

# Chapter 3

## Issues raised in the Inquiry

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3.1 The following matters were raised during the committee's examination of the bills:

- the consultative process;
- funding for the new company;
- determination of company policy and strategic direction; and
- accountability mechanisms.

### Establishment of a new industry owned company

#### *Consultative Process*

3.2 The committee was advised that the decision to establish a new industry owned company was an industry led initiative and that it followed a lengthy period of consultation and discussion within the industry.<sup>1</sup> The committee notes that each of the four main forest and wood products industry associations support the establishment of the new body, although not all individual industry operators have supported the change. The committee also notes that out of 1,118 eligible voters, 434 ballots were lodged in the ballot conducted between 20 March and 21 April 2006 and 71.4 per cent of votes lodged favoured the establishment of the new company.<sup>2</sup>

3.3 The committee was also advised that, following the ballot, an Implementation Committee was established comprising representatives from government, industry and unions to pursue the implementation of the proposal. The Implementation Committee has been involved in assisting the Department of Agriculture, Fisheries and Forestry (DAFF) in the development of:

- the two bills under consideration in this inquiry;
- the constitution for the proposed company;
- the statutory funding agreement between the proposed company and the Commonwealth; and

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1 Mr Richard Stanton, Manager, Policy, A3P, *Committee Hansard*, 5 June 2007, p. 1.

2 Mr Richard Stanton, Manager, Policy, A3P, *Committee Hansard*, 5 June 2007, p. 3; Department of Agriculture, Fisheries and Forestry (DAFF), *Submission 6*, p. 4.

- transitional arrangements for the establishment of the proposed company.<sup>3</sup>

3.4 The department clarified that consultation with the industry in relation to the development of the legislation, constitution, and statutory funding agreement, had been undertaken via the industry representatives on the Implementation Committee.<sup>4</sup> The implications of the proposal for the states had also been raised with the Ministerial Council on Forestry, Fisheries and Aquaculture. As stated by the department,

... the general proposition and the main elements of the concept here have been discussed widely, including at ministerial council meetings with the states and the standing committee where the CEOs meet, because there are a lot of Commonwealth and state issues involved in this.<sup>5</sup>

3.5 The department explained that while the substance of the legislation had been the subject of discussions with industry representatives, drafts of the bills and associated regulations have not been circulated to industry. However, draft legislation was circulated to other Commonwealth departments.<sup>6</sup>

### ***Funding for the new company***

3.6 The committee sought clarification on the types of payments which the government can make to the new company under the bills. The committee noted that the forest service payments represented the total amount of funds collected and paid into the Consolidated Revenue Fund, less the Commonwealth's expenses relating to the collection of the funds.<sup>7</sup> The committee was advised that the Commonwealth will only match expenditure on research and development up to 0.5 per cent of the gross value of production.<sup>8</sup> The committee notes that the FWPRDC is currently funded at 0.3 percent of the gross value of production.<sup>9</sup>

3.7 The committee noted that the new levy collection arrangements would be set out in regulations. DAFF provided the committee with a list of the proposed regulations and instruments. The committee notes that the *Primary Industries (Excise) Levies Regulations 1999* to increase the levy rate for hardwood sawlogs is currently registered on the Federal Register of Legislative Instruments and will commence on

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3 Australian Plantation Products and Paper Industry Council (A3P), *Submission 2*, p. 3.

4 Mr Robin Nielsen, A/g Manager, Forest Industries Branch, DAFF, *Committee Hansard*, 5 June 2007, p. 25.

5 Mr Daryl Quinlivan, Deputy Secretary, DAFF, *Committee Hansard*, 5 June 2007, p. 26.

6 Mr Daryl Quinlivan, Deputy Secretary, DAFF, *Committee Hansard*, 5 June 2007, p. 26.

7 Ms Courtney Smith, Policy Officer, DAFF, *Committee Hansard*, 5 June 2007, pp 24-25.

8 Mr Richard Stanton, A3P, *Committee Hansard*, 5 June 2007, p. 10.

9 Mr Warwick Ragg, Chief Executive Officer, Australian Forest Growers, *Committee Hansard*, 5 June 2007, p. 10.

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1 July 2007. All other regulations and legislative instruments are currently in development and have various commencement dates. Those instruments associated with the new growers' levy are expected to commence on 1 August 2007, pending passage of the legislation, to ensure the new company has commenced operations in order to receive the levy.<sup>10</sup>

3.8 DAFF explained that while it was initially expected that the new company would commence operation on 1 July 2007, the current expected commencement date is 1 August 2007 and the bills provide for a continuation of the FWPRDC until such time as the company is formed and declared the industry services body.<sup>11</sup>

3.9 The committee also sought clarification of the definition of forestry service payments contained in the Forestry Marketing and Research and Development Services Bill 2007. Section 4 provides that forestry service payments means payments mentioned in paragraph 8(1)(a). However, the committee noted that paragraph 8(1)(a) refers to payments called forestry service payments and that as a result, the definition appeared circular. The department undertook to discuss the definition with the Office of Parliamentary Counsel. The department subsequently advised the committee that:

The drafting of the Bill is sound and the clauses will operate effectively, but they need to be read with the full text of clause 8 and not clause 8(1)(a) alone.

In particular, clause 8(2) provides clarity about the valid application of "forestry service payments" and "matching payments". This provides the additional detail that the reader may have sought in the definition, but is more appropriately and simply placed in the operative provisions in clause 8 as it relates to the funding arrangements, and will place the necessary constraints on the dispersal of the two categories of funds provided to the company by the Australian Government.

The approach taken in the bill to the provisions about forestry services payments reflects that taken to similar provisions in similar Acts such as the provisions about dairy service payments in the *Dairy Produce Act 1986*, the provisions about promotion payments and research and development payments in the *Egg Industry Service Provision Act 2002* and the provisions about marketing payments and research and development payments in the *Pig Industry Act 2001*.<sup>12</sup>

### ***Determination of company policy and strategic direction***

3.10 The committee sought clarification of the minister's role in the development and adoption of the new company's research plan. The committee noted that clause 9 of the draft Statutory Funding Agreement provides for ministerial guidance in the development of the new company's strategic plan. In particular, the committee noted

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10 DAFF, *Submission 6*, pp 3-4.

11 Mr Nielsen, DAFF, *Committee Hansard*, 5 June 2007, pp 27-28.

12 DAFF, answer to question on notice, 7 June 2007 (received 7 June 2007).

that the strategic plan is to take account of a range of matters including the research and development priorities, as communicated to the company by letter from the minister and that, in addition to consulting with certain stakeholders, the company must consult with the minister in developing the strategic plan.<sup>13</sup>

3.11 The department explained that the minister does not have a power of approval in relation to the strategic plans, and that the process outlined in the draft Statutory Funding Agreement is a process of consultation not direction. The requirements for developing strategic plans reflect an expectation that the priorities of all key stakeholders, including the Commonwealth, are given due weight in their development.<sup>14</sup>

3.12 The department also explained that while the minister's letter would not be made public, the research and development priorities are a public document and provided the committee with a copy of the current *Rural Research and Development Priorities*. The committee notes that the current priorities were developed in consultation with state and territory governments, industry, research funders and providers.<sup>15</sup>

### **Governance and accountability**

3.13 The committee notes that the governance and accountability requirements for the new company will be set out in the Statutory Funding Agreement between the Commonwealth and the new company and in the constitution of the new company. The committee was provided with drafts of both of these documents and notes that proposed subclauses 8(6) and 8(7) of the bill provide for the Statutory Funding Agreement, and any amendments to it, to be tabled in Parliament. However, the committee notes that there is no requirement to table the constitution for the new company.

3.14 The committee noted that in developing the draft constitution and the draft Statutory Funding Agreement, the department drew on previous examples of other industry owned companies including the Australian Egg Corporation Limited, Dairy Australia and Australian Wool Innovation Limited and the proposed company structure is indicative of the type of structure envisaged for all such bodies.<sup>16</sup>

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13 *Agreement 2007-12 between the Commonwealth of Australia and Forest and Wood Products Australia Limited*, [Draft 1 June 2007], attachment to DAFF, *Submission 6*, p. 14.

14 Mr Andrew Pearson, Manager, DAFF, *Committee Hansard*, 5 June 2007, pp 6-27.

15 Department of Agriculture, Fisheries and Forestry, *Rural Research and Development Priorities*, 2007, p. 3.

16 Ms Courtney Smith, Policy Officer, DAFF, *Committee Hansard*, 5 June 2007, p. 20; Senator O'Brien and Mr Andrew Pearson, Manager, DAFF, *Committee Hansard*, 5 June 2007, p. 26.

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### *Appointment of board of directors*

3.15 In its submission to the inquiry, the Construction Forestry Mining and Energy Union (CFMEU) stressed the importance of representation of principal key stakeholders on the board if the new company is to be successful. In particular, the CFMEU advanced its own expectation of representation on the board and supported representation of Timber Communities Australia.<sup>17</sup> In commenting on this submission, the FWPRDC stated,

The view of the board currently is that the board is elected on merit. That does not preclude anybody from nominating themselves or an organisation for a position on the board, but currently there is a selection process that is needed to go forward.<sup>18</sup>

...

It is clearly set out in the draft constitution of the company. ... The key point is that nobody is excluded. There is a process there that will take in suitable candidates from any sector of the industry.<sup>19</sup>

3.16 The committee notes that the draft constitution provides for between five and nine directors, including the managing director, and stipulates that at least two of the directors must be independent directors. Directors will be appointed by election at a general meeting of the company, following a nomination by the board on the recommendation of the Director Selection Committee.<sup>20</sup> In recommending directors, the Director Selection Committee must endeavour to ensure that the board will collectively possess knowledge, skills and experience across a range of fields in the forest and wood products industry and in management and public policy.<sup>21</sup>

3.17 The committee notes that the board would not be a representational board and that this is consistent with the findings of the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Report). The Uhrig Report states

Boards require the skills, experience and characteristics necessary to ensure the success of the entity.

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17 Construction Forestry Mining and Energy Union, Forestry & Furnishing Products Division, *Submission 11*, pp 2-3.

18 Mr Adams, FWPRDC, *Committee Hansard*, 5 June 2007, p. 18.

19 Dr Kile, FWPRDC, *Committee Hansard*, 5 June 2007, p. 18.

20 The Director Selection Committee comprises a current director whose term is not expiring, a representative of each levy payer national representative body and another suitably qualified person appointed by the board. Constitution, Forest and Wood Products Australia Limited, [Final Draft], pp 19-20.

21 Constitution, Forest and Wood Products Australia Limited, [Final Draft], p. 21.

The review does not support representational appointments to governing boards as representational appointments can fail to produce independent and objective views.<sup>22</sup>

3.18 The committee notes that the initial directors of the company will be appointed on the day the company is registered and that they will be the current directors of the FWPRDC, not including the executive director and the government director.<sup>23</sup> The committee sought clarification of the range of skills represented on the current board. The FWPRDC explained

We have people involved in softwood processing and obviously sawmilling and softwood marketing. We have a director who has been involved for many years in hardwood sawmilling and the whole gamut of hardwood operations. We have a former CSIRO forestry expert on the board, now retired; he fits the category, I guess, of an independent. We have an individual who has now retired but has had a longstanding engagement in consulting in the commercial field, independent of the forest products industry. We also have the founding executive director, or chief executive, of the research and development corporation on the board. I think all of the appropriate sectors are represented on the board.

A comment was passed in the earlier session about increased funding coming from the grower contribution, and that increased representation from the forest owners and forest growers sector could be a skill that the board would be considering. There is an opportunity to review the skill sets of the current directors...<sup>24</sup>

3.19 The committee notes that the initial directors of the company are expected to operate as an interim board for a period of about 12 months, during which time they will be responsible for, among other things, creating the company membership register prior to the first annual general meeting and the election of the new board.<sup>25</sup>

### ***Accountability mechanisms***

3.20 The committee sought clarification of the proposed accountability mechanisms for the new company and, in particular, the means through which the company would be accountable to the Parliament, and ultimately the public, for the expenditure of Commonwealth funds.

3.21 The department explained that, in addition to the reporting requirements of the *Corporations Act 2001*, the draft Statutory Funding Agreement included a number of

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22 Uhrig, J., Review of Corporate Governance of Statutory Authorities and Office Holders, Commonwealth of Australia, Canberra, 2003, p. 98.

23 Mr Richard Stanton, Manager Policy, A3P, *Committee Hansard*, 5 June 2007, p. 6.

24 Dr Glen Kile, Executive Director, FWPRDC, *Committee Hansard*, 5 June 2007, pp 16-17.

25 Mr Richard Stanton, Manager Policy, A3P, *Committee Hansard*, 5 June 2007, p. 7.

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requirements which had been added to improve the level of reporting and provide extra surety in relation to the Company's financial management.

3.22 The draft Statutory Funding Agreement requires provision of:

- an annual report to the minister which addresses the Commonwealth accountability requirements set out in schedule 3 to the Statutory Funding Agreement;
- six-monthly financial performance statements to the Commonwealth;
- a report to the minister within 30 days of any significant matters that have come to the company's notice that will or may impact on the company's ability to achieve the objectives stated in its operating plan or comply with its obligations under the agreement during the relevant financial year;
- six-monthly briefings to the minister on the company's performance of its functions and in meeting research and development priorities;
- an annual audit compliance report to the minister and provision for the Commonwealth to request an audit report on any matter relevant to the company's compliance with the Statutory Funding Agreement; and
- an annual certification report to the Minister in relation to the company's compliance with its obligations under the Statutory Funding Agreement.

3.23 The committee notes that the requirement for regular meetings between the chairman and the minister is consistent with the recommendations of the Uhrig report.

3.24 The department explained that the audit compliance report and certification report are now formal requirements in statutory funding agreements. Other enhancements to the Statutory Funding Agreement included the requirement to develop, implement and regularly review a risk management plan, fraud control plan and intellectual property management plan and provide copies of these plans to the minister.

3.25 The department also explained that in addition to these enhanced reporting requirements DAFF had sought to address certain recommendations contained in the committee's report *Australian Wool Innovation Limited – Application and expenditure of funds advanced under Statutory Funding Agreement dated 31 December 2000* (the AWI Report). In particular, in response to Recommendation 2 of the AWI Report, the definition of 'funds' encompasses all funds received by the company, including income derived.<sup>26</sup> Recommendation 2 states:

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26 Mr Andrew Pearson, Manager, DAFF, *Committee Hansard*, 5 June 2007, p. 22.

The Statutory Funding Agreement should have a condition that all the company's expenditure (not only the expenditure of 'the Funds') should be controlled by the Statutory Funding Agreement.<sup>27</sup>

3.26 Similarly, the definition of 'agri-political' activities has been framed to include engaging in or financing any form of external or internal political campaigning. The department advised that it is using this standard form of words across all of its statutory funding agreements:

Certainly the whole intent of the statutory funding agreement process is one of continual improvement so that, stemming from particularly the Senate inquiry in relation to AWI, we have as a department been constantly working to try to improve the compliance and governance associated with our statutory funding agreements.<sup>28</sup>

3.27 The draft Statutory Funding Agreement provides that the annual reports of the company may be laid before or otherwise given to Commonwealth Parliament.<sup>29</sup> However, the committee noted that while the company's annual report would include audited financial statements and would provide for the identification of total expenditure of Commonwealth matching funds, the six-monthly financial performance reports to the minister would not be made available to the Parliament. Nevertheless, the committee notes that delivery on the contract would be a matter examinable at Senate Estimates.

## **Conclusions**

3.28 The committee concludes that the provisions of the Forestry Marketing and Research and Development Services Bill 2007 and the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007 are in a satisfactory form and will establish an industry-owned company which is broadly acceptable to the industry.

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27 Rural and Regional Affairs and Transport Legislation Committee, *Australian Wool Innovation Limited – Application and expenditure of funds advanced under Statutory Funding Agreement dated 31 December 2000*, February 2004, p. xi.

28 Mr Andrew Pearson, Manager, DAFF, *Committee Hansard*, 5 June 2007, pp 22-23.

29 Contract between the Commonwealth of Australia and Forest and Wood Products Australia Ltd [draft], attachment to DAFF, *Submission 6*, Clause 11.7, p. 16.



**Recommendation 1**

**3.29 The committee recommends that the Senate pass the Bills.**

**Senator the Hon. Bill Heffernan  
Chair**

