

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Forestry Marketing and Research and
Development Services Bill 2007**

No. , 2007

(Fisheries, Forestry and Conservation)

**A Bill for an Act relating to service provision for
the forestry industry, and for related purposes**

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1 **A Bill for an Act relating to service provision for**
2 **the forestry industry, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

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

9 **2 Commencement**

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

Section 3

1 **3 Simplified outline of this Act**

2 The following is a simplified outline of this Act:

3 This Act provides for a company:

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

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

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

17 **4 Definitions**

18 In this Act:

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

21 ***company*** means a company registered under the *Corporations Act
22 2001* as a company limited by guarantee.

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

26 ***forestry service payments*** means payments mentioned in paragraph
27 8(1)(a).

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

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

3 **matching payments** means payments mentioned in paragraph
4 8(1)(b).

5 **tax-related amounts** means:

- 6 (a) amounts of charge imposed under clause 2 of Schedule 7, or
7 clause 2 of Schedule 8, to the *Primary Industries (Customs)*
8 *Charges Act 1999* and received by the Commonwealth on or
9 after the transfer time; and
- 10 (b) amounts of levy imposed under clause 2 of Schedule 10 to
11 the *Primary Industries (Excise) Levies Act 1999* and received
12 by the Commonwealth on or after the transfer time; and
- 13 (c) amounts of levy:
- 14 (i) imposed under regulations made for the purposes of
15 Schedule 27 to the *Primary Industries (Excise) Levies*
16 *Act 1999*; and
- 17 (ii) identified by regulations made for the purposes of this
18 paragraph; and
- 19 (iii) received by the Commonwealth on or after the transfer
20 time; and
- 21 (d) amounts that:
- 22 (i) are required to be paid under section 7 of the *Primary*
23 *Industries Levies and Charges Collection Act 1991* in
24 relation to charge or levy described in paragraph (a), (b)
25 or (c); and
- 26 (ii) are received by the Commonwealth on or after the
27 transfer time; and
- 28 (e) amounts that:
- 29 (i) are payable under section 15 of the *Primary Industries*
30 *Levies and Charges Collection Act 1991* in relation to
31 charge or levy described in paragraph (a), (b) or (c); and
- 32 (ii) are received by the Commonwealth on or after the
33 transfer time; and
- 34 (f) amounts that:
- 35 (i) are payable under a contract between a company and a
36 State, a Territory or an authority of a State or Territory,

Section 5

- 1 if the company is declared to be the industry services
2 body; and
3 (ii) represent the amounts that would be payable by the
4 State, Territory or authority if it were subject to charge
5 or levy described in paragraph (a), (b) or (c); and
6 (iii) are received by the Commonwealth on or after the
7 transfer time.

8 Note: Section 7 of the *Primary Industries Levies and Charges Collection Act*
9 *1991* concerns liability of intermediaries and section 15 of that Act
10 concerns penalty for late payment.

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

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

19 **5 Extension to external Territories**

20 This Act extends to all the external Territories.

21 **6 Application of this Act**

22 This Act applies both within and outside Australia.

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Part 2—Funding contract

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7 Simplified outline of this Part

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The following is a simplified outline of this Part:

6

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

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

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- (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

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- (b) cannot exceed those amounts.

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The second kind (called *matching payments*):

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- (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

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- (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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Section 8

1 **8 Funding contract**

2 (1) The Minister may, on behalf of the Commonwealth, enter into or
3 vary a contract with a company so that the contract provides for the
4 Commonwealth to make payments of the following kinds to the
5 company:

- 6 (a) payments called *forestry service payments*;
7 (b) payments made for particular financial years, called
8 *matching payments*.

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

11 (2) Before acting to enter into or vary the contract, the Minister must
12 be satisfied that the terms of the contract after the action will make
13 adequate provision to ensure that:

- 14 (a) forestry service payments are spent by the company on one
15 or both of the following:
16 (i) marketing, promotion, research and development
17 activities, or other activities, for the benefit of the
18 Australian forestry industry;
19 (ii) payments by the company to the Commonwealth to
20 meet the expenses (the *administration expenses*)
21 incurred by the Commonwealth in relation to the
22 collection and recovery of tax-related amounts, the
23 administration of the contract and the payment of
24 refunds related to tax-related amounts; and
25 (b) matching payments are spent by the company on one or both
26 of the following:
27 (i) research and development activities for the benefit of
28 the Australian forestry industry and the Australian
29 community generally;
30 (ii) payments by the company to the Commonwealth to
31 meet the administration expenses; and
32 (c) the administration expenses are met from one or more of the
33 following:
34 (i) the difference between forestry service payments and
35 the limit under section 9 on the appropriation for those
36 payments;

Section 9

1 (ii) the difference between matching payments and the limit
2 under section 9 on the appropriation for those payments;

3 (iii) payments by the company to the Commonwealth.

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

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

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

15 (4) The contract may include provisions relating to assets and
16 liabilities that will become those of the company under the
17 *Forestry Marketing and Research and Development Services*
18 *(Transitional and Consequential Provisions) Act 2007*. This
19 subsection does not impliedly limit the matters that may be
20 included in the contract.

21 (5) This section does not impliedly limit the executive power of the
22 Commonwealth to enter into agreements.

23 (6) The Minister must cause a copy of the contract to be tabled in each
24 House of the Parliament within 15 sitting days of that House after
25 the day on which the contract was entered into.

26 (7) If the contract is varied, the Minister must cause a copy of the
27 contract as varied to be tabled in each House of the Parliament
28 within 15 sitting days of that House after the variation occurred.

29 **9 Appropriation for payments under funding contract**

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

Section 9

1 *Overall limit for forestry service payments*

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

4 *Overall limit for matching payments*

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

7 *Matching payments—annual limit*

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

19 *Matching payments—unmatched R and D excess*

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

26 Note: This means that research and development expenditure that is not
27 “50% matched” in one financial year because of the cap in
28 paragraph (4)(a) can be carried forward into later years.

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

Section 9

1 the funding contract, as research and development activities;
2 and

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

6 The amount of the unmatched R and D excess is:

7
$$\text{R and D spend amount in the financial year} - \left(2 \times \frac{\text{The amount of the matching payments for the financial year}}{\text{the financial year}} \right)$$

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

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Part 3—Industry services body

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10 Simplified outline of this Part

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The following is a simplified outline of this Part:

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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.

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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).

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

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(a) the industry services body must comply with directions given by the Minister in the national interest under section 13; and

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(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*.

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11 Declaration of industry services body

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(1) The Minister may, in writing, declare a company to be the industry services body if:

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(a) the Commonwealth and the company have entered into a funding contract; and

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(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.

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1 *Declaration takes effect immediately*

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

4 *Tabling in Parliament*

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

8 *Declaration is not a legislative instrument*

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

11 **12 Cessation of declaration of industry services body**

12 (1) If any of the following apply, the Minister may declare in writing
13 that the company that is the industry services body ceases to be the
14 industry services body:

15 (a) the company gives the Minister a written request that the
16 declaration be made;

17 (b) the Minister has reasonable grounds to believe that the
18 company has contravened this Act or the funding contract
19 with the company;

20 (c) the Minister has reasonable grounds to believe that:

21 (i) the company's constitution is no longer appropriate for
22 a company performing the functions of the industry
23 services body; or

24 (ii) the company has failed to comply with its constitution;

25 (d) an administrator of the company is appointed;

26 (e) the company starts to be wound up or ceases to carry on
27 business;

28 (f) a receiver, or a receiver and manager, of property of the
29 company is appointed (by a court or otherwise);

30 (g) the company enters into a compromise or arrangement with
31 some or all of its creditors.

Section 12

1 (2) The declaration must specify the day on which the company is to
2 cease to be the industry services body.

3 (3) The declaration has effect accordingly.

4 *Tabling in Parliament*

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

8 *Declaration is not a legislative instrument*

9 (5) A declaration made under subsection (1) is not a legislative
10 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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Section 14

- 1 (5) Subsections (3) and (4) do not apply to the direction if:
2 (a) on the body's recommendation, the Minister determines in
3 writing that compliance with the subsections would prejudice
4 the body's commercial activities or would be likely to do so;
5 or
6 (b) the Minister determines in writing that compliance with the
7 subsections would be contrary to the public interest.
- 8 (6) The Minister, or a person to whom the Minister delegates the
9 Minister's power under this section, is not a director of the body
10 for the purposes of the *Corporations Act 2001* merely because of
11 that power.
- 12 (7) The Commonwealth is not in a position to exercise control over the
13 body merely because of the Minister's power under this section.
- 14 (8) A direction given under subsection (1) or a determination made
15 under subsection (5) is not a legislative instrument.

16 **14 Delegations**

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

25 **15 Compensation for acquisition of property**

- 26 (1) If the operation of this Act would result in an acquisition of
27 property from a person otherwise than on just terms, the
28 Commonwealth is liable to pay a reasonable amount of
29 compensation to the person.
- 30 (2) If the Commonwealth and the person do not agree on the amount
31 of the compensation, the person may institute proceedings in the
32 Federal Court of Australia for the recovery from the
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Section 16

1 Commonwealth of such reasonable amount of compensation as the
2 court determines.

3 (3) In this section:

4 *acquisition of property* has the same meaning as in paragraph
5 51(xxxi) of the Constitution.

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

8 **16 Regulations**

9 The Governor-General may make regulations prescribing matters:

- 10 (a) required or permitted by this Act to be prescribed; or
11 (b) necessary or convenient to be prescribed for carrying out or
12 giving effect to this Act.