



Environmental
Defenders Office

**Submission in response to the draft Forestry
(Miscellaneous Amendments) Bill 2023**

10 July 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record of achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

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Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law. In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft Forestry (Miscellaneous Amendments) Bill 2023 (the **Bill**).

While many of the proposed amendments to the *Forest Practices Act 1985* (the **Act**) in the Bill are uncontroversial, EDO is particularly concerned by the proposal to diminish the already limited opportunities for the community to be notified about, object to or appeal against boundary extensions to existing private timber reserves.

This short submission outlines why EDO **recommends** that those changes set out in clauses 5, 6, 7 and 8 of the Bill not proceed.

What changes are proposed to limit public notification and objections to private timber reserve extensions?

Currently, if a person wishes to amend the boundaries of an existing private timber reserve, those changes must proceed through the Act's same process for making, assessing and approving an application for a private timber reserve. This includes the public notification of the application and an opportunity for "prescribed persons" (defined as local or State authorities, a person who has a legal or equitable interest in the land or the timber to be harvested on the land, adjoining landowners or those landowners within 100 m of the proposed reserve)¹ to object before the Forest Practices Authority's determination on whether to approve or refuse the application.

The Bill proposes to amend the Act to allow the operators of existing private timber reserves to extend their boundaries by no more than 10 per cent in area (to a maximum of 50 additional hectares and providing the boundary is not within 50 metres of neighbouring land) without completing the public notification or objections phases under the Act. These extensions are referred to as "minor boundary extensions" under the Bill.

Changes in Bill are inconsistent with the United Nations' recognition of a human right to a healthy environment.

Last year, the United Nations recognised that access to a safe and healthy environment is a human right. Australia voted in favour of this resolution.

EDO has released a report *A Healthy Environment is a Human Right*² which calls for Australian Commonwealth, state and territory governments to provide for and act consistently with the right to a healthy environment when exercising their functions under legislation that affects the environment and human health.³ While lutruwita/Tasmania is yet to implement the Tasmanian Law Reform Institute's recommendation to legislate a Charter of Human Rights,⁴ its environmental and resource management laws (including the Act) can play an important role in recognising and giving effect to the human right to a healthy environment.⁵

¹ *Forest Practices Act 1985*, Section 7(4).

² EDO, [A Healthy Environment is a Human Right](#) (Report, August 2022).

³ See recommendations 1- 4 in EDO, [A Healthy Environment is a Human Right](#) (Report, August 2022).

⁴ Tasmanian Law Reform Institute (2007) [A Charter of Rights for Tasmania](#).

⁵ EDO explores the concept of environmental justice, and the importance of applying an environmental justice framework to environmental protection in [Implementing effective independent Environmental](#)

One of the critical mechanisms to help secure a human right to a healthy environment is to give people the opportunity to participate in government decision-making related to the environment and ensure the views of the public are into account in the decision-making process.⁶

Given the extremely limited opportunities for the public to participate in decisions around forestry in private timber reserves, EDO is concerned that the amendments proposed in the Bill would further reduce the opportunities for the narrow group of “prescribed persons” to make objections to proposed boundary extensions. This is particularly concerning given forestry in these reserves could have significant environmental impacts, including adverse impacts on water quality and the loss of biodiversity.

Rather than seeking to even further limit public participation in decisions around private timber reserves, the Bill should be seeking to broaden the scope for public comment and appeal rights relating to the approval of private timber reserves. This would include, for example:

- the removal of the limitation for objections to private timber reserves to be made by only “prescribed persons”;
- the revocation of subsection 7(2)(ab) of the Act which severely limits the grounds for objections for neighbouring landholders; and
- the revocation of subsection 8(2A) of the Act, such that other land use planning laws can effectively prohibit forestry on certain land.

These amendments to the Act would be consistent with the human right to a healthy environment by ensuring the public can actively participate in decisions affecting the environment.

EDO **recommends** that those changes to the Act set out in clauses 5, 6, 7 and 8 of the Bill not proceed.

EDO **recommends** that the Bill amend the Act such that objections to private timber reserves can be made by any member of the public and not only “prescribed persons”.

EDO **recommends** that the Bill revoke subsections 7(2)(ab), and 8(2A) of the Act.

There is inadequate justification for the proposed amendments to the Act.

EDO is not convinced there is a need for the proposed amendments to the Act to remove the opportunity for objections and appeals for so-called “minor boundary extensions” for private timber reserves.

While Private Forests Tasmania says the proposed amendments would improve efficiency and reduce the application processing time or “minor boundary extensions” while having minimal

[Protection Agencies in Australia: Best practice environmental governance for environmental justice](#) (Report, January 2022).

⁶ Refer to Framework Principal 9 in the United Nations’ Framework Principles on Human Rights and the Environment (2018) accessible at <https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018>

impact on the rights and amenity of neighbours, the data and information provided by Private Forests Tasmania does not support this contention.⁷

Private Forests Tasmania’s explanatory factsheet states that since 2010 there have been 164 applications for new private timber reserves and objections have been raised on only 5 occasions; none of which were for applications that fitted the “minor boundary extension” definition in the proposed changes.

In EDO’s view, one of the likely explanations as to why so few objections have been lodged to extensions of private timber reserves is that the Act effectively limits adjacent landholders’ objections to establishing that they would be “directly and materially disadvantaged if the application was granted”,⁸ and otherwise prevents general members of the public from objecting to applications for private timber reserves.⁹

Furthermore, the data presented by Private Forests Tasmania in support of the changes in the Bill also does not address the possibility that the mere existence of objection and appeal rights (limited though they may be) may have resulted in more reasonable applications for private timber reserve extensions, such that there was a reduced need for objections to be made or appeals to be lodged.

Finally, the fact that there have, to date, been so few objections to private timber reserve extensions indicates there are likely to be very limited efficiencies for proponents under the proposed new “minor boundary extension” process in the Bill. This is because there have been no instances where proponents seeking to extend their private timber reserve boundaries within the definition of “minor boundary extension” in this Bill have had their proposal held up by objections through an appeal process.

Overall, EDO considers that the justification for the amendments set out in clauses 5, 6, 7 and 8 of the Bill is inadequate, and therefore repeats its **recommendation** those changes not proceed.

However, if Private Forests Tasmania still intends to proceed with some form of restrictions on public notice and objections through the Bill, EDO **strongly recommends** there be a limit on the number of occasions that a person can make a “minor boundary extension” for a private timber reserve so that these provisions are not used multiple times by a proponent to evade objections and appeals for what may be cumulatively, much larger, private timber reserve extensions.

Furthermore, to ensure the biodiversity and amenity impacts resulting from the changes in the Bill are limited, the maximum size under the definition of “minor boundary extension” should be reduced from 50 hectares to 10 hectares, and the minimum distance from adjacent landholders increased from 50 metres to 200 metres.

⁷ Refer to Private forests Tasmania, Explanatory Fact Sheet Forestry (Miscellaneous Amendments) Bill 2023, accessible here: <https://pft.tas.gov.au/volumes/documents/News/FMA-Bill-Explanatory-Fact-Sheet.pdf>

⁸ *Forest Practices Act 1985*, s 8(2)(f).

⁹ *Forest Practices Act 1985*, s 7(4) – definition of “prescribed person”.

EDO repeats its **recommendation** that those changes to the Act set out in clauses 5, 6, 7 and 8 of the Bill not proceed.

Alternatively, EDO **recommends** that the definition of “minor boundary extension” in the Bill be amended so that:

- (a) a person can only make an application for a “minor boundary extension” for a particular private timber reserve once; and
- (b) the maximum size for a “minor boundary extension” is 10 per cent of the private timber reserve area (up to a maximum of 10 hectares), and the minimum distance from neighbouring properties is increased to 200 metres.