



Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007

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Law and Bills Digest Section

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Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007

Date introduced: 29 March 2007

House: House of Representatives

Portfolio: Fisheries, Forestry and Conservation

Commencement: Sections 1 to 3 commence on the day the Act receives Royal Assent. Schedule 1 commences on the later of either the day after this Act receives Royal Assent or the time the *Forestry Marketing and Research and Development Services Act 2007* commences, and will not commence at all if the Forestry Marketing and Research and Development Services Act 2007 does not commence. Schedule 2 commences on a date to be proclaimed, or failing that, six months after Royal Assent.

Purpose

The main purpose of this bill is to provide transitional arrangements for the change of the Forest and Wood Products Research and Development Corporation (FWPRDC) from statutory body to a non-statutory forestry industry services corporation.

Background

This is the second of two bills designed to provide for the creation of a forestry industry services company to provide marketing and research and development and other industry services to the forestry industry. The background to the Bill is outlined in the [Bills Digest](#) for the principal Bill, Forestry Marketing and Research and Development Services Bill 2007. The Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007 provides for:¹

- abolition of the FWPRDC,
- transfer of assets, liabilities and staff from the FWPRDC to the new industry services body; and
- repeal of some legislation and consequential amendments to other legislation.

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Financial implications

The net value of assets (including cash balances) and liabilities to be transferred to the new industry services body is approximately \$6.4 million. The final value will be determined following the financial transfer on the cessation date of the FWPRDC.²

Main provisions

Schedule 1 — Transitional provisions

Transfer of assets and liabilities

Immediately after the cessation of the FWPRDC, its assets and liabilities transfer to the successor body (the new industry services body). No conveyance or formal property transfer is required (**proposed item 4**) and the processes are exempt from stamp duty or other taxation (**proposed item 6**). Pending proceedings relating to the assets and liabilities are also transferred to the new industry body (**proposed item 5**). Registrations of assets are also transferred (**proposed item 8**). The Explanatory Memorandum suggests that such assets would include things like registered patents and trademarks.

After the cessation of FWPRDC, any references to the FWPRDC in instruments are to be construed as references to the new industry services body (**proposed item 7**).

Transfer of employees

All the staff of the FWPRDC are transferred to the new industry body on the cessation of FWPRDC (**proposed item 9**). **Proposed item 10(1)** states that employees will be employed by the new industry services body on the same terms and conditions and with the same accrued entitlements to benefits. The employees' service with the new industry services body will be considered to be continuous with the FWPRDC (**proposed item 10 (2)**). However, the terms and conditions may be varied after the cessation of FWPRDC provided the variations are carried out in accordance with applicable law, awards, determinations or agreements and following any procedures specified in the terms of the employee's employment (**proposed item 11**).

Transfer of staff benefits

A range of benefits currently available to employees of the FWPRDC as Commonwealth employees will continue to be available to employees in limited circumstances, even though the new industry services body is not a Commonwealth authority. This is particularly the case where the entitlement to the benefits accrued before the cessation of the FWPRDC. These benefits are:

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- workers compensation under the *Safety, Rehabilitation and Compensation Act 1988* in respect of employees who were injured or suffered property loss before the cessation of the FWPRDC (**proposed item 13**);
- long service leave entitlements accrued under the *Long Service Leave (Commonwealth Employees) Act 1976* carry over for employees who are transferred to the new industry services body. (**proposed items 20 and 24**).

Workers compensation

Special transitional arrangements apply to workers compensation payments. For the purposes of workers compensation claims arising before the cessation date, the Commonwealth is taken to have been the employer of FWPRDC employees (**proposed item 14**). Hence, the Commonwealth will be liable to pay the premium to Comcare in respect of those employees. The new services industry body is not liable for premiums under the Commonwealth scheme. The new services industry body will be entitled to a refund of the premium paid by FWPRDC for the part of the financial year after the cessation date, although use of the refund may be made subject to certain conditions (**proposed item 16**). However, the new services industry body is not wholly exempt from the operation of the Commonwealth workers compensation scheme. It will have to cooperate with Commonwealth in assisting it to fulfil its obligations in relation to rehabilitation and providing suitable employment for employees injured prior to the cessation of FWPRDC (**proposed item 15**).

Long service leave

Proposed items 20 to 25 contain specific transitional provisions for long service leave entitlements. An employee who has accrued at least 10 years of long service at the cessation date carries over all his or her accrued benefits under the *Long Service Leave (Commonwealth Employees) Act 1976*. Because long service leave entitlements are preserved, employees are not entitled to receive any payment for ceasing to be employed in the public service (**proposed item 24**).

Employees who have served less than 10 years and transfer to the new industry services body carry with them their long service leave credits. After they have served a total of at least 10 years, they may be granted long service leave on full salary (**proposed item 20(3)**) or on half salary for a period twice as long (**proposed item 20 (5)**). **Proposed item 21** allows employees with less than 10 years of service at the cessation date to be paid in lieu of long service leave if they cease to be an employee of the new industry services body or after the day they reach 10 years of combined service with the FWPRDC and industry services body.

Where an employee who is transferred to the new industry services body dies after serving at least one year but less than 10 years in total combined service, his or her dependants are

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entitled to payment at full salary for the period of long service leave accrued (**proposed item 22**).

Benefits no longer available

Some benefits currently available to FWPRDC employees will cease to be available when they are transferred to the new industry services body. The new industry services body is not an ‘approved authority’ for the purposes of Commonwealth public sector superannuation legislation, so private superannuation arrangements will apply to employees from the cessation date (**proposed items 17 and 18**).

Final annual report

The FWPRDC must produce a final annual report covering its operation and financial status up to the cessation date. It will continue to notionally exist after the cessation date for the sole purpose of producing the annual report (**proposed item 27**).

Expenditure and funding

Proposed item 28 provides a formula for working out the limit on the appropriation for matching payments for a financial year. Matching payments are used for research and development purposes. It provides for any unmatched research and development excess from the FWPRDC to be carried over to the new services industry body at the cessation date.

Miscellaneous

The Minister has power to delegate his or her powers prescribed by Schedule 1 to the Secretary of the administering Department or an SES employee, or acting SES employee of the Department. (**proposed item 30**).

Proposed item 31 provides that the acquisition of property from a person under the Bill must be on just terms in accordance with paragraph 51 (xxxi) of the Constitution. The Federal Court is appointed to arbitrate on the question of what amounts of compensation would constitute ‘just terms’ if the Commonwealth and the person whose property is acquired are unable to agree.

The Governor-General has power to make regulations relating to any matter contained in the Bill (**proposed item 32**).

Schedule 2—Consequential provisions

A number of consequential amendments are made to other Acts to enable the operation of this Act. The main amendment is the insertion of a new definition of ‘industry body’ into related legislation.

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Concluding comments

The passage of this bill is necessary to enable to termination of the current FWPRDC and for the transition to the new industry services body under the Forestry Marketing and Research and Development Services Bill 2007.

Endnotes

1. Catherine Lorimer, *Forestry Marketing and Research and Development Services Bill 2007, Bills Digest No. 147, 2006-07*, Parliamentary Library, Canberra, 9 May 2007. <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd147.pdf>
2. Explanatory Memorandum, p. 2.

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