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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 61 2000–01

Regional Forest Agreements Bill 2001

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20 September 2001

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Regional Forest Agreements Bill 2001

Date Introduced: 29 August 2001

House: House of Representatives

Portfolio: Forestry and Conservation

Commencement: On a day to be fixed by Proclamation, or failing that, six months after Royal Assent.

Purpose

To give legislative effect to certain provisions of the Commonwealth-State Regional Forest Agreements - particularly provisions on compensation and exclusion of specified Commonwealth laws - and provide legislative recognition of the existence and work of the Forest and Wood Products Council. The Bill effectively replaces the Regional Forest Agreements Bill 1998.

Background

This background section traces the origin of the Regional Forest Agreements Bill 1998¹ and summarises the main sticking points behind the failure of the Parliament to pass that Bill in 1999. What differences there are between the 1998 and 2001 Bills are discussed in the main provisions section.

Regional Forest Agreements

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.² As part of implementing the NFPS governments agreed that forest regions would go through a comprehensive assessment process of all forest values - environmental, heritage, economic and social - leading to the establishment a comprehensive and adequate reserve (CAR) system, agreements on forest management, and the signing of Regional Forest Agreements (RFAs) between the Commonwealth and the relevant State.

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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.³ They are intended to clearly identify those forest resources available for multiple use, including resources for sustainable timber harvesting. As shown in the following table, ten RFAs have been signed across 4 states.

Table 1: Regional Forestry Agreements

Region	Date Signed
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

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 website of the Department of Agriculture, Forestry and Fisheries, around \$100 million of Commonwealth FISAP funding is available over 1996-2003.⁴ However, in Queensland there has only been limited funding due to the failure of the respective governments to sign a RFA.⁵ In Western Australia only a 'negligible amount' has been released by the Commonwealth to date due to the alleged

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failure of the Western Australian Government to implement the RFA,⁶ although the Commonwealth has recently announced its intention to advertise for expressions of interest from businesses involved in the WA hardwood forestry industry for 'direct' Commonwealth financial assistance.⁷

Table 2: Forest Industry Structural Adjustment Package (FISAP) payments

	NSW	Victoria	QLD	WA	Other payments	Total
Allocation	\$60.00 m	\$18.80 m	\$5.00 m	\$15.00 m		\$98.80 m
Spent to 30 June 2001	\$18.85 m	\$4.69 m	\$0.034 m	\$0.136 m	\$8.82 m	\$32.02 m
Unspent	\$41.15 m	\$14.11 m	\$4.96 m	\$14.86 m		\$75.09 m

Notes: Figures are millions of dollars.

The \$8.82 million of 'other payments' includes rescheduling assistance payments in Tasmania, past Agriculture, Forestry and Fisheries Departmental Costs (not attributed to individual states), direct Interim Hardship payments and expenditure and running costs by the Department of Employment, Workplace Relations and Small Business on the Forest Industry Labour Adjustment Package (FILAP) (where not attributed to individual states) and monies returned to consolidated revenue by that portfolio. AFFA assumed administrative responsibility for FILAP with effect from 1 July 2001.

The amounts spent to end June 2001 include FILAP payments attributed to individual states.

Tasmania received substantial funding over \$100 million as part of the RFA process for that state and this is not included in the above. Tasmania does not have an ongoing FISAP program.

Source: Personal communication, Commonwealth Department of Agriculture, Forestry and Fisheries.

While the contents of the respective RFAs vary somewhat, a key feature of all the 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.

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The origin and content of the 1998 Regional Forest Agreements Bill

In February 1998, Senator Bob Brown, obtained a legal opinion that concluded the Tasmanian RFA was 'statement of intent only and has no legal effect'.⁸ If correct, one of the obvious consequences of this opinion was that the RFA's compensation provisions would not be legally enforceable. Around this time, the Government started to prepare the 1998 Bill. In response to a Question on Notice from Senator Brown on 2 April 1998, as to the Government's rationale for the Bill, Senator Hill stated that⁹

Only part three of the Tasmanian and Central Highland RFAs is expressed to be legally binding. The primary reason for the legislation is to give effect to some key provisions which are not expressed to be legally binding...thereby providing greater certainty about the operation of RFAs.

The compensation provisions are contained in Part three of the RFAs. The implication of Senator Hill's statement is that the Government considered, at least on the balance of probabilities, that the compensation provisions were legally enforceable without any legislation. However, later statements by the Government indicate that questions over the legal enforceability of the compensation provisions in the RFA were a motivating factor behind the Bill.¹⁰

...the Commonwealth has introduced its Regional Forest Agreement Bill, to ensure that the compensation provisions of RFAs are legally enforceable against the Commonwealth.

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

The Bill was very short with only 8 sections covering only about 4 pages. Key provisions were:

- 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

On 9 December 1998, the Bill was referred to the Senate's Rural and Regional Affairs and Transport Legislation Committee. The Committee reported on 25 February 1999. The Chairman's report recommended that the Bill be passed unamended. Separate dissenting

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reports were given by the ALP, the Democrats and the Australian Greens. The ALP and the Democrats considered that more time was required to address various aspects of the Bill. The Greens opposed the Bill outright.

While the Bill was introduced into the Senate in February 1999, substantive debate did not begin until August. The Senate made significant amendments to the Bill (the Senate amendments) but these were rejected by the House of Representatives in October 1999. The Senate insisted on the amendments and again sent the Bill back. The Government continued to oppose the Senate amendments and with the Houses deadlocked, the 1998 Bill was not debated again in either 2000 or 2001.

There were five main sticking points between the Government position and the Senate amendments.

An objects clause

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.¹¹ 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 NFPS. The criteria also required that the precautionary principle be applied in a RFA. The Democrats proposed an amendment to the ALP's objects clause that would require an RFA to be consistent with the 1995 National Competition Policy Agreement¹² but this was not supported by the ALP.

In opposing the ALP's objects clause of Senate amendments, the Government said¹³

...we have grave concerns about an objects clause because that just opens up the opportunity for people who seem to have heaps and heaps of money to take someone to court after the event when they have committed their billion bucks in a paper making plant and say, 'You cannot do this because RFA No. 5 in Victoria does not meet the objects of the act.' That is a great opportunity for a couple of lawyers to make a lot of money. The fact of life is that investors do not want that problem; they want uncontested arrangements. That is what you achieve with an objects clause: you start to create opportunities for litigation. That is why I think it was totally unnecessary. But we were prepared to have some limited objects that we felt would not open the legislation to that sort of litigation, and we said so.

On this basis, the 2001 Bill actually contains a short objects clause. This is discussed in the main provisions section of this Digest.

Parliamentary scrutiny and disallowance

The ALP successfully moved a Senate amendment that, amongst other things, would mean that an RFA made after 1 March 1999¹⁴ would only be an RFA for the purposes of the Act if it were made in accordance with proposed parliamentary scrutiny provisions. This meant

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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.

At the heart of the 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. The rationale for this amendment was that the¹⁵

Regional forest agreements have a long term and massive impact on our forests. Therefore, it is quite reasonable that the Senate and this House ask for better scrutiny. It is reasonable that the regional forest agreements be subjected to public scrutiny before their final ratification. In Western Australia, the Regional Forest Agreement was signed off before anybody else saw it. There was no public scrutiny. That is the way this operates.... The Senate disallowance, in my view, is the best mechanism for making sure there is proper public scrutiny of these very important agreements.

The Government opposed the disallowance provisions for two reasons. The first related to the possibility of an opened-end delay.¹⁶

The RFA process itself involves both comprehensive scientific assessment and comprehensive stakeholder engagement. On what basis will a house of parliament be better placed to determine whether an RFA is appropriate or not?... if the RFA is disapproved, there is no requirement under the proposed amendment for the disapproving house to specify what aspects of the RFA are not acceptable...so one could envisage extensive rounds of submission and resubmission of a draft RFA without any positive resolution. These proposed amendments are a recipe for uncertainty....it will produce yet another process that has no obvious merit.

The other reason was the question of whether a disallowance process would be invalid due to inconsistency with section 99 of the Commonwealth Constitution. Section 99 provides that

the Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Advice from the Australian Government Solicitor indicated that, amongst other things, as the disallowance procedure would only apply to post-March 1999 RFAs, this would constitute section 99 preferential treatment.¹⁷

This view was rejected by the shadow Justice Minister, Duncan Kerr, who said¹⁸

The proposition that has been put forward that the bill may be vulnerable to legal challenge is false. It has been done on the basis of an opinion provided by the Office of General Counsel, dated 10 August 1999. The thrust of that opinion is that the amendments would create two possible outcomes that could result in an infringement of section 99 and that the bill itself if amended as proposed would probably infringe section 99. Both propositions are expressed in the most qualified of language and are wrong. Moreover, the reasoning supporting them conflicts with the considered advice,

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dated 12 February, tendered to the parliament by the Office of General Counsel to the Senate Rural and Regional Affairs and Transport Legislation Committee, whose report has been published in this parliament.

Indeed Mr Kerr argued that the possibility of the High Court reassessing its historical approach to section 99 might result in questions being asked whether the Government's form of the Bill was consistent with section 99:¹⁹

If the High Court would set aside its hither-to unanimity, then that issue would arise irrespective of the course of this debate. Indeed, from a positive point of view, it may be argued that the disallowance mechanism actually provides the means for this parliament to ensure greater opportunity to ensure compliance with the equality of treatment provisions mandated by section 99.

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

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).

After the Bill had passed the House 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, which 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.

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; or
- in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or
- that are incidental to another action whose primary purpose does not relate to forestry.

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 principle that, where there is inconsistency between two pieces of legislation, the more recent legislation should prevail.

The Senate amendment was opposed by the Government²⁰

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The government does not agree that this proposed amendment is necessary....The RFA Bill provides support for RFA forestry operations by exempting such operations from existing environmental and heritage legislation. The EPBC Act complements the RFA Bill by ensuring that environmental assessment and approval requirements relating to RFA forestry operations which are satisfied under the RFA process are not revisited under the new environmental legislation while an RFA is in force. So we will not be supporting this amendment.

However, this statement does not seem to recognise the effect of section 42 of the EPBCA on section 38. The Senate amendment of subclause 5(3) simply attempted to preserve the status quo with respect to section 42. Of course, a RFA may itself prohibit forestry operations in World Heritage or Ramsar areas.²¹

Compensation

As introduced by the Government, the 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 an RFA.'²²

The Senate altered this to '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*.'²³ The ALP stated that²⁴

...the opposition supports the concept of compensation and is happy to clarify any legal uncertainties. Equally, we have an obligation to protect the interests of the taxpayers of this country. We believe the bill is deficient in failing to properly define the extent of the Commonwealth's potential compensation liability. Senate amendments (10) to (13) do this, chiefly by linking compensation to 'actual losses arising from the loss of legally exercisable rights'.

This amendment was rejected by the Government, saying it²⁵

...also rejects the Senate amendments which propose to alter the compensation clause in the bill in a way that not only is confused but will have no effect, as the liability to pay compensation continues to arise out of the terms of the RFA itself. It is unclear as to what the term 'losses arising from the loss of legally exercisable rights' actually means. It is clearly designed to open opportunities for litigation and create uncertainty in terms of the compensation a dispossessed company would otherwise anticipate.

An industry advisory Council

The 1998 Bill as introduced made no provision for an advisory industry council. Whilst in government, the ALP planned to establish a council to 'drive' the implementation of its *Wood and Paper Industry Strategy*²⁶, released in December 1995. Chaired by the responsible Commonwealth Minister, the Council membership was to be drawn from industry, unions, the States, local government, the scientific community and the

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conservation movement.²⁷ The members of the Council were announced in January 1996, but it appears the Council was abolished after the new Government came to power.²⁸

However, during the Coalition's second term, the Government and industry stakeholders developed what was to become the *Forest and Wood Products Industry Action Agenda – Forest and Wood Futures* (the Action Agenda).²⁹ The Government's September 2000 response to the Action Agenda included a commitment to establish a Forest and Wood Products Council. The Council has met 3 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, including in the furnishings and timber merchants sector. There are no conservation or tourism representatives amongst designated observers to the Council.

The issue of an industry council was also examined by the Senate committee inquiring into the 1998 Bill. The Chairman's 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.

In relation to the 1999 Parliamentary debate, the major issues of contention between the Government and the Senate related to the Council's membership and functions.

Under the Senate's amendments to the Bill, the provisions relating to the Council (termed a Wood and Paper Industry Council) ran to some 20 sections. The Council's functions reflected a very proactive body, able to undertake studies and report to the Minister on its own initiative. It was to be a large body of at least 15 people, with membership from a very wide range of interest groups beyond the timber processing sector, including unions, downstream timber users, conservation and tourism. The Chair and Deputy chair were to be drawn from either timber processors / user groups or union representatives.

The Governments view on this was³⁰

[we agree] that a wood and paper industry council should be established, but we on this side of the chamber do not agree that it is necessary to spell out all the fine detail of the membership and structure of that committee. We would sooner have a flexible approach to this and a committee which is structured to deal with the principles required in this area but which can have the flexibility to change membership and direction and to do things that are in the best interests of the timber industry. The amendments put before us ignore the fact that rigidly setting something in concrete in legislation such as this effectively removes any flexibility that such an industry council may have. It is not necessary for it to be put into legislation.

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Main Provisions

New section 3 sets out the 'main objects' of the Bill. The are:

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

The 1998 Bill had no objects clause.

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.

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 agreement³¹ and hence no RFA has been signed.

New section 5 provides that the Bill legally binds the Commonwealth. This is unchanged from clause 4 of the 1998 Bill.

New section 6 provides that certain Commonwealth legislation, or parts of them, do not apply to RFA wood or RFA forestry operations. The *Explanatory Memorandum* to the Bill comments that this exclusion³²

is because the environmental and heritage values of these regions have been comprehensively assessed under relevant legislation during the RFA process and the

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RFAs themselves contain an agreed framework on ecologically sustainable development of these forest regions over the next 20 years.

The effect of **new subsection 6(1)** provides is 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.

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.

New subsection 6(4) provides that Part 3 of the EPBCA, which deals with what matters require Ministerial approval before they can proceed, 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 the background section of this Digest, 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'. Thus as argued in the background section, **new section 6** seems likely to override section 42 of the EPBCA. The *Explanatory Memorandum* does not acknowledge this possibility.

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.

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 **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. **New section 7** would have to be amended to allow a valid Commonwealth termination under any new provisions.

New section 7 is unchanged from clause 6 of the 1998 Bill.

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New section 8 deals with compensation for breach of RFA by 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.

New section 8 is unchanged from clause 7 of the 1998 Bill.

New section 9 provides that the Minister must publish a notice in the Gazette when a RFA is entered into or ceases to be force. The notice must provide details of the relevant region and the dates of entry into force or cessation.

New section 9 is unchanged from clause 8 of the 1998 Bill.

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 cause a copy of an RFA 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 comes into force does not have to 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.

New section 10 is an entirely new section compared to the 1998 Bill, having emerged from the negotiations in 1999.

New section 11 deals with the Forest and Wood Products Council (the Council).

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 executive power of the Commonwealth'.

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'.

In performing its functions, **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

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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)**.

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.

New subsections 11(7)-(9) require the Council to undertake a review in the second half of 2004 of whether should continue to exist and, if so, 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.

Concluding Comments

The Bill has been modified since its introduction in 1998. However, none of the amendments make any significant concessions towards the Senate's previous position over the 'sticking points' outlined earlier in this Bills Digest. The only immediate practical implication of a failure to pass the Bill is that doubt would remain over whether the compensation provisions of the various RFAs are legally enforceable. On the other hand, passing the Bill would legally reinforce the RFA compensation provisions and modify the operation of the EPBCA and AHCA.

Endnotes

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- 1 See <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd050.htm> for the Bills Digest for the 1998 Bill.
 - 2 The text of the NFPS can be found at the Commonwealth's RFA website at: <http://www.rfa.gov.au/rfa/national/nfps/index.html>
 - 3 See Environment Forest Taskforce, *Information sheet No. 1* at: <http://www.rfa.gov.au/rfa/overview.html>
 - 4 See <http://www.affa.gov.au/docs/forestry/fisap/index.html>
 - 5 The Hon Wilson Tuckey, 'Tuckey announces financial support for Queensland native hardwood industry' *Media Release* 2 October 2000. For a discussion of the legalities of the Commonwealth position on Queensland funding see J Brown, 'Beyond Public Native Forest

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- Logging', *Environmental and Planning Law Journal* Vol 18(1) February 2001, pp. 71–92 and especially pp. 81–82.
- 6 Mairi Barton, 'Payment urged in timber standoff' *West Australian* 6 June 2001.
- 7 The Hon Wilson Tuckey and the Hon Geoff Proser, 'Commonwealth to call for expressions of interest from WA Hardwood forestry industry for direct Commonwealth financial assistance' *Joint Media Release* 7 September 2001.
- 8 Opinion of Gary Corr, Barrister at Law, dated 6 February 1998.
- 9 Senator the Hon Robert Hill, *Senate Debates* 28 May 1998, p. 3437.
- 10 The Hon Wilson Tuckey, 'WA Conservation Council legal opinion misses the point' *Media Release*, 28 June 1999.
- 11 Note that the ALP's objects clause also included the establishment of an industry council, but this is dealt with elsewhere in this digest.
- 12 See *Senate Debates*, 25 August 1999 at p. 7671.
- 13 The Hon Wilson Tuckey, House of Representatives *Debates*, 9 December 1999, p. 13219.
- 14 Presumably this date was chosen as approximately coinciding with the release of the Senate Committee's report on the Bill.
- 15 The Hon Carmel Lawrence, House of Representative *Debates*, 13 October 1999, p 11451.
- 16 Senator the Hon Judith Troeth, *Senate Debates*, 26 August 1999, p. 7820.
- 17 Guy Aiken, AGS Senior General Counsel and Philip White, AGS Counsel. Advice to Derek White, Department of Agriculture, Forestry and Fisheries, dated 10 August 1999.
- 18 The Hon Duncan Kerr, House of Representatives *Debates*, 13 October 1999, p. 11449.
- 19 *ibid*, pp. 11449–50.
- 20 Senator the Hon Judith Troeth, *Senate Debates*, 1 September, p. 8103.
- 21 The author has not reviewed the ten RFAs currently in force as to their attitude towards forestry operations in World Heritage or Ramsar areas.
- 22 Clause 7.
- 23 Italics added by author.
- 24 Mr Laurie Ferguson, House of Representatives *Debates*, 13 October 1999, p. 11444.
- 25 The Hon Wilson Tuckey, House of Representatives *Debates*, 13 October 1999, p. 11442.
- 26 Wood and Paper Industry Strategy, 1995, p. 25.
- 27 *ibid*, p.26.
- 28 The Hon Bob Collins, House of Representatives *Debates*, 19 March 1997, p .1842.
- 29 See http://www.affa.gov.au/docs/forestry/action_agenda/aa_index.html
- 30 Senator Winston Crane Senate, *Debates*, 24 August 1999, p. 7644.

Warning:

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- 31 The Hon Wilson Tuckey, 'Tuckey Calls on Beattie to sign "a proper RFA" to protect small timber towns' *Media Release*, 23 February 2000.
- 32 *Explanatory Memorandum*, p7.

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