

**FOREST PRODUCTS BILL 1999**

*Committee*

The Deputy of Committees (Hon W.N. Stretch) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

**Clauses 1 and 2 put and passed.**

**Clause 3: Definitions -**

Hon MARK NEVILL: I move -

Page 3, line 1 - To insert after "Conservation" -  
and Land Management

This amendment changes the name of the department to the Department of Conservation and Land Management, making it consistent with the Bill we dealt with a moment ago.

**Amendment put and passed.**

Hon CHRISTINE SHARP: I move -

Page 3, line 31 - To insert after "tend" -  
(including thinning)

This is to ensure that thinning is in the scope of the definition of the word "manage". Although this is a simple and rather technical amendment, I believe it is a very important amendment. I would like to explain to the Chamber why I think that is so. The definition currently in the Bill before us, which I seek to amend, is the result of a government amendment in the other place. In a series of amendments to this Bill the Government gave the Forest Products Commission very significant powers, which were not in the Bill as originally introduced, with regard to responsibilities for management of the production of forest. I do not remember the total of the suite of amendments - it was perhaps 12 or 15 - that relate to this concept of to "manage" which is defined in clause 3. Management crops up throughout the activities described in the Bill, and although it has a very wide scope of meaning it does not specify the critical meaning to my mind, which is the requirement that management should include thinning.

I leave aside the meaning of ecologically sustainable forest management and how it represents a new departure for forest management because essentially it is looking at other forest values than timber production. However, with timber production one of the critical requirements of a sustainable yield, particularly in the way in which forests grow in the south west, is that the sustainable yield will be sustained over several rotations only by including a requirement for thinning. The history of the management of the state forest, which has claimed the adjective sustainable for many decades, indicates that no silviculture management we have implemented to date has delivered a sustainable yield.

That is a very sweeping statement and I shall explain what I mean. Until the introduction of the Forests Act 1918 there was no requirement for sustainable yield management. As members know, that was when logging in the jarrah forest peaked before the First World War and when most of the very large trees were taken. After that time there was initially some lip service and then, with the introduction of the Conservation and Land Management Act, more specificity for the requirement of sustainable yield. However, in the management practices in the forest, the argument for the introduction for clear felling is that previous selective logging had continually left behind the culled trees. As a result of that, with subsequent logging the quality of the trees in the forest was continually being reduced. Therefore, over time there was a reduction in the timber quality of the remaining trees.

That was clearly not done on a sustainable-yield basis. To solve this problem of the lack of quality of the remaining standing timber we introduced the concept of clear-felling. Since 1973, and in the case of the jarrah forest the late 1980s, we have been implementing silviculture management incorporating the use of clear-felling. That, too, has failed to deliver a sustainable-yield because clear-felling requires adequate thinning of the regenerated forest to produce quality timber in the future. Information has been provided about how much thinning has been done in the karri clear-felled stands that have regenerated since the beginning of woodchipping. I am awaiting answers to questions on notice on that topic. We know that a relatively small proportion of that forest area has been thinned. Significant concerns have been raised in some quarters that we are seeing a very strong regeneration of marri, except in the gravel sites that foster the best jarrah trees.

The history I have summarised indicates that at every step of the way we are maximising our current take and leaving a depleted resource for the future. The only way to get around that is to stipulate that "manage" must

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involve thinning and that the cost of that thinning should be incorporated in the royalties paid by timber companies. This is a long-term cost of sustainable-yield logging. To date we have not managed to get timber companies to understand that they are taking a crop now and that the royalties they pay should cover the cost of providing a crop in the future. Therefore, the addition of the words "including thinning" is fundamental. This Bill is designed to ensure that the forest products covered by this Bill are managed on a sustainable-yield basis. That is why I say that this is a very important although simple amendment.

Hon MARK NEVILL: I support this amendment for a number of reasons. I have heard anecdotal evidence over the years that CALM has not maintained an appropriate level of thinning in clear-felled areas. The logs obtained from thinning are a very important resource. Including reference to thinning in this definition of "manage" focuses attention on that issue. If that is the case - I have heard from a number of sources that it is - thinning regrowth of clear-felled forest could be done by offenders. That would save CALM a lot of time and trouble and the Attorney General a lot of money.

It is a sensible amendment and it is an area with which the Department of Conservation and Land Management could do a better job. I have always said that there is room to improve silvicultural practices and we should always be looking at ways of getting better value-added wealth from harvested timber. It is a worthwhile amendment that I support.

Hon PETER FOSS: I oppose the amendment. It is not a question of disagreement with Hon Christine Sharp or Hon Mark Nevill about whether there should be thinning. It is a question of what will be achieved by the amendment. The term "tend" includes thinning. If we put "including thinning" after "tend", then one has to ask what does "tend" mean if it does not include thinning and one has to put "including thinning" after it? It takes away from the general broad meaning of the word "tend" and causes confusion and ambiguity in the normal way of interpreting statutes. It also does not oblige any greater or lesser quantity of thinning than exists currently. If one wants to change the amount of thinning, one will have to change the management plan for the particular forest. That is a matter of management, not of statutory interpretation. All that is done here is to change the definition. Definitions do not change the statutory effect of what happens. Hon Christine Sharp may not achieve what she intends to achieve. I think one will have the reverse effect because it will cast doubt on the meaning of the word "tend" and its general broad definition. From the point of view of statutory interpretation, the word "tend" includes thin and is intended to include thin.

I defend the old silviculturists of Western Australia. It is fashionable to look at what was done in the past and to criticise people for not having the same practices that we have now. The conservation practices of silviculturists of the forest department were, for many years, eons ahead of everyone else in the community. Criticising them now in light of what we see to be the appropriate way to conserve timber is most inappropriate. They fought against agriculture that would have destroyed the potential for any regrowth and would not have allowed for any form of sustainable forestry. If it were not for the silviculturists, we would not have forests to protect. It is only because a long succession of conservators of forest over many years preserved our forests and made sure that they were not all turned into agricultural land that we have any forest today. Criticising them in the way they have been criticised is to deny the historical record of what they did in their time. In the light of current knowledge, what they did would not be done now. It is not right to criticise them for what they did as they stood head and shoulders above everybody else in terms of conservation. It shows a superior belief in our own era that I do not think is justified. I have met many old foresters whose conservation ethic is extremely strong. We should be very grateful that they existed.

Hon CHRISTINE SHARP: I point out to the Attorney General that if it appeared that I was attempting to denigrate the record, it was certainly not my intention. I wanted to draw attention to the fact that it is human nature to always want to maximise the present gain. That is not something that only existed in the past; it also exists in the current time and is likely to be tempting in the future. I am not casting aspersions on the historical record as being somehow inferior to our current practices. Many people would argue that in some ways the tending of the forests was better in the past than it is now. I see a difference between tending and thinning. The Attorney General is arguing that tending includes the meaning of thinning.

It could also be argued that they are different. In that case, it is important to designate both, as they are very important. It is fairly clear what thinning means. I will give a practical example of tending. Nowadays many small trees are removed as part of the process of thinning crop trees in jarrah forests. They are not removed for any productive purpose and remain on the forest floor. Many of them will fall, as part of a haphazard event, against trees that have been designated as crop trees. Standing crop trees have a marking that identifies them so that the faller does not inadvertently remove a tree that has been identified as a timber tree of the future. However, it is commonplace in the coupes for these trees to be surrounded by at least one, if not several, smaller trees that have been felled as part of the silvicultural process. After the silviculture is finished, a top burn goes through and the coupe is burnt. As it is a cool burn and the small trees are lying on the floor, they become fuel

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and begin to smoulder, damaging the crop tree they are touching. I understand that when intensive logging took place in the past, the old-timers were careful to remove the young felled culls from a crop tree to prevent such a thing happening. That does not take place any more because the manpower is not available - if one is allowed to say that sort of thing these days; although I do not know of any women who do that work - and the trees are damaged as a result. That is an example of tending, which is quite different from thinning. If the Attorney General wishes to argue that tending means both of those, why does the definition specify that establish and regenerate are different? Are they not also similar and could one not say that establish is a generic term that includes regenerate? Why are only some parts of the definition specific and prolific? I think it is clear to all members how important the concept of thinning is to sustainable yield management.

Could the Attorney General explain why establish and regenerate have two meanings when he does not want to allow any more inclusions in the definition? Could he also show me the statutory definition that he said proves that tending includes thinning? If I have misunderstood him, perhaps he would be so kind as to reassure me, with all his great knowledge, that this definition includes thinning.

Hon PETER FOSS: This Bill refers to plantations. There is a big difference between establish and regenerate. Establish means to start something where there was nothing. One establishes a pine forest by planting trees where there was none before. As the word indicates, regenerate means to grow again. One causes it to generate again. To "grow" means to take it from establishment to the time it reaches full size. To "tend" is to deal with the tree itself and its surrounding area. Instead of growing the tree, one may take bits off the tree, especially if it is in a plantation. One may thin the branches if necessary, thin the trees, keep down the suckers and do all the other things necessary. To "protect" includes things such as protecting it from fire.

I indicated the lack of benefit in adding any word Hon Christine Sharp wishes to add. I would have thought it was clear that if one is thinning the tree, one is tending the tree. I cannot see what else it could be called. If it does not include thinning, one must ask what "tend" includes. That is the rule of statutory instruction to which I refer. If "tend" is followed by "including thinning", one adds a meaning it does not apparently already include. If thinning is added to the meaning, the question arises: What does tend mean?

Hon Christine Sharp: I explained to you what things it could mean.

Hon PETER FOSS: I know. All the things the member said are included in "tend". Hon Christine Sharp thinks that because it includes A, it does not include B. As soon as one says that it includes B, the question is raised: What does it not include? If one said all the world, including greenies - obviously, the world includes greenies - one questions what "all the world" means if it does not include greenies. As soon as one adds something specific, which is obviously included anyway, the broad matter is regarded as more narrow than first thought. We need not say every member of Parliament, including the Greens (WA). Why would one not include the Greens? What does "every member of Parliament" mean if the Greens are not included? I cannot see how "tend" does not include thinning.

The rule of statutory interpretation is that once one starts to state that a definition includes the following, it will be used as an aid for the interpretation of "tend". Adding the word "thinning" will raise doubts about the breadth of "tend" in interpreting the provision. All the things Hon Christine Sharp raised as examples of tend are examples of tend - no-one said they were not. I do not say "tend" equals thinning, as it includes thinning. The inclusion of thinning in the provision will take away from the broad understanding of "tend", and will raise the question: What does "tend" mean if it does not mean what we thought it meant? That is my objection. The member wants to add something that is unnecessarily complicated, and that will make it difficult for anyone to work out what is meant by "tend". It would apply a narrow and clouded meaning.

Hon J.A. COWDELL: The Attorney General doth protest too much. The Opposition sees no problem with this amendment.

Hon NORM KELLY: Using the Attorney General's argument, maybe we do not need a definition of "manage" in the Bill at all. The definition of manage includes the aspects of "establish, regenerate, grow and protect". Hon Christine Sharp seeks to make it clear that it also includes thinning. She could have done that in a different way by not including it in brackets after "tend". Another word could have been added.

Hon Peter Foss: It would have been better.

Hon NORM KELLY: Given that we are to have this debate, if this Chamber were not to include "thinning" in the Bill, it could be argued in a later interpretation of the statute that Parliament determined that tend should not include thinning.

Hon Peter Foss: That is not the way it works.

Hon NORM KELLY: I know.

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Hon Peter Foss: I said in the committee stage that it includes thinning. If you want to take it to that degree, that would be taken into account.

Hon NORM KELLY: Hon Christine Sharp referred to the problem that this was a late amendment in the Bill's progress in the other place. It was understood at the time that "managed" was a term used for the period in preparation for a harvest and the reparation after harvest. This definition refers to the whole of life of those forests to be used for timber production. It adds up to the possible privatisation of state forests. Clause 10(1)(h) refers to functions of the commission to enter into contracts with any person for the management of forest products. Therefore, it will allow the commission to contract out all aspects of forest management, whether it be prescribed burns or the entire gamut of management procedures. It is important that emphasis be placed on thinning because traditionally thinning occurs only if it is commercially viable. That is why the Regional Forest Agreement has special provision for funding non-commercial thinning. Thinning that had been identified as essential had not been done simply because there was no commercial return. That is why it is important that such costs be incorporated into royalty rates, so that when a forest is logged there is a return to the State that allows for whole-of-life management of that forest. This proposed amendment will strengthen the Bill, and the Australian Democrats will support it.

Hon MARK NEVILL: The definitions of "harvesting" and "manage" do not add much to the Bill. If they were omitted, it would not affect the Bill at all. I agree with the Attorney General that the word "tend" includes thinning. The reason for amendments is often to highlight something. When a word is added that is probably covered by the previous word - in this case "tend" - it is to highlight something that is ignored or neglected. There is nothing unusual about that, although it could be argued that it is superfluous. There is anecdotal evidence that if people cannot make a dollar out of the activity, it will not be done. I am not saying that the Department of Conservation and Land Management is perfect; far from it. It probably makes many mistakes. I hope the Attorney General will provide a frank answer to the following questions: Is there a significant backlog of thinning in our forests at present? If so, should we highlight it?

Hon PETER FOSS: There is certainly an opportunity for increased thinning, and money has been allocated for that purpose. If we are to make this change, I would like to make it absolutely certain, in case anyone refers to *Hansard* - they will not necessarily do so because the opportunities to refer to *Hansard* are often limited - that it is not intended by this amendment in any way to decrease the broadness of the meaning of the word "tend".

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon J.A. Cowdell	Hon Helen Hodgson	Hon Christine Sharp	Hon E.R.J. Dermer ( <i>Teller</i> )
Hon Cheryl Davenport	Hon Norm Kelly	Hon Tom Stephens	
Hon G.T. Giffard	Hon Mark Nevill	Hon Ken Travers	

Noes (13)

Hon M.J. Criddle	Hon Peter Foss	Hon B.M. Scott	Hon Muriel Patterson
Hon Dexter Davies	Hon Barry House	Hon Greg Smith	( <i>Teller</i> )
Hon B.K. Donaldson	Hon M.D. Nixon	Hon W.N. Stretch	
Hon Max Evans	Hon Simon O'Brien	Hon Derrick Tomlinson	

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Pairs

Hon Ljiljanna Ravlich	Hon N.F. Moore
Hon Bob Thomas	Hon Murray Montgomery
Hon N.D. Griffiths	Hon Ray Halligan

**Amendment thus passed.**

**Clause, as amended, put and passed.**

**Clause 4: Meaning of forest products -**

Hon PETER FOSS: I move -

Page 4, line 23 - To delete the line and insert instead -

For the purposes of this Act -

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**“forest products”** means -

Page 4, line 28 - To delete the line.

Page 5, lines 1 to 4 - To delete the lines.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 5 put and passed.**

**Clause 6: Commissioners -**

Hon MARK NEVILL: I move -

Page 6, line 13 - To insert after “activities” -

, the plantation timber industry or labour relations

I will own up to something here. I intended to move this amendment on the understanding that Hon John Cowdell had withdrawn his amendment. The information I received was incorrect.

Hon J.A. Cowdell: I am working on the principle that I will vote for your amendment half of the way and you can vote for mine all of the way.

Hon MARK NEVILL: I will support the amendment I moved. However, I acknowledge that it will essentially achieve the same result as the amendment that Hon John Cowdell will move. I will support my amendment because I have seen too many proposals to link particular organisations to places on boards of statutory authorities, particularly port authorities and like institutions. There should be flexibility. In the amendment, the words “labour relations” refer to a union that represents the timber industry. In view of the way unions have been changing in the past decade, it is a wonder that the Australian Workers Union still exists in name. It is certainly a shadow of its former self. To not prescribe that two members represent the plantation timber industry is probably better because it gives more flexibility. Although I support my amendment, it is basically similar to that which will be moved by Hon John Cowdell, which for some reason I had understood he had withdrawn but which in fact he had not.

Hon J.A. COWDELL: I have no trouble supporting this amendment. If it were included, clause 6(1) would read -

The Commission is to have 7 commissioners appointed by the Governor on the nomination of the Minister as having such expertise in commercial activities, the plantation timber industry or labour relations as is relevant to the functions of the Commission.

That gives a hint - perhaps no more than that - to the minister that it would be valuable to have on the board of commissioners people other than those experienced in only managerial activities. It may well be that people with experience in the plantation timber industry have managerial skills, but a contribution is to be made to management by the representatives of the workers in the industry. In many instances, that is the most valuable contribution in determining what activities should take place and what management practices should change. As I said, I am happy to support the amendment, although that does not mean that I will not proceed to spell out more precisely, in my proposed new subclauses (2) and (3), how the minister may exercise his or her discretion.

Hon PETER FOSS: I support Hon Mark Nevill’s amendment, whereas I cannot support the one foreshadowed by Hon John Cowdell. It does not matter how often lawyers advise members of boards that they are not there to represent the people who appointed them but that they owe a duty to the board, it is my unvarying experience that when members are appointed in the way suggested by Hon John Cowdell, particularly when they shall be representative of the plantation industry or nominated by a particular industry, we end up with a stand-off type of situation in which people think that their principal reason for being there is to represent a separate point of view, rather than to get together to try to resolve the problems being faced.

There is a world of difference between the two mental attitudes. It is a question of mental attitudes; it is not what the person is, but what that person thinks he or she is there to do. It is important that the person is there for the purpose of supporting the body to which he or she has been appointed and does the best for that body. That is the law. I do not know how many times I have advised people about that or have heard other lawyers advise people similarly. I do not know how many times I have seen people who think they are there not for the good of the body to which they are appointed, but to represent some factional interest. That is not a good idea. I support Hon Mark Nevill's point of view. He is trying to ensure that the commission comprises people who have a particular benefit, knowledge, capacity and skill that they can bring to it as opposed to those who fight the good fight and take directions from the people who appointed them or whom they supposedly represent.

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Hon CHRISTINE SHARP: I also support the amendment in the name of Hon Mark Nevill in preference to the subsequent amendment in the name of Hon John Cowdell. Although the spirit of the two amendments is the same in many ways, I have some concern that if one is too specific with the meaning of "labour relations" in the subsequent amendment, one could leave out other possible nominees who represent other unions that work in some areas of the timber industry. For example, I believe that some members of the Construction, Forestry, Mining and Energy Union are represented in the timber industry; therefore, it is improper to specify one particular union. I prefer the flexibility of Hon Mark Nevill's amendment. I also agree with the remarks of the Attorney General that it is better not to encourage a sectarian approach on any advisory body, because that prevents consensus being reached on difficult matters. Therefore, I will be supporting the amendment.

Hon NORM KELLY: I appreciate the intention of Hon Mark Nevill's amendment. It also has a secondary impact that I support; that is, it broadens the original intent of the commission membership. The current wording in the Bill is that it consist of persons with such expertise and commercial experience as is relevant. It is strictly a commercial expertise-based commission. Hon Mark Nevill's amendment would broaden it so it does not have only that labour relations expertise or representation. There are various environmental and social aspects of the plantation industry - a new and developing industry - which are not fully appreciated or realised. I would like to think that a Forest Products Commission could include representation of people who have expertise in the other important environmental and social aspects of how the plantation timber industry is developing in this State and not strictly the commercial aspects of the industry. For those reasons, the Australian Democrats will be supporting this amendment.

**Amendment put and passed.**

**Progress reported and leave granted to sit again.**