

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 4 June 1992

(*Mr Miles*)

**A BILL**

FOR

**An Act concerning the provision of resource security for  
certain forest industries**

BE IT ENACTED by the Queen, and the Senate and the House  
of Representatives of the Commonwealth of Australia as follows:

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the *Forest Conservation and  
Development Act 1992*.

**Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

**Objects of Act**

3. (1) The objects of this Act are, in co-operation with the States to:

- (a) facilitate co-operation between the Commonwealth and the States in relation to forest industries, and, where appropriate, to assist in furthering the objects of relevant State laws by providing Commonwealth legislative support to those laws and Commonwealth recognition of the responsibilities of the States in relation to land use issues; and
- (b) facilitate investment in forest programs.

(2) The objects are to be achieved by:

- (a) establishing procedures and conditions concerning the granting of resource security, if necessary on a regional basis, to forest programs on public and private land; and
- (b) preventing the exercise of Commonwealth decision making powers in relation to forest programs otherwise than in the exceptional circumstances provided for in this Act.

**Interpretation**

4. (1) In this Act, unless the contrary intention appears:

"Commonwealth decision making power", in relation to forest programs, means a decision making power in relation to the programs that is a power under the law of the Commonwealth.

"decision making power", in relation to forest programs means:

- (a) a power, conferred by a law of the Commonwealth or a State (whether before or after the commencement of this section) to make a decision of an administrative character; or
- (b) a power (whether conferred before or after that commencement) under an Act to make regulations;

that would prohibit or impose conditions on, or have the effect of prohibiting or imposing conditions on, the conducting of forest programs and, without limiting the scope of the foregoing, includes a power to make a decision of an administrative character involving the

) application of any one or more of the following:

- (c) subject to this definition, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
- (d) section 30 of the *Australian Heritage Commission Act 1975*;
- 5 (e) the *Environment Protection (Impact of Proposals) Act 1974*;
- ) (f) the *Export Control Act 1982*;
- (g) the *World Heritage Properties Conservation Act 1983* (including the Commonwealth's power to make a decision that causes property to be taken, for the purposes of subparagraph 3A(1)(a)(ii) of that Act, to be subject to World Heritage List nomination);

10 but does not include a decision involving the application of Part IIA, or Division 3 of Part II, of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;

15 "**designated Ministers**", in relation to a provision of this Act, means one or more Ministers whom the Governor-General declares, by instrument published in the *Gazette*, to be designated Ministers for the purposes of that provision;

"**export**" means export from Australia;

20 "**forest industries**", includes activities and undertakings connected with the establishment, cultivation, harvesting, processing or production of trees, wood or wood-based products and includes the singular "forest industry" where appropriate;

"**forest programs**" has the meaning given in section 5;

25 "**provision of this Act**", includes a definition, a subsection of a section of this Act, and a paragraph of such a subsection or section;

"**relevant State law**" means a law enacted by a State relating to land use, environmental management or protection or forestry management which designated Ministers accept, by instrument published in the *Gazette*, as a relevant State law for the purposes of this Act;

30 "**relevant State or regional forest industry strategies**" means strategies, plans, proposals or arrangements made by or under the authority of a State under a relevant State law which designated Ministers accept, by instrument published in the *Gazette*, as relevant State or regional forest industry strategies for the purposes of this Act;

35 "**species**" means a group of biological entities that interbreed to produce fertile offspring;

40 "**wood processing projects**" means projects for or connected with the establishment, cultivation, harvesting, processing or production of trees, wood or wood-based products on private or public land.

(2) A reference in this Act to forest industries or programs includes a reference to carrying out any activity (including harvesting operations) that is necessary for the conducting of those industries or programs.

(3) A reference in this Act to forest programs that are proposed to be conducted includes a reference to forest programs that already exist but which it is proposed to expand or extend.

(4) Nothing in the definition of "designated Ministers" in subsection (1) prevents the Minister administering this Act being declared to be a designated Minister for the purposes of a provision of this Act.

(5) A provision of this Act that requires that the designated Ministers be satisfied that particular circumstances exist or have occurred is taken to require that all the Ministers who are designated Ministers for the purposes of that provision be so satisfied.

**Forest programs**

5. A reference in this Act to forest programs is a reference to:

- (a) wood processing projects conducted, proposed to be conducted or which may be conducted, under or in accordance with relevant State or regional forest industry strategies; or
- (b) wood processing projects for which a State has sought resource security under section 10; or
- (c) other wood processing projects as a State or States deem appropriate under a relevant State law or relevant State laws; or
- (d) wood processing projects concerning which an instrument is in force under section 12; or
- (e) wood processing projects, including plantations.

**References to resource security**

6. A reference in this Act to forest programs having resource security is a reference to forest programs in relation to which an instrument is in force under section 12.

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**Certain Territories regarded as States**

7. For the purposes of this Act, the Australian Capital Territory and the Northern Territory are to be regarded as States.

**Administration of Act**

8. (1) A Minister who exercises a power under this Act as a designated Minister is to exercise the power in such a way as to assist in meeting the objects of the Act.

(2) Nothing in this Act affects the operation of a law of a State.

**Act to bind Crown**

9. This Act binds the Crown in all its capacities.

**PART 2 - GRANT OF RESOURCE SECURITY**

**Application for grant of resource security**

10. (1) A State may make an application to a designated Minister for the granting of resource security in relation to forest programs.

(2) An application for the granting of resource security must be made in writing.

**Commonwealth may enter into agreements**

11. (1) The Commonwealth may enter into an agreement, with one or more States, concerning the provision of resource security for certain forest programs.

(2) The agreement is legally binding.

**Grant of resource security to forest programs**

12. (1) Subject to subsection (2), the designated Ministers must, by instrument in writing, declare that this Act applies in relation to an application under section 10.

(2) Subject to subsection (3), the designated Ministers must not issue an instrument under subsection (1) unless they are satisfied that any requirements arising:

(a) as a result of the Commonwealth's consideration of the application for the granting of resource security; or

(b) in connection with the exercise of Commonwealth decision making powers concerning the granting of resource security; have been or will be met.

(3) If 12 months have passed since the receipt of an application under subsection 10(1) in relation to those forest programs the requirements of subsection (2) of this section shall be deemed to have been met whether or not any consideration or assessment concerning the application has been completed.

(4) The instrument must specify a period during which it is to be in force.

(5) A copy of the instrument must be tabled in each House of the Parliament within 15 sitting days of that House after the making of the instrument.

**Minimising undue duplication**

13. In the interests of avoiding undue duplication of effort, the Commonwealth must, as far as is practicable, co-ordinate and integrate the processes of assessment in relation to the exercise of its decision making powers for which it is responsible relating to forest programs with the processes of the exercise of decision making powers relating to those forest programs by the State or States where the forest programs are proposed to be conducted.

**PART 3 - EXTENT OF RESOURCE SECURITY**

**Exercise of Commonwealth decision making powers**

14.(1) Subject to subsection (2) and to section 15, no Commonwealth decision making power is to be exercised in relation to forest programs that have resource security under section 12 in a way that would prevent or obstruct:

- (a) the making available, to or for the purposes of those forest programs, of the volume of resources that a State has agreed to make available; or
- (b) the use of privately owned land for the purposes of forest industries or forest programs; or
- (c) the export by those associated with those forest programs of goods produced using those resources; or

- (d) the consumption or use in Australia of those resources or goods produced using those resources.

(2) Subsection (1) does not prevent the exercise of a decision making power for the purposes of or in connection with enforcing conditions imposed or agreements entered into in connection with the exercise of a Commonwealth decision making power prior to the granting of resource security to forest programs.

**Major and unforeseen environmental impact**

15. Section 14 does not apply to the exercise of a Commonwealth decision making power in relation to forest programs if:

- (a) the designated Ministers are satisfied that after completion of the assessment process a previously unknown species or a species which was believed to be extinct or threatened has been discovered and that conducting the forest programs would cause that species of fauna or flora to become threatened; and
- (b) the power is exercised to prevent that threat.

**PART 4 - MISCELLANEOUS**

**Commonwealth liable to make compensation**

16.(1) Subject to subsection (2) the Commonwealth is liable to make compensation to any person or body in connection with the Commonwealth making a decision in the exercise of a decision making power that would prohibit, or impose conditions on, the conducting of forest programs that have resource security.

(2) Compensation made under subsection (1) shall be such sum or other consideration as, having regard to the circumstances, the designated Ministers determine is appropriate.

(3) Compensation payable under subsection (1) is to be paid out of funds appropriated by the Parliament for the purpose.

**Protection of property that is subject to the *World Heritage Properties Conservation Act 1983***

17.(1) Nothing in this Act prohibits the exercise of a Commonwealth decision making power in relation to forest programs

if the power is exercised for the purpose of preventing forest programs being conducted on identified property.

(2) In this section:

"Commonwealth decision making power" does not include the Commonwealth's power to make a decision that causes property to be taken, for the purposes of subparagraph 3A(1)(a)(ii) or (iv) of the *World Heritage Properties Conservation Act 1983*, to be subject to World Heritage List nomination:

"identified property" has the same meaning as in section 3A of that Act.

**Taxation laws unaffected**

18. Nothing in this Act affects the operation of any law of the Commonwealth relating to taxation.

**Effect on foreign investment review process**

19. Nothing in this Act affects the exercise of a power under the *Foreign Acquisitions and Takeovers Act 1975*, except so far as the power is exercised for the purpose of protecting the natural environment or Australia's cultural heritage.

**Overriding Commonwealth legislation**

20. This Act does not affect the exercise of a Commonwealth decision making power if and only if an Act expressly provides that this Act does not apply to the exercise of the power.

**Regulations**

21. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

