or attempts to light a fire without being licenced under section 36 to do so,

commits an offence.

PART 7—FOREST OFFICERS

Appointment of forest officers

39.—(1) The Permanent Secretary shall, on the recommendation of the Conservator appoint persons within the Department of Forests as Forest Officers for the purposes of ensuring the effective administration and enforcement of this Act.

(2) The Forest officers should possess knowledge, skills and experience appropriate to the positions to which they are appointed.

Power of inspection

40.—(1) Any forest officer or person appointed by the Conservator, or police officer, may without a warrant enter any land on which activities subject to a licence or other authorisation under this Act are being conducted, and any timber yard or sawmill, timber merchants, wood processing sites and inspect such activities and any forest products found in such places, where the officer has reasonable grounds to believe an offence is being committed or is about to be committed.

(2) Any biosecurity officer or forest officer, may enter sites harbouring potentially harmful organisms and materials, such as plant nurseries and plant breeding and distribution sites.

(3) Any officer, police officer or any person authorised in this behalf by the iTaukei Land Trust Board may—

- (a) where any person is engaged in an activity for which a licence or other authorisation is required under this Act, require the production of such licence or other authorisation by such person; and
- (b) stop and inspect any log carrier or other vehicle which is carrying any forest products or anything for which a transport document is required under this Act or which he reasonably suspects has been obtained in contravention of this Act.

(4) Any person who—

- (a) refuses to produce or make available for inspection by any forest officer a licence or other document required to be kept under this Act;
- (b) obstructs a forest officer from carrying out their inspection duties;
- (c) forges or fraudulently uses upon any forest product, any registered hammer mark or any mark used by any forest officer to indicate that such forest product may be removed or is the property of the State or of some other person; or
- (d) without proper authorisation wears any identification, uniform or part of a uniform or any badge or other mark issued by the Department of Forests,

commits an offence.

Power of arrest

41.—(1) Any police officer may upon the notification of a forest officer and without warrant arrest any person who he or she reasonably suspects has committed an offence against this Act.

(2) Any police officer making an arrest under this section must, without unnecessary delay, take or send the person arrested to the police officer in charge of the nearest police station.

Power of seizure

42.—(1) Any forest officer or police officer, may upon the approval of the Minister and without a warrant seize and hand-over to the Conservator any —

- (a) forest products or any peat, rock, sand, shells and soil other than minerals as defined in the Mining Act (Cap. 146), in respect of which there is reason to believe that an offence has been committed against this Act, together with any objects or livestock used in the commission of such offence; and
- (b) any forest products encountered on such inspections which do not comply in quality with prescribed standards; or
- (c) livestock found trespassing or found without any person in charge of them in any forest reserve or nature reserve.

(2) Any biosecurity officer or forest officer may confiscate, in any site, plants and trees deemed harmful to forests.

Non-liability of forest officers

43. A forest officer shall not be held responsible or held liable for any loss or damage which may occur in respect of anything detained for the purposes of this Act unless he causes the same maliciously or fraudulently or by negligence.

Seized property and abandoned timber

44.—(1) Any items seized under section 42 and any timber which appears to have been abandoned, must be taken possession of by the Conservator.

(2) The Conservator must make such enquiry as appears reasonable in the circumstances and either release the items referred to under subsection (1) to any claimant whom he or she has established to be the owner of such items or establish that the property of such items shall vest in the State free from all encumbrances.

(3) If such product seized is perishable, the costs for storage to prevent deterioration of the said product must be borne by the owner of the licence.

(4) If the licence owner refuses or otherwise fails to bear the storage costs of the seized products, the Conservator must authorise in writing the immediate sale or disposal in any other way of any of the objects referred to in subsection (1) which are perishable.

(5) If any of the items referred to in subsection (1) is claimed by more than one person, the Conservator may refer the claimants to the relevant competent court.

(6) Any person aggrieved by any decision of the Conservator under this section may, within 28 days after such decision, appeal to the Minister in writing.

(7) No person shall be entitled to recover possession of any object seized under the provisions of this section until the amount of any expenses incurred in collecting, moving, storing and disposing of the said objects has been paid to the Conservator.

(8) Any of the functions under this section, if not exercised directly by the Conservator, may with the written approval of the Conservator, be exercised by the deputy conservator, principal forestry officer, senior forestry officer, forestry officer, or any other persons approved by the Conservator.

PART 8—OFFENCES AND PENALTIES

Offences and penalties

45. Any person found guilty of an offence against this Act for which a penalty is not specified shall be liable upon conviction to a fine not less than \$10,000 or to a term of imprisonment not less than 2 years, or to both.

Liability of body corporate and directors

46. Where a body corporate commits an offence under this Act, the director, employee or agent of the body corporate who directed, authorised, assented to, acquiesced in or participated in the commissioning of the offence also commits the offence, and shall be liable upon conviction to a fine not exceeding \$20,000.

Evidence

47.—(1) In the prosecution for an offence under this Act it is sufficient proof of the offence against a person to establish that the offence was committed by an employee or agent of that person, whether or not the employee or agent is identified or prosecuted for the offence.

(2) A suitably qualified person authorised by the Permanent Secretary may issue a certificate stating that he or she has analysed or examined the matter, substance or product and stating the result of the analysis or examination is evidence admissible in Court for the offence described in the certificate and of the correctness of the result of the analysis or examination.

(3) No certificate of a person authorised under subsection (2) is to be received in evidence unless the party intending to produce it has given to the party against whom it is intended by a Court to be produced reasonable notice of the intention together with a copy of the certificate.

(4) Where any person is convicted by a Court of an offence against this Act whereby any forest product, forest ecosystem, or watershed has been damaged or injured or taken, the court may in addition to any other penalty, order such person to pay to the owner of such forest product, forest ecosystem, or watershed, compensation not exceeding the commercial value thereof.

(5) The commercial value of such product, forest ecosystem, or watershed must be determined by independent third parties.

Forfeiture of property used in commission of forest offence

48. Where any person is convicted of an offence against this Act, the court may, in addition to any other penalty, order that all forest products and other things in respect of which such offence has been committed, and all tools, machinery, equipment, boats, trucks, helicopters, conveyances and livestock used in the commission of such offence be forfeited to the State.

Onus of proof for livestock

49. Any livestock found on any land shall be deemed to be there under the authority of the owner thereof, unless the owner proves the contrary.

PART 9—MISCELLANEOUS

Regulations

50.—(1) The Minister may make regulations to give effect to the provisions of this Act and such regulations may—

- (a) provide for the appointment of licensing officers;
- (b) regulate the manner in which licences may be issued, the terms and conditions of licences, and restrict or prohibit the issue of such licences in respect of classes or species of forest products, or in respect of specified areas, or, on land within forest reserves in respect of peat, rock, sand, shells and soil other than minerals as defined in the Mining Act (Cap. 146);
- (c) control any activity involving forest land, forest resources and forest products;
- (d) prescribe standards for forest management including the Fiji Forest Harvesting Code of Practice;
- (e) prescribe—
 - (i) royalties due on products cut or collected under licence on State land or on iTaukei land in forest reserves; and
 - (ii) the fees and any other charges due to the State on products cut or collected under a licence on any land;
- (f) provide for the remission or exemption from payment, in whole or in part, of any fees, royalties or other charges due to the State;
- (g) prohibit any dealings in specified kinds of forest products;
- (h) prescribe the route by which forest products may be exported from or moved within Fiji;
- (i) provide for the issue of passes for the removal of forest products and other products whose taking is prohibited under this Act except if authorised by a licence issued under this Act, for the establishment of checking stations and for the stoppage, reporting, examination and marking of such produce;

- (j) regulate the use of marks for timber and of marking hammers;
- (k) prescribe forms to be used under regulations made under this Act;
- (l) control the entry of persons into any forest reserve or nature reserve;
- (m) regulate the floating of timber or other forest products and the storing of timber or forest products on river banks;
- (n) require holders of licences to maintain and render returns and accounts;
- (o) regulate the seasoning, treatment, grading and storage of forest products;
- (p) provide for the registration and licensing of wood processing mills; and
- (q) provide for any other matters related to ensuring the effective enforcement of this Act.

(2) The Minister may, by notice in the Gazette specify the botanical equivalents of any English, iTaukei or other vernacular names used to denote any tree or forest product.

General provisions on prior consent

51. A licence under this Act must only be issued with the prior consent of the—

- (a) iTaukei Land Trust Board, for a licence relating to iTaukei land which is part of a forest reserve, if no provisions for royalties are made or royalties are envisaged at a rate lower than the prescribed rate;
- (b) Director of Lands, for a licence relating to State land other than State land in a forest reserve;
- (c) iTaukei Land Trust Board, for a licence relating to iTaukei land other than iTaukei land in a forest reserve;
- (d) iTaukei Land Trust Board and the lessee of such land, for a licence to fell or extract timber on alienated iTaukei land;
- (e) Director of Lands and the lessee of such land, for a licence to fell or extract timber on alienated State land; or
- (f) owner, for a licence relating to alienated land not being State land nor iTaukei land.

Transitional arrangements

52.—(1) Any other entitlements, issuance of licences, and rights acquired under the Forest Decree 1992 shall remain valid under this Act until their expiry, suspension or revocation in accordance with section 26.

(2) All subsidiary laws lawfully made under the provisions of the Forest Decree 1992 prior to the commencement of this Act shall continue to have effect but may be amended or revoked by regulations made under this Act.

Mahogany Industry Development Decree 2010

53. This Act shall not apply to any land that is mahogany plantation land or forest products stemming from those plantations for the purposes of the Mahogany Industry Development Decree 2010.

Repeal

54. The Forest Decree 1992 is repealed.

FOREST BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Forest Bill 2016 (**'Bill'**) is a result of the review of the Forest Decree 1992 (**'Decree'**) which was endorsed by Government and was conducted with the technical assistance provided by the German International Funding Agency and the continuous effort of the Department of Forests.
- 1.2 This Bill provides for the management, development and sustainable use of Fiji's forest resources. This Bill will also enable the full implementation of the Fiji Forest Policy of 2007 (**'Policy'**).
- 1.3 This Policy embraces the sustainable management and utilisation of forest resources whilst the preservation of the environment is maintained and its related services for the present and future generations it supports.
- 1.4 However, the Decree does not sufficiently cover or provide for measures which are based on sustainable forest management. The Decree does not refer to all aspects of sustainable forest management, and parts of it are inconsistent with recent developments in policy and administration of the forest sector.
- 1.5 Therefore, this Bill endeavours to further harmonise the current Policy with the legal regime of forestry and also other more recent relevant land use policies and environmental legislation such as the Environment Management Act 2005.
- 1.6 This Bill is a more encompassing legislation for the forestry sector and endeavours to resolve the deficiencies within the Decree relating to forest management, licensing and harvesting.

2.0 CLAUSES

2.1 The Bill consists of 9 Parts which are as follows—

- (i) Part 1 of the Bill includes the citation, short title, interpretation provision and the objectives of the Bill.
- (ii) Part 2 of the Bill contains provisions pertaining to the clear articulation of the objectives of the Bill, the roles of the Conservator of Forests, the functions of the Department of Forests, the establishment of the Forestry Board (**'Board'**) and the administration and meetings of the Board.
- (iii) Part 3 of the Bill aligns all programs and activities of the forest sector to the recent developments reflected in the Policy. This Part also mandates the Department of Forests to classify forests based on their forest functions and the opportunity to undertake forest inventories and assessment.
- (iv) Part 4 of the Bill confers new provisions which are consistent with the Policy and provides for other licences such as import and export licences, forest management licences, wood processing mills licences and the relevant provisions for the enforcement of these licenses. Given that the licensing provision in the current Decree has been limiting the work of the Department to only the issuance of the forest annual harvesting licence.

In order to maintain and update production statistics from all forest areas. This Part allows the Department of Forests to measure all logs extracted from native and plantation forests for commercial purposes at the processing plant, by people trained and licensed by the Department.

- (v) Part 5 of the Bill provides for the payment of fees and royalties stemming from forest felling and timber extraction.

This Part also provides for the rights of resources owners and members of the community living around plantation forests to use forest resources for daily sustenance.

- (vi) Part 6 of the Bill allows for the establishment of stakeholders' associations and development and establishment of adequate regulatory framework to regulate and facilitate greater engagement of different partners in the development of the forest sector.

This Part also provides for forest certification and forest carbon trading where all applications for certification and for the implementing of projects and activities that involve the transfer of carbon property rights will have to be made through the Conservator of Forests.

This Part provides for the establishment of a committee under the Board that looks after the reviewing of the list of forest species under the Endangered and Protected Species Act 2002.

This provision ensures that all forest owners, users and operators understand their responsibilities in protecting the forest from outbreaks, pests, fires, etc.

- (vii) Part 7 of the Bill allows for the appointment of officers within the Department of Forests to act as law enforcement officers and ensure that the Bill is implemented accordingly.
- (viii) Part 8 of the Bill provides for offences and penalties under the Bill. If a company commits an offence then the Directors, employees of the Company or their Agent will be held liable.

For the purposes of providing evidence in Court this Part allows a suitably qualified person authorised by the Permanent Secretary to issue a certificate stating that he or she has analysed or examined the matter, substance or product and stating the result of the analysis or examination is evidence admissible in Court for the offence described in the certificate and of the correctness of the result of the analysis or examination; and

- (ix) Part 9 of the Bill provides for the miscellaneous provisions and for transitional provision which allow for the smooth transition from the old Decree to the new Bill.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for forests.

A. SAYED-KHAIYUM
Attorney-General