

IN THE FEDERAL COURT OF AUSTRALIA)
VICTORIA DISTRICT REGISTRY)

No. VID of 2010

IN THE MATTER OF FEA PLANTATIONS LTD (ACN 055 969 429)
(administrators appointed) and FOREST ENTERPRISES AUSTRALIA LTD
(ACN 009 553 548) (administrators appointed) (receivers and managers appointed)

Between

BRIAN RAYMOND SILVIA, PETER PAUL
KREJCI and MATHEW CAMPBELL
MULDOON in their capacity as administrators
of FEA PLANTATIONS LTD
(ACN 055 969 429) (administrators appointed)
and FOREST ENTERPRISES AUSTRALIA
LTD (ACN 009 553 548) (administrators
appointed) (receivers and managers
appointed)

First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429)
(administrators appointed)

Second Plaintiff

FOREST ENTERPRISES AUSTRALIA LTD
(ACN 009 553 548) (administrators appointed)
(receivers and managers appointed)

Third Plaintiff

AFFIDAVIT

On 12 May 2010, I, PETER PAUL KREJCI, of 1 Castlereagh Sydney in the State of New
South Wales, Chartered Accountant, make oath and say as follows:

1 I am one of the joint and several Administrators of the second plaintiff, FEA
Plantations Ltd (ACN 055 969 429) (administrators appointed) (FEAP), and the

Filed on behalf of the plaintiffs by:

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third plaintiff, Forest Enterprises Australia Ltd (ACN 009 553 548) (administrators appointed) (receivers and managers appointed) (FEA).

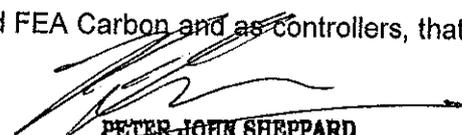
2 I have been a registered liquidator since 2002 and have over 14 years insolvency experience. Mr Silvia has had over 40 years insolvency experience including substantial experience dealing with managed investment schemes.

3 I am authorised to make this affidavit on behalf of my fellow Administrators, Brian Raymond Silvia (**Mr Silvia**) and Mathew Campbell Muldoon (**Mr Muldoon**). In this affidavit, where I refer to 'the Administrators', I mean Mr Silvia, Mr Muldoon and me.

4 I make this affidavit from my own knowledge and from information that I believe to be true. Where I make this affidavit from information I have obtained that information from the Administrators' and their staff or from my own investigations and believe that information to be true.

5 The Administrators were appointed administrators of FEAP, its holding company, FEA, and two other subsidiaries of FEA, namely, Tasmanian Plantation Pty Ltd (ACN 009 560 463) (administrators appointed) (controllers appointed) (TP) and FEA Carbon Pty Ltd (ACN 009 505 195) (administrators appointed) (receivers and managers appointed) (**FEA Carbon**), by resolution of the directors of each of those companies on 14 April 2010.

6 Immediately following the appointment of the Administrators to those four companies, ANZ Fiduciary Services Pty Ltd (ACN 100 709 493) (**ANZ Fiduciary**), in its capacity as security trustee for Australia and New Zealand Banking Group Limited (ACN 005 357 522) (**ANZ**) and Commonwealth Bank of Australia (ACN 123 123 124) (**CBA**), appointed Timothy Bryce Norman and Salvatore Algeri of Deloitte Touche Tohmatsu to act as receivers and managers of property of FEA and FEA Carbon and as controllers, that is agents for the mortgagee in possession,


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12.v.2010



of property of TP. Annexed hereto and marked with the letters PPK-1 to PPK-4 are:

- (a) PPK-1, an Australian Securities and Investments Commission (ASIC) extract search in respect of FEAP;
- (b) PPK-2, an ASIC extract search in respect of FEA;
- (c) PPK-3, a copy of the resolution of the board of directors of each of FEA and FEAP by which the Administrators were appointed; and
- (d) PPK-4, a copy of a letter from Maddocks, the lawyers for ANZ Fiduciary, to the Administrators, dated 21 April 2010, enclosing notices of:
 - (i) the appointment of receivers to property of FEA and FEA Carbon; and
 - (ii) the appointment of controllers to property of TP.

7 ANZ Fiduciary has not appointed receivers or controllers to FEAP. However, the Administrators have given their consent to the appointment of receivers or controllers to FEAP, notwithstanding that the time for doing so has expired.

8 The first meetings of creditors of each of FEA, FEAP, TP and FEA Carbon were held in Launceston, Tasmania on 27 April 2010. Annexed hereto and marked with the letters PPK-5 is a copy of the Administrators' first report circulated to creditors of those companies in advance of those meetings.

9 At each of those meetings, resolutions were moved by a proxy for ANZ and CBA to remove the Administrators from office as Administrators and to appoint Mark Mentha and Mark Korda of Korda Mentha as administrators in lieu of the Administrators. At the meetings of each of FEA and FEAP, those resolutions were not passed. However, resolutions to that effect were passed at meetings of


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12.11.2010



creditors of each of TP and FEA Carbon. Annexed hereto and marked with the letters PPK-6 are true copies of the minutes of each of those four meetings of creditors.

- 10 FEA is listed on the Australian Stock Exchange. FEA and its subsidiaries are engaged in the businesses of owning timber plantations and operating a sawmill located at Bell Bay in Tasmania.
- 11 At the time of the appointment of the Administrators, there were approximately 200 employees of FEA. FEAP has no employees. In March 2009, FEAP entered into a Head Management Agreement with FEA, whereby it sub-contracted to FEA its obligations as the responsible entity in respect of a number of managed investment schemes. Annexed hereto and marked with the letters 'PPK-7' is a true copy of that Head Management Agreement. FEAP relied wholly upon FEA to undertake the work required of the responsible entity of the relevant managed investment schemes, pursuant to that agreement.
- 12 Subsequent to the appointment of receivers and managers to FEA, Maddocks, solicitors for the receivers and managers, gave notice to FEAP of the termination of that agreement. Annexed hereto and marked with the letters 'PPK-8' is a copy of that Notice of Termination.
- 13 In addition, Maddocks, who act also as solicitors for ANZ, CBA and ANZ Fiduciary, have given notice to FEAP that to the extent to which assets charged by FEAP were subject only to a floating charge in favour of ANZ Fiduciary, that charge is now fixed. Annexed hereto and marked with the letters 'PPK-9' is a copy of that notice dated 12 April 2010.


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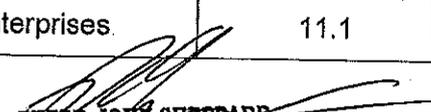
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Extension of time for convening meeting of creditors under s 439A of the Act

- 14 FEAP is the responsible entity for 17 managed investment schemes (the **Schemes**) in which approximately 13,000 investors (**growers**) participate in the growing of timber.
- 15 The first scheme commenced in 1993 and in each subsequent year, up until 2009, there has been an additional scheme. Each scheme is therefore currently at a different stage of development.

Fund Name	Funds Raised (\$ M)	Hectares	No of Lease Holders
Tasmanian Forests Trust No 1	0.1	44	Completed
Tasmanian Forests Trust No 1	0.5	166	2
Tasmanian Forests Trust No 3	0.7	188	4
Tasmanian Forests Trust No 4	0.8	201	5
Tasmanian Forests Trust No 5	1.3	369	10
Tasmanian Forests Trust No 6	4.1	948	20
Tasmanian Forests Trust No 7	50.8	10,831	224
Tasmanian Forests Project 2000	9.2	1,993	33
Australian Forests Projects 2001	7.0	1,308	32
Australian Forests Projects 2002	1.8	406	23
Forest Enterprises	11.1	2,053	70

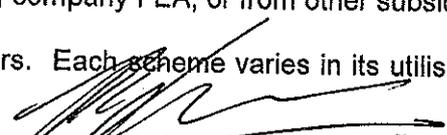

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12.11.2010



Project 2003			
FEA Plantations 2004	26.2	4,374	57
FEA Plantations 2005	54.2	9,026	96
FEA Plantations 2006	67.3	10,686	104
FEA Plantations 2007	57.9	9,196	76
FEA Plantations 2008	108.2	18,011	174
FEA Plantations 2009	15.8	2,250	Unknown
TOTAL	417.0	72,050	930

- 16 Each of the Schemes is a forestry scheme whereby growers entered into leases with FEAP of particular wood lots and entered into management agreements with FEAP whereby the latter agreed to manage, for a fee, the plantations on behalf of the growers.
- 17 Financial arrangements between FEAP and growers varied over time. Schemes for the years 1993 to 2002 were based on growers being charged annually in arrears for forestry maintenance in respect of their investments. Later schemes were principally based on investors not being required to contribute to annual forestry maintenance and lease costs because FEAP accepted responsibility for financing such costs, but became entitled to a share of the proceeds of the subsequent sale of timber grown. FEAP is entitled to levy a range of specific charges in respect of activities undertaken for each of the projects. Specifically, for example, growers who secured finance for their investment through FEA were required to maintain forestry insurance payable annually in advance.
- 18 The land that is leased by FEAP to investors is sub-leased by FEAP from its holding company FEA, or from other subsidiaries of FEA, or directly from third party investors. Each scheme varies in its utilisation of FEA owned land and third party


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19. v. 4-010



owned land. Annexed hereto and marked with the letters 'PPK-10' and 'PPK-11' are copies of lease agreements between FEAP and other entities in the 'FEA Group' and with an external landlord, Australind Investors Pty Ltd, respectively.

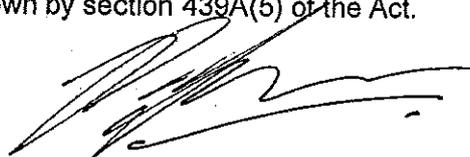
19 Annexed hereto, by way of example, are documents in respect of the 2008 scheme, namely:

- (a) PPK-12 Constitution;
- (b) PPK-13 Product Disclosure Statement;
- (c) PPK-14 Proforma Management Agreement between FEAP and an individual grower; and
- (d) PPK-15 Proforma Forestry Rights Deed between FEAP and an individual grower.

20 Land leased by FEAP to growers is variously located in Tasmania, New South Wales, Queensland and the Northern Territory. Each scheme appears to utilise a mixture of FEA owned and third party owned land.

21 Individual growers, apart from the scheme documentation, also have Forestry Rights under legislation applicable in each of Tasmania, New South Wales, Queensland and the Northern Territory.

22 On 30 April 2010, his Honour Justice Finkelstein made orders, *inter alia*, extending to 31 May 2010 the time within which the Administrators of FEAP may give to relevant lessors notice(s) of the kind specified in section 443B(3) of the Act. The Administrators do not anticipate being in a position to determine whether to give any such notice prior to 31 May 2010, which is beyond the convening period set down by section 439A(5) of the Act.



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12.11.2010



23 Due to the complexity of the Schemes and the financial arrangements of FEAP and FEA, the uncertain status of the leases of the land leased by FEAP, and the matters which gave rise to the application to and orders made by the Court referred to in paragraph 21 above, the Administrators have been unable to complete the enquiries and examinations necessary to form an opinion about the matters listed in section 439A(4)(b) of the Act, provide the report required under section 439A(4)(a) of the Act and, if appropriate, a statement required under section 439A(4)(c) of the Act. The Administrators do not anticipate being in a position to do so by the expiration of the time allowed under sections 439A(2) and (5) of the Act. Based upon my experience as a company administrator, and my present knowledge of the affairs of FEAP and FEA, I do not anticipate that the Administrators will be in a position to fulfil those obligations properly, consistently with the objects of Part 5.3A of the Act set out in section 435A, until in or about September 2010.

24 Matters which are preventing the Administrators sending out notices of the second meetings of creditors, and the requisite section 439A report and statements, are as follows:

(a) The Administrators' staff are reviewing cash flows and business plans for each of the MIS Schemes. Prior to the appointment of the Administrators officers of FEA and FEAP had, with the assistance of PriceWaterhouseCoopers, been preparing a proposal for a reconstruction of the various Schemes. That work was incomplete at the time of our appointment, but was nonetheless well advanced. We have sought to complete the work but it requires work by external consultants. It is not complete and will require time to complete.

(b) For the Administrators to form a view on recommendations to be put to creditors, completion of the review and analysis is critical. In the time


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12.v.2010

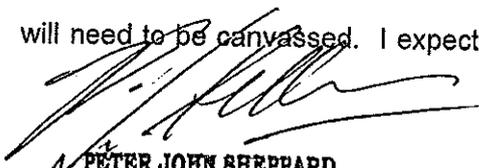


since our appointment as the Administrators we have not been able to complete that review and analysis to a level that enables meaningful recommendations to be made to creditors as to the approach to be adopted.

- (c) There are some 13,000 investors or growers who have participated in the 17 separate schemes. The number of growers and the size of the plantations in each scheme vary. A number of growers are participating in more than one Scheme. As the trees in each Scheme are at different stages of development and maturity, the impact of a reconstruction varies from scheme to scheme. Furthermore, land occupied by FEAP as responsible entity may be either sub-leased from FEA which in turn leases it from other FEA owned entities or directly from independent third parties. Our investigations to date suggest that there is something in the order of 300 separate leases from external landlords. In some cases, it appears that different schemes occupy land under the same external leases.
- (d) The Administrators understand that each State or Territory in which the Schemes occupy land is subject to a different statutory forestry regime. These differing statutory regimes may be expected to have varying impacts on the schemes and growers' interests in them. As yet, the Administrators have been unable to assess the effects of the different legislative regimes (if any) on the Schemes and growers' interests in them.
- (e) The commercial structure in place at the time of our appointment involved both FEA and FEAP having an intertwined responsibility for the various Schemes. Although FEA terminated its rights under the head

management agreement, it remains 'custodian'. This is despite the custodian agreement also terminating. The receivers and managers of FEA have asserted rights, under various charges, to retain possession or control of records of FEA, FEAP and the Schemes.

- (f) At the time of making this my affidavit, the directors of each of FEA and FEAP have not completed any reports as to the affairs of either company.
- (g) Because the receivers and managers appointed to FEA by ANZ Fiduciary have effective control of FEA and are, in effect, controlling FEA as if it were still custodian of Scheme property, it has proved and is proving difficult to obtain company information, especially that which is necessary to distinguish between assets of the Schemes and assets of FEAP itself.
- (h) After our appointment, the Receivers & Managers gave us access to a data room. We did not get access immediately, but have become aware that this data room does not contain all relevant documents. For example, not all external leases are available.
- (i) ANZ Fiduciary, ANZ and CBA have, through the receivers and managers, Mr Norman and Mr Algeri, expressed an interest in seeking to realise immediately the assets of FEA and FEAP. However, because of the complexity of the arrangements between FEAP, FEA the growers and third party landlords, the Administrators are presently unable to form a view as to whether a sale is in the interests of all creditors of FEA and FEAP including growers. To ascertain the views of growers, there will need to be convened meetings parties interested in the Schemes at which the potential benefits of either winding up or restructuring the Schemes will need to be canvassed. I expect that process to take about 3 months


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12.1.2010

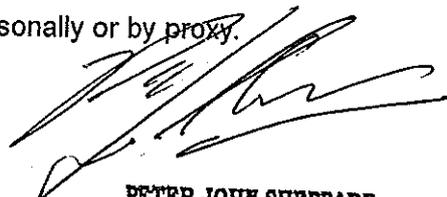


from the date of making this my affidavit. Because of the variations within the Schemes, as to the terms of the Schemes, the ages of the relevant plantations and the differing tenancy structures, there may well be variations in the recommendations to be made in respect of different schemes.

- (j) The Administrators have been approached by a number of parties who have expressed interest in participating in a restructuring of the Schemes or in purchasing assets used in the Schemes - both of which may produce, for the general body of creditors, better outcomes than an immediate sale of the kind suggested by the secured creditors' representatives.
- (k) Meetings of the committees of creditors of each of FEA and FEAP were held by telephone on 11 May 2010. At those meetings the proposal of the Administrators to seek a four (4) month extension was approved by members other than representatives of ANZ and CBA who suggested a one (1) month extension. Annexed hereto and marked with the letters PPK-16 is a copy of the minutes of that meeting.

Sending notices to creditors by electronic means

- 25 The Administrators sent notices of the first meetings of creditors of FEA and its subsidiaries to approximately 13,400 creditors. The cost of sending those notices was approximately \$60,000 of which the vast majority was attributable to FEA and FEAP. There are very few creditors of the other two entities (FEA Carbon and TP).
- 26 Almost 3,000 creditors attended the first meeting of creditors of FEA, either personally or by proxy.



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27 Almost 3,000 creditors attended the first meeting of creditors of FEAP, either personally or by proxy.

28 A summary of those who attended the first meetings of creditors of FEA and FEAP is as follows:

ATTENDEES	FEAP	FEA
Secured	2	2
Unsecured	15	249
Employees	-	202
Investors	2,889	2,631
Observers	1	1
TOTAL ATTENDEES	2,907	3,085

29 The Administrators anticipate sending notices of the second creditors meeting to more than 13,000 creditors of FEA and FEAP.

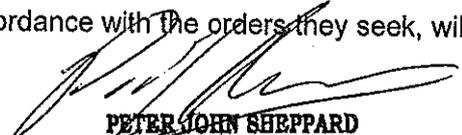
30 To date, one creditor has requested that the Administrators communicate with him by electronic means.

31 The Administrators hold a personal electronic address for almost all creditors who are investors.

32 The Administrators do not hold personal electronic addresses for most of the remaining creditors but they are small in number.

33 At the first meeting of creditors of FEA and FEAP, Mr Silvia as chairman of the meeting, foreshadowed that an application would be made to the court for directions in relation to the notice of meeting being sent electronically.

34 The Administrators consider that permitting notice of second creditors' meetings, and other materials, to be given to creditors by electronic means, and otherwise in accordance with the orders they seek, will save substantial cost and expense.


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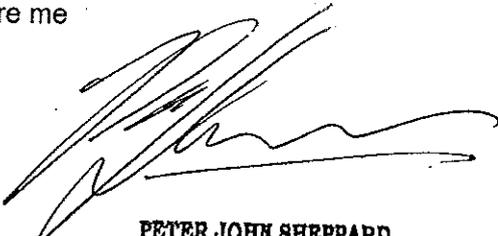
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35 The Administrators seek the orders set forth in the originating process that is to be filed together with this affidavit.

SWORN at Sydney *Hand 12th day of May, 2010*

Before me



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