



Forestry Marketing and Research and Development Services Bill 2007

Catherine Lorimer
Law and Bills Digest Section

Peter Hicks
Economics Section

Contents

Purpose.....	2
Background.....	2
Basis of policy commitment	4
Australian Plantation Products and Paper Industry Council (A3P).....	4
The forests and wood products industry	6
Resource base	7
Trade.....	7
Current R&D arrangements	8
Financial implications.....	10
Standing appropriations	10
Main provisions	10
Concluding comments	12
Appendix 1 – Comparison of provisions for ‘privatised’ industry services bodies.....	14
Endnotes.....	16

Forestry Marketing and Research and Development Services Bill 2007

Date introduced: 29 March 2007

House: House of Representatives

Portfolio: Fisheries, Forestry and Conservation

Commencement: The day after Royal Assent.

Purpose

This Bill allows for the establishment of a new industry owned company, Forest and Wood Products Australia, which will effectively replace the statutory body, Forest and Wood Products Research and Development Corporation (FWPRDC). It also establishes the mechanism for the Commonwealth Government to make payments to Forest and Wood Products Australia.

Background

The current statutory authority, Forest and Wood Products Research and Development Corporation (FWPRDC) was established under the *Primary Industries and Energy Research and Development Act 1989*. Under this enabling legislation, the corporation was able to undertake research and development functions but was not permitted to undertake marketing and promotion activities.

In March 2006, the report '*Forest and Wood Products Australia: a proposal to establish a new entity to deliver marketing & promotion and research & development to the Australian Forest and Wood Products Industry*' was released.¹ The report had been prepared by the Steering Committee of the Forests and Wood Products Council and funded by the FWPRDC. The report identified a number of critical challenges facing the forest and wood products industry. To address these concerns the report outlined the proposal for the establishment of a company nominally called 'Forests and Wood Products Australia' which is designed to deliver market driven research and development (R&D) and generic marketing and promotion for the Australian forest and wood products industry.

The report outlined the need for generic marketing and promotion and proposed a new company structure to deliver this and R&D services to the industry. It also outlined the requirements that needed to be met before the proposal could be implemented and the necessary Commonwealth legislation enacted.

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Following these proposals, the Australian forest and wood products industry was asked to vote on a new approach to national research and development and wood promotion and marketing. The proposal involved a number of components:

- Transition of the FWPRDC from a statutory body to an industry owned company, Forest and Wood Products Australia (FWPA);
- Increased funding for FWPA from:
 - A levy of 5 cents per m³ of all logs to be paid for by forest/plantation growers and timber plantation Managed Investment Scheme (MIS) managers; and
 - An increase in the existing hardwood sawlog levy from 22 cents per m³ to 29 cents per m³.

The four industry associations² engaged the Australian Electoral Commission (AEC) to manage the ballot which was conducted between 20 March and 21 April 2006. The ballot was counted on 28 April 2006 in the AEC offices in Sydney. The results of the ballot are briefly summarised below.

- FWPA Proposal

As a whole, the industry voted in favour of the proposal to establish Forest and Wood Products Australia – 310 votes in favour to 118 against. All sectors voted in favour of the proposal except for the Panels sector, where the vote was evenly split, and the Hardwood Sawlog and Cypress Sawlog sectors who voted against the proposal.

- New/Increased Levies

- The Growers/MIS Managers voted to support the proposal to raise a levy of 5 cents per m³ - 143 votes in favour, 41 against.
- The Hardwood Sawmillers voted against the proposal to increase the hardwood sawlog levy by 7 cents per m³- 22 votes in favour, 54 against.³

As a result of the ballot outcome the four industry associations asked the Minister for Fisheries, Forestry and Conservation to proceed with the introduction of the legislation required to give effect to the proposal.⁴

The current Bill follows a series of Acts passed in recent years that deal with privatisation or corporatisation of bodies providing industry services in the Agriculture, Fisheries, and Forestry Portfolio. These are:

- the *Dairy Industry Services Reform Act 2003*
- the *Wool Industry Privatisation Act 2000*
- the *Horticulture Marketing and Research and Development Services Act 2000* and *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*

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- the *Pig Industry Act 2001*, and
- the *Egg Industry Service Provision Act 2002*.

All of these Acts transferred control over marketing and research and development activities from government to industry participants. They provide for private control in relation to the use of participant levies whilst retaining an element of public control in relation to the use of government subsidies.

Basis of policy commitment

On 26 October 2006, the Minister for Fisheries, Forestry and Conservation announced that the Australian Government had given approval to the formation of a new company, FWPA, to promote the timber industry.⁵

The new company will be limited by guarantee under the *Corporations Act 2001*, and will assume the research and development functions currently provided by the FWPRDC and incorporate the new functions of marketing and promotion.

The new company will be not-for-profit and all levy payers who pay statutory levies and state growers who pay contractual payments will be eligible to register for membership and then be eligible for voting rights in the company, allocated according to the amount of levy or contractual payments paid.⁶

The new company will continue to develop the competitiveness of Australia's forest industries through the development of an enhanced R&D, marketing and promotional company. R&D will be jointly funded by the Government and industry, with marketing and promotional activities funded solely by industry.⁷

It is expected that the new company will begin operation on 1 July 2007.⁸

Position of significant interest groups/press commentary

The forest and wood products industry associations have all supported the establishment of the new privatised entity, although as noted above not all individual industry operators supported the change.

Australian Plantation Products and Paper Industry Council (A3P)

The implementation of the new entity will allow the industry to 'have the capacity to deliver a coordinated, national and unified brand for Australian forest and wood products through generic marketing campaigns'.⁹

A3P has welcomed the introduction of legislation into Parliament this week which provides for a new industry owned R&D and marketing company that will replace the Forest and Wood Products Research and Development Corporation. (FWPRDC).

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The marketing function of the FWPA will be used to promote the many outstanding qualities and environmental values of wood and increase our access to both domestic and international markets. Under the new structure, levy-paying members including forest growers will have a greater influence over the company's activities allowing us to maximise our competitiveness against timber alternatives such as steel, concrete and aluminium.¹⁰

National Association of Forest Industries (NAFI):

A press release issued by NAFI stated that the association welcomed the formation of a new company to promote the timber industry.

FWPA will enhance opportunities for the forest industry through access to new markets domestically and internationally, as well as promoting the green credentials of timber.

FWPA will continue to provide the valuable research and development services provided by the current FWPRDC, which is jointly funded by the industry and the Australian Government.

NAFI is also pleased to note that the Australian Government has agreed to match the current levies paid by timber importers. This will result in an additional \$700,000 being available specifically for research and development.¹¹

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The forests and wood products industry

Summary statistics about Australia's forests and wood products industry are provided in Table 1.

Table 1: Selected Australian forest and forest product statistics

	2002-03	2003-04	2004-05	2005-06	2006-07 ^s	2007-08 ^f
<i>Roundwood</i>						
Production ('000 m3)	26,032	26,621	27,207	26,980	28,778	29,898
Gross value (\$m)	1,483	1,569	1,639	1,681	1,791	1,900
<i>Forest products exports</i>						
Woodchips (kt)	5,437	5,264	5,598	5,363	5,803	6,135
Woodchips (\$m)	808	794	858	839	911	959
Pulp and paper products (\$m)	834	820	839	854	na	na
Other ^a (\$m)	418	388	392	415	na	na
Forest products excl woodchips (\$m)	1,253	1,207	1,230	1,269	1,265	1,270
Total forest products (\$m)	2,061	2,001	2,088	2,108	2,176	2,229
<i>Forest products imports</i>						
Sawnwood (\$m)	505	502	492	419	na	na
Wood based panels (\$m)	206	193	219	231	na	na
Pulp and paper products (\$m)	2784	2719	2809	2841	na	na
Other ^b (\$m)	591	585	587	528	na	na
Total (\$m)	4086	3998	4107	4020	na	na
<i>Industry gross value added ^c</i>						
Forestry and fishing (\$m)	2430	2604	2502	2387	na	na
Wood and paper products (\$m)	6987	6976	7030	6748	na	na
<i>Employment '000</i>						
Forestry and logging	10	12	12	11	na	na
Wood and paper product manufacturing	74	78	71	72	na	na

a - includes roundwood, sawnwood, sleepers, processed wood and minor forest products.

b - includes roundwood, other processed wood and minor forest products.

c - chain volume measures; reference year is 2004-05.

s - estimate.

f - forecast.

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The highlights of Australia's forests and wood products industry in 2005-06 were:

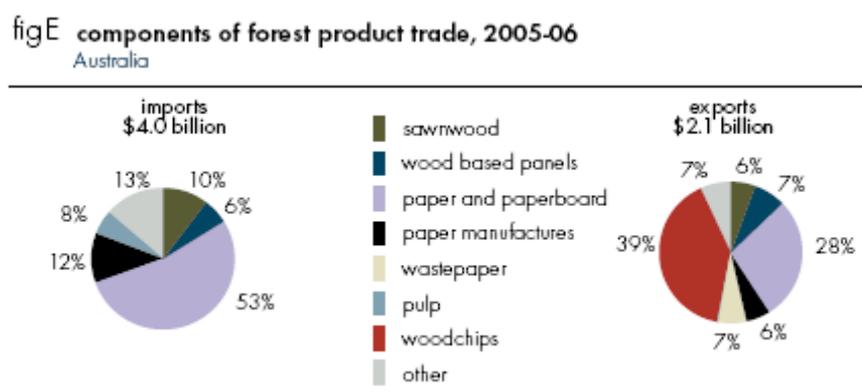
- removals from forests declined slightly to 27 million cubic metres, but higher log prices increased the value of log production by 3.5 per cent to \$1.7 billion
- housing commencements remained weak and economic growth moderated, dampening domestic demand for forest products
- nevertheless, sawnwood production increased by 2.1 per cent as a result of increased import replacement and expanding exports
- the volume of woodchip exports fell by 4.2 per cent despite supply growth from hardwood plantations.¹²

Resource base

Australia currently has 1.8 million ha of plantation forests and 11.4 million ha of public native forest where timber production is permitted. Some 21.5 million ha of native forests are in conservation reserves while the large bulk of the remaining 130 million ha of forests and woodlands is Crown land where the right to harvest or clear land must be approved by state/territory governments.¹³

Trade

In recent years the value of Australia's imports of forest products has averaged \$4 billion annually, double the value of exports. A summary of 2005-06 trade is shown in the following figure.



Source: ABARE 2006, *Australian Forest and Wood Product Statistics*, March and June quarters 2006, Canberra, November.

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The major sources of forest product imports in 2005-06 were New Zealand (newsprint and sawn wood), Indonesia and the United States. The key export markets were Japan (woodchips), New Zealand and China (wastepaper and medium density fibreboard).¹⁴

Current R&D arrangements

The FWPRDC is jointly funded by industry and Commonwealth. Industry contributions are raised by way of a levy on unprocessed wood produced in Australia and a charge on imported wood products. The levy applies to eight classes of logs. Details of levy rates and FWPRDC income for 2005-06 are shown in Table 2.

Commonwealth appropriations are provided to the level of \$1 for every \$1 contributed in levies industry up to a maximum of 0.50% of the industry's gross value of production. Revenue from the charge on imported timber products is not matched by Commonwealth appropriations.¹⁵

Table 2: FWPRDC levy income 2005-06

	Levy rate (\$/m ³)	Levy income (\$m)	% of income
Softwood sawlog	0.29	1.89	56
Low grade softwood	0.08	0.10	3
Softwood roundwood	0.8	0.03	1
Hardwood sawlog	0.22	0.51	15
Hardwood woodchip	0.035	0.23	7
Panels	0.10	0.12	4
Plywood/veneer	0.15	0.09	2
Cypress	0.22	0.59	2
Importer timber charge		0.69	10

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Summary financial data for the FWPRDC over recent years is provided in Table 3.

Table 3: FWPRDC revenue and expenditure 2001-02 to 2005-06 (\$m)

	2001-02	2002-03	2003-04	2004-05	2005-06
<i>Revenue</i>					
Domestic levies (exc penalties)	2.8	2.9	3.1	3.0	3.0
Importer charge	0.6	0.7	0.7	0.8	0.7
Commonwealth contribution	2.8	2.9	3.1	3.0	3.0
Other	1.0	0.5	0.5	0.5	0.7
Total operating revenue	7.1	7.1	7.5	7.2	7.5
<i>Expenditure</i>					
R&D projects	7.0	8.2	7.3	7.1	5.9
Administration expenditure	1.0	1.0	1.1	1.1	1.2
Total operating expenditure	8.0	9.2	8.4	8.2	7.1

Totals may not add due to rounding

Source: FWPRDC Annual Report, various issues

In 2005-06 about 55% of FWPRDC's expenditure was directed at the softwood sector which compares with 56% of income from that sector. Under FWPRDC's Research and Development Plan 2003-08, the Corporation seeks to ensure that over time research investment will equate with income from levy paying sectors, while recognising that some projects deliver benefits to the whole forest and forest products industry.

In terms of output/program performance FWPRDC's expenditure in 2005-06 was allocated thus:

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- Manufacturing and products 28%
- Market knowledge and development 25%
- Research services and management 17%
- Resource characterisation and improvement 13%
- Sustainable forest management 9%
- Services and capabilities 8%

Financial implications

The Consolidated Revenue Fund will be appropriated for the purposes of making payments to the industry services body under the funding contract.

Standing appropriations

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

Main provisions

Part 2 — Funding contract

Proposed section 7 outlines the two kinds of payments that can be made by the Commonwealth to the contracted company.

The first kind is called the **forestry service payments**. These are to be spent on marketing promotion, research and development activities or other activities for the benefit of the Australian forestry industry and/or to repay the Commonwealth for administrative expenses in relation to the collection and recovery of the tax-related amounts, administration of the funding contract and refunds in relation to tax-related amounts.¹⁶

The second kind is called **matching payments**. These can be spent on research and development activities for the benefit of the Australian forestry industry and the Australian community and/or to repay the Commonwealth for the administrative expenses incurred.

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Proposed section 8 allows the Minister to enter into contracts with a company which will allow the Commonwealth to make forestry service payments and matching research and development payments to the company. The Minister must be satisfied that the contract makes adequate provision to ensure that each payment is spent on relevant activities. Once a contract has been made, the Minister may declare the company to be the ‘industry services body’ for the purposes of the Bill. The funding contract does not oblige the Commonwealth to pay the full amounts that could be paid out of the money appropriated.¹⁷

Proposed section 9 appropriates Consolidated Revenue Funds so payments can be made to the industry services body under the terms of the funding contract. There are overall limits on the amount of funds to make tax-related amounts and matching payments to the industry services body. The annual limit for matching payments is the lesser of 0.5% of the gross value of production of the Australian forestry industry for the financial year *or* 50% of the industry services body annual expenditure on R&D.

In addition, an allowance is made to for a carry forward of ‘unmatched R&D excess’ (**proposed subsections 9(6) and (7)**). This is the amount spent by the industry services body in a given year that is not met by ‘matching payments’ because of the total or annual limits on funding. A formula is provided for calculating the unmatched research and development excess.

Part 3 — Industry services body

Proposed section 11 allows the Minister to declare a company to be the industry services body if there is a contract under Part 2. Press releases from the Government and forestry industry associations have indicated the company will be called ‘Forest and Wood Products Australia’.

Proposed section 12 allows the Minister to make a declaration that the relevant company ceases to be the industry services body when there are reasonable grounds to believe the company has contravened this Act or the funding contract. There are also a number of other grounds for making such a declaration.

Part 4—Miscellaneous provisions

Ministerial directions

The Minister may give written directions the industry services body if he or she is satisfied that the direction is in the national interest ‘because of exceptional and urgent circumstances’ (**proposed section 13**). The body’s Directors must be given the opportunity to discuss the proposed direction before it is made. The directions are binding and must be tabled in Parliament within 5 sitting days unless the Minister determines in writing that doing so would be likely to prejudice the public interest or the commercial interests of the body (**proposed subsections 13 (3) and (5)**). A direction or determination is not a legislative instrument. Despite these powers, the Minister is not taken to be a

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director of, or to be in a position to exercise control over, the industry services body (**proposed subsections 13 (6) and (7)**).

The Minister may delegate any or all of his or her powers to the Secretary or a substantive or acting SES employee (**proposed section 14**).

In giving directions, the Minister must not require the body to incur expenses that exceed the public payments made under the funding contract. This restriction applies to payments made in the present year *and* to unspent or uncommitted payments from previous years (**proposed subparagraph 13(1)(a)(ii)**). This permits retrospective control over the financial arrangements of the body.

The Governor-General has power to make regulations relating to any matters contained in the Bill (**proposed section 16**).

Concluding comments

The practice of establishing public companies owned by levy payers or industry bodies to undertake delivery of marketing and other services to agricultural industries is now well established. Examples include Meat and Livestock Australia, Australian Wool Innovation, National Food Industry Strategy Ltd, Animal Health Australia and Australian Egg Corporation Limited.

Although the general thrust of all these arrangements has been the same, i.e. the establishment of a private company to provide industry services, Appendix 1 shows that there has not been uniformity of provisions in the legislation and associated provisions giving effect to this policy.

An issue of potential interest for Parliamentarians in relation to arrangements proposed by this Bill is that of accountability and transparency with a couple of specific aspects to this worth highlighting.

The first relates to the use of statutory powers to generate levy income for a private company. Parliament has a legitimate interest in monitoring the impact and effectiveness of its power to institute levies. However, the Bill provides no specific arrangements for either the industry services body or the Minister for Agriculture, Fisheries and Forestry to provide Parliament with appropriate information upon which such judgements can be made. Parliament will be dependent on the as yet unknown provisions of the funding contract.

The only mention of accountability is in the following extract from the Explanatory Memorandum.

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

Nevertheless, under the proposed arrangements the Commonwealth - and hence the Parliament - will be further removed than at present from the administration and oversight of forestry marketing and R&D arrangements which are actually underpinned by the levy provisions sanctioned by Parliament.

The second aspect of accountability which might be of concern to Parliament relates to the appropriation of matching funds sourced from taxpayers generally. In the main, the issues here are similar to those outlined above. However, an important difference is that while some reporting to levy payers will automatically happen under corporations' law, and levy payers have scope to directly determine FWPA's accountability arrangements, the proposed legislation contains no equivalent provision for the general taxpayer who will provide a significant proportion of the revenue of the industry services body.

Customarily it is Parliament that operates on behalf of taxpayers to exercise accountability and transparency in relation to funds appropriated from consolidated revenue. The traditional major mechanisms employed for this have been the legislative requirement for a body in receipt of such income to produce an annual report which the Minister must table in Parliament and the direct scrutiny of portfolio bodies by parliamentary committees.

As noted earlier, the only provision in this Bill which hints at accountability is the requirement for the funding contract to be tabled in Parliament. That said however, there are encouraging precedents for accountability reporting contained in the statutory funding agreements for other industry bodies such as [Dairy Australia](#) and [Australian Wool Innovation](#).

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Appendix 1 – Comparison of provisions for ‘privatised’ industry services bodies

<i>Provision</i>	<i>Pigs</i>	<i>Horticulture</i>	<i>Wool</i>	<i>Eggs</i>	<i>Forestry</i>
Agreement and declaration for levies funding:					
• body must be registered as a company	✓	✓	✓	✓	✓
• body must have appropriate constitution	✗	✓	✓	✗	✗
• body must be limited by ...	guarantee	guarantee	shares	guarantee	guarantee
• prescribed members/shareholders	✗	✗	✓	✗	✗
• declaration precedes or follows contract	follows	follows	precedes	follows	follows
• 'marketing' and 'R&D' defined in Act	✗	✓	✗	✗	✗
• special provision for revoking declaration	✗	✓	✗	✗	✓
Public v Private aspects:					
• Minister may give directions, but ...	✓	✓	✗	✓	✓
– Minister is not a director, etc	✓	✓	✗	✓	✓
– body is not a statutory authority	✗	✗	✓	✗	✗
– power can be delegated	✓	✗		✓	✓
• body performs a public statutory function	✗	exports licences	levy setting	levy setting	levy setting
Flexible restructuring environment:					

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<i>Provision</i>	<i>Pigs</i>	<i>Horticulture</i>	<i>Wool</i>	<i>Eggs</i>	<i>Forestry</i>
• flexible transfer by ... of	declaration	legislation	declaration	declaration	declaration
– assets and liabilities	✓	✓	✓	✓	✓
– contractual rights and obligations	✗	✓	✓	✗	✓
• exemption from conveyance procedures	✓	✓	✓	✗	✓
• exemption from stamp duty for:					
– transfers to principal	✓	✓	✓	✓	✓
– transfers to subsidiaries, etc	✗	✗	✓	✗	✗
• exemptions for Capital Gains Tax	✗	✗	✓	✗	✓
• exemptions for Goods and Services Tax	✓	✓	✗	✓	✓
Power for the Commonwealth to:					
• acquire assets and liabilities	✓	✗	✗	✗	✗
• sell assets and discharge liabilities	✓	✗	✗	✗	✗
Body liable for restructure expenses	✓	✗	✗	✗	✗
Provision for transfer of employees	✓	✓	✗	✗	✓

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Endnotes

- 1 Forests and Wood Products Council, Steering Committee *Forest and Wood Products Australia: a proposal to establish a new entity to deliver marketing & promotion and research & development to the Australian Forest and Wood Products Industry, March 2006* <http://www.afg.asn.au/resources/pdfs/FWPASteeringCommitteFinal%20Report-060306.pdf> accessed 30 April 2007.
- 2 Australian Plantation Products and Papers Industry Council (A3P), Australian Forest Growers (AFG), Australian Timber Importers Federation (ATIF), National Association of Forest Industries (NAFI).
- 3 A3P website. Outcome of Ballot – April 2006 <http://www.a3p.asn.au/assets/pdf/Key%20Issues%20RandD/FWPA%20Ballot%20Outcome%20Statement.pdf>, accessed 30 April 2007.
- 4 *ibid.*
- 5 Senator the Hon. E. Abetz, Minister for Fisheries, Forestry and Conservation, ‘New company to promote the timber industry’ Media Release DAFF06/128A, 26 October 2006 <http://www.mffc.gov.au/releases/2006/06128a.html>, accessed 30 April 2007.
- 6 Forestry Marketing and Research and Development Services Bill 2007. Explanatory Memorandum p. 1.
- 7 Hon. P. McGauran MP, Minister for Agriculture, Fisheries and Forestry, ‘Second reading speech: Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007’, Debates 29 March 2007.
- 8 Senator E. Abetz, *op. cit.*
- 9 A3P, Wood is good: new entity to promote Australian forest and wood products, *Media release* 26 October, 2006.
- 10 A3P, A3P welcomes progress towards new R&D and marketing entity for forest and wood industry, Media Release, 30 March 2007, <http://www.a3p.asn.au/news/fwpa%20legislation.html>, accessed 30 April 2007.
- 11 NAFI, Forest industry welcomes new research and promotion company, Media release, 26 October 2006, <http://www.nafi.com.au/media/view.php3?id=443>, accessed 30 April 2007.
- 12 ABARE 2006, *Australian Forest and Wood Product Statistics*, March and June quarters 2006, Canberra, November.
- 13 ABARE 2006, *Australian Forest and Wood Product Statistics*, March and June quarters 2006, Canberra, November and National Forest Inventory 2007. *National Plantation Inventory 2007* Update, Bureau of Rural Sciences, Canberra.
- 14 *ibid.*
- 15 FWPRDC Portfolio Budget Statement 2006-07 and FWPRDC Annual Report 2005-06.
- 16 Explanatory Memorandum pp. 3–4.

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17 Explanatory Memorandum pp. 3-4.

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