



Australian Government

Department of Agriculture, Fisheries and Forestry

Ms Jeanette Radcliffe
Committee Secretary
Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe

Please find enclosed the Department of Agriculture, Fisheries and Forestry's submission to the Senate Rural and Regional Affairs and Transport Committee's Inquiry into the Forestry Marketing Research and Development Services Bill 2007 and the related bill, Forestry Marketing Research and Development Services (Transitional and Consequential Provisions) Bill 2007.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Bartlett', with a long horizontal flourish extending to the right.

Tony Bartlett
General Manager
Forest Industries Branch
Department of Agriculture, Fisheries and Forestry
31 May 2007

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Australian Government

Department of Agriculture, Fisheries and Forestry

SUBMISSION

to the

Senate Standing Committee on
Rural and Regional Affairs and Transport

Inquiry into the Forestry Marketing and Research and
Development Services Bill 2007 and a related bill



Introduction

The Department of Agriculture, Fisheries and Forestry (the Department) welcomes the opportunity to contribute to the Inquiry.

This submission outlines the rationale for 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 submission explains the background to why the bills were developed, the process by which the bills were developed and the implications of the bills.

Background

The Forestry Marketing and Research and Development Services Bill 2007 and the Forestry Marketing and Research and Development Services Bill (Transitional and Consequential Provisions) Bill 2007, currently before Parliament, are a response to an initiative of the Australian forest industries. They identified a need for better promotion of the environmental values of wood products and to facilitate enhanced research and development activities.

The forest industries want to ensure that they can undertake generic marketing and promotion programmes in the domestic and international markets and that the real environmental values of wood are properly understood by consumers. They consider that their needs can be best met through the establishment of an industry-owned company.

Some producers are large enough to carry out marketing and create brand recognition, but overall there is market failure in this area. The structure of the forest industries and the nature of the produce are such that an individual company's marketing efforts also benefit other companies without the latter's contributions to the cost, known as free-riding. The problem of 'free-riding' results in a commercial disadvantage to those companies that might invest individually in marketing and promotion. The industry believes that the position of wood in the market can be improved through a national generic marketing programme funded by all members of the industry and managed by an industry-owned company.

Current Arrangements: Statutory Authority

Currently, the statutory authority, Forest and Wood Products Research and Development Corporation (FWPRDC) is enabled by the *Forest and Wood Products Research and Development Corporation Regulations 1993*. FWPRDC is governed by administrative provisions in the *Commonwealth Authorities and Companies Act 1997* and the *Primary Industries and Energy Research and Development Act 1989* (PIERD Act).

A levy, import charge and export charge are collected by the Levies Revenue Service (LRS) in the Department, from Australian forest industries processors, importers and exporters. The levy and charges have formed the basis for funding the FWPRDC. The Commonwealth matched dollar for dollar expenditure on eligible research and development activities.



Proposed New Arrangements: New Industry Services Body

Following extensive consultation with existing levy payers, the peak forest industry associations have proposed a new company be established and declared an 'industry services body' to replace FWPRDC. This new company would continue the research and development activities currently undertaken by FWPRDC and undertake new programmes on generic marketing and promotion and other industry-wide services.

The company will be funded through forestry service payments and Commonwealth matching funds for research and development expenditure. Forestry service payments include the statutory levies and charges authorised for imposition under the *Primary Industries (Excise) Levies Act 1999* (Excise Levies Act) and the *Primary Industries (Customs) Charges Act 1999* (Customs Charges Act) and state growers' contractual payments.

As part of this proposal, the industry associations also proposed to increase the existing levy rate for hardwood sawlogs from 22 cents per cubic metre to 29 cents per cubic metre and introduce a new levy on private forest growers and managed investment scheme managers of 5 cents per cubic metre at time of harvest. The increase in the levy rate for hardwood sawlogs will achieve equity between the softwood and hardwood sectors.

Section 114 of the Constitution prevents the Commonwealth from imposing a tax on the states and territories, therefore a levy cannot be imposed on public first growers. To ensure competitive neutrality between the government-owned and private forest growers, the state and territory government business enterprises (GBEs) have agreed in-principle to make a voluntary contribution. This would occur through a contract to pay an amount (contractual payment) equivalent to the private growers' levy on harvested timber. Draft contracts are currently being negotiated between industry representatives and state and territory GBEs, to be finalised once the new company is formed.

The additional income from the changed levy rate for hardwood sawlogs, the new growers' levy and the voluntary GBE grower contribution, which is projected to be about \$1.6 million per annum, will enable the new company to undertake its new activities. Only those funds which are allocated to eligible research and development projects will be eligible for matching Commonwealth contributions.

The establishment of industry-owned companies under the *Corporations Act 2001* (Corporations Act) to undertake marketing and research and development activities has occurred in the dairy, egg, pork, meat, wool and horticulture industries. These industry-owned companies have been in operation for varying periods since 1998:

- Meat and Livestock Australia since 16 February 1998;
- Australian Wool Innovation Limited since January 2001;
- Horticulture Australia Limited since 1 February 2001;
- Australian Pork Limited since 1 July 2001;
- Australian Egg Corporation Limited since 1 February 2003; and
- Dairy Australia since 1 July 2003.



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 Department worked with the Office of Parliamentary Counsel (OPC) to prepare two bills to enable the change from the statutory authority, FWPRDC, to a new industry-owned company. A drafter was assigned to develop the legislation on 7 February 2007.

The legislation has been modelled on the legislation in place for the other agricultural industries that have established industry-owned companies. The provisions in each industry's enabling legislation have been tailored to suit that industry, taking into regard changes to Government policies and improvements to legislative provisions.

The Forestry Marketing and Research and Development Services Bill 2007 provides for the Minister to:

- enter into a funding contract on behalf of the Commonwealth with a particular company and then declare that company as the industry services body for the Australian forest industries;
- declare for the industry services body to cease to be the industry services body in the event of a number of circumstances, such as the company has contravened the legislation or funding contract, the company's constitution is changed in a way that it is no longer appropriate, an administrator of the company is appointed. or the company ceases to exist; and
- issue a direction to the industry services body, because of exceptional and urgent circumstances, after the Minister has consulted with directors of the company.

The Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007 provides for transitional arrangements such as the transfer of assets, liabilities and FWPRDC employees from FWPRDC to the industry services body and the production of FWPRDC's final annual report. This Bill also provides for consequential amendments to the PIERD Act, the Customs Charges Act and the Excise Levies Act.

Development of Regulations and Legislative Instruments

The Department is working with the Office of Legislative Drafting and Publishing (OLDP) to produce a variety of regulations and legislative instruments (instruments) for the proposed changes. A drafter was assigned in January 2007 to begin work on producing the regulations and instruments.

Consultation between the Forest Industries Branch and the Levies Revenue Service of the Department and OLDP has identified the following regulations and instruments are required to be produced:

- Amendment to the Primary Industries (Excise) Levies Regulations 1999 to increase the levy rate for hardwood sawlogs;
- Amendment to the Primary Industries (Excise) Levies Regulations 1999 to impose the new private growers' levy;
- Amendment to the Primary Industries (Customs) Charges Regulations 2000 to impose a new private growers' charge on exports where the new levy was not collected;



- Amendment to the Primary Industries Levies and Charges Collection Regulations 1991 to impose new collection arrangements as a result of the new growers' levy and charge;
- Repeal the Forest and Wood Products Research and Development Corporation Regulations 1993;
- New regulation under the Forestry Marketing and Research and Development Services Bill 2007 for the calculation of Gross Value of Production for the purpose of Commonwealth matching funding;
- Instrument declaring designated bodies for Schedule 27 of the Excise Levies Act in relation to products on which the new growers' levy is imposed;
- Instrument declaring designated bodies for Schedule 14 of the Customs Charges Act in relation to products on which new charge imposed;
- Instrument prescribing industry bodies for Schedule 10 of the Excise Levies Act;
- Instrument prescribing industry bodies for each of Schedule 7 and 8 of the Customs Charges Act; and
- Commencement proclamation for Schedule 2 of the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007.

The Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 4) (Attachment A) to amend the Primary Industries (Excise) Levies Regulations 1999 to increase the levy rate for hardwood sawlogs was passed at Executive Council on 23 May 2007. The amendment regulation is currently registered on the Federal Register of Legislative Instruments and will commence on 1 July 2007. As the levy rate for hardwood sawlogs is an existing levy attached the FWPRDC, it was proposed that the increase take place before the new industry services body begins operations as an actual commencement date has not been proclaimed.

All other regulations and legislative instruments are currently in development and have various commencement dates. The regulations and legislative instruments associated with the new growers' levy will commence on 1 August 2007, pending passage of the legislation, to ensure the industry services body has commenced operations in order to receive the levy.

Consultation

The peak forest industry associations have conducted an extensive consultation process with the industry leading up to the Commonwealth agreeing to their proposal.

A ballot was conducted by the Australian Electoral Commission during April/May 2006 to determine support for the new company and for changes to levies. The majority of the industry (71.4 per cent) voted in favour of the establishment of a new company to replace the existing FWPRDC. While many of the small hardwood processors did not support the proposed changes, the National Association of Forest Industries, representing the majority of the hardwood sector, agreed to support the industry led initiative.

The Department has participated on an industry implementation committee to ensure that regular consultation has occurred with the industry associations during the development of the legislation and the funding contract.



The Department worked with the Office of Parliamentary Counsel to develop an exposure draft of the two bills that was provided to other Commonwealth Departments in March 2007 for consultation.

Extensive consultation has occurred between the Forest Industries Branch and the Levies Revenue Service of the Department and the industry implementation committee regarding the changes to the levies and charges and the collection arrangements.

Accountability and Transparency

Formation of a New Company to be the Industry Services Body

The Department has assisted in the preparatory work to form the company that will become the industry services body. This assistance has included developing the legislation and funding contract, providing advice on the collection of levies and participating in the industry implementation committee.

For transparency, the Minister for Fisheries, Forestry and Conservation will table a section 45 notice under the *Commonwealth Authorities and Companies Act 1997* in both houses of Parliament, outlining the Department's participation in the formation of the new company. This will be done as soon as practicable after the company has been registered.

Once the new company has been declared as the industry services body replacing the FWPRDC, the Commonwealth will have no further involvement in the company excepting negotiations and liaison pursuant to the funding contract.

Industry Services Body

The company's constitution, the Corporations Act and the funding contract with the Commonwealth will provide a comprehensive accountability framework within which the company will operate. This will provide a high level of scrutiny of the new company's activities, the use of levy funds and the Commonwealth matching research and development contributions to the Commonwealth, the public and levy payers.

Under the new arrangements, the new industry-owned company will be limited by guarantee under the Corporations Act and therefore will be subject to the governance arrangements and accountability obligations under the Corporations Act. This includes accountability to the Australian Securities and Investments Commission (ASIC) and the company's members, through provision of the annual return, financial reports, director's reports and auditor's reports. The Corporations Act requires companies limited by guarantee to lodge such reports within four months of the end of each financial year and to send copies of the reports to its members.

In addition to reporting obligations, the Corporations Act requires companies to inform ASIC and company members of any material changes to a company's activities during the year.

Funding Contract

Section 8 of the Forestry Marketing Research and Development Services Bill 2007 provides for the Commonwealth to enter into a funding contract with the industry services body, using a Statutory



Funding Agreement. A copy of the draft agreement is at Attachment B. The funding contract will not be finalised until the new company is in a position to sign the document.

The funding contract will enable the new company to receive funding in the form of statutory levies, contractual payments and Commonwealth matching of research and development expenditure. The funding contract is currently being developed in consultation with industry, the proposed interim board of the new company (the current FWPRDC board) and the Australian Government Department of Finance and Administration.

The funding contract will detail the arrangements under which the company will manage and administer industry levies and contractual payments, collected by the Levies Revenue Service, and the Commonwealth's matching contributions. It is closely modelled on existing contracts between the Commonwealth and other industry-owned companies. Experience with other industry-owned companies has achieved a high level of compliance with their obligations under the funding contracts.

As with other industry-owned companies the funding contract will be tabled in Parliament, after the contract is entered into by the company and the Commonwealth. The funding contract is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and therefore will not be tabled for review or disallowance by the Parliament. The contract is a voluntary arrangement between two parties and it is not appropriate that it be subject to prior scrutiny or disallowance by Parliament. The Forestry Marketing and Research and Development Services Bill 2007 provides for any future amendments to the funding contract to be tabled in Parliament to allow for more accountability to Parliament.

The essential elements of the funding contract will require the new company to:

- inform the Commonwealth of any motions to repeal or modify the company's constitution;
- spend the funds in accordance with the funding contract and Commonwealth matching funds only on research and development activities;
- not engage in agri-political activity;
- develop operational and strategic plans that take into account the priorities of stakeholders and clients (including levy payers and state growers) and the Government's research and development priorities;
- produce an annual report in compliance with the requirements of Corporations Act and the funding contract and provide a copy to the Minister and members of the company;
- provide the Commonwealth with statements of financial position and performance every six months;
- provide annual independent compliance audit reports that the company has managed and spent the funds in accordance with the funding contract;
- provide annual certification by the company chairman and managing director that the company has complied with its obligations under the funding contract;
- engage an independent person/organisation to undertake periodic performance reviews of their operations and to make it available to the Commonwealth, levy payers and the public; and
- have directors on the board with public policy and administration and corporate governance experience (skills based board).



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Department of Agriculture, Fisheries and Forestry

Conclusion

This legislation is the result of the partnership approach to forestry matters between the Commonwealth Government and the forest industries. It also brings the forest growers into the co-operative arrangements for research and development as well as marketing and promotion.

It aims to provide the forest industries with greater ownership of industry-wide programmes and control to have the capacity to respond more effectively to current and emerging challenges. Ultimately this will mean increased access to domestic and international markets and improved sustainability and profitability of the forest industries.

The Department strongly supports the passage of those two bills to enable the transition from the current statutory authority (FWPRDC) to the new private sector company.

Attachments

Attachment A: The Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 4)

Attachment B: Draft Statutory Funding Agreement between the Commonwealth of Australia and Forest and Wood Products Australia Limited