

# Chapter 2

## The legislation

### Background

2.1 The bills are the result of an initiative by the Australian forest and wood products industry. In late 2002, the Forest and Wood Products Council established a Steering Committee to consider the options available to address the challenges faced by the forest and wood products industry. As a result, the Steering Committee released a report proposing the creation of a new company to deliver not only research and development but also marketing and promotion services for the industry.<sup>1</sup>

2.2 The current body, Forest and Wood Products Research and Development Corporation (FWPRDC), is a Commonwealth statutory authority established under the *Primary Industries and Energy Research and Development Act 1989*. Under this legislation the FWPRDC provides research and development services, but cannot undertake marketing and promotion activities.<sup>2</sup>

2.3 Industry largely approved the Steering Committee proposal through a ballot held between March and April 2006. Consequently, the four major industry associations, Australian Plantation Products and Paper Industry Council (A3P), Australian Forest Growers (AFG), Australian Timber Importers Federation (ATIF) and the National Association of Forest Industries (NAFI), approached the Minister for Fisheries, Forestry and Conservation to proceed with the legislation necessary to implement the proposal.<sup>3</sup>

---

1 Department of Agriculture, Fisheries and Forestry, *Submission 6*, p. 2; Forest and Wood Products Council, Steering Committee, *Forest and Wood Products Australia: a proposal to establish a new entity to deliver marketing & promotion and research & development to the Australian Forest and Wood Products Industry*, March 2006, attachment to Australian Plantation Products and Paper Industry Council (A3P), *Submission 2*, p. 2; Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 2.

2 Forest and Wood Products Council, Steering Committee, *Forest and Wood Products Australia: a proposal to establish a new entity to deliver marketing & promotion and research & development to the Australian Forest and Wood Products Industry*, March 2006, attachment to *Submission 2*, p. 2; Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 2.

3 Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, pp 2 and 16; A3P, 'Forest and Wood Products Australia: Outcome of Ballot', April 2006, attachment to *Submission 2*.

## **Forestry Marketing and Research and Development Services Bill 2007**

### ***Purpose of the bill***

2.4 This bill provides for the establishment of a new, not-for-profit, industry owned company which will provide marketing and promotion, research and development and other industry services to the forestry industry. The new company will replace and augment the functions of the current Commonwealth statutory authority, the FWPRDC.<sup>4</sup>

2.5 The bill also gives the minister the authority to enter into a funding contract with a company, enabling the Commonwealth Government to make payments to that company.<sup>5</sup>

### ***Provisions of the bill***

2.6 The main provisions of the bill, as explained in the Explanatory Memorandum (EM), are set out below:<sup>6</sup>

#### *Part 1 - Preliminary*

2.7 Part 1 provides background information regarding the bill, including the date of commencement, definitions of terms, and provides that the Act will apply both within and outside of Australia, and will extend to all external territories.

#### *Part 2 – Funding contract*

2.8 Clause 7 outlines the two kinds of payments that the Commonwealth may make to a company under an agreed funding contract, as follows:

- Forestry service payments- to be spent on marketing, promotions, research and development and other activities to benefit the Australian forestry industry, and/or, to repay the Commonwealth for administrative expenses incurred relating to the collection of levies, charges and related payments from industry.

---

4 Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 2; Explanatory Memorandum (EM), *Forestry Marketing and Research and Development Services Bill 2007*, p. 2; Second Reading Speech, *Forestry Marketing and Research and Development Services Bill 2007*, p. 1.

5 Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 2; EM, *Forestry Marketing and Research and Development Services Bill 2007*, p. 2.

6 The text of this section is based on information contained in: Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, pp 10-12; EM, *Forestry Marketing and Research and Development Services Bill 2007*, pp 3-6.

- 
- Matching payments- to only be spent on research and development activities to benefit the Australian forestry industry, and/or, to repay the Commonwealth for administrative expenses incurred relating to the collection of levies, charges and related payments from industry.<sup>7</sup>

2.9 Clause 8 provides for the minister to enter into, or vary, a contract with a company, thereby allowing the Commonwealth to make forestry service and matching payments (see paragraph 2.7) to that company, provided that the minister is satisfied that the funds are spent appropriately. A new or varied contract must be tabled by the minister in each House of Parliament within 15 sitting days of that House.

2.10 Clause 9 appropriates the Consolidated Revenue Fund so payments can be made to the industry services body under the funding contract, and sets overall limits on the appropriation of funds for forestry service and matching payments. The clause also sets annual limits on the amount that can be paid to the industry services body. The annual limit is defined as:

...the lesser of either 0.5% of the gross value of production (GVP) of the Australian forestry industry for the financial year or 50% of the amount spent by the industry services body on research and development activities that qualify under the funding contract in that financial year.<sup>8</sup>

2.11 Clause 9 also allows research and development expenditure that is not matched because of the limits on funding in a particular financial year (unmatched research and development excess), to be carried forward into later years.

### *Part 3 – Industry services body*

2.12 Clause 11 provides that once a contract is made with a company under part 2 of the bill, the minister may declare that company to be the 'industry services body', while clause 12 outlines the circumstances under which the minister can declare that a company ceases to be the industry services body.

### *Part 4 – Miscellaneous provisions*

2.13 Clause 13 allows the minister to give written direction to the industry services body if the direction is deemed to be '...in Australia's national interest because of exceptional and urgent circumstances...' and '...for a purpose that is within the Commonwealth's legislative power.'<sup>9</sup> The minister must give the directors of the body

---

7 Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 10; *Forestry Marketing and Research and Development Services Bill 2007*, p. 5.

8 EM, *Forestry Marketing and Research and Development Services Bill 2007*, p. 4.

9 EM, *Forestry Marketing and Research and Development Services Bill 2007*, p. 5.

an opportunity to discuss the direction before it is made. Directions are binding, and must be tabled in Parliament and included in the body's annual report.<sup>10</sup>

2.14 Clause 16 makes provision for the Governor-General to make regulations under the bill.

## **Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007**

### ***Purpose of the bill***

2.15 This bill provides for the abolition of the FWPRDC, the transfer of assets, liabilities and staff to the new company, and other transitional arrangements. The bill also provides for the repeal of some legislation and consequential amendments to other legislation.<sup>11</sup>

### ***Provisions of the bill***

2.16 The main provisions of the bill, as explained in the EM, are set out below:<sup>12</sup>

#### *Schedule 1 – Transitional provisions*

2.17 Part 1 provides definitions of terms, and states that the Act will apply both within and outside of Australia, and will extend to all external territories.

2.18 Clauses 4 and 6 provide that upon the cessation of FWPRDC, its assets and liabilities will immediately become the assets and liabilities of the new industry services body (the new body), without any conveyance, transfer or assignment, and

---

10 Department of the Parliamentary Library, Bills Digest No. 147, 2006-07, *Forestry Marketing and Research and Development Services Bill 2007*, 9 May 2007, p. 11; EM, *Forestry Marketing and Research and Development Services Bill 2007*, pp 5-6.

11 Department of the Parliamentary Library, Bills Digest No. 146, 2006-07, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, 9 May 2007, p. 2; EM, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, p. 2.

12 The text of this section is based on information contained in: Department of the Parliamentary Library, Bills Digest No. 146, 2006-07, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, 9 May 2007, pp 3-9; EM, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, pp 3-5.

---

that these processes will be exempt from stamp duty and any other taxation.<sup>13</sup> Clause 8 further states that registrations of assets are also transferred.<sup>14</sup>

2.19 Clause 5 notes that any pending proceedings in any court or tribunal regarding the assets and liabilities of FWPRDC will also be transferred to the new body.

2.20 Clause 7 provides that upon the cessation of FWPRDC, 'any references to the FWPRDC in instruments are to be construed as references to the new industry services body.'<sup>15</sup>

2.21 Clauses 9 and 10 provide for the transfer of all FWPRDC staff to the new body on the cessation of FWPRDC. These staff will be employed by the new body under the same terms and conditions and with equivalent accrued entitlements to benefits. The service of these employees will be considered continuous with their prior service as employees of FWPRDC. Under clauses 20 to 25, this includes accrued long service leave benefits and credits, however, transferred employees are not entitled to receive payment for ceasing to be employed in the public service.

2.22 Clause 11 notes that after the cessation of FWPRDC, the terms and conditions of a transferred staff member's employment may be varied in accordance with applicable laws, rewards, agreements and procedures.

2.23 Clause 14 provides that the Commonwealth will be liable to pay the Comcare premium in relation to employees with workers compensation claims arising from their employment with FWPRDC prior to its cessation.

2.24 The EM notes that under clauses 17 and 18,

[t]he new industry services body is not an 'approved authority' for the purposes of Commonwealth public sector superannuation legislation, so private superannuation arrangements will apply to employees from the cessation date...<sup>16</sup>

---

13 With the exception of Commonwealth records, which under the *Archives Act 1983* can only be transferred with the permission of the National Archives of Australia.

14 The EM suggests that such assets may include registered patents and trade marks. See Department of the Parliamentary Library, Bills Digest No. 146, 2006-07, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, 9 May 2007, p. 3; EM, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, p. 4.

15 Department of the Parliamentary Library, Bills Digest No. 146, 2006-07, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, 9 May 2007, p. 3.

16 Department of the Parliamentary Library, Bills Digest No. 146, 2006-07, *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007*, 9 May 2007, p. 5.

2.25 Under clause 27, the FWPRDC is required to produce a final annual report on its operation and financial status up until the cessation date.

2.26 Clause 28 provides that any unmatched research and development expenditure from the FWPRDC is to be carried over to the new industry services body upon cessation, and provides a formula for calculating this research and development excess.

2.27 Clause 32 allows the Governor-General to make regulations on any matter contained in the bill.

*Schedule 2 – Consequential provisions*

2.28 Schedule 2 provides for consequential amendments to the following Acts to enable the operation of the bill: *Primary Industries and Energy Research and Development Act 1989*, *Primary Industries (Customs) Charges Act 1999*, *Primary Industries (Excise) Levies Act 1999*, and *Primary Industries Levies and Charges Collection Act 1991*.

### **Consideration by the Senate Scrutiny of Bills Committee**

2.29 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters.

2.30 The Scrutiny of Bills Committee noted that under clause 8 of the Forestry Marketing and Research and Development Services Bill 2007, the minister is required to table a contract entered into with a company, but queried whether this constituted sufficient parliamentary scrutiny.<sup>17</sup>

2.31 The Scrutiny of Bills Committee also raised concerns about non-reviewable decisions, noting that the Forestry Marketing and Research and Development Services Bill 2007 endows the minister with discretionary power to terminate the contract between the Commonwealth and the industry services body, and to issue a direction to the body, without providing grounds to challenge either of these decisions. The Scrutiny of Bills Committee has consequently sought the minister's advice as to whether it may be appropriate to incorporate some mechanism of review regarding the exercise of these discretionary decisions into the bill.<sup>18</sup>

---

17 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 5 of 2007*, 9 May 2007, pp 25-26.

18 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 5 of 2007*, 9 May 2007, pp 26-27.