

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**FOREST CONSERVATION AND DEVELOPMENT BILL 1991**

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1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 29 November 1991 a.m.

*(Prime Minister)*

**A BILL**

FOR

**An Act providing for resource security for certain wood  
processing projects**

The Parliament of Australia enacts:

**PART 1—PRELIMINARY**

**Short title**

5     **1.** This Act may be cited as the *Forest Conservation and Development Act 1991*.

**Commencement**

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

**Objects of Act**

10     **3.(1)** The objects of this Act are, in co-operation with the States, to:

- (a) identify, and facilitate the protection and conservation of, forest areas of significant environmental, cultural or heritage value; and

(b) facilitate investment by enterprises in major wood processing projects for the production of value-added products for export, import replacement or both.

(2) The objects are to be achieved by:

- (a) establishing the procedures and conditions for granting resource security to a wood processing project, including completion, by the Commonwealth and the one or more States concerned, of a comprehensive integrated assessment process that involved consideration of the environmental, cultural, heritage, social and economic impact of the project; and 5  
10
- (b) preventing the exercise of Commonwealth decision making powers in relation to the project, except in the exceptional circumstances provided for in this Act.

### Interpretation

4.(1) In this Act, unless the contrary intention appears: 15

“**Commonwealth decision making power**”, in relation to a wood processing project, means a decision making power in relation to the project that is a power under the law of the Commonwealth;

“**decision making power**”, in relation to a wood processing project, means: 20

(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; 25

that would prohibit or impose conditions on, or have the effect of prohibiting or imposing conditions on, the conducting of the project, 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: 30

(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*;

(e) the *Environment Protection (Impact of Proposals) Act 1974*;

(f) the *Export Control Act 1982*; 35

(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); 40

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*;

5 “**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;

“**enterprise**” means a body corporate, partnership or joint venture;

“**export**” means export from Australia;

10 “**national estate**” means the national estate as defined in section 4 of the *Australian Heritage Commission Act 1975* for the purposes of that Act;

“**provision of this Act**” includes a subsection of a section of this Act, and a paragraph of such a subsection or section;

15 “**species**” means a group of biological entities that:

(a) interbreed to produce fertile offspring; or

(b) possess common characteristics derived from a common gene pool;

and includes:

20 (c) a sub-species; and

(d) a distinct population of such biological entities, being a distinct population that the regulations provide is taken to be a species for the purposes of this definition;

25 “**sub-species**” means a geographically separate population of a group of biological entities that:

(a) interbreed to produce fertile offspring; or

(b) possess common characteristics derived from a common gene pool;

30 being a population that is characterised by morphological or biological differences from other populations of that group of biological entities.

(2) A reference in this Act to conducting a wood processing project includes a reference to carrying out any activity (including logging operations) that is necessary for conducting the project.

35 (3) A reference in this Act to a wood processing project that is proposed to be conducted includes a reference to a wood processing project that an enterprise already conducts and proposes substantially to expand or extend.

40 (4) Nothing in the definition of “designated Minister” 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.

**Wood processing projects**

5. (1) A reference in this Act to a wood processing project is a reference to a project for the production of goods by processing up to a specified volume of wood that is obtained from a particular catchment area, being a project: 5

- (a) that an enterprise proposes to conduct; or
- (b) that an enterprise already conducts and proposes substantially to expand or extend; or 10
- (c) in relation to which an instrument is in force under section 10.

(2) A reference in this section to a project includes a reference to a group of integrated activities that could reasonably be considered, when taken together, to constitute a project.

**References to resource security** 15

6. A reference in this Act to a wood processing project having resource security is a reference to a wood processing project in relation to which an instrument is in force under section 10.

**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. 20

**Act to bind Crown**

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

**PART 2—GRANT OF RESOURCE SECURITY**

**Commonwealth may enter into agreements** 25

9. (1) The Commonwealth may enter into an agreement, with one or more States, concerning the provision of resource security for a wood processing project.

(2) The agreement is legally binding, but neither the Commonwealth nor any State is liable to pay damages for any breach. 30

**Grant of resource security to a wood processing project**

10. (1) If the Minister is satisfied that the conditions imposed by sections 11 to 15 (inclusive) have been met in relation to a particular wood processing project, the Minister must, by instrument in writing, declare that this Act applies to the project. 35

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

(3) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**First condition: characteristics of the wood processing project**

11.(1) The designated Ministers must be satisfied that:

- 5 (a) the project's dominant purpose is the production of goods for either or both of the following:
- (i) export;
  - (ii) consumption or use in Australia in place of goods that would otherwise be imported into Australia; and
- 10 (b) to conduct the project in the way that it is proposed to be conducted if resource security were granted would involve the investment of at least \$100,000,000 for the purpose of producing goods from the project; and
- 15 (c) if the project is an expansion or extension of an existing project (by the modernising or upgrading of existing facilities and equipment or otherwise)—to conduct the project in that way would involve a substantial increase in the amount, or the value, or both the amount and the value, of goods produced from the project; and
- 20 (d) appropriate consideration has been given by:
- (i) the Commonwealth; and
  - (ii) the State or States in which it is proposed to conduct the project; and
  - (iii) the enterprise proposing to conduct the project;
- 25 to the establishment, maintenance and use of forestry plantations.

(2) In this section:

“goods” does not include:

- 30 (a) logs for export; or
- (b) wood-chips for export (other than residues from the project); unless those logs or wood-chips will be produced from forestry plantations and will not be needed for consumption or use in Australia.

**Second condition: completion of an appropriate assessment process**

12.(1) The designated Ministers must be satisfied that the Commonwealth has completed an appropriate assessment process that:

- 35 (a) was conducted in co-operation with the one or more States in which it is proposed to conduct the wood processing project; and
- 40 (b) examined the environmental, cultural, heritage, social and economic issues that might reasonably be expected to arise from conducting the project.

(2) The designated Ministers must be satisfied that, in the assessment process:

- (a) in relation to each Commonwealth decision making power that relates to the project and that might reasonably be expected to give rise to environmental, cultural, heritage, social or economic issues, other than a decision making power that can only be exercised during the construction stage, commissioning stage or operational stage of the project—consideration has been given as to whether the power should be exercised; and 5
- (b) consideration has been given to, and the Australian Heritage Commission has been given a reasonable opportunity to consider and comment on: 10
  - (i) the extent (if any) to which conducting the project would involve action being taken, by a body of a kind mentioned in subsection 30(1) of the *Australian Heritage Commission Act 1975*, that would adversely affect any place as part of the national estate; and 15
  - (ii) whether there are feasible and prudent alternatives to the taking of any such action and what measures can reasonably be taken to minimise the adverse effect of such action; and 20
- (c) all applicable administrative procedures approved under section 6 of the *Environment Protection (Impact of Proposals) Act 1974* have been complied with as if the carrying out of the assessment process constituted the making of a decision concerning matters affecting the environment to a significant extent within the meaning of section 5 of that Act; and 25
- (d) any final environmental impact statement or public environment report formulated in accordance with those procedures, and any suggestions or recommendations made in accordance with those procedures, have been taken into account. 30

(3) For the purposes of the application of section 30 of the *Australian Heritage Commission Act 1975* in relation to paragraph (2)(b) of this section, any part of the national estate that is included within the area in which it is proposed to conduct the project is taken to be a place that is in the Register of the National Estate kept under that Act. 35

(4) In the interests of avoiding undue duplication of effort, the Commonwealth must, as far as is practicable, co-ordinate and integrate its process of exercising its decision making powers relating to the project with the process of the exercise of decision making powers, relating to the project, by the State or States in which the project is proposed to be conducted. 40

**Third condition: enactment etc. of appropriate State laws**

13. The designated Ministers must be satisfied that, in each State in which the wood processing project is proposed to be conducted, such laws of the State (if any) as are necessary to be enacted or made in order to authorise or enable:

(a) the State to carry out its obligations under:

(i) the agreement, between the Commonwealth and the State, entered into under section 9; and

(ii) the agreement, between the State and the enterprise proposing to conduct the project, mentioned in section 14; and

(b) the enterprise to carry out its obligations under the agreement, between the State and the enterprise, mentioned in section 14; have been enacted or made.

**Fourth condition: an agreement between the State and the enterprise**

14.(1) The designated Ministers must be satisfied that an agreement has been entered into, between the State or States in which the wood processing project is proposed to be conducted and the enterprise proposing to conduct the project, being an agreement under which:

(a) the State has agreed to be bound by appropriate undertakings relating to making available to the enterprise a volume of resources for use in conducting the project; and

(b) the enterprise has agreed to be bound by appropriate undertakings relating to the conduct of the project, including appropriate undertakings relating to:

(i) matters in relation to which the State has given undertakings in its agreement with the Commonwealth under section 9; and

(ii) the period during which, subject to extensions of time granted under the agreement, the project is to be conducted.

(2) Nothing in subsection (1) prevents the agreement providing for matters not referred to in that subsection.

**Fifth condition: an agreement between the Commonwealth and the State**

15.(1) The designated Ministers must be satisfied that an agreement has been entered into under section 9 under which:

(a) the Commonwealth has agreed that, while the project has resource security, it will not exercise any Commonwealth decision making power in relation to the project in a way that is contrary to section 16; and

(b) each State that is a party to the agreement has agreed to be bound by appropriate undertakings relating to, or incidental to,

the conduct of the project, including appropriate undertakings relating to:

- (i) making available, to the enterprise that is proposing to conduct the project, the volume of resources that the State has agreed to make available under its agreement with the enterprise under section 14; and 5
- (ii) enforcing the obligations imposed on the enterprise by that agreement; and
- (iii) monitoring compliance with and enforcing environmental management practices required by the agreement with the enterprise under section 14; and 10
- (iv) allowing the Commonwealth to monitor the State's compliance with its obligations under subparagraphs (ii) and (iii); and
- (c) the parties have agreed: 15
  - (i) to provide access to, and advice about the existence of, all information and reports necessary for carrying out or applying the agreement, this Act or any law enacted as mentioned in section 13 by one of the States; and
  - (ii) on the procedures to be followed by the parties before a decision making power is exercised in relation to the project, in particular a procedure for co-operation and consultation, and for taking each party's views into account, in ascertaining whether circumstances exist for the operation of section 17, 18, 19, 20 or 21; and 20 25
  - (iii) on the procedures for consultation, at the request of a party, in relation to the agreement; and
  - (iv) on the procedures for the renegotiation and termination of the agreement.
- (2) Nothing in subsection (1) prevents the agreement providing for matters not referred to in that subsection. 30

### PART 3—EXTENT OF RESOURCE SECURITY

#### Exercise of Commonwealth decision making powers

16.(1) If a wood processing project has resource security, section 30 of the *Australian Heritage Commission Act 1975* does not apply to the exercise of any Commonwealth decision making power that relates to the project. 35

(2) Subject to subsection (3), no other Commonwealth decision making power is to be exercised in a way that would prevent or obstruct: 40

- (a) the making available, to the enterprise that is proposing to conduct the project, the volume of resources that one or more

States have agreed to make available under the agreement with the enterprise under section 14; or

(b) the export by the enterprise of goods produced using those resources; or

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

(3) Subsection (2) does not prevent the exercise of a Commonwealth decision making power if one or more of the exceptions set out in sections 17 to 21 (inclusive) apply to the power.

(4) Nothing in subsection (2) prevents any procedure or step in a procedure (other than a procedure or step that is in itself the exercise of a decision making power) being taken, or affects an obligation to take such a procedure or step, for the purpose of deciding:

(a) whether circumstances exist for the operation of section 17, 18, 19, 20 or 21 in relation to the project; and

(b) whether, and in what way, to exercise the power.

**First exception: major and unforeseen environmental or cultural impact**

17.(1) Subsection 16(2) does not apply to the exercise of a Commonwealth decision making power if:

(a) the designated Ministers are satisfied that the wood processing project is being conducted, or is about to be conducted, in a way that would have a major physical impact on the natural environment or Australia's cultural heritage, being a major physical impact that was not substantially taken into account in the assessment process mentioned in section 12; and

(b) the power is exercised to prevent the project being conducted in that way.

(2) Without limiting subsection (1), subsection 16(2) does not apply to the exercise of a Commonwealth decision making power in relation to a wood processing project if:

(a) the designated Ministers are satisfied that, after completion of the assessment process mentioned in section 12, it has been discovered that conducting the project would cause:

(i) a species of fauna or flora to become threatened; or

(ii) a species of fauna of flora that is already threatened to become more threatened; and

(b) the power is exercised to prevent that threat or increased threat.

(3) For the purposes of subsection (2):

(a) a species of fauna or flora is taken to be threatened if:

(i) the designated Ministers have, by instrument published in the *Gazette*, declared the species to be a threatened species; or

- (ii) it comes within one of the threatened species categories set out in the Schedule; and
  - (b) the species of fauna or flora that comes within one of those categories may be taken to become more threatened even if it does not move to another of those categories. 5
- (4) The designated Ministers are not, under subparagraph (3)(a)(i), to declare a species to be a threatened species unless:
  - (a) they are satisfied that there is adequate scientific basis for the declaration; and
  - (b) there has been appropriate consultation with the States concerning the declaration, and the views of the States have been taken into account. 10
- (5) Without limiting subsection (1), subsection 16(2) does not apply to the exercise of a Commonwealth decision making power in relation to a wood processing project if: 15
  - (a) the designated Ministers are satisfied that, after completion of the assessment process mentioned in section 12, a physical feature or thing has been discovered as a result of which an area or object that is wholly or partly included within the area in which the project is proposed to be conducted is taken to be: 20
    - (i) part of the cultural heritage or the natural heritage within the meaning of the Convention for the Protection of the World Cultural and Natural Heritage; or
    - (ii) part of the national estate; and 25
  - (b) the power is exercised to prevent the conduct of the project having a substantial adverse effect on the physical feature or thing.
- (6) Without limiting subsection (1), subsection 16(2) does not apply to the exercise of a Commonwealth decision making power in relation to a wood processing project if: 30
  - (a) the designated Ministers are satisfied that, after completion of the assessment process mentioned in section 12, either:
    - (i) an area or object has been discovered that is; or
    - (ii) a physical characteristic of an area or object has been discovered as a result of which the area or object is taken to be; 35
  - a significant Aboriginal area or a significant Aboriginal object within the meaning of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*; and 40
  - (b) the power is exercised to prevent the conduct of the project having a substantial adverse effect on the area or object.

(7) For the purposes of subsections (2), (5) and (6), a matter (however described) is taken to have been discovered if the persons who carried out the assessment process mentioned in section 12:

(a) were not informed of the matter; and

5 (b) were not aware of the matter;

while the process was being carried out.

**Second exception: parts of the assessment process conducted during the construction stage, commissioning stage or operational stage**

10 18. Subsection 16(2) does not apply to the exercise, during the construction stage or the commissioning stage of the wood processing project, of a Commonwealth decision making power relating to the construction or operation of the project if the designated Ministers are satisfied that it was not possible to exercise the power before the completion of the assessment process mentioned in section 12.

15 **Third exception: matters not relevant to the assessment process**

19. Subsection 16(2) does not apply to the exercise of a Commonwealth decision making power if the designated Ministers are satisfied that the matter in relation to which the power was exercised:

20 (a) was not considered in the assessment process mentioned in section 12; and

(b) is not a matter involving environmental, cultural, heritage, social or economic issues arising from the wood processing project.

**Fourth exception: material breach of agreements**

25 20.(1) Subsection 16(2) does not apply to the exercise of a Commonwealth power if the designated Ministers are satisfied that:

(a) there has been a material breach of:

30 (i) the agreement entered into under section 9 in relation to the project, or an agreement associated with that agreement, not being a breach by the Commonwealth; or

(ii) the agreement entered into, as mentioned in section 14, in relation to the wood processing project, or an agreement associated with that agreement; and

(b) the breach:

35 (i) cannot be remedied; or

(ii) can be remedied but has not been fully remedied within a reasonable time.

(2) For the purposes of subsection (1), an agreement is associated with another agreement if:

40 (a) the agreements are made by the same parties; and

(b) the other agreement provides that the first-mentioned agreement

is to be regarded as associated with it for the purposes of this section.

**Fifth exception: enforcement of conditions etc.**

21. Subsection 16(2) does not apply to the exercise of a Commonwealth decision making power if: 5

- (a) the designated Ministers are satisfied that there has been a breach of a condition or requirement that was imposed as a result of the exercise of a decision making power during or after the assessment process mentioned in section 12; and
- (b) the first-mentioned decision making power is exercised in the enforcement of the condition or requirement. 10

**Consultative arrangements**

22.(1) A decision that section 17, 18, 19, 20 or 21 applies in relation to a wood processing project must not be made unless:

- (a) the procedure for co-operation and consultation mentioned in subparagraph 15(1)(c)(ii) and provided for in the agreement under section 9 to which the project relates has been followed; and 15
- (b) the views of each party to that agreement have been taken into account. 20

(2) Subsection (1) does not affect any other requirements under law concerning the way in which such a decision must be made.

**PART 4—MISCELLANEOUS**

**Commonwealth not liable to pay compensation**

23.(1) Subject to subsection (2), neither the Commonwealth nor any State is liable to pay 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 a wood processing project that has resource security. 25

(2) Subsection (1) does not apply in relation to an act that constitutes an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution. 30

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

24.(1) Nothing in this Act prohibits the exercise of a Commonwealth decision making power in relation to a wood processing project if the power is exercised for the purpose of preventing the project being conducted on identified property. 35

(2) In this section:

5 “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

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

#### Effect on foreign investment review powers

15 26. 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 27. 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.

#### State laws unaffected

28. Nothing in this Act affects the operation of a law of a State.

#### Regulations

25 29. 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;

30 and, in particular, may make regulations providing that distinct populations of biological entities are species.

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**SCHEDULE**

Subparagraph 17(3)(a)(ii)

**CATEGORIES OF THREATENED SPECIES**

**Species that are presumed extinct**

A species is presumed extinct if:

- (a) it has not been definitely located in the wild during the preceding 50 years; or
- (b) during those 50 years the species has been the subject of thorough searching but has not been definitely located in the wild as a result of, or since, that searching.

**Species that are endangered**

A species is endangered if:

- (a) it is likely to become extinct unless the circumstances and factors threatening its abundance, survival or evolutionary development cease to operate; or
- (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction; or
- (c) it is possible that it is already extinct (whether or not it is presumed extinct within the meaning of this Schedule).

**Species that are vulnerable**

A species is vulnerable if it is likely to become endangered within the next 25 years unless the circumstances and factors threatening its abundance, survival or evolutionary development cease to operate.

