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**Forests in NSW: An Update**

by

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**Briefing Paper No 2/99**

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## EXECUTIVE SUMMARY

The debate on the appropriate use of native forests in Australia and particularly New South Wales shows no signs of abating. It has been six years since the Commonwealth and State Governments signed the National Forest Policy Statement. It was hoped that the successful implementation of the Policy Statement would resolve conflict in the native forests. However, in NSW at least it appears that the implementation of the National Forest Policy Statement is at somewhat of a stalemate (page 1).

The National Forest Policy Statement provides for the Commonwealth and individual States to complete a comprehensive regional assessment of forests, leading to a Regional Forest Agreement. The Regional Forest Agreements are at the core of the National Forest Policy Statement (page 4).

A detailed 'Interim Assessment Process' was carried out for forests of the NSW coast and ranges pending further investigation for the Comprehensive Regional Assessment (CRA). The IAP was conducted by the Resource and Conservation Assessment Council (RACAC), with input from a wide range of government agencies and stakeholders. Environmental, economic and social outcomes were modelled under various reservation options. IAPs were completed in September 1996, with the following major outcomes (page 5):

- deferral from harvesting of about 816,000 hectares of Interim Deferred Forest Area, pending further investigation in the CRA;
- protection of 12 new wilderness areas totalling 163,000 hectares;
- nine new national parks and a nature reserve in the north-east of NSW and additions to the South-east Forests National Park, together with dedications of wilderness areas, resulting in the revocation of 240,000 hectares across NSW for National Park;
- provision of industry security by maintaining quota quality sawlog allocations at 70% of 1995/96 levels until 30 June 1997, followed by an initial five year (plus five years with conditions) tradeable term agreements guaranteed at 50% of 1995/96 levels;

During 1997/98 Comprehensive Regional Assessments (CRAs) of NSW forest regions continued to be conducted. The four regions in NSW where assessments have been conducted include: Eden; Upper North East; Lower North East; and Southern. The CRAs were designed to form the basis of Regional Forest Agreements.

However, relations between the Commonwealth and State began to sour with the two not cooperating in the lead up to the announcement of the Regional Forest Agreements. In the end Regional Forest Agreements with the Commonwealth were not achieved and NSW released its own agreements. As a result the Commonwealth suspended its contribution to the Forest Industry Structural Adjustment Package (page 7).

In deciding to 'go it alone', on 26 October 1998 the Premier Hon Bob Carr MP announced the Eden Forest Agreement. It is not a 'Regional Forest Agreement' with the Commonwealth. Key features of the 20 year Agreement are (page 8):

- addition of 37,000 hectares of forests to create a total area in the South-east Forests National Park of 134,000 hectares;
- jobs growth for the region with the creation of up to 49 jobs in the short term;
- timber volume supply of 25,000 cubic metres of sawlogs for the first five years;
- addition of 24,000 hectares to Brogo Wilderness, bringing the total reserve to 56,000 hectares; and
- \$6 million industry package to help build a new recovery mill in Eden with a focus on value adding.

The Eden Forest Agreement attracted both support and criticism from a wide selection of groups. Similarly, the North East Forests Agreement was announced by the Premier Hon Bob Carr MP on 12 November 1998. Key features of the Agreement include (page 9):

- the addition of about 380,000 hectares of National Park and nature reserves;
- the creation of 85 new national parks and nature reserves and additions to 37 existing conservation reserves;
- no net job losses, with the creation of 160 jobs in the coming years;
- a timber guarantee to industry of a minimum allocation of 129,000 metres cubed in the Upper North East and 140,000 metres cubed in the Lower North East for the next 20 years;
- a new Timber Industry Employment Taskforce to focus on regional development in the forest sector;
- \$18 million over the next five years for private land acquisition;
- \$5 million of the next five years for log haulage assistance; and
- \$30 million over the next five years for the development of hardwood plantations.

The conservation movement in particular thoroughly criticised the Government upon the release of the North East Forest Agreement. To implement the above Agreements, the Government introduced the Forestry and National Park Estate Bill 1998. After considerable debate and amendment, the Bill was finally passed and assented to on 14 December 1998. The Act is divided into five parts, and provides for: revoking parts of State Forests to be reserved or dedicated as national parks or other reserves; and the making of Forest Agreements. It also co-ordinates integrated forestry operation approvals and restricts the effect of other environmental legislation for approved forestry operations (page 10).

The Commonwealth Government has also introduced the Regional Forest Assessment Bill 1998. This Bill was originally introduced into the House of Representatives on 30 June 1998. The Bill provides legislative backing to Regional Forest Agreements between the Commonwealth and States. In response to industry concern that governments may simply 'walk away' from Regional Forest Agreements, the Commonwealth proposes that all Agreements be strengthened by providing that termination by mutual consent of the parties can only occur 12 months after an intention to terminate the Agreement is notified. In addition, the Commonwealth proposes that all Agreements will include provisions for compensation for those affected if a RFA is terminated early (page 13).

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## 1.0 Introduction

The debate on the appropriate use of native forests in Australia and particularly New South Wales shows no signs of abating. The logging of native forests is an issue once again polarising sections of the community. It has been six years since the Commonwealth and State Governments signed the National Forest Policy Statement. It was hoped that the successful implementation of the Policy would resolve conflict in the native forests. However, in NSW at least it appears that the implementation of the National Forest Policy Statement is at somewhat of a stalemate.

Since the election of the Carr Labor State Government in March 1995, considerable work has been undertaken to reform the forest industry. Numerous Acts have been introduced to restructure the industry and revoke State Forest land to national park. As explained later in this paper, these Acts have been met with both support and criticism.

## 1.2 The Wood and Wood Products Industry

The wood and wood products industry can be divided into several subcategories, including woodchips, pulp and paper, saw milling, veneers and the production of wood based panels. Woodchips are produced from pulp logs obtained from native forests, plantations and sawmill residues. Australia has a significant trade surplus of woodchips, with Australian woodchip exporters licensed to export approximately 5.5 million tonnes of hardwood chips. At present there are 23 pulp and paper mills in Australia involved in the conversion of roundwood thinnings, native forest, harvesting residues and sawmill waste to pulp and paper. Australia imports about one third of paper consumed domestically and has a significant trade deficit in the pulp and paper sector.<sup>1</sup>

The saw milling sector processes hardwood and softwood logs into timber. The sector, particularly that based on native hardwood forests, is characterised by a large number of small operators, geographically dispersed. The large mills that do exist are based exclusively on plantation grown softwood, capital intensive and technologically advanced. Veneers from hardwood and softwood are glued together to make plywood. There are 15 plywood mills in Australia, with production meeting about two-thirds of consumption. Wood based panels are produced from hardwood or softwood pulp logs, thinnings or sawmill residues. The raw material is chipped, converted to fibre and fabricated into panels or boards. This is a growing sector and Australia is largely self sufficient in this area.<sup>2</sup>

## 2.0 The State of the Forest Resource in NSW

- there are approximately 14.8 million ha of forest in NSW, covering about 19% of the land and comprising about 36% of Australia's forest area.

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<sup>1</sup> Resources Assessment Commission, 1992, *Forest and Timber Inquiry Final Report*. AGPS, page 278

<sup>2</sup> *Ibid* p 278

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- of the 14.8 million ha, 23% is in State Forests, 60% in private ownership and 17% in reserves.
  - In NSW 2% of the forest area is plantations, 90% of which is exotic pine and 10% hardwood.
  - Australia imports more forest products than it exports, with a trade deficit of \$1.78 billion in 1993-94. Pulp and paper products accounted for 62% of imports and sawn wood 22%.<sup>3</sup>

An estimated 29% of NSW forests, or 4.3 million ha have been logged. Of the native forest in State forest lands, about 59% percent is available for logging. The equivalent figure for private land is about 39% and for Crown land about 15%. These smaller percentage areas for the latter two tenures reflects the higher proportion of uncommercial or remote forests and generally steeper terrain than on other timber lands.<sup>4</sup>

### **3.0 The National Forest Policy Statement.**

In December 1992 the Commonwealth and State governments signed the National Forest Policy Statement (NFPS)<sup>5</sup>. Although Tasmania did not originally sign the Statement it subsequently did so. The Statement outlines agreed objectives and policies for the future of Australia's public and private forests. The signatory governments committed themselves to implement the Statement as a matter of priority, although it could be argued that not much happened for several years and some timelines were not met. The Statement was an attempt by governments to coordinate forest management, and is a reflection of three major reports by the Ecologically Sustainable Development Working Group on Forests, the National Plantations Advisory Committee, and the Resource Assessment Commission Forest and Timber Inquiry.<sup>6</sup> The Statement maintains the tradition of managing public and private native forests for multiple use. Underpinning the Statement is the agreement between the States and Commonwealth to negotiate Regional Forest Agreements, comprising a network of comprehensive, adequate and representative reserve system, whilst all other forests not in this reserve system would be available for multiple use, including wood production.

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<sup>3</sup> NSW Environment Protection Authority, 1995, *New South Wales State of the Environment 1995*.

<sup>4</sup> *Ibid* p 291

<sup>5</sup> Commonwealth of Australia, 1992, *National Forest Policy Statement. A new focus for Australia's forests*.

<sup>6</sup> Commonwealth of Australia, *Ecologically Sustainable Development Working Groups, Final Report - Forest Use*. 1991.  
Commonwealth of Australia, Resource Assessment Commission. *Forest and Timber Inquiry. Final Report*. 1992.  
Commonwealth of Australia, *Integrating forestry and farming: commercial wood production on cleared agricultural land Australia*. National Plantations Advisory Committee, 1991.



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The implementation of the Statement is overseen by a sub-committee of the following two Ministerial Councils, the Ministerial Council on Forestry, Fisheries and Aquaculture and the Australian and New Zealand Environment and Conservation Council. This body is called the Joint ANZECC/MCFFA Implementation sub-committee (JANIS).

The NFPS has set the agenda for forest policy since 1992. It is therefore important to understand the content of the Statement in order to appreciate both Commonwealth and State actions. The following is a summary.

### **3.1 The Vision**

The vision of the NFPS is the ecologically sustainable management of Australia's forests.

### **3.2 National Goals**

Eleven goals were identified, including;

- Conservation - maintain an extensive and permanent native forest estate and to manage this estate so that the full suite of forest values can be conserved.
- Wood production and industry development - develop internationally competitive wood production and wood products, maximising value adding opportunities.
- Integrated and coordinated decision making and management - reduce fragmentation in the land use decision making process between the States and the Commonwealth.
- Private native forests - these forests are maintained and managed in an ecologically sustainable manner.
- Plantations - expand commercial plantations of softwood and hardwood so as to provide an additional, economically viable, reliable and high quality wood resource.
- Water supply and catchment management - ensure the reliable, high quality water supply from forested land and to protect catchment values.
- Tourism and other economic and social opportunities - manage forests for a range of uses.
- Employment, workforce education and training - expand employment opportunities and the skills base of people working in forest management
- Public awareness, education and involvement - foster community understanding and support for ecologically sustainable forest management.
- Research and Development - increase research and development and ensure it is well coordinated

### 3.3 Specific Objectives and Policies

Four fundamental approaches lay the foundations for this section, including;

- governments will set the regulatory framework for the use of native forests in order to achieve social and environmental objectives. Within these constraints, market forces should determine the extent of resource use.
- commercial uses of forests that are based on ESD practices are appropriate and desirable. The establishment of plantations should be determined on the basis of economic viability and international competitiveness.
- governments will seek complementary management of forests for all uses.
- there should be a sound scientific basis for sustainable forest management.

### 3.4 Regional Forest Agreements

The Statement provides for the Commonwealth and individual States to complete a comprehensive regional assessment of forests, leading to a Regional Forest Agreement. The Regional Forest Agreements are at the core of the National Forest Policy Statement. The formulation of the Agreements is designed to offer a mechanism for governments to resolve competing demands on forest resources, and to deliver a high level of certainty to industry and other forest users. An RFA may specify land use boundaries, forest management guidelines and consultative arrangements between governments, and is expected to last from ten to 20 years.<sup>7</sup> In late December 1994, the Commonwealth announced that export woodchips from native forests would be phased out by the year 2000 if they were from a forest not covered by a RFA.<sup>8</sup>

As part of a Regional Forest Agreement, the governments have committed themselves to establish a system of reserves based on principles of comprehensiveness, adequacy and representativeness. These are known as CAR reserves. The CAR reserve system is to be managed to protect natural values, and is designed to safeguard endangered and vulnerable species and communities. The protection of old-growth forests and wilderness areas are separate strategies under the NFPS.

Complementary management outside CAR reserves and the promotion of the management of private forests in sympathy with nature conservation goals are other stated ways to pursue nature conservation objectives. The Statement makes it clear that forests not included in a CAR reserve will be available for a range of other uses, including logging.

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<sup>7</sup> Commonwealth of Australia, 1995, *Regional Forest Agreements. The Commonwealth position.*

<sup>8</sup> *Ibid* p 2

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## 4.0 Forestry Reforms in New South Wales

The NSW Labor Government was elected in March 1995, and one of the promises of the Party was to reform the forest industry and create 24 new National Parks. The *Forestry Restructuring and Nature Conservation Act 1995* was the result of this promise. The Act allowed the income and capital from the three Environmental Trust Acts<sup>9</sup> to be used for obtaining land for new National Parks, restructuring the forest industry and other smaller associated nature conservation works.<sup>10</sup> Fifty million dollars was to be allocated towards National Park purchases over four years, \$60 million for forestry restructuring over five years and just over \$20 million for the smaller environmental initiatives. In December 1995 it was announced that the Commonwealth government would also allocate \$60 million to NSW for timber industry restructuring assistance, bringing the total amount to \$120 million.<sup>11</sup>

As part of the State reforms, in November 1995 the Government announced that logging quotas from native forests would be reduced by 30% (40% in Eden) from July 1996. The Minister for Land and Water Conservation Hon Kim Yeadon MP has confirmed that once forests have been set aside for the nature reserve system, those forests outside the reserve system will be permanently available to the industry.<sup>12</sup>

### 4.1 Timber Plantations (*Harvest Guarantee*) Act 1995

One of the impediments to the establishment of commercial timber plantations has been the lack of security to harvest the plantation in the face of environmental restrictions. This Act provided for the accreditation of plantations and removed the need for accredited plantations to obtain licences under the *National Parks and Wildlife Act 1974* before harvesting timber. It also removed the need for development consent for harvesting operations under Part 4 of the *Environmental Planning and Assessment Act 1979* or environmental assessment under Part 5 of that Act. The Act ensures that harvesting must be done in accordance with harvesting codes.

## 5.0 The Implementation of the National Forest Policy Statement

As part of the development of Regional Forest Agreements, the Commonwealth government initially prepared a draft list of Deferred Forest Areas, which were used as a starting point to determine those forests which will be included in the CAR reserve system. A Deferred

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<sup>9</sup> These were: *Environmental Education Trust Act 1990*, the *Environmental Research Trust Act 1990* and the *Environmental Restoration and Rehabilitation Trust Act 1990*.

<sup>10</sup> NSWPD, 11 October 1995, p 1553.

<sup>11</sup> "Yeadon welcomes \$120 million for timber industry and workers" Media Release Kim Yeadon, Minister for Land and Water Conservation, 8 December 1995.

<sup>12</sup> "Yeadon says security is the goal" Media Release, Kim Yeadon, MP, Minister for Land and Water Conservation 10 November 1995.

Forest Area was not available for logging until a final comprehensive assessment of a region had determined those areas for inclusion in new national parks. The DFA proposal aimed at protecting 15 percent of the forest area that existed before European settlement. It is important to note that this percentage figure is for a region, and not based on national averages or goals. Other factors for determining DFAs include the retention of at least 60% of old growth forests, increasing up to 100% (where practicable) for rare old growth, and protection of 90% or more wherever practicable, of areas of high quality wilderness that exceeds minimum size thresholds.<sup>13</sup>

In NSW a Northern, Central, Southern and Eden region were assessed for a DFA, covering a total of 11.9 million ha. Of this approximately 2.1 million ha of forests are reserved and 2.19 million ha of native forest are managed by State Forests NSW, with some 68% of this estate managed for timber production.

The Minister for Land and Water Conservation Hon Kim Yeadon MP released details on 22 January 1996 of the Deferred Forest Areas. State Forests was allocated a pool of 1,864 compartments from which to plan harvesting operations, and logging deferred in the remaining 1.5 million ha of forest pending assessment by the Resource and Conservation Assessment Council.<sup>14</sup>

On 25 January 1996, the State and Commonwealth Governments signed the Deferred Forestry Agreement. This Agreement considered current reservations and harvesting moratoria, old growth, biodiversity, and wilderness values and Commonwealth CAR reserve criteria. The report identified additional areas to be deferred from harvesting on a regional and local area basis. This provided protection of forest areas while the Interim Assessment Process was completed.

In NSW, the Resource and Conservation Assessment Council was responsible for coordinating comprehensive regional assessments with the Commonwealth to form the Regional Forest Agreements.

A detailed 'Interim Assessment Process' was carried out for forests of the NSW coast and ranges pending further investigation for the Comprehensive Regional Assessment (CRA). The IAP was conducted by the Resource and Conservation Assessment Council (RACAC), with input from a wide range of government agencies and stakeholders. Environmental, economic and social outcomes were modelled under various reservation options. After 15 months of intensive study, IAPs were completed in September 1996. Major outcomes of the NSW IAP were:<sup>15</sup>

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<sup>13</sup> Commonwealth of Australia, 1995, *National Forest Conservation Reserves. Commonwealth Proposed Criteria. A Discussion Paper.*

<sup>14</sup> "Public consultation on logging compartments complete" Media Release, Kim Yeadon, Minister for Land and Water Conservation 22 January 1996.

<sup>15</sup> State Forests of NSW, *Annual Report, 1996/97*, at 9.

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- deferral from harvesting of about 816,000 hectares of Interim Deferred Forest Area, pending further investigation in the CRA;
  - protection of 12 new wilderness areas totalling 163,000 hectares, including 118,000 hectares of former State forest, and 31,500 hectares in existing national parks;
  - establishment of nine new national parks and a nature reserve in the north-east of NSW and additions to the South-east Forests National Park, together with dedications of wilderness areas, resulting in the revocation of 240,000 hectares across NSW for National Park;
  - provision of industry security by maintaining quota quality sawlog allocations at 70% of 1995/96 levels until 30 June 1997, followed by an initial five year (plus five years with conditions) tradeable term agreements guaranteed at 50% of 1995/96 levels;
  - topping up timber supplies with additional allocations, until RFAs are completed - providing 60% of the 1995/96 quota sawlog level in northern NSW and 65% in central and southern areas of the State and 26,000 cubic metres per year for the Eden Management Area;
  - providing timber industry workers assistance for retraining, skill development, relocation to alternative employment opportunities and redundancy payouts as a last resort;
  - developing Harvest Advisory Boards for all stakeholders including the conservation movement, timber industry, union and government land management agencies. The Boards will identify IDFA areas required for maintenance of supply equipments.
  - assisting timber industry restructuring through financial support for investment in value adding infrastructure and development of markets for quality timber goods.

To revoke areas of State Forest so they could be made available for inclusion in the reserve estate, as reflected in the Interim Assessment Process as described above, the Hon Kim Yeadon introduced into Parliament the Forestry Revocation and National Park Reservation Bill 1996 in September. Displaced timber workers were also to be assisted by the Forest Industry Structural Adjustment Package. The Act was assented to on 12 December 1996.

During 1997/98 Comprehensive Regional Assessments (CRAs) of NSW forest regions continued to be conducted. The four regions in NSW where assessments have been conducted include: Eden; Upper North East; Lower North East; and Southern. The CRAs cover the range of environmental, biological, economic, social and cultural values of forests. The CRAs form the basis of Regional Forest Agreements.

However, relations between the Commonwealth and State had begun to sour with the two not cooperating in the lead up to the announcement of the Regional Forest Agreements. In the end Regional Forest Agreements with the Commonwealth were not achieved and NSW released its own agreements. The Commonwealth Minister for Forestry and Conservation, the Hon Wilson Tuckey MP, claimed that the NSW Government breached the National Forest Policy Statement, and as a result has suspended Commonwealth payments of the Forest Industry Structural Adjustment Package. Of the original \$60 million Commonwealth allocation to the Adjustment Package, \$40 million remains unspent, which

is now suspended.<sup>16</sup> The NSW Government claimed that the Commonwealth saw fit to withdraw from RFA negotiations and in fact hinder the process in NSW. Minister Yeadon stated: “It is still the wish of the Government to enter into regional forest agreements with the Commonwealth and we are exploring ways to open dialogue with them. This Government nevertheless maintains its rights as the State of New South Wales to manage and allocate public lands in accordance with the State’s constitutional rights.”<sup>17</sup>

In deciding to ‘go it alone’, on 26 October 1998 the Premier Hon Bob Carr MP announced the Eden Forest Agreement. It is not a ‘Regional Forest Agreement’ with the Commonwealth. Key features of the 20 year Agreement are:<sup>18</sup>

- addition of 37,000 hectares of forests to create a total area in the South-east Forests National Park of 134,000 hectares;
- jobs growth for the region with the creation of up to 49 jobs in the short term;
- timber volume supply of 25,000 cubic metres of sawlogs for the first five years;
- addition of 24,000 hectares to Brogo Wilderness, bringing the total reserve to 56,000 hectares; and
- \$6 million industry package to help build a new recovery mill in Eden with a focus on value adding.

The Eden Forest Agreement attracted both support and criticism from a wide selection of groups. Green groups said: “The Carr Government’s Eden forest decision is a compromise. The expansion of the reserves is welcomed but there is strong concern about other elements of today’s decision....The decision adds some very valuable areas to the national park estate but critical areas from our conservation plan, already a substantial compromise, have been excluded and will now be open to woodchipping.”<sup>19</sup> The National Association of Forest Industries stated that the Agreement will: “cause even more job loss for timber workers and communities and relies on log supply arrangements which are uneconomic and likely to be subject to significant criticism from the conservation movement.”<sup>20</sup>

Similarly, the North East Forests Agreement was announced by the Premier Hon Bob Carr MP on 12 November 1998. The region is divided into a Lower North East Forest area (north of Hawkesbury River to near Coffs Harbour and west from the coast to Tamworth) and an Upper North East Forest area (from near Coffs Harbour north to the Queensland border and west from the coast to past Glen Innes). Key features of the Agreement

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<sup>16</sup> Media Release, The Hon Wilson Tuckey MP, “Tuckey no longer prepared to accept continual breaches of Agreements by NSW on RFAs.” 26 November 1998.

<sup>17</sup> *NSWPD*, 12 November 1998, at p9923.

<sup>18</sup> State Forests of NSW, *Annual Report*, 1997/98, at 11.

<sup>19</sup> NCC NSW Forests Campaign Media Release ‘Eden Forests Decision - Environment Movement Responds.’ 26 October 1998.

<sup>20</sup> Media Release NAFI: ‘Carr Eden Proposal Unsustainable for Jobs or the Forests.’ Statement by Dr Robert Bain, 26 October 1998.

include:<sup>21</sup>

- the addition of about 380,000 hectares of National Park and nature reserves;
- the creation of 85 new national parks and nature reserves and additions to 37 existing conservation reserves;
- no net job losses, with the creation of 160 jobs in the coming years;
- a timber guarantee to industry of a minimum allocation of 129,000 metres cubed in the Upper North East and 140,000 metres cubed in the Lower North East for the next 20 years;
- a new Timber Industry Employment Taskforce to focus on regional development in the forest sector;
- \$18 million over the next five years for private land acquisition;
- \$5 million of the next five years for log haulage assistance; and
- \$30 million over the next five years for the development of hardwood plantations.

Whilst criticism of the Eden Forest Agreement by different groups was on the whole muted, the North East Forests Agreement was much more controversial. The Green Groups claim the following: some 359,400 ha of forest ecosystem occurring on public lands still require reservation to meet national reserve criteria; of the 360,300 ha of old growth forest identified on available public land outside existing reserves, 33% has been included in new reserves and 67% has been excluded; some 170,900 ha of old growth forest ecosystems on available public lands still require reservation to meet national reserve criteria. The Green groups claim that every other CRA region in Australia has a drastically better target achievement profile for forest ecosystems and old growth forest than the north-east regions of NSW.<sup>22</sup>

In response it was reported that a spokeswoman for Mr Carr said: “the Government had set 1,100 conservation targets to protect pre-1750 forest and animal types. The aim was not to meet the targets but to protect as broad a range of forests and animals as possible.”<sup>23</sup>

Sections of the forest industry also did not like the forest packages. For instance, Boral Timber’s general manager, Mr Ian Hewett, stated that the timber restrictions raised doubts about the business’s ability to move into higher quality markets.<sup>24</sup> In contrast, the Forest Products Association stated that the Agreement “has delivered a balanced outcome for all sides, the greens, the timber industry and rural communities...it is not true to claim there are major shortfalls in the protection of old growth, wilderness and threatened species - 68

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<sup>21</sup> News Release, Premier of NSW Hon Bob Carr MP, “The most comprehensive forest decision in NSW’s history: Premier” 12 November 1998.

<sup>22</sup> Pugh, D. *Establishing a CARR Reserve System in North East New South Wales*. December 1998, at 3.

<sup>23</sup> “Carr betrayal ‘threatens’ new forests war.” in *The Sydney Morning Herald*, 12 November 1998.

<sup>24</sup> “Carr enrages all with North East Forests deal” in *The Australian Financial Review*, 13 November 1998.

percent of all public forests are now reserved in national parks.”<sup>25</sup>

## **6.0 The Forestry and National Park Estate Act 1998**

This Act was introduced by the Minister for Forestry Hon Kim Yeadon MP on the 12 November 1998. After considerable debate and amendment, it was finally passed and assented to on 14 December 1998.

The Act is divided into five parts, and provides for: revoking parts of State Forests to be reserved or dedicated as national parks or other reserves; and the making of Forest Agreements. It also co-ordinates integrated forestry operation approvals, and restricts the effect of other environmental legislation for approved forestry operations. The main parts of the Act are described below.

Part 2 of the Act permits the revocation of certain lands as State Forest and dedicates them into various classes of land use, according to six different Schedules attached to the Act. Schedule 1 dedicates State Forest as national park or historic site or as a nature reserve. The Schedule is divided into different forestry regions, and itemises the additions to the conservation estate for each region. Demonstrating the complexity of the changes, in the Eden region there were 22 separate revocations totalling 32,242 ha of State Forests. Similarly, in the Lower North East Forests region there were 105 revocations of State Forests, totalling 245,130 hectares, while in the Upper North East Forest area there were 81 revocations of State Forests totalling 136,579 hectares. The total area of State Forests revoked in the North East Forest region was 381,130 hectares.

Schedule 2 itemised Crown lands reserved as national park or nature reserve in the Eden, Lower North East and Upper North East regions. While Schedule 3 itemised those parts of State Forests set apart as flora reserves under the Forestry Act 1916. Schedule 4 itemised those parts of State Forests dedicated as Crown Reserves under the Crown Lands Act 1989. Schedule 5 itemises those State forests vested in the National Parks and Wildlife Minister but which are subject to leasehold interests. Schedule 6 itemises State forests and Crown lands which are to be transferred to Aboriginal interests.

Part 3 of the Act allows for the making of Forest Agreements. A Forest Agreement is to be made between Ministers administering the following Acts: *Environmental Planning and Assessment Act 1979*; *Forestry Act 1916*; *National Parks and Wildlife Act 1974*; *Protection of the Environment Administration Act 1991*. Currently, this means that three Ministers would be a party to an Agreement. The Minister administering the *Fisheries Management Act 1994* may also be a party to the Agreement.

A Forest Agreement may only be made in a region that has been the subject of a regional forest assessment carried out by the Resource and Conservation Assessment Council. Any assessment must consider: environmental and heritage values; economic and social values;

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<sup>25</sup> Dorber, Col, "Timber deal protects forests, jobs" in *The Sydney Morning Herald*, 20 November 1998.



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ecologically sustainable forest management; and timber resources.

The Act allows for public participation in the making of an Agreement, but limits this to inviting representations on any proposed Agreements and then considering those comments. However, this section does not apply to those Agreements already announced (ie, Eden, Lower North East and Upper North East Agreements).

Section 18 of the Act allows the parties to the Agreement to amend or terminate the Agreement at any time. Again, public participation as described above is required. Agreements are to be reviewed by the parties every five years, whilst the Minister administering the EPAA is required to prepare an Annual Report to be tabled in Parliament on each Forest Agreement. The Annual Report is to review ecologically sustainable forest management in the region, and compliance with any integrated forestry operations approval for the region. Copies of any Agreement and forestry operation approvals are to be made available in the normal way, and in a forward step by the Government are also required to be placed on the website of the Department of Urban Affairs and Planning.

Part 4 details the provisions for Integrated Forestry Operations Approvals. These approvals are for forestry operations to occur in regions covered by a Forest Agreement. The Act defines the Ministers that may jointly grant an operations approval, which are the same Ministers as made the Forest Agreement.

An approval may last for a maximum of 20 years, but may be revoked, suspended or amendment at any time jointly by those Ministers who granted the approval. A relevant Minister (defined as a Minister who is a party to the Approval other than the Minister administering the Forestry Act 1916) may bring proceedings in the Land and Environment Court for an order to restrain or remedy a breach of the conditions of an approval.

Division 4 of Part 4 of the Act restricts the application of other environment legislation to approved forestry operations within a Forest Agreement Area. Sections 36/37 state: that Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply; an environmental planning instrument cannot prohibit, require development consent or otherwise restrict forestry operations; stop work orders and interim protection orders under the *National Parks and Wildlife Act 1974* do not apply, except for the purpose of protecting any Aboriginal relic or place; stop work orders under the *Threatened Species Conservation Act 1995* do not apply; section 124 orders of the *Local Government Act 1993* do not have effect (section 38); and wilderness areas cannot be proposed or identified or declared in an area where approved forestry operations are being carried out.

A number of environmental statutes include statutory provisions that enable third parties to commence proceedings to remedy a breach or threatened breach of the Act. For instance, section 25 of the *Environmental Offences and Penalties Act 1989* states that any person may bring proceedings in the Court for an order to remedy or restrain a breach of either that Act or any other Act, or any statutory rule under an Act, if the breach is causing or likely to cause harm to the environment. Section 40 of the *Forestry and National Park Estate Act 1998* restricts any third party statutory right available in other Acts to commence

proceedings in a Court to remedy a breach in regard to the *Forestry and National Park Estate Act 1998*. This includes breaches of the Act, including a breach of any Forest Agreement; a breach of an integrated forestry operations approval; a breach of the Act that includes the statutory provision for third parties. Only Ministers, the Environment Protection Authority or a government agency engaged in the administration of their Act may bring proceedings to remedy or restrain a breach of the *Forestry and National Park Estate Act 1998*.

The *Forestry and National Park Estate Bill* attracted considerable debate in both Houses of Parliament. In the Legislative Assembly the Opposition originally noted that the Bill was: inconsistent with the National Forest Policy Statement and flawed. Criticisms included: the Bill not providing long term security for industry, as the Ministers may change a Forest Agreement at any time; with the increase in area of National Park and the consequent reduction in productive forest, wood supply to the industry can only be maintained by over cutting the available resource; and the fact that a RFA has not been signed means that NSW timber will be unsaleable in an increasing number of markets which demand clear proof that the timber comes from a sustainably managed resource.<sup>26</sup>

One of the issues in the Second Reading debate was how easy or not it is to change or terminate a Forest Agreement. The Opposition argued that Forest Agreements are not legally binding, may be subject to variation or termination at any time on the vote of the three Ministers, which may be done in Cabinet and subject to Cabinet Confidentiality, and therefore do not provide the level of certainty that industry requires. This compares to proposed Commonwealth legislation which provides for a 12 month notification period to terminate a Regional Forest Agreement and the payment of compensation to those who are affected if a RFA is terminated. See below for an explanation of the Commonwealth legislation.

At the end of the Second Reading debate the Opposition in the Legislative Assembly opposed the bill.

In the Legislative Council debate on the Bill was considerable with numerous amendments moved. There was much discussion on the provision of third party appeal rights to remedy breaches of the Act. On the Second and Third Reading the cross benchers Hon RSL Jones and Hon I Cohen strongly opposed the Bill. After amendments to help increase security to the timber industry, the final Bill was supported by the Opposition.

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<sup>26</sup>

NSWPD, 17 November 1998, at page 10042. Mr Don Page MP, Leading for the Opposition.

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## 7.0 Commonwealth Regional Forest Assessments Bill 1998

This Bill was originally introduced into the House of Representatives on 30 June 1998. It was read a third time but lapsed when Parliament was dissolved for the 1998 General Election. The Bill was reintroduced on 26 November 1998 and was identical to the original one, but to date has yet to be passed.

The Bill provides legislative backing to Regional Forest Agreements between the Commonwealth and States. One of the issues identified in the forestry debate is whether or not Regional Forest Agreements are legally binding on the parties. The Minister for Forestry and Conservation the Hon Wilson Tuckey MP noted: “Key provisions in certain RFAs already in place are expressed to be legally binding on the parties. However, not all existing RFAs are so expressed and neither are all the provisions that are contained in those agreements.”<sup>27</sup>

In response to industry concern that governments may simply ‘walk away’ from Regional Forest Agreements, the Commonwealth proposes that all Agreements be strengthened by providing that termination by mutual consent of the parties can only occur 12 months after an intention to terminate the Agreement is notified, thus allowing a review of the Agreement to be carried out. Clause 6 of the Bill states that termination of an Agreement is of no effect unless it is done in accordance with the procedures as outlined in the Agreement (for example, 12 month lead time). To strengthen industry confidence in the RFA process even more, the Commonwealth proposes that all Agreements will include positive obligations on the States to initiate compensation action on behalf of industry where a Commonwealth breach of the Agreement results in a case for compensation (clause 7 of the Bill). Minister Tuckey noted that the Commonwealth expected all Agreements to include the same termination and compensation provisions as contained in the Tasmanian and Central Highlands (Victoria) RFAs.<sup>28</sup> Appendix One contains those provisions as found in the Tasmanian Agreement.

The Minister expects complementary State legislation to ensure that industry and the community have confidence in the implementation of Regional Forest Agreements.

It is noteworthy that the Bill defines a Regional Forest Agreement being an agreement that satisfies all the following conditions (clause 3):

- (a) the agreement was entered into having regard to assessments of the following matters that are relevant to the region or regions:
  - (i) environmental values, including old growth, wilderness, endangered species, national estate values and world heritage values;
  - (ii) indigenous heritage values;
  - (iii) economic values of forested areas and forest industries;

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<sup>27</sup> *Hansard House of Representatives*, 26 November 1998, page 729.

<sup>28</sup> *Hansard House of Representatives*, 26 November 1998, page 729.

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- (iv) social values (including community needs);
  - (v) principles of ecologically sustainable management;
  - (b) the agreement provides for a comprehensive, adequate and representative reserve system;
  - (c) the agreement provides for the ecologically sustainable management and use of forested areas in the region or regions;
  - (d) the agreement is expressed to be for the purpose of providing long-term stability of forests and forest industries;
  - (e) the agreement is expressed to be a Regional Forest Agreement.

Minister Tuckey emphasised that for any agreement to gain the benefits of the Bill, the definition of a RFA as above “must be met - and met in full.”<sup>29</sup> The Bill also removes certain Commonwealth controls and restrictions on wood products sourced from RFA areas. The Bill will prohibit the application of export controls imposed under the *Export Control Act 1982* for processed and unprocessed wood sourced from a region where an RFA is in force. In addition, RFA forestry operations must be disregarded for the purposes of certain sections of the: *Australian Heritage Commission Act 1975*; the *Environment Protection (Impact of Proposals) Act 1974*; and the *World Heritage Properties Conservation Act 1983*. Under the Environment Protection and Biodiversity Conservation Bill 1998, forestry operations do not need Commonwealth approval if they are undertaken in accordance with Regional Forest Agreements. The Government aims to remove Commonwealth environmental control, other than that of this Bill, from forestry operations in every area of Australia covered by a Regional Forest Agreement.<sup>30</sup>

## 8.0 Conclusions

Natural resource management has always presented a difficult public policy dilemma for governments, and water and forest management particularly so. It was the hope of governments that the successful implementation of the National Forest Policy Statement would bring to a conclusion conflict in the forest debate. However, in NSW at least this has not been achieved, with even the NFPS breaking down between the Commonwealth and State governments. The Commonwealth approach is tending towards giving greater certainty to industry, with ‘model provisions’ in a RFA including a 12 month notification period to change or terminate a RFA, including compensation provisions. In the current state of government budgetary restrictions, this will most likely mean that governments will not be able to afford to make any significant changes or terminate agreements. In contrast, the NSW Forest Agreements can be changed at any time by the responsible Ministers, with no compensation provisions provided for. Whilst the NSW and Commonwealth Governments both indicate that they would like to see the current NSW Forest Agreements ‘converted’ into Regional Forest Agreements, it appears difficult for this to occur without significant changes to both the rationale and legislation behind each of their positions.

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<sup>29</sup> *Hansard House of Representatives*, 26 November 1998, page 730.

<sup>30</sup> Michaelis, F. *Regional Forest Agreements Bill 1998*. Parliament of Australia Parliamentary Library, Bills Digest No 50. 1998-99.

## **Appendix One**

**Model Provisions in Regional Forest Agreements, as taken from:  
TASMANIAN REGIONAL FOREST AGREEMENT between  
THE COMMONWEALTH OF AUSTRALIA & THE STATE OF TASMANIA  
NOVEMBER 1997**

## Compensation

95.1 If to protect the environment and heritage values in native forests and in connection therewith the protection of:

- (a) CAR Values; or
- (b) Old Growth forest; or
- (c) wilderness; or
- (d) any Priority Species; or
- (e) any Endangered Forest Community; or
- (f) National Estate Values; or
- (g) World Heritage Values; or
- (h) Wild Rivers

the Commonwealth takes any Action during the period of this Agreement which is inconsistent with any provision of this Agreement and a foreseeable and probable consequence of which is to prevent or substantially limit:

- (i) the use of land which is not included within the CAR Reserve System for Forestry Operations which, immediately before the announcement of the proposed Commonwealth Action, are being undertaken or were intended to be undertaken at any time or the use of land which is not included within the CAR Reserve System or of land within that system but not within a Dedicated Reserve for Mining Operations pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action; or,
- (j) the sale or commercial use of Forest Products sourced from land which is not included within the CAR Reserve System or the first sale or first commercial use of Mining Products sourced from land which is not included within the CAR Reserve System or land within that system but not within a Dedicated Reserve for a purpose for which, immediately prior to the announcement of the proposed Commonwealth Action, they had been intended to be sold or used commercially at any time; or,
- (k) the construction on land which is not included within the CAR Reserve System of roads being built or intended to be built, immediately before the announcement of the proposed Commonwealth Action, where those roads primary purpose is for the transportation of Forest Products sourced from land which is not included within the CAR Reserve System, the Commonwealth will pay compensation to the State in accordance with the remaining provisions of clauses 95.2 to 95.20.

95.2 Subject to:

- (a) clauses 95.3, 95.4, 95.5, 95.6, 95.8, 95.9, 95.10, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of the use of land for Forestry Operations or prevention by Commonwealth Action of the sale or commercial use of Forest Products is the amount of the reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person in any of the following classes of person
    - (i) the Owner of the land or of the Forest Products on the land;
    - (ii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land or with any person mentioned in sub-paragraph (iii) below for the carrying out of Forestry Operations on the land ; and
    - (iii) any person who, prior to the announcement of the proposed Commonwealth Action but not in anticipation of that Action, entered into a contract with the Owner of the land or of the Forest Products on the land to purchase the Forest Products on the land.
  - (b) clauses 95.3, 95.4, 95.5, 95.6, 95.7, 95.8, 95.10, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of the use of land for Mining Operations or the first sale or first commercial use of Mining Products is the amount of the reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person carrying on Mining Operations on the land pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations which was in force immediately prior to the announcement of the proposed Commonwealth Action licence or authority as the case may be.
  - (c) clauses 95.3, 95.6, 95.8, 95.11 and 95.12 the compensation to be paid by the Commonwealth to the State in accordance with clause 95.1 in relation to the prevention by Commonwealth Action of construction of a road is the amount of reasonable loss or damage sustained by reason of that prevention, calculated as at the time at which the prevention referred to in clause 95.1 occurred, by any person who, immediately before the announcement of the proposed Commonwealth Action, was contracted to construct that road.
- 95.3. No amount of compensation is payable in the event of any loss or damage being sustained which would have been so sustained regardless of the Commonwealth Action. No compensation is payable hereunder in respect of any additional areas included pursuant to this Agreement in the CAR Reserve System.
- 95.4 The State warrants that no claim will be made in respect of areas where Forestry Operations or Mining Operations would not have been permitted by this agreement and that any claims will be certified by it as being or not being in respect of such

areas and as having been assessed by the State in this regard.

- 95.5 The State warrants that no claim will be made in respect of Forest Products or Mining Products which would not have been available for sale or commercial use under this Agreement and that any claims will be certified by it as being or not being in respect of such Products and as having been assessed by the State in this regard.
- 95.6 The State undertakes to supply to the Commonwealth on request information, including as to areas protected by prescription, required by the Commonwealth for the purposes of considering claims under this clause.
- 95.7 To the extent that clause 95.2 (b) relates to loss or damage in respect of an exploration licence or a retention licence, that clause is to be read as providing for compensation to be payable only:
- (a) in respect of the part of the area to which that licence relates that is affected by the Commonwealth Action; and
  - (b) up to the loss in market value of that licence resulting from the prevention of the Mining Operations
- 95.8 Any claim made by the State hereunder is to be notified in writing within 6 months after the loss or damage is sustained.
- 95.9 For the purposes of clause 95.1(I), the intention to conduct Forestry Operations is to be established on the basis of contracts, documentation of management history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth Action.
- 95.10 For the purposes of clause 95.1(j), the purpose for which there was an intention to sell or use commercially is to be established on the basis of contracts, documentation of management history or other records establishing clear intent and in existence immediately prior to the announcement of the proposed Commonwealth Action.
- 95.11 No compensation is payable under clause 95.2 in relation to any loss or damage which the person who sustained the loss or damage might have avoided by taking reasonable steps in mitigation including by the making of alternative contractual arrangements which would have avoided or reduced that loss or damage.
- 95.12 Clause 95.2 does not apply so as to entitle the State to recover compensation more than once in respect of the same loss or damage.
- 95.13 The initial procedure in relation to a claim for compensation under this clause is as follows:
- (a) The State is to make the claim for compensation by a notice in writing to the Commonwealth which indicates the amount claimed, for whom the claim is made, the area to which it relates and gives detailed particulars of the basis for the claim, and of the manner in which it has been calculated.
  - (b) Where there is a dispute concerning a claim for compensation, or on or before the expiry of thirty days after the receipt of a claim, the Commonwealth notifies the



State that it does not accept the amount claimed then either Party may serve a notice of dispute under clause 11.

- (c) In the event that the amount of compensation payable in response to a claim has not been agreed in the dispute resolution process for which clauses 11 to 15 provide, or the Commonwealth fails to pay the agreed amount of compensation to the State within 60 days of agreement (for reasons other than lack of the necessary appropriation), the Parties hereby refer the claim to arbitration in accordance with the Commercial Arbitration Act 1986 (Tas.).

95.14 The procedure in relation to any arbitration required by reason of the provisions of clause 95.13 is as follows:

- (a) The Parties must meet to appoint an arbitrator within 7 days of an unsuccessful mediation.
- (b) If the Parties are unable to agree on the appointment of an arbitrator, either of them may refer the matter to the President of the Law Council of Australia, or equivalent officer of such body as in future may have the functions of the Law Council of Australia, with a request that person appoint an arbitrator.
- (c) At an arbitration under this clause:
  - (i) the Parties are entitled to representation by a legal practitioner qualified to practice in any State of Australia;
  - (ii) the arbitrator may order the Parties to discover any relevant documents prior to the hearing;
  - (iii) the arbitrator may order the Parties to exchange proofs of evidence of witnesses (whether expert or not) prior to the hearing;
  - (iv) the arbitrator may take advice from any other person as to the matters in issue, but if so, the arbitrator must provide the Parties with an opportunity to:
    - (1) make submissions on the matter in which the advice is to be taken;
    - (2) make submissions on the identity of the person from whom the advice is to be taken;
    - (3) make submission on the substance of any advice given before making any decision on the issue on which the advice is taken;
  - (v) the arbitrator must conduct the arbitration in accordance with procedural fairness;
  - (vi) subject to sections 31 and 32 of the Commercial Arbitration Act 1986 (Tas.), the arbitrator may award interest on any sum ordered to be paid by one Party to the other.

95.15 Subject to clause 95.18 and any appeal under section 38.4 of the Commercial Arbitration Act 1986 (Tas.) the Commonwealth undertakes to pay the State the amount of any award made by an arbitrator under clause 95.14 (including any award of costs, and any interest which the arbitrator may direct to be payable on the award or any award of costs) as a debt due to the State, and to do so within 60 days of the award.

95.16 Except where the State is the person who sustained the relevant loss or damage, any payment of compensation made by the Commonwealth to the State in accordance with this clause will be paid to and received by the State as trustee for the person who sustained the relevant loss or damage.

95.17 Subject to clause 95.18(b), where the State receives monies as a trustee pursuant to clause 95.16, it will pay those monies to the person who sustained the relevant loss or damage within 30 days.

95.18

(a) Where the Commonwealth has agreed to pay compensation to the State under this clause, or an award of compensation has been made under clause 95.14 as a result of arbitration, and the Commonwealth claims that events have since taken place which have the result that the compensation loss and damage comprised in the compensation so agreed or awarded no longer reflects the actual loss or damage that has been or will be sustained, the Commonwealth may by notice in writing to the State, decline to pay that compensation.

(b) If a notice under paragraph (a) is delivered after the State has received the compensation so agreed or awarded, but before the State has paid it to the person who sustained the relevant loss or damage, the State will not pay the compensation to that person.

(c) If a notice under paragraph (a) is delivered, the Parties will attempt to agree the amount of the compensation which the Commonwealth should pay, and -

(i) in default of agreement, will first seek to resolve the dispute by dispute resolution under clauses 11 to 15; and

(ii) in the event that the dispute is not so resolved, or the Commonwealth fails to pay the agreed amount of compensation to the State within 60 days of agreement (for reasons other than lack of the necessary appropriation), hereby refer the claim for compensation to arbitration in accordance with the Commercial Arbitration Act 1986 (Tas.)

(d) Subject to paragraph (e) of this clause, where an arbitration takes place in accordance with sub-paragraph (c)(ii), clauses 95.14 and 95.15 of this Agreement apply to that arbitration and to any amount awarded in that arbitration.

(e) If, following the observance of paragraph (c) of this clause, it is determined by agreement or award that the Commonwealth should pay a reduced amount of compensation to the State, the State will within 30 days of that determination -

(i) repay to the Commonwealth the amount by which the compensation paid to it by the Commonwealth is reduced ; and

(ii) pay the balance of the compensation to the person who sustained the relevant loss or damage.

If, following the observance of paragraph (c) of this clause, it is determined by agreement or award that the Commonwealth should pay an increased amount of compensation to the State -

- (i) the Commonwealth will within 60 days of that determination pay to the State the amount of the increase ; and
  - (ii) the State will, within 30 days of receiving the amount of the increase, pay that amount to the person who sustained the relevant loss or damage.
- (f) If, following the observance of paragraph (c) of this clause, it is determined by agreement or award that the amount of compensation previously paid to the State is correct paid to the State, the State will within 30 days of that determination pay to the person who sustained the relevant loss or damage the amount of the compensation previously paid to it by the Commonwealth.

95.19 Where the State:

- (a) has received monies as a trustee pursuant to clause 95.16; and
- (b) has made all reasonable endeavours to pay the monies to the person who sustained the relevant loss or damage; and
- (c) but has been unable to do so within six months of receiving payment

the State shall repay to the Commonwealth at the expiry of that period the monies so received.

95.20 In this clause

- (a) "Action" means
  - (i) the commencement of legislation or subordinate legislation ; and
  - (ii) administrative action which is taken pursuant to legislation or subordinate legislation, or otherwise than in accordance with such legislation.
- (b) "Owner" means
  - (i) in relation to land
    - (1) the owner of any estate or interest in that land, including the Crown in right of the State ; and
    - (2) any statutory corporation which has the power to carry on Forestry Operations or Mining Operations, as the case may be, on the land for profit.
  - (ii) in relation to Forest Products or Mining Products, as the case may be, the owner of any interest in those products.

## Termination

102. This Agreement may only be terminated by the Commonwealth;
- a) with the consent of the State; or
  - b) where the dispute resolution procedures in clauses 11 to 15 have been observed and the State has been given a 90 day period of notice on:
    - (i) a failure by the State to comply with clause 24(b) or 24(d) being a failure to proclaim any of the new reserves; or
    - (ii) a failure by the State to comply with clause 24(a), being a failure to conserve the areas in the CAR Reserve system identified in Attachment 6 (other than Commonwealth owned or leased land), other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature; or
    - (iii) a failure by the State to comply with clause 24(c), being a failure to introduce legislation in accordance with that clause or a failure to use its best endeavours to secure the enactment of that legislation; or
    - (iv) a failure by the State to observe the terms and conditions referred to in clause 100 or 101 or a failure to use the money referred to in clause 100 or 101 for the purpose for which it is appropriated; or
    - (v) a failure by the State to comply with clauses 58, 60, 64, 68 or 73 other than a failure of a minor nature which is not one or a part of a series of deliberate or reckless failures of a minor nature save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or
  - c) on a fundamental failure by the State to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.
103. The Agreement may only be terminated by the State.
- a) with the consent of the Commonwealth; or
  - b) where the dispute resolution procedures in clauses 11 to 15 have been observed and the Commonwealth has been given a 90 day period of notice on:
    - i) a breach by the Commonwealth of clauses 100 and 101, being a failure to pay financial assistance in accordance with those clauses, or
    - ii) a breach by the Commonwealth of clause 95, being a failure to pay compensation due under that clause, or
    - iii) a failure by the Commonwealth to comply with clause 22 or 23 being a failure to introduce into the Commonwealth Parliament the legislation referred to in clause 23 in accordance with that clause, or a failure to use its best endeavours to secure the enactment of that legislation; save that the

above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period; or

- c) on a fundamental failure by the Commonwealth to comply with the spirit of the Agreement after the observance of the dispute resolution procedures in clauses 11 to 15.