

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**REGIONAL FOREST AGREEMENTS BILL 1998**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Minister for Forestry and Conservation,  
the Hon Wilson Tuckey MP)

## **REGIONAL FOREST AGREEMENTS BILL 1998**

### **GENERAL OUTLINE**

The Regional Forest Agreements Bill will provide legislative support to the outcomes of Regional Forest Agreements (RFAs) entered into between the Commonwealth and respective States and Territories.

RFAs are the central focus of a package of measures designed to implement the National Forest Policy Statement (adopted by the Commonwealth and all State and Territory Governments) in relation to native forests. Completion of an RFA for a region will:

- ensure the long-term protection of environmental and heritage values through the establishment and management of a comprehensive, adequate and representative reserve system; and
- provide the basis for an internationally competitive and ecologically sustainable native forest products industry outside that reserve system.

To date, RFAs have come into force for the East Gippsland and Central Highlands regions in Victoria and the Tasmania region. The process of assessment and negotiation of RFAs is currently underway for nine other regions.

The RFA Bill will provide a broad legislative context for all RFAs, with each RFA itself including provisions to operate in the relevant region.

### **FINANCIAL IMPACT STATEMENT**

There will be no direct financial impacts from the passage of the RFA Bill. Any costs/savings will be the result of the establishment, implementation and operation of the RFAs themselves.

### **REGULATION IMPACT STATEMENT**

#### Introduction

Over years, governments have faced the task of balancing competing interests of environment/conservation, industry and recreation regarding the use, management and conservation of forests and forest resources. The National Forest Policy Statement provides a framework for a long-term and lasting resolution of conservation, forest industry and community interests and expectations concerning Australian forests. The Statement requires joint Commonwealth-State comprehensive regional assessments of forests' environmental, heritage, economic and social values.

These assessments then form the basis of negotiated Regional Forest Agreements (RFAs) between the Commonwealth and the States, which provide for both future forest management and the basis of an internationally competitive and ecologically sustainable forest products industry. The agreements will provide for a comprehensive, adequate and representative forest reserve system and will clearly identify those forest resources available for multiple use, including resources for sustainable timber harvesting.

## 1. The Problem

Some interests seek long term security in addition to that provided by RFAs. In particular, greater certainty is sought by industry about the lifting of export controls, the non-application of certain Commonwealth statutory environmental and heritage requirements, about compensation matters and that RFAs will not be arbitrarily terminated. Environmental and some community interests seek greater confidence that forest reserves and conservation values will be appropriately protected. Specific Commonwealth legislation is sought to provide greater certainty in these areas.

## 2. Objectives of Government Action

The Government seeks to provide strong legislative backing for RFAs to increase confidence in the long-term future of Australian forest management and protection of environmental and heritage values.

## 3. The Proposed Option.

The proposed option is to provide Commonwealth statutory backing for the lifting of export controls and exemption from certain Commonwealth statutory environmental and heritage obligations where an RFA, based on comprehensive regional assessments, is in place, and for support of RFA termination and compensation provisions.

## 4. Impact Assessment

### (a) Groups Affected.

In considering the proposed option, affected groups would include conservation and environmental interests, forest and forest products industry operators and their workforces, recreational forest users and the broader community.

### (b) Costs and Benefits of the Proposed Option

The proposed option provides a high degree of certainty for conservation and environmental interests, forests and forest products industry operators, recreational users of forests and the broader community in that significant commitments made under RFAs will be supported by legislation. For industry, it will ensure that compensation would be payable as provided in the RFAs. There would be no direct financial cost to the Commonwealth arising from the proposed option.

## 5. Consultation Statement

As required under Article 23(a) of the Tasmanian RFA, the Commonwealth released a policy paper outlining the proposed legislation in December 1997. The paper, *Commonwealth Legislation to Complement Regional Forest Agreements*, was circulated to all States and Territories as well as to a large number of stakeholders, including industry participants, industry associations and conservation groups. The paper set out the basis of the proposed legislation to support RFAs and called for submissions by 31 January 1998. In addition, Commonwealth officials discussed the proposal with industry and conservation groups in Sydney, Melbourne and Canberra. Submissions and views expressed in the consultations were considered in finalising the Bill.

## 6. Conclusion

The proposed option is to introduce legislation which precludes the application of controls under the *Export Control Act 1982*, and other Commonwealth laws which have the effect of prohibiting or restricting exports of wood from a region where an RFA is in force.

The legislation would also prevent application of the requirements of specific provisions of Commonwealth environmental and heritage legislation as they relate to the effect of RFA forestry operations. This recognises that because RFAs provide for on-going protection of environmental

and heritage values through a comprehensive, adequate and representative forest reserve system and for the ecologically sustainable use of native forests outside that system, such provisions are no longer appropriate where an RFA is in force.

Wood from plantations in RFA regions will be covered by the exemption unless the relevant State's code of practice has not been approved under Regulation 4B of the Export Control (Unprocessed Wood) Regulations (recognising that the Government's separate process dealing with wood from plantations is not yet complete for all jurisdictions).

The Bill would also support termination and compensation provisions in an RFA, ensuring that termination of an RFA is ineffective unless done in line with the RFA's termination provisions. The Bill would state that the Commonwealth Government is liable for compensation made available under the RFA should it breach an RFA in force, even if it is subsequently terminated or expires, and will ensure that the Commonwealth Government cannot effectively change RFA termination or compensation provisions in the future without legislative action.

#### 7. Implementation and Review Strategy

The three RFAs that have been signed to date - for the East Gippsland, Central Highlands regions in Victoria and the Tasmania region - will remain in force for 20 years and will be reviewed every five years. This process, through which the effectiveness of Commonwealth-State forest arrangements will be assessed, will provide an opportunity to examine the operation of the legislation.

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1: Short title

The Act will be called the *Regional Forest Agreements Act 1998* (the Act).

### Clause 2: Commencement

Clause 2 provides for the Act to commence on a day to be fixed by Proclamation, or on the first day after the period of six months following the day on which it receives the Royal Assent, which ever is the earlier. This delay in commencement will enable RFAs currently in force to be examined to ensure consistency with the provisions in the Act. For example, unlike the Central Highlands and Tasmanian RFAs, the East Gippsland RFA currently does not contain any compensation provisions (see Clause 7). The delay to the commencement of the Act will allow the parties to the East Gippsland RFA time to include similar provisions in the agreement.

### Clause 3: Definitions

Clause 3 provides definitions of certain terms contained in the Act.

**“Comprehensive, adequate and representative reserve system”** has the same meaning as in the particular RFA (as noted, RFAs currently in force will be examined and if necessary revised to ensure consistency with the Act). This definition requires the reserve system in each RFA region to be based on consistent principles of comprehensiveness, adequacy and representativeness, and that differences in the composition of the reserve system in each RFA can be accommodated.

In this regard, the Commonwealth intends to negotiate for all RFAs the establishment of a comprehensive, adequate and representative reserve system in each region on the basis that “comprehensive” means that the reserve system includes the full range of native forest classes, communities or ecosystems found in the region; “adequate” means the reserve system maintains the ecological viability and integrity of populations, species and communities in such forests; and “representative” means the reserve system is a reasonable reflection of the biotic diversity of the communities in such forests.

**“Forest products”** is defined as meaning live or dead trees, ferns or shrubs, or parts thereof. This ensures activities related to the harvesting of trees for leaves, pollen, etc., fall within the definition of “forestry operations”.

**“Forestry operations”** are confined to activities and operations, undertaken for commercial purposes, which are related to the planting and management of trees and the harvesting of trees and other forest products.

**“Plantation”** is defined as an intensively managed stand of trees of either native or exotic species that is created by the regular placement of seedlings or seed. This definition is relevant to the definition of “RFA wood”.

**“RFA or Regional Forest Agreement”** is defined as an agreement that is in force between the Commonwealth and a State, which must:

- (a) have been entered into having regard to assessments made in relation to environmental, endangered species, national estate, world heritage, indigenous heritage, economic and social values, and principles of ecologically sustainable management that are relevant to the region; and
- (b) provide for a comprehensive, adequate and representative reserve system; and

- (c) provide for the ecologically sustainable management of forested areas in the region; and
- (d) be expressed to be for the purpose of providing long-term stability of forests and forest industries; and
- (e) be expressed to be a Regional Forest Agreement.

**“RFA forestry operations”** is restricted to forestry operations in relation to a forest (where ‘forest’ has the same meaning as in the RFA) on land which is in a region covered by an RFA and which is land where such forestry operations are not prohibited by the RFA. The definition is important in confining the forestry operations which are exempt from certain Commonwealth environmental and heritage legislation during the currency of the RFA (see Clause 5) -and ensuring that Commonwealth statutory environmental obligations not related to RFA forestry operations can continue to be met. This definition is drafted to include such operations as regeneration of a former forest and transport operations related to a forest that may take place outside it. As noted, RFAs currently in force will be examined and if necessary amendments will be sought to ensure consistency with the Act.

**“RFA wood”** comprises all processed or unprocessed wood (including woodchips) sourced from an RFA region. Wood sourced from plantations in the region is excluded unless the relevant State’s code of practice for plantation management has, under Regulation 4B of the Export Control (Unprocessed Wood) Regulations (the Regulations), been approved by the relevant Minister as satisfactorily protecting environmental and heritage values in the State, and this approval has not been revoked by the relevant Minister under Regulation 4C of the same Regulations. An approval or revocation remains operative for the purposes of this definition even if the Regulations under which they were made are, subsequently, no longer in force. This definition is important in determining which wood is exempt from Commonwealth export controls (see clause 5).

While the removal of export controls on plantation-sourced wood is being done through a separate State-by-State process involving Commonwealth approval of a State’s code of practice, this provision ensures that plantations in RFA regions in States which are exempt from export controls as a result of the approval of a code of practice have legislative protection of that exemption. To date Tasmania, Victoria, South Australia, New South Wales and Western Australia have had their codes of practice assessed and approved. The assessment process is yet to be completed for Queensland, Australian Capital Territory and Northern Territory.

**“State”** is defined to include the Australian Capital Territory and the Northern Territory

#### Clause 4: Act Binds the Crown

Clause 4 ensures the Crown in right of the Commonwealth is bound by the Act.

#### Clause 5: Certain Commonwealth Acts not to apply in relation to RFA wood or RFA forestry operations

Clause 5 provides that certain Commonwealth legislative provisions would not apply in relation to RFA forestry operations and RFA wood.

Subsection (1) precludes any controls under the *Export Control Act 1982* being applied to RFA wood sourced from a region while an RFA is in force for the region.

Subsection (2) precludes any other export control law being applied to RFA wood, unless that export control 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.

Subsection (3) provides that the effect of RFA forestry operations must be disregarded for the purposes of:

- (a) section 30 of the *Australian Heritage Commission Act 1975*;
- (b) approved procedures under section 6 of the *Environment Protection (Impact of Proposals) Act 1974*;
- (c) section 11 of the *Environment Protection (Impact of Proposals) Act 1974*; and
- (d) section 6 of the *World Heritage Properties Conservation Act 1983*.

Section 30 of the *Australian Heritage Commission Act 1975* requires that where a Commonwealth action will adversely affect a national estate place, the person responsible for that action must be satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken.

The *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act) requires that, to the greatest extent practicable, matters affecting the environment to a significant extent are fully examined and taken into account in relation to Commonwealth decisions. For this purpose the Commonwealth can require

- (i) that environmental impact assessment be undertaken in accordance with the Administrative Procedures approved under s.6 of the EPIP Act; or
- (ii) that a commission of inquiry be conducted in accordance with s.11 of the EPIP Act.

The *World Heritage Properties Conservation Act 1983* (the WHPC Act) provides for proclamations to be made to protect areas that form part of the world heritage. Section 6 of the WHPC Act relates to property that the Commonwealth Government has international responsibilities to protect, or that is part of Australia's distinctive heritage. Section 6 authorises the Governor-General, if he is satisfied that such property is likely to be damaged or destroyed, to make a proclamation that section 9 of the Act applies to it. Section 9 makes it unlawful to do certain acts (prescribed in regulations) in relation to the property, without the consent of the Commonwealth Minister.

The exemption under subsection (3) is made because the RFA itself and the management prescriptions contained therein are based on comprehensive assessments, made in the light of these specified Commonwealth statutory environmental and heritage obligations. The establishment of a comprehensive, adequate and representative reserve system and provision for ecologically sustainable forest management under each RFA ensures the on-going protection of environmental and heritage values in the region. Thus no further assessment in relation to the effect of RFA forestry operations is required. This exemption is limited to RFA forestry operations in relation to "forest" (the scope of which is as defined in the RFA).

#### Clause 6: Termination of RFA by Commonwealth

Clause 6 provides that the termination of an RFA by the Commonwealth has no effect unless it is done in accordance with the termination provisions of the RFA in force at the time the Act commences or at the time the RFA commences, whichever is later. This ensures that the Commonwealth cannot terminate an RFA in a way inconsistent with its termination provisions without amendment of the Act by the Parliament and allows parties to existing RFAs to examine the scope of relevant termination provisions in the light of this Act prior to its commencement. It also ensures that following the commencement of the Act, the Commonwealth Government cannot agree to subsequently change termination provisions in any RFA without amendment of the Act by the Parliament.

### Clause 7: Compensation for breach of RFA by Commonwealth

Subsection (1) ensures the Commonwealth is liable for any compensation it is required to pay to a State under compensation provisions contained in an RFA in force at the time the Act commences or at the time the RFA commences, whichever is later. This ensures that, without prior legislative action, the Commonwealth remains liable for any breach of an RFA, as determined by the compensation provisions contained in that RFA.

This provision also allows parties to existing RFAs to examine the scope of relevant compensation provisions in the light of this Act prior to its commencement. It also ensures that following the commencement of the Act, the Commonwealth Government cannot agree to subsequently change compensation provisions in any RFA without amendment of the Act by the Parliament.

Subsection (2) ensures any Commonwealth liability under subsection (1) incurred when an RFA is in force remains even though the RFA may subsequently be terminated or expire.

Subsection (3) ensures that compensation payments liable to be paid by the Commonwealth to a State under subsection (1) may be recovered as a debt and are payable from funds appropriated by Parliament.

### Clause 8: Publication of information about RFAs

Subsection (1) requires the Minister, as soon as practicable after an RFA has been entered into, to publish a notice in the *Gazette* stating that the RFA has been entered into and giving details concerning the region covered and the date the RFA came, or comes, into force.

Subsection (2) requires the Minister, as soon as practicable after an RFA ceases to be in force, to publish a notice in the *Gazette* stating that the RFA has ceased to be in force and giving details concerning the region covered and the date the RFA ceased to be in force.

These subsections, while not affecting the commencement or cessation of an RFA, ensure that public notice is given of such a commencement or cessation.

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