



Forestry Marketing and Research and Development Services Act 2007

No. 122, 2007

**An Act relating to service provision for the forestry
industry, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act relating to service provision for the forestry
industry, and for related purposes**

[Assented to 28 June 2007]

The Parliament of Australia enacts:

Forestry Marketing and Research and Development Services Act 2007 No. 122, 2007 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Forestry Marketing and Research and Development Services Act 2007*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Simplified outline of this Act

The following is a simplified outline of this Act:

This Act provides for a company:

- (a) to receive (under a contract) Commonwealth funding for promotion, research and development for the Australian forestry industry; and
- (b) to be declared as the industry services body for the Australian forestry industry.

This Act also requires the industry services body to comply with directions given by the Minister in the national interest because of an emergency.

Note: The first industry services body has the assets, liabilities and staff of the Forest and Wood Products Research and Development Corporation transferred to it by the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

4 Definitions

In this Act:

Australia, when used in a geographical sense, includes the external Territories.

company means a company registered under the *Corporations Act 2001* as a company limited by guarantee.

forestry industry means the industry concerned with growing, harvesting, processing, importing, exporting and marketing wood, wood fibre and products made from wood or wood fibre.

forestry service payments means payments mentioned in paragraph 8(1)(a).

funding contract means a contract entered into under section 8 (with the variations, if any, that are in force).

industry services body means the company that is declared to be the industry services body under Part 3.

matching payments means payments mentioned in paragraph 8(1)(b).

tax-related amounts means:

- (a) amounts of charge imposed under clause 2 of Schedule 7, or clause 2 of Schedule 8, to the *Primary Industries (Customs) Charges Act 1999* and received by the Commonwealth on or after the transfer time; and
- (b) amounts of levy imposed under clause 2 of Schedule 10 to the *Primary Industries (Excise) Levies Act 1999* and received by the Commonwealth on or after the transfer time; and
- (c) amounts of levy:
 - (i) imposed under regulations made for the purposes of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*; and
 - (ii) identified by regulations made for the purposes of this paragraph; and
 - (iii) received by the Commonwealth on or after the transfer time; and
- (d) amounts that:
 - (i) are required to be paid under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to charge or levy described in paragraph (a), (b) or (c); and

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- (ii) are received by the Commonwealth on or after the transfer time; and
- (e) amounts that:
 - (i) are payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to charge or levy described in paragraph (a), (b) or (c); and
 - (ii) are received by the Commonwealth on or after the transfer time; and
- (f) amounts that:
 - (i) are payable under a contract between a company and a State, a Territory or an authority of a State or Territory, if the company is declared to be the industry services body; and
 - (ii) represent the amounts that would be payable by the State, Territory or authority if it were subject to charge or levy described in paragraph (a), (b) or (c); and
 - (iii) are received by the Commonwealth on or after the transfer time.

Note: Section 7 of the *Primary Industries Levies and Charges Collection Act 1991* concerns liability of intermediaries and section 15 of that Act concerns penalty for late payment.

transfer time means the time the assets of the Forest and Wood Products Research and Development Corporation become assets of the industry services body under Schedule 1 to the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

Note: Under that Schedule, those assets become assets of the industry services body when the Forest and Wood Products Research and Development Corporation ceases to exist.

5 Extension to external Territories

This Act extends to all the external Territories.

6 Application of this Act

This Act applies both within and outside Australia.

Part 2—Funding contract

7 Simplified outline of this Part

The following is a simplified outline of this Part:

The Minister may make a contract with a company for the Commonwealth to make payments of 2 kinds to the company.

The first kind (called *forestry service payments*):

- (a) are to be spent by the company on activities benefiting the Australian forestry industry and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and charges and related payments; and
- (b) cannot exceed those amounts.

The second kind (called *matching payments*):

- (a) are to be spent by the company on research and development benefiting the Australian forestry industry and the Australian community and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and charges and related payments; and
- (b) cannot exceed limits based on those amounts, the annual value of production by the industry and the amount spent by the company on that research and development.

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8 Funding contract

- (1) The Minister may, on behalf of the Commonwealth, enter into or vary a contract with a company so that the contract provides for the Commonwealth to make payments of the following kinds to the company:
- (a) payments called *forestry service payments*;
 - (b) payments made for particular financial years, called *matching payments*.

Note: After a contract has been entered into, the company can be declared as the industry services body under section 11.

- (2) Before acting to enter into or vary the contract, the Minister must be satisfied that the terms of the contract after the action will make adequate provision to ensure that:
- (a) forestry service payments are spent by the company on one or both of the following:
 - (i) marketing, promotion, research and development activities, or other activities, for the benefit of the Australian forestry industry;
 - (ii) payments by the company to the Commonwealth to meet the expenses (the *administration expenses*) incurred by the Commonwealth in relation to the collection and recovery of tax-related amounts, the administration of the contract and the payment of refunds related to tax-related amounts; and
 - (b) matching payments are spent by the company on one or both of the following:
 - (i) research and development activities for the benefit of the Australian forestry industry and the Australian community generally;
 - (ii) payments by the company to the Commonwealth to meet the administration expenses; and
 - (c) the administration expenses are met from one or more of the following:
 - (i) the difference between forestry service payments and the limit under section 9 on the appropriation for those payments;

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- (ii) the difference between matching payments and the limit under section 9 on the appropriation for those payments;
- (iii) payments by the company to the Commonwealth.

Note: An example of the administration expenses is the Commonwealth's expenses relating to an agreement under section 10 or 11 of the *Primary Industries Levies and Charges Collection Act 1991* between the Commonwealth and a State or organisation for it (or a State authority) to collect levies, charges and related amounts on the Commonwealth's behalf.

- (3) The contract does not have to oblige the Commonwealth to pay the full amounts that could be paid out of the money appropriated under section 9.

Note: For example, the contract may provide for payments less than the limits specified in section 9 so the administration expenses are met.

- (4) The contract may include provisions relating to assets and liabilities that will become those of the company under the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*. This subsection does not impliedly limit the matters that may be included in the contract.
- (5) This section does not impliedly limit the executive power of the Commonwealth to enter into agreements.
- (6) The Minister must cause a copy of the contract to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the contract was entered into.
- (7) If the contract is varied, the Minister must cause a copy of the contract as varied to be tabled in each House of the Parliament within 15 sitting days of that House after the variation occurred.

9 Appropriation for payments under funding contract

- (1) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under section 8.

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Overall limit for forestry service payments

- (2) For forestry service payments, the total limit on the appropriation is the sum of the tax-related amounts.

Overall limit for matching payments

- (3) For matching payments, the total limit on the appropriation is the sum of the tax-related amounts.

Matching payments—annual limit

- (4) For matching payments for a particular financial year, the limit on the appropriation is the lesser of:
- (a) 0.5% of the amount determined by the Minister to be the gross value of production of the Australian forestry industry in that financial year; and
 - (b) 50% of the amount spent by the company in that financial year on activities that qualify, under the funding contract, as research and development activities.
- (5) For the purposes of subsection (4), the regulations may prescribe the manner in which the Minister is to determine the gross value of production of the Australian forestry industry in a financial year.

Matching payments—unmatched R and D excess

- (6) If there is an unmatched R and D excess for a financial year, the amount spent by the company in the following financial year on activities that qualify, under the funding contract, as research and development activities is taken, for the purposes of this section (including for the purposes of this subsection and subsection (7)), to be increased by the amount of the unmatched R and D excess.

Note: This means that research and development expenditure that is not “50% matched” in one financial year because of the cap in paragraph (4)(a) can be carried forward into later years.

- (7) For the purposes of subsection (6), there is an ***unmatched R and D excess*** for a financial year if:
- (a) the company spends a particular amount (the ***R and D spend amount***) in the financial year on activities that qualify, under

the funding contract, as research and development activities;
and

- (b) because of paragraph (4)(a), the matching payments for the financial year are less than 50% of the R and D spend amount.

The amount of the unmatched R and D excess is:

$$\text{R and D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the matching payments for the financial year}}{\text{the financial year}} \right)$$

Note: Amounts spent and received by the Forest and Wood Products Research and Development Corporation before it ceased to exist may also affect whether there is an unmatched R and D excess, and its amount: see the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

Part 3—Industry services body

10 Simplified outline of this Part

The following is a simplified outline of this Part:

The Minister may declare a company to be the industry services body if there is a contract under Part 2 with the company and the Minister is satisfied that the company will comply with its contractual and statutory obligations.

The Minister may declare that a company ceases to be the industry services body in certain circumstances (for example, if the company requests it, the company does not comply with its contractual and statutory obligations or the company is wound up).

Note: The significance of being the industry services body is that:

- (a) the industry services body must comply with directions given by the Minister in the national interest under section 13; and
- (b) assets, liabilities and staff of the Forest and Wood Products Research and Development Corporation are transferred to the first industry services body by the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

11 Declaration of industry services body

- (1) The Minister may, in writing, declare a company to be the industry services body if:
 - (a) the Commonwealth and the company have entered into a funding contract; and
 - (b) the Minister is satisfied that, if the company is so declared, it will comply with its obligations under the funding contract and this Act.

Declaration takes effect immediately

- (2) A declaration under this section takes effect immediately after it is made.

Tabling in Parliament

- (3) The Minister must cause a copy of a declaration under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the declaration is made.

Declaration is not a legislative instrument

- (4) A declaration made under subsection (1) is not a legislative instrument.

12 Cessation of declaration of industry services body

- (1) If any of the following apply, the Minister may declare in writing that the company that is the industry services body ceases to be the industry services body:
- (a) the company gives the Minister a written request that the declaration be made;
 - (b) the Minister has reasonable grounds to believe that the company has contravened this Act or the funding contract with the company;
 - (c) the Minister has reasonable grounds to believe that:
 - (i) the company's constitution is no longer appropriate for a company performing the functions of the industry services body; or
 - (ii) the company has failed to comply with its constitution;
 - (d) an administrator of the company is appointed;
 - (e) the company starts to be wound up or ceases to carry on business;
 - (f) a receiver, or a receiver and manager, of property of the company is appointed (by a court or otherwise);
 - (g) the company enters into a compromise or arrangement with some or all of its creditors.

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- (2) The declaration must specify the day on which the company is to cease to be the industry services body.
- (3) The declaration has effect accordingly.

Tabling in Parliament

- (4) The Minister must cause a copy of the declaration to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the declaration is made.

Declaration is not a legislative instrument

- (5) A declaration made under subsection (1) is not a legislative instrument.

Part 4—Miscellaneous provisions

13 Ministerial directions to industry services body in an emergency

- (1) The Minister may give a written direction to the industry services body if:
 - (a) the Minister:
 - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
 - (ii) is satisfied that the direction would not require the body to incur expenses greater than the sum of the amounts previously paid to the body under the funding contract that have not been spent or committed and the amounts the body will receive under the funding contract during the period to which the direction relates; and
 - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsections (3) and (4) on the body's commercial activities; and
 - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
 - (2) The body must comply with the direction.
 - (3) The Minister must cause a copy of the direction:
 - (a) to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (b) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction.
 - (4) The body's annual report for each period to which the direction relates must include:
 - (a) particulars of the direction; and
 - (b) an assessment of the impact of the direction on the body's operations during the period.
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- (5) Subsections (3) and (4) do not apply to the direction if:
 - (a) on the body's recommendation, the Minister determines in writing that compliance with the subsections would prejudice the body's commercial activities or would be likely to do so; or
 - (b) the Minister determines in writing that compliance with the subsections would be contrary to the public interest.
- (6) The Minister, or a person to whom the Minister delegates the Minister's power under this section, is not a director of the body for the purposes of the *Corporations Act 2001* merely because of that power.
- (7) The Commonwealth is not in a position to exercise control over the body merely because of the Minister's power under this section.
- (8) A direction given under subsection (1) or a determination made under subsection (5) is not a legislative instrument.

14 Delegations

- (1) The Minister may delegate all or any of the Minister's powers and functions under this Act or the regulations to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.The delegation must be in writing.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

15 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
 - (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the
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Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

16 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 29 March 2007
Senate on 12 June 2007]*

(61/07)
