



# **Forestry Marketing and Research and Development Services Act 2007**

**No. 122, 2007 as amended**

**Compilation start date:** 13 December 2013

**Includes amendments up to:** No. 146, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Forestry Marketing and Research and Development Services Act 2007* as in force on 13 December 2013. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 13 December 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# An Act relating to service provision for the forestry industry, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Forestry Marketing and Research and Development Services Act 2007*.

### 2 Commencement

This Act commences on the day after it receives the Royal Assent.

### 3 Simplified outline of this Act

The following is a simplified outline of this Act:

This Act provides for a company:

- (a) to receive (under a contract) Commonwealth funding for promotion, research and development for the Australian forestry industry; and
- (b) to be declared as the industry services body for the Australian forestry industry.

This Act also requires the industry services body to comply with directions given by the Minister in the national interest because of an emergency.

Note: The first industry services body has the assets, liabilities and staff of the Forest and Wood Products Research and Development Corporation transferred to it by the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

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**Part 1**Preliminary

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## Section 4

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### 4 Definitions

In this Act:

***Australia***, when used in a geographical sense, includes the external Territories.

***company*** means a company registered under the *Corporations Act 2001* as a company limited by guarantee.

***forestry industry*** means the industry concerned with growing, harvesting, processing, importing, exporting and marketing wood, wood fibre and products made from wood or wood fibre.

***forestry service payments*** means payments mentioned in paragraph 8(1)(a).

***funding contract*** means a contract entered into under section 8 (with the variations, if any, that are in force).

***industry services body*** means the company that is declared to be the industry services body under Part 3.

***matching payments*** means payments mentioned in paragraph 8(1)(b).

***tax-related amounts*** means:

- (a) amounts of charge imposed under clause 2 of Schedule 7, or clause 2 of Schedule 8, to the *Primary Industries (Customs) Charges Act 1999* and received by the Commonwealth on or after the transfer time; and
  - (b) amounts of levy imposed under clause 2 of Schedule 10 to the *Primary Industries (Excise) Levies Act 1999* and received by the Commonwealth on or after the transfer time; and
  - (c) amounts of levy:
    - (i) imposed under regulations made for the purposes of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*; and
    - (ii) identified by regulations made for the purposes of this paragraph; and
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## Section 4

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- (iii) received by the Commonwealth on or after the transfer time; and
- (d) amounts that:
  - (i) are required to be paid under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to charge or levy described in paragraph (a), (b) or (c); and
  - (ii) are received by the Commonwealth on or after the transfer time; and
- (e) amounts that:
  - (i) are payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to charge or levy described in paragraph (a), (b) or (c); and
  - (ii) are received by the Commonwealth on or after the transfer time; and
- (f) amounts that:
  - (i) are payable under a contract between a company and a State, a Territory or an authority of a State or Territory, if the company is declared to be the industry services body; and
  - (ii) represent the amounts that would be payable by the State, Territory or authority if it were subject to charge or levy described in paragraph (a), (b) or (c); and
  - (iii) are received by the Commonwealth on or after the transfer time.

Note: Section 7 of the *Primary Industries Levies and Charges Collection Act 1991* concerns liability of intermediaries and section 15 of that Act concerns penalty for late payment.

***transfer time*** means the time the assets of the Forest and Wood Products Research and Development Corporation become assets of the industry services body under Schedule 1 to the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

Note: Under that Schedule, those assets become assets of the industry services body when the Forest and Wood Products Research and Development Corporation ceases to exist.

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**Part 1**Preliminary

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### **5 Extension to external Territories**

This Act extends to all the external Territories.

### **6 Application of this Act**

This Act applies both within and outside Australia.

## Part 2—Funding contract

### 7 Simplified outline of this Part

The following is a simplified outline of this Part:

The Minister may make a contract with a company for the Commonwealth to make payments of 2 kinds to the company.

The first kind (called *forestry service payments*):

- (a) are to be spent by the company on activities benefiting the Australian forestry industry and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and charges and related payments; and
- (b) cannot exceed those amounts.

The second kind (called *matching payments*):

- (a) are to be spent by the company on research and development benefiting the Australian forestry industry and the Australian community and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and charges and related payments; and
- (b) are subject to limits based on those amounts, the annual value of production by the industry and the amount spent by the company on that research and development.

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## **Part 2**Funding contract

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### Section 8

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## **8 Funding contract**

- (1) The Minister may, on behalf of the Commonwealth, enter into or vary a contract with a company so that the contract provides for the Commonwealth to make payments of the following kinds to the company:

- (a) payments called *forestry service payments*;
- (b) payments made for particular financial years, called *matching payments*.

Note: After a contract has been entered into, the company can be declared as the industry services body under section 11.

- (2) Before acting to enter into or vary the contract, the Minister must be satisfied that the terms of the contract after the action will make adequate provision to ensure that:

- (a) forestry service payments are spent by the company on one or both of the following:
    - (i) marketing, promotion, research and development activities, or other activities, for the benefit of the Australian forestry industry;
    - (ii) payments by the company to the Commonwealth to meet the expenses (the *administration expenses*) incurred by the Commonwealth in relation to the collection and recovery of tax-related amounts, the administration of the contract and the payment of refunds related to tax-related amounts; and
  - (b) matching payments are spent by the company on one or more of the following:
    - (i) research and development activities for the benefit of the Australian forestry industry and the Australian community generally;
    - (ia) payments by the company to the Commonwealth under subsection 9(4);
    - (ii) payments by the company to the Commonwealth to meet the administration expenses; and
  - (c) the administration expenses are met from one or more of the following:
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Funding contract **Part 2**

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## Section 8

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- (i) the difference between forestry service payments and the limit under section 9 on the appropriation for those payments;
- (ii) the difference between matching payments and the limit under section 9 on the appropriation for those payments;
- (iii) payments by the company to the Commonwealth.

Note: An example of the administration expenses is the Commonwealth's expenses relating to an agreement under section 10 or 11 of the *Primary Industries Levies and Charges Collection Act 1991* between the Commonwealth and a State or organisation for it (or a State authority) to collect levies, charges and related amounts on the Commonwealth's behalf.

- (3) The contract does not have to oblige the Commonwealth to pay the full amounts that could be paid out of the money appropriated under section 9.

Note: For example, the contract may provide for payments less than the limits specified in section 9 so the administration expenses are met.

- (4) The contract may include provisions relating to assets and liabilities that will become those of the company under the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*. This subsection does not impliedly limit the matters that may be included in the contract.
- (5) This section does not impliedly limit the executive power of the Commonwealth to enter into agreements.
- (6) The Minister must cause a copy of the contract to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the contract was entered into.
- (7) If the contract is varied, the Minister must cause a copy of the contract as varied to be tabled in each House of the Parliament within 15 sitting days of that House after the variation occurred.

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**Part 2**Funding contract

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## Section 9

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### **9 Appropriation for payments under funding contract etc.**

- (1) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under section 8.

*Overall limit for forestry service payments*

- (2) For forestry service payments, the total limit on the appropriation is the sum of the tax-related amounts.

*Overall limit for matching payments*

- (3) For matching payments, the total limit on the appropriation is the sum of:

- (a) the tax-related amounts; and
- (b) amounts prescribed by the regulations.

- (3A) Subsection (3) does not apply if the company is prescribed by the regulations as a company to which the subsection does not apply.

*Matching payments—retention limit*

- (4) The matching payments made to the company during a particular financial year are subject to the condition that, if:
- (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of production of the Australian forestry industry in the financial year; and
  - (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the company during the financial year exceeds the lesser of:
    - (i) 0.5% of the amount of the gross value of production of the Australian forestry industry in the financial year as determined by the Minister; and
    - (ii) 50% of the amount spent by the company in the financial year on activities that qualify, under the funding contract, as research and development activities;

## Section 9

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the company will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the company in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

(4A) If:

- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount of the gross value of production of the Australian forestry industry in the financial year; and
- (b) the Minister has determined under subsection (4) the amount of the gross value of production of the Australian forestry industry in the previous financial year;

the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of the gross value of production of the Australian forestry industry in the financial year is equal to the amount of the gross value of production of the Australian forestry industry determined under subsection (3) for the previous financial year.

(4B) An amount payable under subsection (4) by a company:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

(4C) A determination made under subsection (4) is not a legislative instrument.

(5) For the purposes of subsection (4), the regulations may prescribe the manner in which the Minister is to determine the gross value of production of the Australian forestry industry in a financial year.

### *Matching payments—unmatched R and D excess*

(6) If there is an unmatched R and D excess for a financial year, the amount spent by the company in the following financial year on activities that qualify, under the funding contract, as research and

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**Part 2**Funding contract

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Section 9

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development activities is taken, for the purposes of this section (including for the purposes of this subsection and subsection (7)), to be increased by the amount of the unmatched R and D excess.

Note: This means that research and development expenditure that is not “50% matched” in one financial year because of the condition in subparagraph (4)(b)(i) can be carried forward into later years.

(7) For the purposes of subsection (6), there is an *unmatched R and D excess* for a financial year if:

- (a) the company spends a particular amount (the *R and D spend amount*) in the financial year on activities that qualify, under the funding contract, as research and development activities; and
- (b) because of subparagraph (4)(b)(i), the net matching payments for the financial year are less than 50% of the R and D spend amount.

The amount of the unmatched R and D excess is:

$$\text{R and D spend amount in the financial year} - \left( 2 \times \frac{\text{The amount of the net matching payments for the financial year}}{\text{net matching payments for the financial year}} \right)$$

Note: Amounts spent and received by the Forest and Wood Products Research and Development Corporation before it ceased to exist may also affect whether there is an unmatched R and D excess, and its amount: see the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

*Set off*

(8) If:

- (a) an amount (the *first amount*) is payable by the company under subsection (4); and
  - (b) another amount (the *second amount*) is payable by the Commonwealth to the company under the funding contract;
- the Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

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Funding contract **Part 2**

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## Section 9

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### *Net matching payments*

- (9) For the purposes of this section, *net matching payments* for a financial year means the total of the matching payments made to the company during the financial year, less the amount payable by the company under subsection (4) as a condition of those matching payments.

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**Part 3**Industry services body

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## Section 10

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### **Part 3—Industry services body**

#### **10 Simplified outline of this Part**

The following is a simplified outline of this Part:

The Minister may declare a company to be the industry services body if there is a contract under Part 2 with the company and the Minister is satisfied that the company will comply with its contractual and statutory obligations.

The Minister may declare that a company ceases to be the industry services body in certain circumstances (for example, if the company requests it, the company does not comply with its contractual and statutory obligations or the company is wound up).

- Note:
- The significance of being the industry services body is that:
- (a) the industry services body must comply with directions given by the Minister in the national interest under section 13; and
  - (b) assets, liabilities and staff of the Forest and Wood Products Research and Development Corporation are transferred to the first industry services body by the *Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Act 2007*.

#### **11 Declaration of industry services body**

- (1) The Minister may, in writing, declare a company to be the industry services body if:
  - (a) the Commonwealth and the company have entered into a funding contract; and
  - (b) the Minister is satisfied that, if the company is so declared, it will comply with its obligations under the funding contract and this Act.

## Section 12

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### *Declaration takes effect immediately*

- (2) A declaration under this section takes effect immediately after it is made.

### *Tabling in Parliament*

- (3) The Minister must cause a copy of a declaration under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the declaration is made.

### *Declaration is not a legislative instrument*

- (4) A declaration made under subsection (1) is not a legislative instrument.

## **12 Cessation of declaration of industry services body**

- (1) If any of the following apply, the Minister may declare in writing that the company that is the industry services body ceases to be the industry services body:
- (a) the company gives the Minister a written request that the declaration be made;
  - (b) the Minister has reasonable grounds to believe that the company has contravened this Act or the funding contract with the company;
  - (c) the Minister has reasonable grounds to believe that:
    - (i) the company's constitution is no longer appropriate for a company performing the functions of the industry services body; or
    - (ii) the company has failed to comply with its constitution;
  - (d) an administrator of the company is appointed;
  - (e) the company starts to be wound up or ceases to carry on business;
  - (f) a receiver, or a receiver and manager, of property of the company is appointed (by a court or otherwise);
  - (g) the company enters into a compromise or arrangement with some or all of its creditors.

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**Part 3**Industry services body

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## Section 12

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- (2) The declaration must specify the day on which the company is to cease to be the industry services body.
- (3) The declaration has effect accordingly.

### *Tabling in Parliament*

- (4) The Minister must cause a copy of the declaration to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the declaration is made.

### *Declaration is not a legislative instrument*

- (5) A declaration made under subsection (1) is not a legislative instrument.

## **Part 4—Miscellaneous provisions**

### **13 Ministerial directions to industry services body in an emergency**

- (1) The Minister may give a written direction to the industry services body if:
  - (a) the Minister:
    - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
    - (ii) is satisfied that the direction would not require the body to incur expenses greater than the sum of the amounts previously paid to the body under the funding contract that have not been spent or committed and the amounts the body will receive under the funding contract during the period to which the direction relates; and
    - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsections (3) and (4) on the body's commercial activities; and
  - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
- (2) The body must comply with the direction.
- (3) The Minister must cause a copy of the direction:
  - (a) to be published in the *Gazette* as soon as practicable after giving the direction; and
  - (b) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction.
- (4) The body's annual report for each period to which the direction relates must include:
  - (a) particulars of the direction; and

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**Part 4**Miscellaneous provisions

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## Section 14

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- (b) an assessment of the impact of the direction on the body's operations during the period.
- (5) Subsections (3) and (4) do not apply to the direction if:
  - (a) on the body's recommendation, the Minister determines in writing that compliance with the subsections would prejudice the body's commercial activities or would be likely to do so; or
  - (b) the Minister determines in writing that compliance with the subsections would be contrary to the public interest.
- (6) The Minister, or a person to whom the Minister delegates the Minister's power under this section, is not a director of the body for the purposes of the *Corporations Act 2001* merely because of that power.
- (7) The Commonwealth is not in a position to exercise control over the body merely because of the Minister's power under this section.
- (8) A direction given under subsection (1) or a determination made under subsection (5) is not a legislative instrument.

## 14 Delegations

- (1) The Minister may delegate all or any of the Minister's powers and functions under this Act or the regulations to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.The delegation must be in writing.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

## 15 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the

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Miscellaneous provisions**Part 4**

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## Section 16

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Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## 16 Regulations

The Governor-General may make regulations 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.

## **Endnotes**

### **Endnote 1—About the endnotes**

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## **Endnotes**

### **Endnote 1—About the endnotes**

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### **Abbreviation key—Endnote 2**

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### **Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### **Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Forestry Marketing and Research and Development Services Act 2007	122, 2007	28 June 2007	29 June 2007	
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Schedule 1 (items 54– 65): 29 June 2012	Sch. 1 (items 64, 65)
Rural Research and Development Legislation Amendment Act 2013	146, 2013	13 Dec 2013	Sch 5 (items 5, 6): Royal Assent	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 2</b>	
s. 7 .....	am. No. 82, 2012
s. 8 .....	am. No. 82, 2012
Heading to s. 9 .....	rs. No. 82, 2012
s. 9 .....	am. No. 82, 2012; No 146, 2013
Note to s. 9(6) .....	am. No. 82, 2012

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**