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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT  
SERVICES BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Fisheries, Forestry and Conservation,  
Senator the Hon Eric Abetz)

## **FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES BILL 2007**

### **GENERAL OUTLINE**

This bill is one of two bills designed to provide for the creation of a forestry industry services company to provide marketing and research and development and other industry services to the forestry industry. The new company will replace the current Commonwealth statutory authority, Forest and Wood Products Research and Development Corporation (FWPRDC).

The new company will be limited by guarantee under the *Corporation Act 2001*, and will assume the research and development functions currently provided by the FWPRDC and incorporate the new functions of marketing and promotion. Under FWPRDC's enabling legislation, the *Primary Industries and Energy Research and Development Act 1989* the FWPRDC could not undertake marketing and promotion activities.

The new company will be not-for-profit and all levy payers who pay statutory levies and state growers who pay contractual payments will be eligible to register for membership and then be eligible for voting rights in the company, allocated according to the amount of levy or contractual payments paid.

This bill provides the Minister with the power to enter into a funding contract with a company to enable it to receive and administer levies and state grower contractual payments collected by the Commonwealth for industry promotion, research and development, and the Commonwealth's matching funding for eligible research and development expenditure. The Minister may then declare the company with which the contract is made to be the industry services body.

The contract between the Commonwealth and the company will set certain obligations and accountability requirements for the industry services body, including provisions relating to the use of levies and contractual payments, matching research and development funding and the transfer of assets and liabilities from FWPRDC. The detail of the new industry services body's accountability arrangements to its members and to the Commonwealth will be outlined in the contract and the constitution of the company.

### **FINANCIAL IMPACT STATEMENT**

The second bill, the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007 provides for the transfer of assets and liabilities and current employees associated with FWPRDC to the new industry services body.

The net value of assets (including cash balances) and liabilities to be transferred to the new industry services body is approximately \$6.4 million.

The final outcome will be determined following the financial transfer on the cessation date of the FWPRDC.

## NOTES ON CLAUSES

### **Part 1 Preliminary**

#### **Clause 1: Short title**

This clause provides for the Act to be called the *Forestry Marketing and Research and Development Services Act 2007*.

#### **Clause 2: Commencement**

This clause provides for the Act to come into effect the day after it receives Royal Assent.

#### **Clause 3: Simplified outline of this Act**

This clause provides a simplified outline of the Act.

#### **Clause 4: Definitions**

This clause provides for terms of the Act to be defined.

#### **Clause 5: Extensions to external Territories**

This clause provides for the Act to extend to all external Territories.

#### **Clause 6: Application of this Act**

This clause provides for the Act to apply both within and outside Australia.

### **Part 2 – Funding contract**

#### **Clause 7: Simplified outline of this Part**

This clause provides a simplified outline of the Part.

#### **Clause 8: Funding contract**

This clause provides for the Minister, on behalf of the Commonwealth, to enter into or vary a contract with a company which will allow the Commonwealth to make forestry service and matching research and development payments to the company.

Before the Commonwealth enters into or varies a contract with a company, the Minister must be satisfied that the funds are spent accordingly.

The forestry service payments can be spent on marketing, promotion, research and development activities or other activities for the benefit of the Australian forestry industry and/or to repay the Commonwealth for expenses (the administrative expenses) in relation to the collection and recovery of the tax-related amounts, the administration

of the funding contract and refunds in relation to tax-related amounts. The matching payments can be spent on research and development activities for the benefit of the Australian forestry industry and the Australian community generally and/or to repay the Commonwealth for the administrative expenses incurred.

The funding contract does not oblige the Commonwealth to pay the full amounts that could be paid out the money appropriated.

In addition, the clause provides that the contract may include provisions relating to the assets and liabilities being transferred from the FWPRDC to the company under the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

The Minister must table a new or varied contract in each House of the Parliament within 15 sitting days of that House.

### **Clause 9: Appropriation for payments under funding contract**

This clause appropriates the Consolidated Revenue Fund for the purposes of making payments to the industry services body under the funding contract.

This clause sets the overall limits on the appropriation for the Commonwealth to make tax-related amounts and matching payments to the industry services body. In terms of the matching payments, the clause also sets annual limits on what can be paid to the industry services body. The annual limit is 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. It provides for regulations to be made to prescribe the manner in which the Minister is to determine the GVP of the Australian forestry industry.

This clause allows for research and development expenditure that is not “50% matched” in one financial year, because of the cap based on the GVP of the Australian forestry industry, to be carried forward into later years. The clause also provides a formula for calculating the unmatched research and development excess.

A special appropriation for the payment of levies out of the Consolidated Revenue Fund is required to provide assurance to industries that levy collected and Commonwealth matching funds will be paid out to industry service bodies. Legislation prevents the payment of amounts greater than the total amount of levy collected and matching funds due.

## **Part 3 – Industry services body**

### **Clause 10: Simplifies outline of this Part**

This clause provides a simplified outline of the Part.

### **Clause 11: Declaration of industry services body**

This clause provides for the Minister, on behalf of the Commonwealth, to 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.

This declaration must be tabled by the Minister in each House of the Parliament within 15 sitting days of each House.

A declaration made under Clause 8 subsection (1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

#### **Clause 12: Cessation of declaration industry services body**

This clause enables the Minister, on behalf of the Commonwealth, to declare that the company that is the industry services body will cease to be the industry services body when the company gives a written request to the Minister to declare such, when the Minister has reasonable grounds to believe that the company has contravened this Act or the funding contract, when the Minister has reasonable grounds to believe the company's constitution is no longer appropriate or when the company has failed to comply with its constitution, when an administrator of the company is appointed, when the company starts to be wound up or ceases to carry on a business, when a receiver of property of the company is appointed or when the company enters into a compromise or arrangement with some or all of its creditors. The declaration must specify the day on which the company is to cease to be the industry.

A declaration made under Clause 8A subsection (1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

#### **Part 4 – Miscellaneous provisions**

#### **Clause 13: Ministerial directions to industry services body in an emergency**

This clause provides for the Minister to give written direction to the industry services body if the direction is in Australia's national interest because of exceptional and urgent circumstances; if the direction would not require the body to incur expenses greater than the amounts the body will receive under the funding contract during the period to which the direction relates; and if the Minister has given the body's directors an adequate opportunity to discuss with the Minister the need for the direction and the impact of compliance on the body's commercial activities. The direction must be made for a purpose that is within the Commonwealth's legislative power.

Subsection (3) requires the Minister to publish a copy of the direction in the *Gazette* as soon as practicable after giving the direction and to table a copy of the direction in each House of Parliament within 5 sitting days of that House after giving the direction.

Subsection (4) requires the industry service body to include particulars of the direction and an assessment of the impact of the direction on the industry body's operations in the annual report for the periods to which the direction relates.

Subsection (5) allows for (3) and (4) to not apply to the written direction if compliance with the subsections would prejudice the industry body's commercial activities or if the Minister determines in writing that compliance would be contrary to the public interest.

A direction made under subsection (1) (written direction regarding exceptional and urgent circumstances) or a determination made under subsection (5) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

**Clause 14: Delegations**

This clause provides for the Minister to delegate any or all of his or her powers and functions under this Bill to either the Secretary of the Department or an SES employee or acting SES employee of the Department. The delegate, in exercising these powers or functions, must comply with any directions of the Minister.

**Clause 15: Compensation for acquisition of property**

This clause provides for compensation to be paid by the Commonwealth to a person from whom property is acquired on other than just terms as a result of the operation of the Bill. If the Commonwealth and the person in question cannot agree on the amount of any such compensation to be paid, the Federal Court may, on application by the person from whom the property was acquired, determine what is a reasonable amount of compensation for the acquisition of the property.

**Clause 16: Regulations**

This clause provides for the Governor-General to make regulations under the Act.