



The Parliament of the Commonwealth of Australia

**REPORT ON THE PROVISIONS OF THE**

**REGIONAL FOREST AGREEMENTS BILL 2001**

**Report by the Senate Rural and Regional Affairs and  
Transport Legislation Committee**

**September 2001**

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Senator John Cherry	AD, Queensland	
Senator Jeannie Ferris	LP, South Australia	
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\* Senator O'Brien to substitute for Senator Mackay for all inquiries relating to the Agriculture, Fisheries and Forestry portfolio.

\*\* Senator O'Brien to substitute for Senator Forshaw for all inquiries relating to transport issues, including in respect of budget estimates.

\*\*\* Senator Calvert to substitute for Senator McGauran for the inquiry into the role of AusSAR in the search for the *Margaret J.*

### *Participating Members*

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	Senator Mason	Senator Watson

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# CHAPTER ONE

## THE COMMITTEE'S INQUIRY

### Reference of the Bill to the Committee

1.1 On 20 September 2001, on a motion by Senator O'Brien, the Senate referred the *Regional Forest Agreements Bill 2001* (the Bill) to the Legislation Committee for inquiry and report by 25 September 2001.<sup>1</sup>

1.2 The motion read:

That the order of the Senate of 19 September 2001 adopting the 14<sup>th</sup> report of 2001 of the Selection of Bills Committee be varied to provide that the provisions of the Regional Forest Agreements Bill 2001 be referred to the Rural and Regional Affairs and Transport Legislation Committee instead of the Environment, Communications, Information Technology and the Arts Legislation Committee, for inquiry and report by 25 September 2001.<sup>2</sup>

### The Committee's Inquiry

1.3 On referral of the provisions of the Bill, the Committee immediately approached Government, groups and bodies associated with and representing the interests of the forestry industry for their views on the Bill. The Committee received 34 written submissions on the Bill. These submissions are shown at Appendix 1 of the report. The Committee also notes that a number of additional submissions have since been received. These submissions will be processed and tabled at a later date.

1.4 The Committee held a public hearing on the Bill in Canberra on Monday, 24 September 2001. The witnesses who appeared at the hearing are shown in Appendix 2 of the report.

1.5 All submissions and the *Hansard* of the Committee's hearing on the Bill are tabled with this report, together with supplementary material provided to it following the Committee's hearing. The *Hansard* of the hearing is available at the Hansard site on the Parliament House homepage on the Internet ([www.aph.gov.au](http://www.aph.gov.au)).

### Consideration of the Committee's Report

1.6 The Committee met on 25 and 26 September to consider its report.

### Acknowledgments

1.7 The Committee acknowledges the assistance and contribution made to its inquiry by all those who prepared written submissions on this inquiry, often at very short notice. The Committee also acknowledges the assistance provided at its public hearing on the Bill by all witnesses. This co-operation has allowed the Committee to prepare and present its report on time.

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1 *Journal of the Senate*, 20 September, p 4897

2 *Journal of the Senate*, 20 September, p 4897





## **CHAPTER TWO**

### **BACKGROUND TO THE 2001 RFA LEGISLATION**

#### **Introduction**

2.1 The RFA legislation referred to the Committee has a considerable history of negotiations between the Commonwealth and the States, of preparation and drafting prior to its presentation to the Parliament 1998 (the 1998 RFA Bill), and - since February 1999 - subsequent debate, amendment by the Senate and re-drafting.

2.2 The Committee considered and reported on the 1998 Bill in February 1999. A history of the Regional Forest Agreements system and the RFA legislation both before and after that date is important to an understanding of the factors which have resulted in the introduction of the 2001 RFA Bill.

2.3 In presenting the detailed background information in producing this report, much of the following discussion in this chapter has been compiled from the Bills Digest pertinent to the current legislation before the Senate, dated 21 September 2001.

#### **History of the 2001 RFA Legislation**

2.4 In 1992, the Commonwealth and the States and Territories signed the National Forest Policy Statement (NFPS). The NFPS outlined agreed objectives and policies for the future of Australia's public and private native forests. As part of implementing the NFPS, governments agreed that forest regions would go through a comprehensive assessment process of all forest values. The assessment process evaluated environmental, heritage, economic and social values. This led to the establishment of a comprehensive and adequate reserve (CAR) system, agreements of forest management, and the signing of Regional Forest Agreements (RFAs) between the Commonwealth and the relevant State.

2.5 Collectively, the RFAs are intended to provide a blueprint for the future management of Australian forests, and the basis for an internationally competitive and ecologically sustainable forest products industry. They are intended to clearly identify those forest resources available for multiple use, including resources for sustainable timber harvesting. Ten RFAs have been signed across four states. The following table details these.

*Table 2.1 – Region and Date Signed for RFAs*

<b>Region</b>	<b>Date Signed</b>
East Gippsland, Victoria	February 1997
Tasmania	November 1997
Central Highlands, Victoria	March 1998
South-West Western Australia	May 1999
Eden, NSW	August 1999
North East Victoria	August 1999
Gippsland, Victoria	March 2000
West Victoria	March 2000
North-East NSW	March 2000
Southern NSW	April 2000
Queensland	Not signed

*Source: Bills Digest, 21 September 2001*

2.6 As part of the RFA process, a joint Commonwealth-State Forest Industry Structural Adjustment Package (FISAP) was established to help forest industry businesses and workers adjust to reductions in the native forest resources available to industry resulting from the RFAs. According to the Department of Agriculture, Fisheries and Forestry, approximately \$100 million of FISAP funding is available over the period from 1996 to 2003.

2.7 However, in Queensland, as a RFA has not been finalised, FISAP funding has been limited. Western Australia has also only received a ‘negligible amount’ due to the failure of the Western Australian Government to implement the RFA. In regard to Western Australia, the Commonwealth has recently announced its intention to advertise for expressions of interest from businesses involved in the Western Australia hardwood forestry industry for ‘direct’ Commonwealth funding assistance.

2.8 The following table details FISAP allocations and expenditure to June 2001:

*Table 2.2 – FISAP Payments*

	<b>NSW</b>	<b>VIC</b>	<b>QLD</b>	<b>WA</b>	<b>Other payments</b>	<b>Total</b>
<b>Allocation</b>	\$60.0 m	\$18.80 m	\$5.0 m	\$15.0 m		\$98.80 m
<b>Spent to 30 June 2001</b>	\$18.85 m	\$4.69 m	\$0.034 m	\$0.136 m	\$8.82 m	\$32.02 m
<b>Unspent</b>	\$41.15 m	\$14.11 m	\$4.96 m	\$14.86 m		\$75.09 m

*Source: Bills Digest, 21 September 2001*

2.9 While the contents of the respective RFAs vary, a key feature of all RFAs except East Gippsland has been the compensation provisions. Typically, these provide that if, in order to protect environment or related values in native forests, the Commonwealth breaches the RFA in a way that curtails the use of land outside the reserve system, or the sale or commercial use of forest products sourced from land outside the reserve system, the Commonwealth will pay compensation to the State concerned acting as a trustee for the person or company who has suffered loss.

### **The 1998 Regional Forest Agreements Bill**

2.10 In February, 1998, Senator Bob Brown, obtained a legal opinion that concluded the Tasmanian RFA was a ‘statement of intent only and has no legal effect’. If correct, one of the consequences of this opinion was that the RFA’s compensation provisions would not be legally enforceable. Around this time, the Government began to prepare the 1998 Bill. The compensation provisions are contained in Part three of the RFAs.

2.11 The Regional Forest Agreements Bill 1998 was introduced into Parliament in mid 1998. Its passage through Parliament was halted by the Commonwealth election in October 1998, re-introduced in November 1998 and passed in the House of Representatives in February 1999.

2.12 The Bill contained eight sections, namely:

- definitions of what constituted an RFA and an RFA forestry operation,
- that RFA forestry operations were exempted from the operation of various Commonwealth environment and export control laws and
- that the Commonwealth was liable to pay compensation where this was required under the relevant provisions of an RFA.

### **The Key Sticking Points in the 1999 Parliamentary Debate**

2.13 On 9 December 1998, the Bill was referred to this Committee. The Committee reported on 25 February 1999 and recommended that the Bill be passed unamended.<sup>1</sup> Dissenting reports were made by the Opposition, Australian Democrats and the Greens. The Opposition and the Democrats considered that more time was required to address various aspects of the Bill. The Greens opposed the Bill outright.

2.14 The Senate subsequently made amendments to the Bill (the Senate amendments). These were rejected by the House of Representatives in October 1999. The Senate insisted on the amendments and sent the Bill back to the House of Representatives. The House of Representatives opposed the Senate amendments. The 1998 Bill was not debated again in either 2000 or 2001.

2.15 There were five main proposals in the Senate amendments as follows:

- An objects clause;
- Parliamentary scrutiny and disallowance;
- Application of the Environmental Protection and Biodiversity Conservation Act 1999 to RFA regions;
- Compensation and
- An industry advisory council.

#### *An Objects Clause*

2.16 As introduced in 1998, the Bill had no objects clause or similar statement of intent. The ALP introduced an objects clause that made specific reference to the NFPS. The purpose of the clause was 'to ensure RFAs are consistent with the NFPS'. The consistency was to be judged with reference to a number of criteria, which were directly derived from the list of 'national goals' contained in the NFPS. The criteria also required that the precautionary principle be applied in a RFA. The Australian Democrats proposed an amendment to the ALP's objects clause that would require a RFA to be consistent with the 1995 National Competition Policy Agreement. However, this was not supported by the ALP.

#### *Parliamentary Scrutiny and Disallowance*

2.17 The ALP successfully moved a Senate amendment that would mean that an RFA made after 1 March 1999 would only be an RFA for the purposes of the Act if it were made in accordance with proposed parliamentary scrutiny provisions. This meant that if an RFA did not comply with this requirement, the Bill would not apply to it, thus defeating the Government's purpose in relation to the enforceability of RFA provisions.

2.18 Included in the proposed scrutiny provisions was the requirement for RFAs to be tabled and the ability of either House to disallow them within 15 sitting days of tabling.

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1 RRAT report on Regional Forest Agreements Bill 1998, p 67

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*Application of the Environmental Protection and Biodiversity Conservation Act 1999 to RFA Regions*

2.19 Subclause 5(3) of the 1998 Bill excluded the operation of the environment assessment provisions of the *Environment Protection (Impact of Proposals) Act 1975* (EPIPA) and the ability of the Governor-General to invoke the protective measures of the *World Heritage Properties Conservation Act 1983* (WHCPA).

2.20 After the Bill had passed the House of Representatives and been introduced into the Senate but before substantive debate on the Bill had commenced in the Senate, the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBCA) was passed. This repealed both the EPIPA and the WHCPA, although the EPBCA was not to come into effect until July 2000. Part 3 of the EPBCA effectively replaced the EPIPA assessment provisions and WHCPA invoking measures mentioned above.

2.21 Section 38 of the EPBCA enabled a person to undertake RFA forestry operations without being subject to the requirement for environmental approvals under Part 3 of the EPBCA. However, under section 42, section 38 did not apply to forestry operations in a property included in the World Heritage List; in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention or are incidental to another action whose primary purpose does not relate to forestry.

2.22 A Senate amendment incorporated similar language to that of EPBCA section 42, into subclause 5 (3) of the Bill. Without these amendments subclause 5 (3) would have likely negated section 42 EPBCA on the general principles that, where there is inconsistency between two pieces of legislation, the more recent legislation should prevail. The Senate amendment was opposed by the Government.

*Compensation*

2.23 The 1998 Bill provided that ‘the Commonwealth is liable to pay any compensation that the Commonwealth is required to pay a State in accordance with the compensation provisions of a RFA.

2.24 The Senate proposed that ‘the Commonwealth is liable to pay any compensation *in relation to actual losses arising from the loss of legally exercisable rights* that the Commonwealth is required to pay a State in accordance with the compensation provisions of the RFA for a *breach amendment or termination of any RFA*.

*An Industry Advisory Council*

2.25 The 1998 Bill as introduced made no provision for an industry advisory council. A Forest and Wood Products Council has since been appointed by the Minister. The Council has met three times since November 2000, including the latest meeting in September 2001. The Council is chaired by the Forestry and Conservation Minister, the Hon Wilson Tuckey. There is one union representative on the Council, with the remainder being timber industry representatives. There are no conservation or tourism representatives among designated observers to the Council. A current list of members and observers is included at Appendix 3.

2.26 The issue of an industry council was examined by this Committee when inquiring into the 1998 Bill. The report recommended a council be established, although it did not

make any recommendations as to whether it should have a statutory basis or what its role and membership should be.

2.27 In relation to the 1999 Parliamentary debate, a major issue of debate between the Senate and House of Representatives related to the Council's membership and functions.

2.28 Under the Senate's amendments, the provisions relating to the Council (termed a Wood and Paper Industry Council) totalled 20 sections. The Council's functions proposed a body able to undertake studies and report to the Minister on its own initiative. It was to be a body of at least fifteen people, with membership from a very wide range of interest groups beyond the timber processing sector, including unions, timber users, conservation and tourism. The Chair and Deputy Chair were to be selected from, timber processors, user groups or union representatives. The Government rejected this amendment.

# CHAPTER THREE

## PROVISIONS OF THE 2001 RFA BILL

### Introduction

3.1 As noted in Chapter 2, the 1998 RFA Bill was subject to substantial amendment by the Senate during debate in 1999 and 2000. The Government did not accede to the Senate's requests for amendment of the Bill and has introduced the 2001 Bill containing new provisions not in the 1998 Bill.

3.2 The Committee, as noted in Chapter 1, does not repeat its analysis of the matters raised by the 1998 Bill, as these matters were dealt with in its February 1999 report to the Senate. The Committee draws the Senate's attention to the provisions of the 2001 Bill, which **alter or amend** the 1998 Bill in the following section.

3.3 As the provisions contained in the 2001 Bill which alter or amend the 1998 Bill are quite detailed, much of the following discussion has been compiled from the Bills Digest, dated 21 September 2001.

### The 2001 RFA Bill - Principal Provisions

3.4 A **new section 3** sets out the 'main objects' of the Bill. These are:

- to give effect to certain obligations of the Commonwealth under Regional Forest Agreements;
- to give effect to certain aspects of the Forest and Wood Products Action Agenda and the National Forest Policy Statement; and
- provide for the existence of the Forest and Wood Products Council.

3.5 A **new section 4** contains a list of definitions. Notably, the definition of RFA or Regional Forest Agreement remains the same as that in the 1998 Bill as originally introduced. However, the definition of RFA Forestry operations has changed. In relation to NSW, Victoria and Tasmania they are defined as:

*forestry operations* (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and [relevant State] that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA).

In relation to WA, it is defined as:

*harvesting and regeneration operations* (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and Western Australia) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA).

There is no definition for Queensland. The Commonwealth and the Queensland Governments have been unable to reach an agreement over a draft agreement, therefore, a RFA has not been signed.

3.6 A **new section 5** provides that the Bill legally binds the Commonwealth. This is unchanged from clause 4 of the 1998 Bill.

3.7 A **new section 6** provides that certain Commonwealth legislation, or parts of them, do not apply to RFA wood or forestry operations. This exclusion is because of:

the environmental and heritage values of these regions have been comprehensively assessed under relevant legislation during the RFA process and the RFAs themselves contain an agreed framework on ecologically sustainable development of these forest regions over the next 20 years.<sup>1</sup>

3.8 The effect of a **new subsection 6(1)** provides that measures under the *Export Control Act 1982* do not apply to RFA wood. **New subsection 6(2)** excludes any other 'export control law' applying to RFA wood, unless the relevant law expressly refers to RFA wood. Export control law is defined as 'a provision of a law of the Commonwealth that prohibits or restricts exports or which has the effect of prohibiting or restricting exports'. Note that the export controls on woodchips from regions covered by RFAs have already been lifted by the combined effect of the Export Control (Hardwood Woodchips) Regulations 1996 and the Export Control (Regional Forest Agreements) Regulations 1997.

3.9 A **new subsection 6(3)** provides that 'the effect of RFA forestry operations must be disregarded for the purposes section 30 of the *Australian Heritage Commission Act 1975*' (AHCA). Essentially, under section 30, the Commonwealth is constrained from taking any action which adversely affects a place in the Register of the National Estate, unless there is no feasible and prudent alternative to this action. Section 30 does not provide any protection against the actions of non-Commonwealth entities such as individuals, companies or local or State Governments. The AHCA is itself currently the subject of repealing legislation (the Environment and Heritage Legislation Amendment Bill (No.2) 2000) and associated Bills. If the AHCA is repealed, protection of Australian Heritage will mainly occur under Part 3 of the EPBCA.

3.10 A **new subsection 6(4)** provides that Part 3 of the EPBCA, which deals with what matters require Ministerial approval before they can proceed. It does not apply to an RFA forestry operation that is undertaken in accordance with an RFA. This reflects a similar provision in section 38 of the EPBCA. However as mentioned in Chapter 2, section 38 is modified by EPBCA section 42 which in effect says that section 38 does not apply to forestry operations affecting a World Heritage property, Ramsar wetland or forestry operations 'incidental to another action whose primary purpose does not relate to forestry'. Therefore, as the **new section 6** seems likely to override section 42 of the EPBCA.

3.11 A **new section 6** is essentially the same as clause 5 of the 1998 Bill, allowing for the fact that the EPBCA has been passed since then. As noted at 2.22, a Senate amendment to clause 5 of the 1998 Bill was proposed in 1999. This after the passage of the EPBCA was opposed by the Government.

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1 Explanatory Memorandum, p 7



3.12 A **new section 7** provides that the Commonwealth can only terminate an RFA in the way set in the termination provisions of the relevant RFA. One effect of the new section 7 is that, if the termination provisions of an RFA which is in force are amended after the Bill commences, the Commonwealth could only legally terminate the RFA under the 'old' termination provisions rather than the new version. The new section 7 would have to be amended to allow a valid Commonwealth termination under any new provisions. The new section 7 is unchanged from clause 6 of the 1998 Bill.

3.13 A **new section 8** deals with compensation for a breach of an RFA by the Commonwealth. It provides that the Commonwealth is legally liable for any compensation it is required to pay to a State, pursuant to compensation provisions contained in the relevant in force RFA. The fact that the RFA expires or is terminated after the breach occurs does not effect the Commonwealth's liability. If necessary, compensation may be recovered by a State through a court action as a debt. Compensation is payable from funds appropriated by Parliament. The new section 8 is unchanged from clause 7 of the 1998 Bill.

3.14 A new section 9 provides that the Minister must publish a notice in the Gazette when a RFA is entered into or ceases to be in force. The notice must provide details of the relevant region and the dates of entry into commencement or cessation. The new section 9 is unchanged from clause 8 of the 1998 Bill.

3.15 A **new section 10** deals with the tabling in Parliament of RFAs, amendments to RFAs, RFA annual reports and RFA review reports. **New subsections 10(1)-(2)** require that the Minister must invoke that a copy of an RFA is to be tabled in each House of the Parliament within 15 sitting days after the RFA is entered into or the Bill comes into force, whichever is the later. However, a RFA that has already been tabled in a House before the Bill is enacted does not have to be re-tabled in that House. Amendments to RFAs must also be tabled in each House within 15 sitting days after the amendment is made, or the Bill comes into force, whichever is the later. The Minister must also table RFA annual reports and RFA review reports within the same timeframe. The new section 10 is an entirely new section compared to the 1998 Bill, having emerged from the negotiations in 1999.

3.16 A **new section 11** deals with the Forest and Wood Products Council (the Council). A **new subsection 11(1)** requires that the Minister 'must take all reasonable steps to ensure that, at all times, there is in existence a committee known as the...[Council]...and established under the executive power of the Commonwealth'.

3.17 **New subsections 11(2)-(3)** set out the objects and functions of the Council. These mainly relate to providing advice to the Minister about the implementation of the *Forest and Wood Products Industry Action Agenda - Forest and Wood Futures* (the Action Agenda) and carrying out any tasks specifically allocated to them under the Action Agenda. Other objects and functions focus on liaison and cooperation between 'different sectors of the forest and wood products industry'.

3.18 In performing its functions, a **new subsection 11(4)** limits the Council to activities that could be legislatively conferred on the Council under the Constitution. In particular, the Council may perform its functions 'in relation to matters arising in the course of, or that concern' interstate or overseas trade, constitutional corporations or any or all of the

Territories. It is noticeable that no reference is made to the external affairs power, although this is not explicitly excluded by **new subsection 11(4)**.

3.19 **New subsections 11(5)-(6)** require the Minister to hold meetings of the Council on request by a majority of the Council and at least twice each calendar year.

3.20 **New subsections 11(7)-(9)** require the Council to undertake a review in the second half of 2004 as to whether the Council should continue to exist and, if so, what its functions and procedures should be. The Council must 'consult with stakeholders in the forest and wood products industry' in undertaking the review. The Council must present its review report to the Minister, who must cause the report to be tabled in both Houses of the Parliament within 15 sitting days after receipt from the Council. While the review must be finished by 31 December 2004, no deadline for the preparation or presentation of the review report to the Minister is contained in new section 11. New section 11 is an entirely new section compared to the 1998 Bill.

## **CHAPTER FOUR**

### **COMMITTEE COMMENTS ON THE NEW CLAUSES CONTAINED IN THE 2001 BILL**

#### **Introduction**

4.1 The Committee has examined the Bill and has specifically considered submissions by those affected by the Bill and by members of the community including stakeholders.

#### **General Comment on the 2001 RFA Bill**

4.2 The Committee notes that submissions to it on the 2001 RFA Bill fall into two categories:

- general comment on the RFA scheme and the consequential importance of the Bill to that scheme and,
- the comment on clauses in the 2001 Bill not in the 1998 Bill .

4.3 As noted the Committee made a number of recommendations regarding the RFA scheme in the 1998 RFA Bill.

4.4 The conclusions and recommendations from the Committee's 1999 report on the 1998 RFA Bill are attached as Appendix 4.

4.5 At the Committee's hearing on the Bill on Monday, 24 September, there was general agreement among Commonwealth and State based organisations, industry and community associations regarding support for the provisions contained in the 2001 Bill. It is acknowledged through submissions to the Committee from the Department of Agriculture, Fisheries and Forestry (AFFA), Timber Communities Association (TCA), National Association of Forest Industries (NAFI) and the Institute of Foresters of Australia that the Bill will assist in decreasing the level of uncertainty and insecurity currently pertaining to RFAs and increasing the potential for employment in timber communities.

4.6 There is also clear consensus that the Bill will add to the legal standing of RFAs with the requirement for mandatory reporting to the Parliament and the added emphasis given to the Forest and Wood Products Council.

4.7 The Committee also received a number of submissions both from organisations and individuals, which criticise the provisions contained in the Bill and the RFA scheme itself. These concerns were highlighted during the Committee's public hearing on the Bill by the Wilderness Society, Doctors for Forests and the Australian Conservation Foundation.

4.8 The Committee notes the concerns contained in submissions regarding the perceived impact the RFA scheme has had on the ecological sustainability of old growth forests, forest eco-systems and wildlife. Concerns relating to unemployment in timber communities and subsequent consequences to the economic viability of those communities were strongly emphasised to the Committee. Other criticism focussed on allegations that, particularly in

Tasmania, there had been a failure to adequately protect forests from breaches against RFA conditions.

### **New Clauses in the 2001 RFA Bill**

4.9 Those clauses are:

- Clause 3 – Objects,
- Clause 4 – New definition of RFA forestry operations,
- Clause 6 – Exemption of certain Commonwealth legislation to RFA wood and RFA forestry operations,
- Clause 10 – Tabling of RFAs and reports and
- Clause 11 – Forest and Wood Products Council.

#### *Clause 3 – Objects*

4.10 Clause 3 contains a set of defined objects for the legislation. The Committee agrees with the addition of this clause to the legislation.

#### *Clause 4 – Definitions*

4.11 Clause 4 contains a set of definitions for the legislation and especially redefines the definition pertaining to RFA Forestry operations. The Committee agrees with the addition of this clause to the legislation.

#### *Clause 6 – EPBCA and certain Commonwealth legislation*

4.12 Clause 6 provides that certain Commonwealth legislation, or parts of them, do not apply to RFA wood or RFA forestry operations as noted in Chapter three.

4.13 In evidence to the Committee, Dr Rhondda Gay from Environment Australia stated:

The other differences that you would probably note between the EPBC Act exemption for forestry operations and the RFA Bill are the different definitions. The EPBC Act still referred to the non-successful RFA Bill 1998, which was obviously not a satisfactory definition when there wasn't such an act. The RFA exemption is set in the context of the new RFA Bill 2001, which clearly identifies each specific RFA and the definition therein.<sup>1</sup>

4.14 In contrast, Mr Henry representing the Australian Conservation Foundation stated:

Our view is that the Commonwealth environment legislation should apply across the full Commonwealth, and areas – specifically, in this case, areas subject to regional forest agreements – should not be excised or excused from the application of national environment laws. I acknowledge fully that that exclusion is contained in the existing EPBC – the environment legislation – and that is referred to

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1 *Evidence*, 24 September 2001, p 14

specifically in this Bill. In our view, that is not an adequate approach to the application of national environment laws in Australia.<sup>2</sup>

4.15 The Committee agrees with the wording of this clause to the legislation.

*Clause 10 – Tabling of RFAs, amendments and reports*

4.16 As discussed in Chapter three, Clause 10 provides for the tabling in Parliament of RFAs, amendments to RFAs, RFA annual and review reports. The Committee agrees with the addition of this clause to the legislation.

*Clause 11 – Forest and Wood Products Council*

4.17 Clause 11 clarifies the status of the Forest and Wood Products Council by formalising its objects, functions and procedures. The clause also requires that the Council undertake a review in the second half of 2004 of its functions and procedures. The Committee agrees with the addition of this clause to the legislation.

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2 *Evidence*, 24 September 2001, p 17.



## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

**The Committee has considered the terms of the Bill and concludes as follows:**

#### **Committee Conclusions**

##### *Enactment of the Bill*

5.1 As the Committee noted in its 1999 Report on the 1998 Bill, enactment of this Bill is an essential aspect of achievement of the NFPS program for the development and execution of RFAs. The Committee considers that enactment of the Bill will act to assist long-term resource security and environmental protection regimes central to the NFPS.

5.2 Taking into account the matters dealt with in Chapter four, the Committee considers the Bill should be enacted.

5.3 **The Committee concludes that the Regional Forest Agreements Bill 2001 should now be passed by the Senate unamended.**

#### **Committee Recommendation**

5.4 **The Committee recommends that the Regional Forest Agreements Bill 2001 should now be passed unamended by the Senate.**

**Senator Winston Crane  
Chairman**

26 September 2001





# **ADDITIONAL COMMENTS BY SENATORS FORSHAW AND O'BRIEN**

## **REGIONAL FOREST AGREEMENTS BILL 2001**

The Regional Forest Agreements Bill 2001 is in most respects similar to the original legislation introduced into the Parliament in 1998 and re-introduced in 1999.

The Senate Rural and Regional Affairs and Transport Legislation Committee examined the original legislation and published a detailed report in February 1999.

At that time the Labor Opposition Senators presented a minority report which stated, inter alia:

The Opposition has considered the proposed legislation and the evidence and submissions presented to the Committee. We strongly support the RFA process which was initiated under the previous Labor Government. We support passage of the Bill subject to consideration of the issues raised in this minority report and appropriate amendments that we will present when the legislation is debated in the Senate.

When the bill was eventually debated in the Senate in late 1999 the ALP successfully moved a number of amendments which improved the legislation. Those amendments provided for:

- an objects clause;
- parliamentary scrutiny and disallowance of RFA's;
- tighter provisions for compensation; and
- an industry advisory council.

Unfortunately the Coalition Government rejected the Senate's amendments.

Since that time the Minister for Forestry has engaged in a campaign to vilify any interests or groups who do not agree totally with his views and who did not agree with his original legislation. This has even led to bitter disagreements between the Minister and his own political colleagues in the former Western Australian Liberal Government as well as industry representatives, environmental groups and State Governments.

The Minister has also withheld payments under the Forest Industry Structural Adjustment Package (FISAP) to some state Governments for blatant political purposes.

Notwithstanding the Federal Minister's belligerence the position has now been reached where Regional Forest Agreements have been finalised in all states except Queensland. The respective State Governments should be congratulated for their hard work and persistence in negotiating these agreements.

The Federal Government has now re-introduced the bill with some changes. These changes, which in large part reflect proposals originally contained in the Opposition's 1999 amendments, include:

- an objects clause (Clause 3) which recognises the requirements of the National Forest Policy Statement of 1992,
- a requirement that Regional Forest Agreements and any amendments to an RFA be tabled in the Federal Parliament (Clause 10); and
- the establishment of a Forest and Wood Products Council with legislative recognition (Clause 11).

It is pleasing to note that after two years of constant abuse and criticism of these proposals the Minister has now agreed to include them in this revised bill.

When the previous bill was debated in 1999 the Opposition proposed an amendment to provide for parliamentary scrutiny of RFA's and, if necessary, disallowance. This amendment, which was carried by the Senate, was necessary because at that time only 3 RFA's had been finalised. The Federal Government was in effect asking the Parliament to endorse future RFA's that had yet to be negotiated. Further the Western Australian RFA had been repudiated by the then Liberal State Government shortly after it was signed.

As noted above RFA's have now been finalised in all states except Queensland.. This significant development together with the provisions in the new bill which require tabling of RFA's and RFA Annual Reports and Review Reports (Clause 10) means that the disallowance provisions are no longer required.

Whilst the Government has adopted some of the key changes originally proposed by the Opposition there are still areas in which the bill can be further improved. In particular the Opposition believes that the bill should be amended to:

- include a requirement that the Minister must cause to be established a comprehensive and publicly available national forest database; and
- provide for the establishment of a Parliamentary Joint Committee on Regional Forest Agreements which would provide for more effective parliamentary and public oversight of the ongoing implementation of RFA's;
- ensure that the compensation liability for a breach of an RFA by the Commonwealth, prescribed in Clause 8, is limited to actual losses; and
- restate the Commonwealth's continuing responsibility for the oversight of listed World Heritage areas and Ramsar wetlands.

**In summary, the Opposition recommends that the Regional Forests Agreement Bill 2001 be passed with amendments to reflect the issues detailed above.**

## **ADDITIONAL COMMENTS FROM THE AUSTRALIAN DEMOCRATS**

Although the Democrats initiated the referral of this Bill to the Committee we were not supportive of the incredibly brief time frame that was imposed on the Committee by the Senate.

I was unable to attend the Committee's public hearing on the Bill and believe that the Senate needs to acquaint itself much more fully with the wide range of negative evidence that is coming to light about the destructive and inefficient nature of forestry activities under existing RFAs.

It would be irresponsible for the Senate to consider this Bill without properly examining the current operations of the forest industry, given that the Bill will lock in Australia's taxpayers to the prospect of massive future compensation payments.

The Democrats believe there should be an independent inquiry into the operations of the forestry industry to establish the level of public subsidy and to assess widespread allegations of breaches of codes of practice and environmentally destructive practices.

I recommend that this Bill be opposed.

Senator Andrew Bartlett

Australian Democrats, Queensland



## **ADDITIONAL COMMENTS FROM SENATOR MURPHY**

In 1992 the Commonwealth and the States with the initial exception of Tasmania signed an agreement known as the National Forest Policy Statement (NFPS).

This agreement outlined agreed objectives and policies for the future of Australia's public and private forests.

The vision of the NFPS was to bring about a holistic approach to the management of Australian forests for all their values.

There were eleven broad national goals to be pursued through the process.

In short, these involved:

- the maintenance of an extensive and permanent native forest estate;
- the development of an internationally competitive and ecologically sustainable wood production and wood products industry;
- ensuring that private native forests are maintained and managed in an ecologically sustainable manner;
- the expansion of Australia's commercial plantations of softwoods and hardwoods so as to provide an additional, economically viable, reliable and high quality wood resource for industry;
- ensuring the availability of reliable, high-quality water supplies from forested land, and;
- the protection of catchment values and the provision of opportunities for effective public participation in decision making.

Regional Forest Agreements (RFA's) were to become the mechanism through which these objectives and goals would be achieved. They in turn were to be underpinned by legislation at the State and Commonwealth levels.

The Bill which has been referred to the Committee is intended to meet the Commonwealth's legislative side of the deal. The legislation was first presented in 1998 and has been intermittently debated since.

It is clear from the objectives and goals of the NFPS that both the States and Commonwealth attached the utmost importance to the sustainable management of Australia's forests in order to achieve the full range of benefits that forests can provide both now and in the future.

In taking into account the goals and specific objectives and policies of the NFPS I would like to point out a number of important failures of the RFA's and underpinning legislative process.

Firstly, it was the intention of the RFA's and supporting legislation to ensure that jobs would be more secure and that forests would be managed on an ecologically sustainable basis and that plantations would provide an economically viable, reliable, high quality wood resource for the industry into the future.

RFA's contain statements about industry development, sustainable management and public participation in decision-making that give the appearance of ensuring such outcomes.

Unfortunately the reality falls a long way short of the intention which raises many questions about the process that has developed from the NFPS.

Evidence makes it clear that jobs are rapidly declining in the forest industry and evidence suggests that in some states, despite the guarantee and availability of resource, little or no development has taken place, especially in the downstream processing and high value-added areas.

Moreover forests that are supposed to be managed in an ecologically sustainable way are not and the goals of improving the quality and maintenance of water resources are simply not being achieved. In fact, water resources are being degraded such that if changes are not made, the damage will be irreparable.

The outcomes that are occurring are not the outcomes which were envisaged and rather than allowing a continuation of the failures of the existing process, we should be seeking to remedy them.

Rather than passing legislation that entrenches the existing failures the Parliament should be taking the opportunity to address those failures and ensure an outcome something like that which was intended in the NFPS.

To further limit the Commonwealth's capacity to act in the interest of all Australians makes no sense at all in light of the current circumstances. To allow legislation to pass that fails to bring any real accountability on the States and their forestry agencies to deliver the outcomes and objectives of RFA's is not supportable.

I therefore reject the Committee's recommendation that the Bill be passed unamended at this time.

I would urge the Government to appoint an Independent Taskforce to conduct a comprehensive assessment of the current management of the forests in Tasmania and Victoria in particular and to determine to what degree the objectives and outcomes of the RFA's are being achieved and report those findings to the Parliament.

Senator Shayne Murphy

## **ADDITIONAL COMMENTS FROM SENATOR BROWN**

### **AXE THE RFAS NOT THE FORESTS**

Senator Bob Brown, Australian Greens

September 2001

In February 1999, I said that the then Regional Forest Agreements Bill should be opposed because

- Jobs have been lost where RFAs have been implemented
- Far from peace in the forests, the RFAs have been followed by demonstrations and bitter opposition
- Far from ecologically sustainable forestry, RFAs allow for unreasonably destructive logging practices
- RFAs have not given security for conservation
- RFAs are short-sighted
- RFAs ignore Indigenous interests
- The RFAs have prudent and feasible alternatives
- The Bill is against the public interest

Today, two and a half years later, nothing has changed except for the worse --

- RFAs have unleashed woodchipping at ever increasing rates, over 5 million tonnes per annum from Tasmania alone and an unprecedented 1 million tonnes from Victoria
- The tallest hardwood trees in the world in the Styx Valley of the Giants are being logged and woodchipped daily
- Job losses continue -- the Tasmanian RFA was supposed to 'lay the foundation' for creating 550 new jobs; instead over 500 jobs have been lost since it was signed
- Plantations (ignored completely by the RFAs) now supply over 70% of wood processed in Australia and can meet all our needs for commodity wood, including building materials and paper products
- Native forests can now be burnt in forest furnaces to generate so-called 'renewable energy', under the Coalition/Labor Renewable Energy Act
- The Commonwealth alone has spent \$328 million on RFAs to subsidise native forest logging
- We are no closer to a plan for creating jobs through domestic processing of plantation wood because we continue to prop up the uneconomic, destructive, job-shedding native forest-based logging industry.

This process for assessing the RFA Bill 2001 has been a farce. The Committee has not had time to consider many of the submissions it received; one witness was unable to be heard because of technical problems; and the new provisions in the bill have not been properly scrutinised.

I thank all those who made submissions at such short notice for their contribution and commitment.

Most Australians want old growth and high conservation value forests protected (70% in the most recent poll in Tasmania). The next forest bill that comes before the federal parliament should do just that.

The RFA Bill 2001 should be withdrawn and never see the light of day again.

#### Additional comments

1. The Committee Report claims that there was 'general agreement among Commonwealth and State based organisations, industry and community associations regarding support for the provisions contained in the 2001 Bill' (para 4.5). This is not correct. Dr Rhondda Dickson (Environment Australia) could not answer whether she supported or opposed the bill, but expressed concerns that it overrides section 42 of the Environment Protection and Biodiversity Conservation (EPBC) Act. Numerous submissions from community associations opposed the RFA bill.
2. The tenor and implications of Dr Rhondda Dickson's submission have been misrepresented (para 4.13). She points out that the effect of s42(c) of the EPBC Act was to 'close off a potential loophole where a range of unintended actions outside the scope of a RFA could be brought into that exemption'; for example clearing for a subdivision, clearing for agriculture. Over-riding s.42 also allows RFAs to over-ride protection for properties included in the World Heritage List and the Ramsar list of Wetlands of International Importance. These concerns are consistent with my legal advice. The RFA Bill opens up a loophole that was not even intended by the government originally.

Senator Bob Brown  
Australian Greens



# APPENDIX ONE

## SUBMISSIONS

<b>Submission No:</b>	<b>Author</b>
1	Native Forest Network Australia
2	Lawyers for Forests
3	David Oppenheim,
4	Peter Lane
5	Luke Chamberlain
6	Tony Whan
7	Sascha Ettinger
8	Phoebe Miller
9	Otway Planning Association Inc
10	Freda Harvey
11	B C Fletcher
12	Preston Environment Group
13	Paul Walsh
14	Phil Shearman BSc(Hons)
15	Lynn Hayward
16	Patrick Johnson
17	Doctors for Forests

<b>Submission No:</b>	<b>Author</b>
18	Doctors For Native Forests Inc
19	Urban Ecosystems
20	Tasmanian Cleanwater Network
21	Upper Meander Catchment Landcare Group
22	Heidi Michelle Brennan
23	Annie and Ian Mayo
24	Ruby Fran and Dave Craven
25	Leith Maddock
26	James Barrie Kirkpatrick
27	Alan Cassell and Irene Jones
28	Waratah-Wynyard Residents Against Chemical Trespass
29	Rainforest Information Centre
30	Ben M Wedham
31	Tasmanian Government
32	Timber Communities Australia Ltd
33	Reedy Marsh Forest Conservation Group
34	The Institute of Foresters of Australia (IFA)

# **APPENDIX TWO**

## **HEARING AND WITNESSES**

**Canberra, 24 September 2001**

### **Agriculture, Fisheries and Forestry Australia**

Mr Rob Rawson, General Manager, Forest Industries  
Mr Allen Grant, General Manager, FISAP  
Mr Steve O'Loughlin, Director, Industry Development  
Mr Des Alfreds, Assistant Director, Industry Development

### **Timber Communities Association**

Mr Chris Althaus, National Director  
Mr Barry Chipman, Manager, Tasmania  
Ms Trish Bodle, Manager, Western Australia  
Ms Kirsten Gentle, Manager, Victoria  
Ms Jill Lewis, Manager, New South Wales

### **Doctors for Forests**

Dr Frank Nicklason  
Mr Phil Pullinger  
Dr Mike Thomas

### **National Association of Forest Industries**

Ms Kate Carnell, Executive Director  
Mr Greg McCormack, President  
Mr Vince Phillips, Vice President

### **Australian Conservation Foundation**

Mr Lindsay Hesketh, Forests Campaign Coordinator  
Mr Don Henry, Executive Director

### **Environment Australia**

Ms Rhonnda Dickson, Assistant Secretary, Natural Resource Management  
Branch, Natural Heritage Division

### **The Wilderness Society**

Ms Virginia Young, National Forest Campaign Coordinator

### **Institute of Foresters of Australia**

Mr Tony Bartlett, Chairman, ACT Division

### **Reedy Marsh Forest Conservation Group**

Mr Andrew Ricketts, Convenor  
(Due to technical difficulties experienced during a teleconference, no evidence  
could be taken)



## APPENDIX THREE

### FOREST AND WOOD PRODUCTS COUNCIL MEMBERSHIP

#### *Members*

The Hon Wilson Tuckey MP	Chair
Greg McCormack	Midway Pty Ltd
Douglas Head	Kempsey Timbers Pty Ltd
John Vaughan	Timbercorp Ltd
John Gay	Gunns Ltd
John McNamara	Hyne and Son
Bob Style	Westfi
Gary Drobnack	Green Triangle Forest Products Ltd.
Trevor Smith	Forest and Forest Products Division, CFMEU
Ian Hearn	Furnishing Industry Association of Australia (WA) Inc
Clive Dossetor	Timber Merchants Association (Victoria)

#### *Observers*

Kate Carnell	National Association of Forest Industries
Alan Cummine	Australian Forest Growers
Judy Freeman	National Furnishing Assoc
Peter Juniper	Plantation Timber Association of Australia Ltd
Glen Kile	Standing Committee on Forestry
Chris Althaus	Timber Communities Australia

#### FOREST AND WOOD PRODUCTS COUNCIL ACTIONS

- Innovation Working Group
- Communications Working Group
- Human Capital Working Group - workforce audit
- Development of strategy for investment in domestic processing
- Developing industry position on impediments to plantation establishment
- Progress certification and labelling is future role (when AFS implemented)



## APPENDIX FOUR

### CHAPTER 9 CONCLUSIONS AND RECOMMENDATIONS FROM 1999

**The Committee has considered the terms of the Bill, and concludes as follows**

#### **Committee Conclusions**

##### *Enactment of the Bill*

1.1 Enactment of this Bill is an essential aspect of achievement of the NFPS program for the development and signing of RFAs. The Committee considers and has concluded that without enactment of the Bill, the resource security and environmental protection regimes central to the NFPS could not be achieved.

1.2 The Committee has canvassed the issues raised concerning the legislative structure proposed by the RFA Bill, and finds it appropriate.

1.3 In this context, the Committee has examined (in Chapter 8) the constitutional and legal questions raised regarding the Bill and the current structure of RFAs.

1.4 Taking into account these matters, the Committee considers the Bill should be enacted unamended.

**1.5 The Committee concludes that the RFA Bill should be passed by the Senate unamended.**

##### *Future review and scrutiny of RFAs.*

1.6 The Committee has also considered in detail the process developed under the National Forest Policy Statement for the negotiation and completion of RFAs.

1.7 In Chapter 3 of the Report, the Committee has discussed aspects of the negotiation, completion and compliance review process for RFAs. The Committee remains concerned that the process of compliance and progress review for the initial 5 years of each RFAs does not, at present, allow for the Parliament to be adequately informed on this process, and on the results of RFA operation.

1.8 The Committee accordingly concludes that the annual reviews of each RFA, as they are prepared in the future, should be tabled in Parliament.

**1.9 The Committee concludes that annual reports on the operation of RFAs for the first 5 operational years of the period of each RFA be tabled in the Parliament.**

##### *Wood and Paper Industry Council*

The Committee heard evidence on the desirability for the establishment of the proposed Wood and Paper Industry Council.

1.10 The Committee considers that the Council would be an advantage in promoting better forest management and developing value adding industry. The Committee deals with this matter in Chapter 6.

1.11 The Committee concludes that the Government should establish the proposed Wood and Paper Industry Council

#### *Accessibility*

1.12 To assist accessibility by interested parties or individuals, the Committee has concluded that RFA's should be tabled in Parliament after they have been signed by the Commonwealth and the States.

1.13 The Committee is recommending that, after each RFA is completed and signed by the Prime Minister and respective State Premier, or their nominee, that the RFA be tabled in the Commonwealth Parliament.

#### *Employment*

1.14 With Regard to employment in RFA areas or potential RFA areas, claims and counter-claims were made about the impact of RFA's on employment. The Committee is of the view that there are direct linkages between the various industries within an RFA, but believes it would be desirable for the Commonwealth to have access to much more reliable information.

1.15 Therefore the Committee is recommending that the Government request the Australian Bureau of Statistics in compiling its annual survey of employment to compile comprehensive employment information for each RFA region regarding the number of people employed directly and indirectly in the following categories:

- natural forest areas
  - plantation forest areas (public and private)
  - tourism industry
  - service industry
  - other industries operating within each RFA region.
-



## **Recommendations**

**The Committee recommends that the RFA Bill should be passed unamended by the Senate.**

**The Committee recommends that annual reports of the operation of RFAs for the first 5 years of the period of an RFA be tabled in the Parliament.**

**The Committee recommends the Government establish the Wood and Paper Industry Council.**

**The Committee recommends that, after each RFA is completed and signed by the Prime Minister and respective State Premier, or their nominee, that the RFA be tabled in the Commonwealth Parliament.**

**The Committee recommends that the Government request the Australian Bureau of Statistics in compiling its annual survey of employment to compile comprehensive employment information for each RFA region regarding the number of people employed directly and indirectly in the following categories:**

- **natural forest areas**
- **plantation forest areas (public and private)**
- **tourism industry**
- **service industry**
- **other industries operating within each RFA region.**

**Senator Winston Crane  
Chairman  
25 February, 1999**

