THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Fisheries, Forestry and Conservation, Senator the Hon Eric Abetz)
FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2007

GENERAL OUTLINE

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 new company will replace the current Commonwealth statutory authority, Forest and Wood Products Research and Development Corporation (FWPRDC).

The new company will be limited by guarantee under the Corporation Act 2001, and will assume the research and development functions currently provided by the FWPRDC and incorporate the new functions of marketing and promotion. Under FWPRDC’s enabling legislation, the Primary Industries and Energy Research and Development Act 1989 the FWPRDC could not undertake marketing and promotion activities.

This bill provides for the termination of the FWPRDC and deals with matters arising from the transition to the new industry services body under the Forestry Marketing and Research and Development Services Bill 2007, such as the transfer of assets, liabilities and employees from the FWPRDC, the FWPRDC’s final annual reports and the transfer of Commonwealth records.

This bill provides for consequential provisions in the PIERD Act, the Primary Industries (Customs) Charges Act 1999, the Primary Industries (Excise) Levies Act 1999, and the Primary Industries Levies and Charges Collection Act 1991 as a result of this bill and the first bill, the Forestry Marketing and Research and Development Services Bill 2007.

FINANCIAL IMPACT STATEMENT

This bill provides for the transfer of assets and liabilities and current employees associated with FWPRDC to the new industry services body.

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 outcome will be determined following the financial transfer on the cessation date of the FWPRDC.
NOTES ON CLAUSES

Clause 1: Short title

This clause provides for the Act to be called the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

Clause 2: Commencement

This clause provides for:
- Sections 1 to 3 of the Act to come into effect on the day on which this Act receives Royal Assent,
- Schedule 1 of the Act to come into effect on the later of the start of the day after this Act receives the Royal Assent or the time the *Forestry Marketing and Research and Development Services Act 2007* commences and to not commence at all if the *Forestry Marketing and Research and Development Services Act 2007* does not commence, and for
- Schedule 2 to come into effect on a single day to be fixed by Proclamation.

Clause 3: Schedule(s)

This clause provides for each Act that is specified in a Schedule to this Act to be amended or repealed as set out in the Schedule.

Schedule 1 – Transitional provisions

Part 1 – Preliminary

Clause 1: Definitions

This clause provides for terms of the Act to be defined.

Clause 2: Extensions to external Territories

This clause provides for Schedule 1 to extend to all external Territories.

Clause 3: Extraterritorial operation

This clause provides for Schedule 1 to apply within and outside Australia.

Part 2 – Transfer of assets and liabilities of FWPRDC

Clause 4: Transfer of assets and liabilities

This clause provides for the assets and liabilities of FWPRDC to become the assets and liabilities of the successor body (to be the declared industry services body) without any conveyance, transfer or assignment immediately after cessation the of FWPRDC.
Commonwealth records, as defined in the *Archives Act 1983*, only become the assets of the successor body if the National Archives of Australia gives permission for their transfer under paragraph 24(2)(b) of the *Archives Act 1983*. This relates to item 26 of the bill.

Section 45 of the *Primary Industries and Energy Research and Development Act 1989* (the PIERD Act) is therefore not applicable in this case because of this clause except in the circumstances where the National Archives of Australia has not permitted Commonwealth records to be transferred to the successor body. Therefore for any Commonwealth records that the National Archives of Australia has not permitted to be transferred to the successor body, they will transfer to the Commonwealth from the FWPRDC.

**Clause 5: Transfer of pending proceedings**

This clause provides for the successor body to be substituted for FWPRDC as a party to any proceedings to which FWPRDC was a party and that were pending in any court or tribunal immediately before cessation time and that were related in whole or part to an asset or liability of FWPRDC.

**Clause 6: Exemption from stamp duty etc.**

This clause provides that the transfer of an asset or liability under Section 4 do not give rise to stamp duty or tax liability under any State or Territory law.

**Clause 7: References in certain instruments**

This clause provides for any instrument to which FWPRDC is a party, which favours or refers, or which accrues any right or liability to FWPRDC at the time of its cessation to continue to have effect after the cessation time as if any reference to FWPRDC were a reference to the successor body.

Section 147 of the PIERD Act is therefore not applicable in this case because of this clause.

**Clause 8: Certificates in relation to assets**

This clause allows for the registration of an asset that is transferred to the successor body. It provides for the lodgement of an appropriate certificate signed by the Minister and for an assets official to register that transfer in accordance with the certificate. The clause may apply, for example, to registered patents and trademarks.
Part 3 – Transferring employees

Division 1 – Preliminary

Clause 9: Transfer of staff

This clause provides that at the cessation time of FWPRDC that each employee is taken be engaged as an employee of the successor body.

Clause 10: Terms and conditions of transferring employees

This clause provides that an employee transferring from FWPRDC to the successor body will do so under the same terms and conditions, with equivalent accrued entitlement to benefits and the service to be considered continuous with the service as an employee of FWPRDC.

Clause 11: Variation of terms and conditions of employment

This clause provides for Schedule 1 to not prevent the variation of terms and conditions of a transferring employee’s employment in accordance with those terms and conditions or under an award or other like instrument.

Division 2 – Application of the Safety, Rehabilitation and Compensation Act

Clause 12: Expressions defined in SRC Act

This clause provides for expressions defined in the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) and that are used in Division 2 to have the same meanings as in the SRC Act.

Clause 13: Continued application of the SRC Act

This clause provides that the SRC Act continues to apply after the cessation of FWPRDC in relation to injuries suffered and loss of, or damage to, property incurred prior to that time by a transferring employee.

Clause 14: Commonwealth liability to meet certain SRC Act liabilities

This clause provides for the Commonwealth to be taken to have been the employer of the transferring employees before the cessation time for the purposes of application of the SRC Act. Therefore the Commonwealth, not the successor body, will have various obligations under the SRC Act relating to existing entitlements for the transferring FWPRDC employees.
Clause 15: SRC Act: rehabilitation provisions

This clause provides for the Commonwealth to receive co-operation from the successor body in order for the Commonwealth to continue to fulfil its obligations arising prior to the cessation, or transfer, day under the SRC Act. This clause also provides that the SRC Act will apply to the successor body in some situations – as the relevant employer – after the cessation, or transfer day.

Clause 16: Premiums under the SRC Act

This clause provides for the determination of the amount (if any) by which the premium for FWPRDC for the transitional financial year should be reduced. This clause also provides that if the amount of the confirmed premium is reduced as a result of a determination, that the Secretary of the Department can direct a refund amount for a particular financial year to be paid to the industry services body from Consolidated Revenue Fund. Further, these directions must be gazetted.

This standing (or special) appropriation has been included in this Bill because the possible refund amount is an indefinite amount that will only comprise a single payment occurring in the one transitional year. The payment of this amount must be made in accordance with a direction by the Secretary of the Department. As this direction must be gazetted and will therefore be transparent and open to scrutiny.

A direction made under subitem (2) is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Division 3 – Provisions relating to superannuation

Clause 17: Application of Superannuation Acts

This clause states that the successor body is not an approved authority for the purposes of the Superannuation Act 1976, the Superannuation Act 1990 and the Superannuation Act 2005.

Clause 18: Application of the Superannuation Benefits (Supervisory Mechanisms) Act 1990

This clause provides that the Minister (with the same meaning as in the Superannuation Benefits (Supervisory Mechanisms) Act 1990) must not declare the successor body to be a relevant body for the purposes of this Act.

Division 4 – Provisions relating to long service leave

Clause 19: Expressions defined in Long Service Leave Act

This clause states that expressions defined in the Long Service Leave (Commonwealth Employees) Act 1976 and used in this Division have the same meanings as in that Act.

Clause 20: Long service leave for employees with less than 10 years service
This clause provides for employees of the FWPRDC who were transferred to the new body with less than 10 years service to carry over their service and entitlements for this period of service to the industry services body. The successor body has to grant the employee long service leave on a full salary if they continue to be employed by the successor body until their combined service is at least 10 years. This clause also provides for payments in case of ill-health, retirement and redundancy.

Clause 21: Payments in lieu of long service leave for employees with less than 10 years service

This clause provides for employees of the FWPRDC who were transferred to the successor body with less than 10 years service to receive payment for long service leave entitlements that they carry over to the successor body when they cease to be an employee of the successor body on or after the day they reach ten years of service. This clause also provides for payments in case of ill-health, retirement and redundancy.

Clause 22: Payments on the death of an employee

This clause provides for benefits to be paid to dependents of employees of the FWPRDC who were transferred to the successor body, in the event of the death of the transferred employee and for determining the amount of benefit to be paid.

Clause 23: Employee’s long service leave credit for the purposes of items 18 and 19

This clause provides for the calculation of the long service leave credit of a transferred employee, for use in clauses 18 and 19.

Clause 24: Employees with at least 10 years service

This clause provides for the benefits accrued by employees of the FWPRDC to continue when the employee is transferred to the successor body. However, the transferred employee is not entitled to receive payment because they have ceased to be in Government service.

Clause 25: Division not to affect post-commencement long service leave rights

This clause provides that this Division does not affect employee’s post-commencement long service leave rights, meaning any long service leave rights the employee acquires after the cessation time under an award or a determination or an industrial agreement, another instrument for providing for terms and conditions of employment or a law other than this Act.
Part 4- Other provisions

Clause 26: Operation of Archives Act

This clause states that this Schedule does not authorise a Commonwealth record to be transferred or otherwise dealt with except in accordance with the provisions of the *Archives Act 1983*. If any Commonwealth records are to be transferred to the industry services body (successor body), permission will be needed from the National Archives of Australia under paragraph 24(2)(b) of the *Archives Act 1983*.

Clause 27: FWPRDC’s final annual reports etc.

This clause provides for the preparation of reports and financial statements relating to FWPRDC and its subsidiaries (if any) for a financial year that ended before the cessation time or the period starting on the 1 July before the cessation time and ending at the cessation time, auditing those reports and investigating and imposing penalties for failure to comply with requirements relating to those reports.

Despite the repeal of the *Forest and Wood Products Research and Development Corporation Regulations 1993*, Subdivision A of Division 2 of Part 3 of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act), the other provisions of that Act so far as they relate to that Subdivision and the Finance Minister’s Order (as defined in the CAC Act) apply for the purpose of this item. Subdivision A of Division 2 of Part 3 of the CAC Act applied for this item as if FWPRDC regulations had not been repealed, the final FWPRDC period were a financial year and the persons who were directors (as defined in the CAC Act) of the FWPRDC immediately before the repeal of the regulations continue to be directors of the FWPRDC.

This item does not limit sections 8 and 9A of the *Acts Interpretation Act 1901*, ensuring that obligations relating to the FWPRDC incurred before the cessation time continue after that time, and allow investigations and legal proceedings relating to those obligations to be undertaken after that time.

Clause 28: FWPRDC’s expenditure and funding treated as industry service body’s

This clause has effect for purposes of working out under section 9 of the *Forestry Marketing and Research and Development Services Act 2007* the limit on the appropriation for matching payments for a financial year.

This clause provides for any unmatched research and development excess from FWPRDC because the research and development expenditure that is not “50% matched” in the last financial year of operation, to be carried over to the successor body at the time of transfer.

If the cessation time of FWPRDC is after the start of a financial year, this clause also provides for the amount spent by the successor body that qualify under the funding contract as research and development activities to be included in the amount (if any) spent by the FWPRDC in that part of the financial year. Therefore, any unmatched
research and development excess for the successor body for that financial year will be dependent on the amount of funds expended by FWPRDC during that financial year before the transfer.

Clause 29: Certificates etc. taken to be authentic etc.

This clause states that a certificate or document issued under this Schedule is taken to be authentic unless the contrary is established.

Clause 30: Delegation

This clause provides for the Minister to delegate, by writing, all or any of his or her powers to the Secretary of the Department or an SES employee in the Department.

Clause 31: Compensation for acquisition of property

This clause provides a right to compensation if, as a result of the Act, property is acquired from a person otherwise than on just terms.

Clause 32: Regulations

This clause provides for compensation to be paid by the Commonwealth to a person from whom property is acquired on other than just terms as a result of the operation of the Bill. If the Commonwealth and the person in question cannot agree on the amount of any such compensation to be paid, the Federal Court may, on application by the person from whom the property was acquired, determine what is a reasonable amount of compensation for the acquisition of the property.

Schedule 2 – Consequential provisions

This clause provides for consequential amendments of various Acts to enable the operation of this Act; Primary Industries and Energy Research and Development Act 1989, Primary Industries (Customs) Charges Act 1999, Primary Industries (Excise) Levies Act 1999, Primary Industries Levies and Charges Collection Act 1991.