

**FOREST PRODUCTS BILL 1999**

*Committee*

Resumed from 7 September. The Deputy Chairman of Committees (Hon W.N. Stretch) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

**Clause 71: Review of Act -**

Progress was reported after Hon Norm Kelly had moved the following amendment -

Page 50, line 30 - To delete "as soon as is practicable after" and substitute -  
within 6 months of

to which Hon J.A. Cowdell had moved the following amendment -

To delete "6" and substitute "12".

Hon J.A. COWDELL: I indicated previously that I would support the amendment moved by Hon Norm Kelly because "as soon as is practicable after" can mean almost anything. Hon Norm Kelly proposes to substitute the words "within six months of", which I am not willing to support. I do not recall whether Hon Norm Kelly has changed the time to 12 months or whether I was to move an amendment. However, I support that the words to be deleted, be deleted.

Hon NORM KELLY: Mr Deputy Chairman, is it the right time, while we are debating amendment No 19/71, to seek leave to amend the second part of the amendment?

The DEPUTY CHAIRMAN: That can be dealt with after the motion is either defeated or passed. If it is defeated, the whole amendment falls over. If it is passed, that will be the stage to substitute "12 months" for "six months".

Hon NORM KELLY: I appreciate that, Mr Deputy Chairman. I will move that amendment to the second part of the amendment. Hon John Cowdell's amendment is similar to mine. However, the end effect is the same; that is, 18 months will elapse within which time there will be a need for a review and a report to be tabled in Parliament. A period of 12 months in the first part of the amendment will provide a better administrative time frame without delaying the overall process. That is the way in which the Australian Democrats will move and I urge members to support the first deletion.

Hon PETER FOSS: Whatever we do we should try to keep the amendment consistent with the previous legislation with which we dealt. I want to clarify an aspect that was spoken of the last time we debated this Bill. A review may or may not be a document. A review is a process that may lead to someone preparing a document for the minister on which he bases his report. There is a problem with tabling both the review and the report because a review is part of the deliberative process of the minister. The minister is responsible and should report to Parliament, and he should give his report to Parliament.

Hon J.A. Cowdell: That is the next clause.

Hon PETER FOSS: I know that but I want to get this whole issue in line. Some incorrect statements were made previously on this issue. Often the process is that the minister will appoint someone to carry out a review for him and when that other person goes over the review he then writes a report, which is the material matter that comes to Parliament. That person, who may or may not be right in the conclusion that he draws, has nothing to do with Government but is part of the process by which the minister arrives at his report. Members appear to have an obsession with digging around in every part of the process before it gets to Parliament. Parliament wants to know about the report of the minister. The minister is responsible to Parliament and what he says to Parliament is the material matter.

*Point of Order*

Hon NORM KELLY: The Attorney General is not speaking to the amendment. I raise this point of order because it is confusing to members for the Attorney General to be arguing about something that is relative to a later amendment on the Supplementary Notice Paper. I am concerned that he is confusing the issue. Although it is a good debate to have, it may be too early to be debating that aspect.

The DEPUTY CHAIRMAN: I will not take that as a point of order. However, I understand what the member is saying. I take it the Attorney General is fitting the amendment into the context of a future clause, but we cannot explore a future clause too far.

**Extract from Hansard**  
[COUNCIL - Tuesday, 12 September 2000]  
p994b-1004a

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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*Committee Resumed*

Hon PETER FOSS: I am raising it as it was raised by members who gave us an idea of what the process is all about. It is important to know what we are talking about; we are talking about a report. Future amendments deal with the review. The review is the process; the report is the document. We are dealing here with the document. We seem to be getting into more and more intricate detail of every process. We will have to file timesheets at some stage to show how long we spend on thinking about and reviewing things, including the number of six-minute bits we took to deal with them. I have serious doubts about this type of clause. We may be able to justify it by saying that we want to hear about the clause, but it is now so elaborated -

Hon Mark Nevill: We will have to cut down a lot of trees to service all these amendments.

Hon PETER FOSS: Yes, especially when we will have to make at least 100 copies of the amendments so that everybody in Parliament can see not only the result but also the deliberative process that went into it. I do not particularly like the clause but I do not believe it should be elaborated. Hon Mark Nevill made the point that the Acts that have been law for a long time should probably be reviewed rather than the ones that have been law for only a short period. The longer an Act has existed, the greater the obligation to review it. We now seem to be reviewing Acts that have only recently come into effect. As time passes we will have a greater obligation to review them.

Hon NORM KELLY: The whole idea of having a review of sections in these statutes is well established. I searched the numerous statutes that contain these review sections and found about 60 or 70 such Acts. I agree with the Attorney General's comments last week that we should not be reviewing Acts only when a Bill comes before the Parliament. There is a valid argument in cases that have such a major administrative change to the workings of a government agency or agencies, as this will be, to have a suitable period to allow those new agencies to establish themselves and for their effectiveness to be reviewed. That is the reason that I fully support these review clauses when they appear in the relevant legislation. I point out once again that the Government included a review of Acts in the Health Professionals (Special Events Exemption) Act 2000 that was before us earlier this year. It is not a major piece of legislation, but I applaud the Government for taking the initiative to include that provision.

Hon Peter Foss: All we are trying to do is anticipate you, and every time we put that provision in, you elaborate it further!

Hon NORM KELLY: I am just sorry that the Government's anticipation was not better in this case!

Hon J.A. COWDELL: The Attorney General's comments were interesting but do not pertain to this amendment. The question is whether to leave the time of the review as "as soon as is practicable after" or to make it a definitive time of six or 12 months; that is a concise debate. The words of this amendment stand by themselves, independent of any argument on what will happen to clause 71(3).

Amendment (deletion of words) put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon G.T. Giffard	Hon Norm Kelly	Hon Giz Watson
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill	Hon Bob Thomas
Hon Cheryl Davenport	Hon Tom Helm	Hon Ljiljana Ravlich	<i>(Teller)</i>
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Tom Stephens	

Noes (13)

Hon M.J. Criddle	Hon Peter Foss	Hon M.D. Nixon	Hon Muriel Patterson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	<i>(Teller)</i>
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	

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Pairs

Hon Christine Sharp	Hon Derrick Tomlinson
Hon J.A. Scott	Hon Ray Halligan
Hon Ken Travers	Hon Simon O'Brien

**Amendment thus passed.**

Hon NORM KELLY: I seek leave to amend the words to be substituted by changing "6" to "12" months.

**Leave granted.**

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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**Amendment (words to be substituted) put and passed.**

Hon NORM KELLY: I move -

Page 51, lines 8 and 9 - To delete "as soon as is practicable after the report is prepared".

This means that clause 71(3) would read: "The Minister is to prepare a report based on the review and, is to cause" - if my following amendment is adopted - "the report to be laid before each House of Parliament as soon as practicable after it is completed, and in any event not later than 12 months" - I shall be moving to make that 18 months - "after the expiration of the 5 year period referred to in subsection (1)." Although the amendments will need to be taken separately, I urge members to read them in conjunction. I shall be supporting Hon John Cowdell's amendment about having the review tabled as well. In an ideal situation, a combination of my amendments and that foreshadowed by Hon John Cowdell would mean that subclause (3) would read -

The Minister is to prepare a report based on the review and, is to cause the report and the review to be laid before each House of Parliament as soon as practicable after it is completed, and in any event not later than 18 months after the expiration of the 5 year period referred to in subsection (1).

The CHAIRMAN: We will require the new part of the amendment in writing for the Chair.

Hon J.A. COWDELL: I support amendment 20/71; it is straightforward. Members can then consider amendment 21/71, which is to replace "it" with "the report", if Hon Norm Kelly wishes to move that. If he does not wish to move that amendment, members may consider the deletion of "it" and its replacement with "the report and the review". If Hon Norm Kelly supports that, he will not move amendment 21/71. It has been suggested with amendment 27/71 that the review may be a process, and indeed it could be a process, but the results of that process are likely to be embodied in a report -

Hon Peter Foss: What if it is not?

Hon J.A. COWDELL: If it is not, the provision cannot be complied with. I would be very surprised.

Hon Peter Foss: What if the minister does not agree with the review?

Hon J.A. COWDELL: If the Attorney General tells us that it will be an oral review to the minister, it may be that the person must come here and give us the oral review as well.

Hon Peter Foss: We will table him, will we?

Hon J.A. COWDELL: Yes, if the review is not to be in a written form! I suggest, however, that the review will be in a written form and presented to the minister. Of course, in the processes envisaged, the minister would consider the review and presumably prepare a much-abridged report of his opinion of the review. It is very worthwhile in such an important area to have both documents; indeed, when we have had reports from the Commission on Government after it has undertaken a review of various processes and areas of government operation, we have had a parliamentary committee report on them.

Hon Peter Foss: That is a bit different.

Hon J.A. COWDELL: We have had both.

Hon Mark Nevill: It is a terrible waste of money.

Hon J.A. COWDELL: But we will get this waste of money regardless. The review will be prepared at any rate. The question is whether Parliament should receive a copy of the review as well as an abridged report, or whether we are satisfied with merely receiving the abridged report, which is the minister's view of the review. I certainly support the deletion of the words with a view to substitution of amendment 27/71, in which I will move that "it" be replaced with the words "the report and the review".

Hon MARK NEVILL: Subclause (3) is adequate as it is. I will consider supporting Hon John Cowdell's amendment 28/71, but I do not believe the other amendments add much. It is adequate for the report to be tabled in the House. If the committee wants access to the review, it can get it. I do not think the Government should deny the committee access to that review if it is a separate report. Governments get into trouble because some ministers do not provide documents readily. If they did, we would not need half of this junk that we are building into Bills. If we ask for the review, the next thing we will ask for will be the working papers and the Post-it stickers. It just goes on and on. We must allow Governments to govern. Committees can look behind reports and so on. That is why they exist. I believe that the subclause is adequate. However, I will consider supporting Hon John Cowdell's amendment if he produces one of the compelling arguments that he puts forward from time to time.

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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Hon NORM KELLY: On the question of the need or otherwise to have the review tabled in Parliament, it is important that the Government be allowed to govern. However, if it makes its decisions based on a review and then chooses to take a different direction from that recommended in the review, it is important that the Parliament be aware of not only the Government's position but also the position originally put to the Government in the review. A classic case with which I have dealt is the review of the Liquor Licensing Act. I think Mattingley conducted the review of that Act, prepared a report for the minister, and then the minister tabled that report in Parliament. Irrespective of the final wording of this clause, I expect that a minister would make such a review readily accessible, not only to members of Parliament but also to the public. Of course, there will be a hell of a lot of public scrutiny of any government decisions based on a restructure of the Department of Conservation and Land Management and the like. If the Government spends all this money on this restructure, the public is entitled to see the results of a review being carried out - not just the Government's subsequent spin on such a review.

Hon PETER FOSS: Having said that the Government must govern, Hon Norm Kelly proceeded to explain how he did not understand that point. What is the status of a person who carries out a review? What is the status of a secretary who types it? The fact is that the person who has the statutory duty to carry out the review and to make the report is the minister. The only person whose views are relevant and who is entitled to have those views is the minister, because he has been charged by Parliament with implementing the Act. It is only his view in a report to the Parliament that is relevant. From a practical point of view, one gets other people to do the legwork. However, in the end what matters is the minister's view. To give an analogy, as a lawyer I frequently had work devilled - that is a technical term. I would get an articled clerk, a junior solicitor or even a senior solicitor to look up the law for me and to give me a preliminary opinion. Frequently, when I received it, I thought that the person had missed the point. He had the wrong law or looked at the facts wrongly, and I changed it. I might have changed it totally. The reason that the client came to me, as opposed to going to my articled clerk, my junior solicitor or my senior solicitor, was that it was my opinion that mattered. It does not matter how many useless opinions are written by articled clerks, junior solicitors or senior solicitors, the only opinion that counts is the one whereby the person with the experience and the responsibility puts his neck on the line and says, "This is it."

The problem is that people may or may not get things right. If someone wants to scratch around in a person's navel to find out how he reached an opinion, I have never had a big problem with that. However, by doing that one is elevating what is done by a person who has no official position. That person is not elected, he is not a minister, and he has no role in our constitution - none whatsoever - yet what that person thinks about a matter is being elevated to some sort of official document.

Hon Mark Nevill: With no responsibility to implement it.

Hon PETER FOSS: No responsibility to implement it and no experience necessarily in politics. There is a world of difference when a person has sat in a seat for a time and knows that he must make decisions. It was the same when I was a partner in a firm. I can remember the first day that I became a partner. I had prepared letters galore prior to that, but there was a big difference when for the first time I signed on the bottom, "Stone James and Co", because I knew that every letter that one of my partners or I signed put my neck on the line and could possibly cost me all my personal assets. That is the difference. I do not give a darn what is in a review prepared for me. I am the one who is responsible. If I read it and I find that the facts have been properly researched and that the views have been properly expressed, I will adopt it and then it is mine.

Hon J.A. Cowdell: Why don't you tell that to some of your ministerial colleagues?

Hon PETER FOSS: That is a very smart remark. However, there is a world of difference. I have seen reports prepared for me on some matters, even by marvellous statisticians. I have looked at them and said, "What dopes! They haven't picked up this particular point." The classic example was fines enforcement. There were elaborate statistics on that. I said to those people, "Have you taken into account the number of fines that are paid without enforcement, because if there is a good fines enforcement system, you will not end up doing any fines enforcement? You must take into account the total number of fines and work out what you end up with, because if you do a really good job, all the easy fines will get paid without enforcement." They said, "Ooh." I sent them away to look at it.

Hon Norm Kelly: If you table the report and review, we will all be able to see how -

Hon PETER FOSS: Yes, but what is the relevance of it? I do not mind if the member sees it. However, I do not want the views of a person who holds no office and no position and who may or may not have any idea what he is talking about - one only finds out when one sees the content that he turns up with -

Hon Mark Nevill: If you don't become more succinct, you might lose my vote.

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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Hon PETER FOSS: Okay. Hon Mark Nevill has interjected on me. The fact is that the whole sense of a minister and responsibility for a report is being missed. I think these clauses are stupid anyway. People who have no official position are now being elevated to a position that they do not have.

**Amendment put and negated.**

Hon NORM KELLY: I will not pursue the amendments to this clause standing in my name.

Hon J.A. COWDELL: I also will not pursue the amendment to page 51, line 10, standing in my name, nor will I impose on the goodwill of Hon Mark Nevill in respect of the final amendment in this series. However, I will press on with my proposed new clause and hope that that goodwill is maintained.

Hon NORM KELLY: I will also not pursue my amendment to page 51, line 10. I realise now that it should not be moved because of the defeat of the previous amendment. I moved the original amendment to include a definite time line in the review process. I am concerned that, even though the words "as soon as is practicable after the report is prepared" are included in subclause (3), the tabling of the report will still be open-ended. Is it possible for me to move the amendment standing in Hon John Cowdell's name or to move the amendment myself?

The DEPUTY CHAIRMAN (Hon W.N. Stretch): It would not be proper for the member to move that amendment.

Hon J.A. COWDELL: I took the point of view that, given that the Committee had previously made a decision to retain "as soon as is practicable after the report is prepared", it would be superfluous and grammatically incorrect to make this amendment. The Committee has already made a decision and this amendment would negate that time span by adding six months.

Hon NORM KELLY: My concern is that reports might be delayed. However, given that a review will be carried out in 12 months, a report should be tabled shortly thereafter.

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

**Clause 72 put and passed.**

**New clause 62 -**

Hon J.A. COWDELL: I seek leave to move my amendment in a slightly altered form.

**Leave granted.**

Hon J.A. COWDELL: I move -

Page 43, after line 11 - To insert the following new clause -

**62.       Tabling of contracts**

- (1)   The Minister must cause any production contracts or road contracts to be laid before each House of Parliament, or dealt with under subsection (2), within 14 days after the contract is signed.
- (2)   If Parliament is not sitting, the contract is to be provided to each House in accordance with any rule or order of that House in relation to that matter.
- (3)   Any document provided is deemed to have been laid before that House.

I have moved this amendment in a slightly altered form after receiving drafting assistance on the latter part, which puts it in a better form in accordance with the standing orders and procedures of this House. Very simply, members are aware that, in proposing this new clause, the Labor Party does not accept the Government's argument that it can be limited in its accountability to the public because of commercial confidentiality clauses in contracts. The Labor Party believes that this argument is used as a blanket excuse on many occasions. This is a standard smokescreen in the work of many government agencies and adds to the work of the Anti-Corruption Commission. It is not appropriate in terms of the business of the Government and it should not be employed on every occasion. The proposed new clause will add to the transparency of the situation. Business will get used to this procedure and will adapt accordingly. I urge the Government to support the amendment.

Hon MARK NEVILL: I compliment the member for reworking this amendment. It was obviously not originally drafted by him because it encroached on the standing orders. This is not the context in which to deliberate on the standing orders. Also, the amendment as it stood on the Supplementary Notice Paper referred

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to publishing a copy of these contracts, which would afford them parliamentary privilege. That is unnecessary. I will consider supporting the amendment in its present form, but I seek some clarification from the Attorney General: How many of these production contracts are there, and how many of these road contracts would be tabled in Parliament each year if the amendment were successful? I am not convinced about the need to table both those groups of contracts.

Hon PETER FOSS: There are about 150 production contracts, which have a 10-year program. There are about 50 road contracts a year. I am totally opposed to the amendment, not because I do not want public accountability but because it represents the ultimate in red tape. We talked at one stage about ensuring competitive neutrality. No other competitor must deal with such provisions. We would see about one road contract a week before Parliament, and we will have a production contract before us every three or four weeks. How do members think they will manage to deal with these people if every contract is open to scrutiny by not only the public but also competitors?

Hon Norm Kelly: We would get cheaper quotes.

Hon PETER FOSS: I do not think so. When tendering, one does not want people to know too much about what other people are likely to submit as a tender. What is the member trying to do? Standing committees of this place can consider these matters if the member is interested. He would be totally bored with this process as every week another road contract would be tabled. He would be submerged in, and barely notice, them. Competitors will be interested to know the price. The bureaucratic bump would be huge. What will be the cost to table about one document a week? We will have eight copies presented in each House; namely, 16 copies sent via, and processed at, the minister's office. They will be written up and stamped at the Bills and Papers Office. Why not do it for everybody? Should we do it for Western Power and AlintaGas?

Hon Giz Watson: Yes.

Hon Mark Nevill: How many production contracts are there?

Hon PETER FOSS: There are about 150 contracts on 10-year programs, which is about 15 a year on average. We have about 50 road contracts a year. Therefore, we are talking about 65 contracts a year. What sort of contracts will one eventually have? It would be wonderful with the Water Corporation! Imagine how many they go through. We are talking about a major organisation.

If Hon Norm Kelly wants to know this information, the standing committee process could find it out for him. I am worried that if we include these little clauses, we find that the Government then anticipates them. Then members opposite would add a little more. We will be tabling shiploads of stuff in here every day. There will be contracts, this, that and the other. It is rubbish! I thought members espoused getting rid of red tape. The first thing to come from the review will be that this place can hardly function as it spends all its time sending stuff octuplet to Parliament. These will be arranged through the minister's office. Officers will say that they cannot get a reasonable deal, because every deal ends up being published to all competitors. Why must members opposite try to govern from that side of the Chamber? They should get enough people to vote for them so they can govern in their own right. They seem to want to make anything anybody does twice as complicated as it need be. This amendment is a load of nonsense!

Hon NORM KELLY: If the Attorney General had a skerrick of genuine concern about the reasons for moving this amendment, I would listen to him. He does not talk in his rantings and ravings about genuine ways to allow this process to happen. If the Government were genuine about being more open and accountable, it would consider alternatives to tabling in Parliament. Another process could be found by which contracts could be openly accessible for the public to see. We are talking about exploitation of a publicly owned resource. We must ensure that the Government of the day gets the best possible price for publicly owned resources. The Government wants to tie that resource up in a little cartel by which their favourite friends can make the most from their dealing with government with no public scrutiny at all.

Auditors General around Australia have highlighted the fact that if companies want to do business with government, they must be prepared to face more accountability coming into government contracts than that found elsewhere. Contracts will be opened up. Therefore, the public can see that they are getting the best value for money. Some companies will decide they do not want to deal with government and be open to that level of scrutiny. Other companies will decide there is still money to be made - so there should be - and will want to enter the contracts. By rights, taxpayers should be getting the best possible price for the use of this resource, which should be at the heart of making the contracts publicly available.

Hon GIZ WATSON: The Greens (WA) support this amendment. I find it interesting that the Attorney General is so surprised about a move to insert such an accountability provision. Given the history of mismanagement of

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our forest, it is hardly surprising that accountability requirements need to be placed in legislation. This has been sadly lacking. Our community has difficulty accessing information about contracts under existing arrangements, and is frustrated that access to accurate information is hindered at every turn. The Greens (WA) support the amendment and agree with Hon Norm Kelly that we are dealing with a public asset in public forests.

Hon Peter Foss: They are not all public; for example, plantations. He keeps saying that! If Hon Norm Kelly has his way, we will have none.

Hon GIZ WATSON: It is Hon John Cowdell's amendment, not Hon Norm Kelly's. We support the amendment.

Hon MARK NEVILL: I certainly will not support the tabling of road contracts. The amendment is going over the top. Thousands of these roads contracts are in place around Western Australia, and it is unnecessary to table them. Both these contract types are available for standing committees to examine. The amendment is not needed. Hon Giz Watson's statement that our forests are mismanaged is totally incorrect. As has been acknowledged by every other State in Australia, our forests are the best managed forests in Australia. It is nonsense to say otherwise. There may be some argument for tabling production contracts, but they are available to the Committee. I do not support the clause in its amended form.

Hon J.A. COWDELL: The proposed new clause follows clause 61 with respect to contracts subject to this proposed Act and the Conservation and Land Management Act. In order to provide accountability and crosschecking, those contracts should be tabled. I am not overwhelmed by the argument of the Attorney General about it being a bureaucratic nightmare as a result of the sheer number of contracts. If Hon Mark Nevill wishes to amend this amendment by taking out the words "road contracts", at least the tabling of 15 production contracts a year would be a valuable contribution to the accountability process.

Hon M.J. CRIDDLE: I will not support tabling road contracts under any circumstances. It would create an enormous problem because Main Roads administers approximately 1 000 contracts a year, Transport has 300 and goodness knows how many contracts Westrail administers. It would cause an extraordinary series of events. Main Roads is recognised as being good at administering contracts and is involved in very little dispute over contracts. It is a ridiculous suggestion.

Hon J.A. COWDELL: I was not aware that we were discussing per se the 1 000 Main Roads contracts a year.

Hon Peter Foss: The principle follows. If it is 3 000, it would be one a day.

Hon J.A. COWDELL: I note the Attorney's comments. Whether it be 1 000 or 3 000, this clause is not applicable to all those contracts. Given the contracted road work that has had to be redone at the expense of the State rather than the contractors, and given the contracts Main Roads has mishandled in recent years, it would be worthwhile to subject them to greater scrutiny and save Main Roads a considerable amount of money.

Hon NORM KELLY: The Attorney General referred to the principle of this issue. It is my understanding that recent prison contracts were made available, although perhaps not tabled.

Hon Peter Foss: I tabled them.

Hon NORM KELLY: On what principle was that based, compared with principles relating to other government contracts and the like?

Amendment put and a division taken with the following result -

**Extract from Hansard**  
[COUNCIL - Tuesday, 12 September 2000]  
p994b-1004a

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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Ayes (13)

Hon Kim Chance	Hon G.T. Giffard	Hon Norm Kelly	Hon Bob Thomas ( <i>Teller</i> )
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	
Hon Cheryl Davenport	Hon Tom Helm	Hon Tom Stephens	
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Giz Watson	

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon Mark Nevill	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon M.D. Nixon	Hon Muriel Patterson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	( <i>Teller</i> )
Hon Max Evans	Hon N.F. Moore	Hon Greg Smith	

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Pairs

Hon Christine Sharp	Hon Derrick Tomlinson
Hon J.A. Scott	Hon Ray Halligan
Hon Ken Travers	Hon Simon O'Brien

**New clause thus negatived.**

**Schedule 1 -**

Hon PETER FOSS: I move -

Page 52, line 27 - To insert after "ineligible" -  
under section 6(3)(a), (b) or (c)

This amendment seeks to clarify that the office of commissioner becomes vacant if a commissioner becomes ineligible under clause 6(3)(a), (b) or (c); that is, if a commissioner is either the general manager or a staff member of the Forest Products Commission, a member or staff member of the Conservation Commission or the executive director or employee of the department. The Australian Labor Party wants to know why paragraph (d) is not included in the amendment. Paragraph (d) excludes a person from the Forest Products Commission if that person is "involved in a current production contract or has a current material personal interest in a company or business which has a current production contract with the Forest Products Commission".

The Australian Labor Party believes that a commissioner's position should also become vacant if he or she has a production contract or has an interest in a production contract with the Forest Products Commission. Although the Attorney General's next amendment seeks to give the Governor the power to remove a commissioner if he or she has a production contract, Labor believes that the commissioner's position should be immediately vacant if he or she has such a contract. There is a difference. I await the Attorney General's explanation, as he is treating paragraph (d) differently from paragraphs (a), (b) or (c), which provide for an automatic vacation of the position. He is arguing for the lesser situation; that is, that the holding of a production contract and whether the commissioner is cashiered should be determined at the discretion of the Governor.

Hon PETER FOSS: The reason for that is clear. In paragraphs (a), (b) and (c) there is no problem in determining whether a person is the general manager, a staff member, a member of the Conservation Commission, a member of its staff or the executive director or an employee of the department. They are all clear, factual matters. Although it would be clear if someone were involved in a current production contract, paragraph (d) is not so clear when that person "has a current material personal interest in a company or business which has a current production contract". The problem with that provision is that it requires a qualitative judgment to be made. The difficulty is that we do not want the identity of the person to be a matter of opinion. It will be for the Governor to decide whether there is a current material interest. If we do not deal with it in that way, people may be left up in the air if they say they do not have a current material interest and someone else says they do. The only way to resolve the question of whether a person has a current material interest is to take it to court, have the facts and the Act examined and to have the court reach a conclusion on a mix of law and fact. Putting it in the Bill in this way means the person who makes that determination is the Governor, and when the Governor has made that determination, that is the end of the matter. This paragraph was included in the interests of certainty so that a person's position was not hanging in the air. The principle is no different. The mixed fact and legal situation is difficult; it is not as cut and dried as the other three paragraphs. We are



Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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concerned that if it remains with the paragraphs that make ineligibility automatic, the only way to resolve it would be to take it to court.

**Amendment put and passed.**

Hon PETER FOSS: I move -

Page 53, after line 4 - To insert the following new paragraph -

(b) is ineligible under section 6(3)(d) to hold office as a commissioner;

I have already explained this amendment.

Hon J.A. COWDELL: Obviously, as the words “or (d)” were not added to clause 4(1) of schedule 1, it certainly needs to be included with a clear indication that Parliament will expect the Governor to remove a commissioner from office when those grounds are clearly established as defined under clause 6(3)(d). I therefore support this amendment.

**Amendment put and passed.**

Hon J.A. COWDELL: I move -

Page 56, lines 20 to 26 - To delete the lines.

Both this amendment and the subsequent amendment - to delete lines 5 to 11 at page 57 - were rejected in another place. They are attempts to remove two clauses which should not be in the Bill. We welcome clauses 18 and 20, which relate to restrictions on voting by interested commissioners and the quorum where clause 18 applies. This amendment would exclude commissioners from deliberations and voting on a matter being considered by the commission in which they have a material, personal interest. However, clauses 19 and 21, both of which we seek to delete, permit the commissioner and the minister to waive the exclusion requirement. I am concerned that such clauses weaken the intent of clauses 18 and 20 and the accountability they instil. We therefore urge the Chamber to adopt the two amendments as they will strengthen the accountability and transparency of the Bill and disallow the waiving or watering down of the intent of clauses 18 and 20.

Hon PETER FOSS: This amendment could probably have been better phrased. A measure is required by which one can determine whether an interest is a material one. The difficulty is that the clause requires a subjective judgment. If all the commissioners were to determine that it was not a material interest, it would be appropriate that they allow the person to vote. However, I concede that, as clause 19 is written, clause 18 would not apply under those circumstances. The problem is that people do not know until after an event whether it applies and there is no forum in which to test it. The provision is there in paragraph (b) partly as it enables the commissioners to determine that it should not apply if they pass a resolution that “states that the commissioners voting for the resolution are satisfied that the interests should not disqualify the commissioner from considering or voting on the matter”. It would have been better if it said the interest does not disqualify the commissioner.

I accept that the clause is perhaps not as well phrased as it should be, but the intent is a good one and is to give some certainty to the deliberations of the commission when someone declares a personal interest and people say it is not a material personal interest. In those circumstances there should be a capacity to record in the minutes that it is not regarded as a material interest. I agree that “material” means material. It could well be that a commissioner has a personal interest but it is not material because it would not have an effect on a decision. It is difficult, but I believe we need something like clause 19 in the schedule for the practical purpose of running the commission.

Hon NORM KELLY: The Australian Democrats will support the deletion of clause 19 from the schedule. When these matters come up in the commission’s debates, there needs to be a resolution that where there is a conflict of interest, a mechanism outside the commission’s deliberations is to determine or record such a conflict and how the commission acted upon it. Without any alternative being proposed by the Government -

Hon Peter Foss: Clause 21 would provide for that.

Hon NORM KELLY: However, the provision in clause 21 is insufficient for the Democrats to be able to support the clause as it stands. I believe there is provision for ministerial direction of the commission.

Hon Peter Foss: Yes.

Hon NORM KELLY: That provision means that the minister is implicit in the workings of the commission, so it would not be an independent assessment of a conflict of interest by the commissioners. We will be seeking to ensure that something more independent can be obtained. I am reassured, unfortunately not by the Minister for the Environment, but by another minister of the Government who is willing to look at conflicts of interest and do something about them. I am disappointed that the Minister for the Environment is not.

Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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Amendment put and a division taken with the following result -

Ayes (14)

Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill	Hon Giz Watson
Hon Cheryl Davenport	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Bob Thomas ( <i>Teller</i> )
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Tom Stephens	
Hon G.T. Giffard	Hon Norm Kelly	Hon Ken Travers	

Noes (13)

Hon M.J. Criddle	Hon Peter Foss	Hon M.D. Nixon	Hon Muriel Patterson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	( <i>Teller</i> )
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	

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Pairs

Hon Kim Chance	Hon Simon O'Brien
Hon Christine Sharp	Hon Ray Halligan
Hon J.A. Scott	Hon Derrick Tomlinson

Amendment **thus passed**.

Hon J.A. COWDELL: I move -

Page 57, lines 5 to 11 - To delete the lines.

The arguments I advanced previously are applicable to these lines. Clause 21 states that the minister may declare clauses 18 and 20 inapplicable. They refer to voting by interested commissioners and the quorum clause 18 applies. Clause 21(2) reads -

The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with section 69.

I do not see the necessity for this provision. I acknowledge clause 14(1) provides for the minister to give directions. Such a specific provision as this puts up a signpost indicating that the minister should consider giving these sorts of specific directions. It is an inappropriate message. If the minister decides he needs to, presumably he can do so under clause 14.

Hon PETER FOSS: It is important to keep the clause. As Hon John Cowdell has rightly said, the minister makes the ultimate decision and he can direct the commission. However, it is fairly important that he have the advice of the commission and its deliberations as well. The clause provides that the direction must be within 14 days. It is important that he have the capacity to direct that all the commissioners sit and make their own decisions. As Hon John Cowdell also pointed out, the provision is probably inconsequential in view of the powers the minister has under the main part of the Bill, but it is important that there be a provision whereby he can ensure that they vote on particular matters, if necessary. In view of the fact that clause 19 has been taken out, clause 21 becomes even more important.

Hon MARK NEVILL: During the previous division I had discussions with Hon John Cowdell about clauses 14 and 21. I do not think that a great amount hangs on whether clause 21 goes or stays, but given the Attorney General's comments, I am probably inclined to support keeping it in the Bill although I believe that it is probably covered by the minister's power to give directions under clause 14.

Hon NORM KELLY: If the clause were to be kept entirely as it reads now, clause 21(1) refers to "in relation to a specified matter either generally or in voting on particular resolutions". I am concerned particularly about the word "generally".

Although it must relate to a specific matter, it is like giving a blanket approval for the commission to make resolutions without the minister having discretion regarding different resolutions on the same matter. That concerns me. If this clause remains, I would prefer to see that general specification deleted from it. However, as Hon Mark Nevill said, it does not make much difference whether or not it is included. Given that the minister has powers to direct under clause 14 of the Bill, that will strengthen the provisions under which the commission will operate.

**Extract from Hansard**  
[COUNCIL - Tuesday, 12 September 2000]  
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Hon Bill Stretch; Hon Peter Foss; Hon John Cowdell; Hon Norm Kelly; Chairman; Hon Mark Nevill; Hon Giz Watson; Hon Murray Criddle

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Hon GIZ WATSON: The Greens (WA) will support the deletion of this clause.

Amendment put and a division taken with the following result -

Ayes (13)

Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Bob Thomas ( <i>Teller</i> )
Hon Cheryl Davenport	Hon Tom Helm	Hon Tom Stephens	
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Ken Travers	
Hon G.T. Giffard	Hon Norm Kelly	Hon Giz Watson	

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon Mark Nevill	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon M.D. Nixon	Hon Muriel Patterson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	( <i>Teller</i> )
Hon Max Evans	Hon N.F. Moore	Hon Greg Smith	

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Pairs

Hon Kim Chance	Hon Simon O'Brien
Hon Christine Sharp	Hon Derrick Tomlinson
Hon J.A. Scott	Hon Ray Halligan

**Amendment thus negatived.**

Hon PETER FOSS: I move -

Page 57, after line 11 - To insert the following -

**22. Ineligibility provisions not affected**

This Division does not affect the operation of section 6(3)(d) and clause 4(1)(d) and (2)(b).

I think the provision is self-evident.

**Amendment put and passed.**

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

**Schedule 2 put and passed.**

**Schedule 3 -**

Hon PETER FOSS: I move -

Page 61, after line 5 - To insert the following new clause -

**4. *Transfer of Land Act 1893* amended**

Section 4(1) of the *Transfer of Land Act 1893*\* is amended in paragraph (b) of the definition of "**Profit à prendre**" by inserting after "*1984*" -

“ or Part 7 of the *Forest Products Act 2000* “.

[\*Reprinted as at 23 July 1999.]

Again, this is self-evident. It refers to the fact that profit à prendre can be given under part 7 of the Act.

**Amendment put and passed.**

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

**Title put and passed.**

**Bill reported, with amendments.**