

The Senate

Standing Committee on
Rural and Regional Affairs
and Transport

Forestry Marketing and Research and Development
Services Bill 2007 [Provisions]

Forestry Marketing and Research and
Development Services (Transitional and
Consequential Provisions) Bill 2007 [Provisions]

June 2007

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ISBN 978-0-642-71815-0

This document was prepared by the Senate Rural and Regional Affairs and Transport Legislation Committee, and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

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List of Abbreviations

A3P	Australian Plantation Products and Paper Industry Council
AWI Report	<i>Australian Wool Innovation Limited – Application and expenditure of funds advanced under Statutory Funding Agreement</i>
CFMEU	Construction Forestry Mining and Energy Union
DAFF	Department of Agriculture, Fisheries and Forestry
Department	Department of Agriculture, Fisheries and Forestry
EM	Explanatory Memorandum
FWPRDC	Forest and Wood Products Research and Development Corporation
Uhrig Report	<i>Review of Corporate Governance of Statutory Authorities and Office Holders, Commonwealth of Australia</i>

Chapter 1

Introduction

1.1 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 (the bills) were introduced into the House of Representatives on 29 March 2007 and were passed on 28 May 2007.

1.2 On 10 May 2007, the Senate Selection of Bills Committee referred the provisions of the bills to the Senate Standing Committee on Rural and Regional Affairs and Transport (the committee), for inquiry and report by 12 June 2007.¹

1.3 The Selection of Bills Committee gave the following reason for referral:

As this Bill establishes a new entity with new responsibilities it is appropriate that this be reviewed to ensure it is properly established and transition arrangements are appropriate.

A review will include comparing the new entity against the Uhrig template, considering the terms of the statutory funding agreement between the new entity and the Commonwealth and other matters associated with the administration of the new entity.²

Conduct of the inquiry

1.4 The inquiry was advertised in *The Australian* on 16 May 2007, and the committee wrote to a number of relevant organisations and stakeholder groups, seeking their comments on the provisions of the bills. The committee received 12 submissions (see Appendix 1).

1.5 The committee held a public hearing in Canberra on 5 June 2007. A list of witnesses who gave evidence at the hearing is at Appendix 2, and copies of the Hansard transcript and all other evidence presented to the committee is available on the committee's website at http://www.apf.gov.au/Senate/committee/rrat_ctte/index.htm

Acknowledgement

1.6 The committee appreciates the time and effort of all of those who provided written and oral submissions to the inquiry. Their work has assisted the committee considerably in its inquiry and the committee thanks them for their contributions.

1 *Journals of the Senate*, No. 144, 'Selection of Bills--Standing Committee--Report No. 7 of 2007', entry no. 3, 10 May 2007, p. 3795.

2 Selection of Bills Committee, *Report No. 7 of 2007*, 10 May 2007, Appendix 2.

Note on references

1.7 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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.¹

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.²

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.³

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.⁴

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.⁵

Provisions of the bill

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

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.

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- 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.⁷

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.⁸

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.'⁹ 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.¹⁰

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.¹¹

Provisions of the bill

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

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.¹³ Clause 8 further states that registrations of assets are also transferred.¹⁴

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.'¹⁵

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...¹⁶

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.¹⁷

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.¹⁸

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.

Chapter 3

Issues raised in the Inquiry

Issues raised in the inquiry

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.¹ 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.²

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

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.³

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.⁴ 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.⁵

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.⁶

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.⁷ 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.⁸ The committee notes that the FWPRDC is currently funded at 0.3 percent of the gross value of production.⁹

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

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.

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.¹⁰

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.¹¹

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*.¹²

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

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.¹³

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.¹⁴

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.¹⁵

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.¹⁶

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.

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.¹⁷ 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.¹⁸

...

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.¹⁹

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.²⁰ 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.²¹

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.

...

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.²²

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.²³ 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...²⁴

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.²⁵

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

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.

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.²⁶ Recommendation 2 states:

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.²⁷

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.²⁸

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.²⁹ 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.

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**

Additional Comments from the Australian Labor Party and the Australian Greens

Introduction

4.1 We accept evidence that the proposed forest industry services body Forest and Wood Products Australia has the support of industry stakeholders.

4.2 We support forest research and development activities by the proposed industry services body.

4.3 We support the incorporation of marketing and promotion activities into the functions of the proposed industry services body.

4.4 However, we are concerned that the government's bill contains inadequate accountability provisions, discussed below.

Reporting Requirements

4.5 We believe the bill will establish arrangements that do not hold the proposed industry services body, or the Minister, sufficiently accountable to the Parliament for the expenditure of levy and taxpayer funds.

4.6 Accountability provisions in the legislation establishing the dairy industry services Dairy Australia provide a benchmark for provisions of this kind.

4.7 In relation to the dairy industry services body:

The body must, within 14 days of lodging an annual report, give the Minister a copy of the report and the Minister must, within 14 days of its receipt, cause a copy of the report to be tabled in each House of Parliament.

In addition to the matters mentioned in section 295 of the *Corporations Act 2001*, the annual report must include details of the following in relation to the financial year to which the report relates:

- (a) the amount of industry service payments and matching payments made to the industry services body;
- (b) the amount of those payments that were spent;
- (c) outcomes as measured against objectives that apply in relation to the industry services body.

The Minister must, as soon as practicable after the holding of each annual general meeting of the body, cause to be tabled in each House of the Parliament a report in relation to the year ending on 30 June before the

holding of that meeting. The report must include the following in relation to that year:

(a) a statement as to the amount of the industry service levy received by the Commonwealth;

(b) a statement as to whether the Minister is satisfied, on the basis of information provided by the industry services body, that the spending of industry service payments and matching payments complies with the funding contract;

(c) if the Minister is not so satisfied—details of why the Minister is satisfied that the spending does not so comply.

Conclusion

4.8 We believe the expenditure of levy and taxpayer funds demands strong accountability to the Parliament.

4.9 In its current form, the Bill provides for an unacceptably weak accountability regime.

Recommendation

That the Bill be amended to incorporate stronger reporting requirements comparable with the reporting requirements in place with respect to Dairy Australia.

Senator Kerry O'Brien
Senator for Tasmania

Senator Anne McEwen
Senator for South Australia

Senator Glenn Sterle
Senator for Western Australia

Senator Rachel Siewert
Senator for Western Australia

Appendix 1

List of Submissions

- 1.** Timber Development Association
- 2.** Australian Plantation Products and Paper Industry Council
- 3.** The Institute of Foresters of Australia
- 4.** Forest Products Commission
- 5.** Forest and Wood Products Research and Development Corporation
- 6.** Department of Agriculture Fisheries and Forestry, Forest Industries Branch
- 7.** Forestry SA
- 8.** National Association of Forest Industries
- 9.** Australian Forest Growers
- 10.** CSIRO
- 11.** Construction Forestry Mining and Energy Union
Forestry & Furnishing Products Division
- 12.** Australian Conservation Foundation

Appendix 2

Witnesses who appeared before the Committee at the Public Hearing

Tuesday, 5 June 2007

Parliament House

CANBERRA

National Association of Forest Industries

Mr Todd Loydell, Senior Policy Analyst

Australian Forest Growers

Mr Warwick Ragg, Chief Executive

A3P Australian Plantation Products and Paper Industry Council

Mr Richard Stanton, Manager, Policy

Forest and Wood Products Research and Development Corporation

Dr Glen Kile, Executive Director

Mr Ron Adams, Chairman

Department of Agriculture, Fisheries and Forestry

Mr Daryl Quinlivan, Deputy Secretary

Mr Robin Nielsen, Acting Manager, Forest Industries Branch

Mr Andrew Pearson, Manager, Research and Development Corporations Policy, Rural Policy and Innovation

Ms Anna Pellew, Manager, Legislation and Policy, Levies Revenue Service

Ms Courtney Smith, Policy Officer, Victoria, South Australia and Western Australia Section, Forest Industries Branch

