



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON UNIFORM
LEGISLATION AND GENERAL PURPOSES
IN RELATION TO THE
RESERVES (NATIONAL PARKS, CONSERVATION
PARKS AND NATURE RESERVES) BILL 2004**

Presented by Hon Adele Farina MLC (Chairman)

Report 20
September 2004

STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL PURPOSES

Date first appointed: April 11 2002

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“7. Uniform Legislation and General Purposes Committee

7.1 *A Uniform Legislation and General Purposes Committee* is established.

7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.

7.3 The functions of the Committee are –

- (a) to consider and report on bills referred under SO 230A;
- (b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
- (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
- (d) to consider and report on any matter referred by the House.

7.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)

Hon Simon O’Brien MLC

Hon Paddy Embry MLC

Staff as at the time of this inquiry:

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EXECUTIVE SUMMARY FOR THE

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL
PURPOSES**

IN RELATION TO THE

**RESERVES (NATIONAL PARKS, CONSERVATION PARKS
AND NATURE RESERVES) BILL 2004**

- 1 On September 21 2004 the Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004 (**Bill**) stood referred to the Uniform Legislation and General Purposes Committee pursuant to standing order 230A.
- 2 The purpose of the Bill is to excise certain areas of land from State forest and timber reserves, to reserve land for the purposes of national parks, conservation parks and nature reserves, and to effect certain other changes to land.
- 3 This report discusses the Bill in light of the intergovernmental agreement - the *Regional Forest Agreement for the South-West Forest Region of Western Australia* - to assist informed debate in the Legislative Council.

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL
PURPOSES**

IN RELATION TO THE

**RESERVES (NATIONAL PARKS, CONSERVATION PARKS
AND NATURE RESERVES) BILL 2004**

1 REFERENCE AND PROCEDURE

- 1.1 On September 21 2004 the Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004 (**Bill**) stood referred to the Uniform Legislation and General Purposes Committee (**Committee**) pursuant to standing order 230A. Pursuant to standing order 230A(5) the policy of the Bill is not a matter for inquiry by the Committee.
- 1.2 Standing order 230A(4) requires that the Committee report to the Legislative Council (**Council** or **House**) within 30 days of referral, being October 20 2004.
- 1.3 The purpose of the Bill, as indicated by the Long Title, is to excise certain areas of land from State forest and timber reserves, to reserve land for the purposes of national parks, conservation parks and nature reserves, and to effect certain other changes to land. Broadly, the Bill:
- a) will create nine new national parks in Western Australia's south-west forests;
 - b) make significant additions to the existing Wellington National Park; and
 - c) implement a number of land category changes proposed in previous forest management plans.

2 INQUIRY PROCEDURE

- 2.1 The Committee was aware that the Bill would be subject to standing order 230A when it was introduced into the Council and would probably stand referred to the Committee. In anticipation of such referral the Committee, of its own motion, commenced preliminary research into the background of the Bill.¹
- 2.2 On July 2 2004 the Committee wrote to Hon Dr Judy Edwards MLA, Minister for the Environment (**Minister**) seeking specific information about a number of aspects of the

¹ The Committee's Term of Reference 7.3(b) states "*The functions of the Committee are...(b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;*".

Bill and documents supporting its implementation. The Committee specifically sought any relevant Memorandum of Understanding, Minutes or Inter-Governmental Agreement. The Minister responded to the Committee's request for information on July 12 2004. A copy of the Ministers reply is attached at Appendix 3. The Committee thanks the Minister for her prompt reply.

- 2.3 The Committee did not advertise for or invite submissions because of its strict reporting timeframe. Details of the inquiry were placed on the parliamentary website at: www.parliament.wa.gov.au.

3 UNIFORM LEGISLATION

Scrutiny of uniform legislation by the Western Australian Parliament

- 3.1 The scrutiny of uniform legislation is not new to the Western Australian Parliament. Since 1991 both the Council and Legislative Assembly have established procedures to assist Parliament in the scrutiny of uniform legislation.²
- 3.2 More recently during the Thirty-Sixth Parliament until the appointment of the Committee, the scrutiny of uniform legislation fell within the terms of reference for the Council Standing Committee on Legislation. In November 2001 the relevant Council standing order (standing order 230A) was amended to consolidate matters relevant to uniform legislation and to facilitate automatic referral of such bills to the Committee for inquiry and report within 30 days.

Legislative structures

- 3.3 National legislative schemes of uniform legislation were addressed in a 1996 Position Paper on the Scrutiny of National Schemes of Legislation by the Working Party of Representatives of Scrutiny Committees throughout Australia (**1996 Position Paper**). The 1996 Position Paper emphasised that it did not oppose the concept of legislation with uniform application in all jurisdictions across Australia. However, it did question the mechanisms by which those uniform legislative schemes are made into law and advocates the recognition of the importance of the institution of Parliament.
- 3.4 A common difficulty with most forms of national scheme legislation is that any proposed amendments may be met by an objection from the Executive that

² For discussion of the history behind the scrutiny of uniform legislation and standing order 230A refer to: Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No 2: The Work of the Committee during the First Session of the Thirty-Sixth Parliament – May 1 2001 to August 9 2002*, August 2002, pp5-6.

consistency with the legislative form agreed among the various executive Governments is a 'given'.³

- 3.5 National legislative schemes, to the extent that they may introduce a uniform scheme or uniform laws throughout the Commonwealth (refer to standing order 230A(1)(b)), can take a number of forms. Nine different categories of legislative structures promoting uniformity in legislation, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability have been identified. The legislative structures are summarised in Appendix 1.⁴
- 3.6 The Bill is 'uniform legislation' within the meaning of standing order 230A by virtue of part of it giving effect to an intergovernmental agreement to which the Government of the State is a party: standing order 230A(1)(a).

Scrutiny principles

- 3.7 One of the recommendations of the 1996 Position Paper was the adoption of the following uniform scrutiny principles:
- does the Bill trespass unduly on personal rights and liberties;⁵ and
 - does the Bill inappropriately delegate legislative powers?⁶

³ For example, refer to the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, *Scrutiny of National Schemes of Legislation Position Paper*, October 1996, pp7-12 attached as Appendix 1 to Western Australia, Legislative Assembly, Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Position Paper: Scrutiny of National Schemes of Legislation*, October 17 1996.

⁴ Ibid. Also see reports of the former Legislative Assembly of Western Australia Standing Committee on Uniform Legislation and Intergovernmental Agreements.

⁵ For example: strict liability offences; reversal of the onus of proof; abrogation of the privilege against self-incrimination; inappropriate search and seizure powers; decision-making safeguards (that is: written decisions and reasons for decisions); consistency with the principles of natural justice; personal privacy; decisions unduly dependent on administrative decisions; delegation of administrative power only in appropriate cases and to appropriate persons; retrospectively affecting rights and liberties, or imposing obligations; the conferral of immunity from proceeding or prosecution without adequate justification; provision for compulsory acquisition of property only with fair compensation; sufficient regard to Aboriginal tradition and Island custom; and clear, precise and unambiguous drafting.

⁶ Such question also raises the issue of whether or not a bill has sufficient regard to the institution of Parliament. For example: provisions allowing or authorising the amendment of an Act only by another Act (known as 'Henry VIII clauses'), insufficient parliamentary scrutiny of the exercise of legislative power, the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjecting the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Council.

3.8 In addition, in recent times, the Committee has considered the impact of any proposed legislation on the application of parliamentary privilege.⁷ Although not adopted formally by the Council as part of the Committee's terms of reference, these principles can be applied as a convenient framework for the scrutiny of legislation.

4 BACKGROUND TO THE BILL

Regional Forest Agreement for the South-West Forest Region of Western Australia

4.1 In August 1998 the former Council Standing Committee on Ecologically Sustainable Development (**ESD Committee**) reported on the Regional Forest Agreement process in its Second Report titled *Management of and Planning for the Use of State Forests in Western Australia: The Regional Forest Agreement Process*.⁸

4.2 In that report the ESD Committee noted that it saw its primary task as "...assessing how effective the RFA [Regional Forest Agreement] process has been to date in achieving the outcomes intended by the Western Australian Government."⁹ The Committee refers readers to that report for a detailed discussion on the Regional Forest Agreement process to August 1998.

4.3 In summary, the *Regional Forest Agreement for the South-West Forest Region of Western Australia (RFA)* is an agreement between the Commonwealth Government and the Western Australian Government which established a framework for the management of Western Australia's south-west forests. The RFA is a product of the National Forest Policy Statement entered into by Australian State and Commonwealth Governments in 1992, a key goal of which was to provide a structured framework for forest management around the country.¹⁰

4.4 The RFA was signed between the Commonwealth Government and the State Government on May 4 1999. It took effect upon that date and remains in force for 20 years: refer to clause 5 of the RFA.

⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No 5: National Crime Authority (State Provisions) Amendment Bill 2002*, November 2002, pp7-10; *Report No 11: Higher Education Bill 2004*, September 2003, pp24-34; and *Report No 15: Australian Crime Commission (Western Australia) Bill 2003*, June 2004, pp51-55.

⁸ Western Australia, Legislative Council, former Standing Committee on Ecologically Sustainable Development, *Report No 2: Management of and Planning for the Use of State Forests in Western Australia: The Regional Forest Agreement Process*, August 1998.

⁹ Ibid, p2.

¹⁰ Joint Commonwealth and Western Australian Regional Forest Agreement Steering Committee (1988c), p3 cited in Western Australia, Legislative Council, former Standing Committee on Ecologically Sustainable Development, *Report No 2: Management of and Planning for the Use of State Forests in Western Australia: The Regional Forest Agreement Process*, August 1998, p14, footnote 1.

- 4.5 The RFA identified a comprehensive, adequate and representative forest conservation reserve system (**CAR reserve system**) and provided for the conservation of those areas.¹¹
- 4.6 The purpose of the RFA is also to:¹²
- a) provide for the ecologically sustainable management and use of forests in the south-west region of Western Australia;
 - b) provide long-term stability of forests and forest-based industries; and
 - c) have regard to studies and projects carried out in relation to matters relevant to the south-west region of Western Australia including:
 - environmental values, including old-growth, wilderness, endangered species and national and world heritage estate values;
 - indigenous heritage values;
 - economic values of forested areas and forest-based industries, including mineral exploration and production;
 - social values (including community needs); and
 - principles of ecologically sustainable management.
- 4.7 Clauses 64 to 70 of the RFA specifically deal with the CAR reserve system. Clause 64 sets out the parties' agreement that the primary function of the CAR reserve system is to ensure the conservation and protection of environmental and heritage values.
- 4.8 Clause 70 of the RFA deals with action to establish and manage reserves. In particular, clause 70(b) commits the State of Western Australia to establish new formal reserves under the *Land Administration Act 1997* that were proposed in the Forest Management Plan 1994-2003 and endorsed by the RFA. The Bill will implement a number of these clause 70(b) proposals.¹³ Appendix 2 is a copy of a table provided by the Minister that indicates reserves included in the Bill that relate to clause 70(b) proposals.¹⁴
- 4.9 Clause 97 deals with the payment of compensation by the Commonwealth to the State in certain circumstances. Clause 98 addresses industry assistance including the

¹¹ *Regional Forest Agreement for the South-West Forest Region of Western Australia*, May 4 1999, Recital B(a), p1.

¹² Ibid, Recitals B(b) to B(d), p1.

¹³ Letter from Hon Dr Judy Edwards MLA, Minister for the Environment, July 12 2004, pp1-2.

¹⁴ Ibid, p2 and Attachment 2.

provision Commonwealth (\$20 million) and the State (\$38 million) to implement South-west Forest Industry Structural Adjustment Program subject to the development of a memorandum of understanding.

Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004

4.10 In the second reading speech on the Bill in the Council, Hon Ken Travers MLC on behalf of Hon Kim Chance MLC, Leader of the House, representing the Minister (**Second Reading Speech**) it was stated that:¹⁵

One of the major commitments of the Government when it was elected to office in February 2001 was the implementation of our 'Protecting our old-growth forests' policy. This policy, which saw the immediate cessation of logging in our old-growth forests, committed to creating 30 new national parks, including the 12 new national parks promised under the Regional Forest Agreement signed between the Commonwealth and State Governments in May 1999, and two new conservation parks in south west forests. It also committed to proceeding with other conservation reserves promised in the RFA, and to reinstating the Forest Management Plan 1994 reserves that were revoked under the RFA.

4.11 During the Second Reading Speech it was also noted that:

- a) the implementation of the policy saw the creation of a new forest management plan, which came into operation on January 1 2004 and that *"The plan revokes previous forest management plans and sets out policies and guidelines for significantly improved management of our native forests in line with the principles of ecologically sustainable forests management."*¹⁶
- b) all of the reservation actions of the Bill are consistent with the Forest Management Plan 2004-2013.¹⁷

4.12 The Committee notes the comments of Hon Ken Travers MLC that:¹⁸

- *"Finalisation of the boundaries for the new national parks, including the expansion of the Wellington National Park, has been the subject of extensive community and government agency consultation."*; and

¹⁵ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, September 21 2004, p6026.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

- that this has included consultation with local government authorities, conservation groups, timber and mining industry groups, native title claimants, Aboriginal representative bodies, the Department of Industry and Resources, the Department of Environment, the Forest Product Commission, the Department for Planning and Infrastructure, the Department of Land Information, Main Roads Western Australia, the Water Corporation, Western Power, Alinta and Telstra.

4.13 It was also noted in the Second Reading Speech that there had been extensive negotiation with the South-west Aboriginal Land and Sea Council on any native title rights and interests that may exist over the lands to be converted to conservation reserve.

5 OVERVIEW OF THE BILL

5.1 The Bill contains 32 clauses in five Parts.

5.2 As previously noted the Bill will, among other things, create nine new national parks in Western Australia's south-west forests. The creation of most of the proposed parks and reserves requires the cancellation of State forest and timber reserves created under the *Conservation and Land Management Act 1984 (CALM Act)* and/or the *Land Administration Act 1997* class A reserves.

5.3 Under section 9 of the CALM Act, cancellations of State forest require a motion or bill to be passed by Parliament. Cancellations of some class A reserves are required to be tabled in Parliament or be by way of an Act in the case of conservation parks or class A nature reserves.

5.4 The Explanatory Memorandum to the Bill notes that most expedient way to effect the required action is through a single bill.¹⁹

5.5 This Bill will also cancel State forest, class A reserves, timber reserves and non class A reserves, close unwanted roads and create the final conservation reserves in one process. The national parks and reserves to be created by the Bill will be vested in the Conservation Commission of Western Australia by virtue of section 7 of the CALM Act. They will be managed by the Department of Conservation and Land Management.²⁰

5.6 All the new parks and reserves and additions to existing parks and reserves in the Bill will come into being on Assent, with the exception of those new reserves and additions to existing reserves from previous forest management plans created by

¹⁹ Explanatory Memorandum, Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004, p1.

²⁰ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, September 21 2004, p6027.

clauses 15, 21, 22, 24, 29, 31 and 32, which will come into being on a day fixed by proclamation.²¹

- 5.7 The Second Reading Speech notes that the reserves, or additions to existing reserves, to be created by those clauses:²²

... fall wholly or partly within State Agreement Act mining leases held by Alcoa World Alumina Australia and Worsley Alumina. The reservations have been supported by the Agreement Act companies subject to specified areas listed on the Register of the National Estate that were not supported for reservation under the RFA being removed from the Register.

- 5.8 The Committee notes clause 6 which provides that nothing done by or under the Bill operates to affect any native title rights and interests. However where those rights and interests are validly affected under the *Native Title Act 1993* (Cth) or a Western Australian law the clause will not apply.

6 OPTING OUT OF THE AGREEMENT AND AMENDMENT OF THE AGREEMENT

- 6.1 In respect of the Committee's query about whether and by what mechanism the State can opt out of the agreement the Minister advised that the RFA may only be amended with the written consent of both parties as provided by clause 8 of the RFA.²³

- 6.2 The RFA, at clause 99, states the circumstances under which the Commonwealth may terminate the RFA and at clause 100 states the circumstances under which the State may terminate the RFA. Specifically, the RFA may be terminated by the State:²⁴

- (a) *with the consent of the Commonwealth; or*
- (b) *where the dispute resolutions procedures in Clauses 10 to 14 have been observed and the Commonwealth has been given a 90 day period of notice on:*
 - (i) *a breach by the Commonwealth of Clause 98 being a failure to pay the financial assistance in accordance with that Clause; or*

²¹ Ibid.

²² Ibid.

²³ Ibid, p3.

²⁴ Letter from Hon Dr Judy Edwards MLA, Minister for the Environment, July 12 2004, p3; and clause 100, *Regional Forest Agreement for the South-West Forest Region of Western Australia*, May 4 1999.

- (ii) *a failure by the Commonwealth to comply with Clause 97, being a failure to pay compensation due under that Clause; or*
- (iii) *save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period.*

7 CONCLUSION

- 7.1 The Committee commends this Report to the House for consideration during debate on the Bill.



Hon Adele Farina MLC
Chairman

September 24 2004

APPENDIX 1
IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

APPENDIX 1

IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper. A brief description of each is provided below.

- Structure 1:** *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.
- Structure 2:** *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.
- Structure 3:** *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.
- Structure 4:** *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.
- Structure 5:** *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.
- Structure 6:** *Mutual Recognition.* Recognises the rules and regulations of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

Structure 7: *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

Structure 8: *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

Structure 9: *Adoptive Recognition.* A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.

APPENDIX 2
RESERVES INCLUDED IN THE BILL THAT RELATE TO
CLAUSE 70(B) PROPOSALS

APPENDIX 2

RESERVES INCLUDED IN THE BILL THAT RELATE TO CLAUSE 70(B) PROPOSALS

ATTACHMENT 2

Other reserves included in the *Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004* from the Forest Management Plan 1994, endorsed by the Regional Forest Agreement and carried forward in the old-growth forests policy.

Forest Management Plan 2004-2013 ID	Bill Clause and Reserve No.	Name (unofficial)	Area (ha)	Proposal type
171	19 - A 146026	Blackbutt	40	SF to CP
231	14 - A 140837	Mattaband (addition to Mt Frankland NP)	260	SF to NP
159	25 - A 145923	Chester	370	SF to NR
160	26 - A 145922	Paget	1,400	SF to NR
264	27 - A 146040	Kordabup	300	TR, UCL to NR
95	20 - A 146362	Muja	6,320	UCL, TR to CP
134	28 - A 145915	Nollajup	670	SF to NR
94*	21* - A 131088	Bennelaking	5,630	SF, UCL, other to CP
70*	29* - A 122797	Clarke (Falls Brook)	200	SF to NR
128	30 - A 146390	Greenbushes	400	SF, Ex Dir freehold to NR
56*	31* - A 146399	North Dandalup	60	Other to NR
52*	22* - A 146408	Wandering	4,310	Other, TR to CP
53*	15* - A 139825	Serpentine (addition to Serpentine NP)	40	Other to NP
53A*	15* - A 139825	Serpentine (addition to Serpentine NP)	30	CP to NP
54A*	15* - A 139825	Karnet/Serpentine (addition to Serpentine NP)	300	NR to NP
61*,62*	32* - A 139827	Lane Poole (Icy Creek)	410	Misc. Ex Dir freehold to s. 5(1)(h)
108	23 - A 146403	Dardanup	570	SF to CP
109	23 - A 146403	Dardanup	70	SF to CP
33*	24* - A 146008	Russell	3,360	SF to CP

Notes:

* indicates proposal wholly or partly within State Agreement Act mining lease area and will not come into effect until a day fixed by proclamation

NR Nature reserve

NP National park

CP Conservation park

SF State forest

UCL Unallocated Crown land

TR Timber reserve

Ex Dir Executive Director of the Department of Conservation and Land Management

Misc Land vested in Executive Director or former National Parks and Nature Conservation Authority

s.5(1)(h) Conservation and Land Management Act section 5(1)(h) – land vested under the *Land Administration Act 1997*

Other Crown reserve not vested in the Conservation Commission

APPENDIX 3
MINISTER'S LETTER DATED JULY 12 2004
(EXCLUDING ATTACHMENTS)

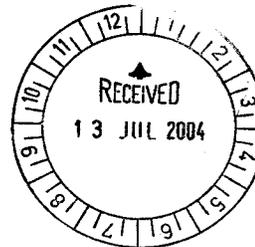
APPENDIX 3
MINISTER'S LETTER DATED JULY 12 2004
(EXCLUDING ATTACHMENTS)



MINISTER FOR THE ENVIRONMENT

28422

Hon Adele Farina MLC
Chairman
Legislative Council Standing Committee on
Uniform Legislation and General Purposes
Legislative Council Committee Office
Parliament House
PERTH WA 6000



*Attention: Ms Sheena Hutchison
Committee Clerk*

Dear Ms Farina *Adele*

**UNIFORM LEGISLATION: RESERVES (NATIONAL PARKS, CONSERVATION
PARKS AND NATURE RESERVES) BILL 2004**

Thank you for your letter of 2 July 2004 concerning the *Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004* which was introduced into Parliament on 23 June 2004. The following information is supplied in response to the questions raised by your Committee.

- (a) *A copy of the relevant intergovernmental agreement/memorandum of understanding or, if one is not available, a copy of the most recent draft with a statement as to the status of that draft.*

The *Regional Forest Agreement for the South-West Forest Region of Western Australia* (the Agreement) signed between the Commonwealth and State Governments on 4 May 1999 established a framework for the management of the forests in the south-west forest region of WA. The Agreement identified a comprehensive, adequate and representative (CAR) forest conservation reserve system and provided for the conservation of those areas. A copy of the Agreement is at Attachment 1. The purpose of the Agreement is detailed on pages one and two.

Clauses 64 to 70 on pages 15 to 17 of the Agreement specifically deal with the CAR reserve system. In particular clause 70(b) commits the State to establish new formal reserves under the *Land Administration Act 1997* that were proposed

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in the Forest Management Plan 1994-2003 and endorsed by the Regional Forest Agreement (RFA). The Bill before Parliament will implement a number of these clause 70(b) proposals (see Attachment 2).

- (b) *If (a) is not available, a copy of the Ministerial Council meeting at which it was agreed to introduce the legislation.*

Not applicable.

- (c) *A statement as to any timetable for the implementation of the legislation.*

The Act, with the exception of sections 15, 21, 22, 24, 29, 31 and 32, will come into operation on the day it receives the Royal Assent. Sections 15, 21, 22, 24, 29, 31 and 32 will come into effect on a day fixed by proclamation. Different days may be affixed for these sections.

- (d) *A copy of the Explanatory Memoranda.*

This is provided at Attachment 3.

- (e) *The Government's clearly stated policy on the Bill.*

The commitment to create the new national parks and other conservation reserves contained in the *Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004* is contained within the Government's *Protecting our old-growth forests* policy. This policy, which saw the immediate cessation of logging in the State's remaining old-growth forests, committed to creating 30 new national parks, including the 12 new national parks promised under the RFA, and two new conservation parks in the south-west forests. It also committed to proceeding with other conservation reserves promised in the RFA, and to reinstating Forest Management Plan 1994-2003 reserves that were revoked under the RFA.

Other Government policies which refer to the creation of the new national parks and conservation reserves include the *Environment* policy and the *Ecotourism strategy for WA*.

Extracts from the *Protecting our old-growth forests* policy, *Environment* policy and the *Ecotourism strategy for WA* are at Attachment 4.

- (f) *The advantages and disadvantages to the State as a participant in the Agreement; and*
(g) *the constitutional issues affecting each jurisdiction.*

The Bill will create nine new national parks committed under the *Protecting our old-growth forests* policy, make significant additions to the existing Wellington National Park and make a number of land category changes proposed in previous forest management plans and which have been carried forward in the *Forest Management Plan 2004-2013* (refer Attachment 2). The Bill is giving

effect to the policy of the State Government, which goes beyond the land category changes proposed in the RFA.

The designation of land use/allocation and creation of the new national parks and reserves is, under the Constitution, a matter for the State Government not the Commonwealth Government.

- (h) *An explanation as to whether and by what mechanism the State can opt out of the intergovernmental arrangement.*

The Agreement (copy at Attachment 1) took effect upon the date of signing and remains in force for 20 years (refer Part 1, clause 5 on page 8). The Agreement may be amended with the consent of both parties in writing (refer Part 1, clause 8, page 8).

The Agreement at Part 3, clause 99, page 27 states where the Commonwealth may terminate the Agreement, and at clause 100 where the State may terminate the Agreement. Specifically, the Agreement may be terminated by the State:

- (a) *with the consent of the Commonwealth; or*
- (b) *where the dispute resolutions procedures in Clauses 10 to 14 have been observed and the Commonwealth has been given a 90 day period of notice on:*
- (i) *a breach by the Commonwealth of Clause 98, being a failure to pay the financial assistance in accordance with that Clause; or*
- (ii) *a failure by the Commonwealth to comply with Clause 97, being a failure to pay compensation due under that Clause; or*
- (iii) *save that the above provisions do not apply if rectification is possible and has occurred before the end of the 90 day period.*
- (i) *The mechanisms by which the Bill, once enacted can be amended. That is, whether the intergovernmental agreement/memorandum of understanding places parameters on the type of manners in which it is envisaged that amendments are to be made to the legislation, for example whether the agreement of the State, or a majority of the States and Territories is required.*

Not applicable. The proposed parks and reserves are created under State legislation, i.e. the *Land Administration Act 1997* (LAA). The reserves can be amended in the future, if required, in accordance with the provisions of the LAA.

- (j) *If the legislation has been developed by reference to a 'model bill', please supply a copy of that 'model bill'.*

Not applicable.

- (k) *The name and contact numbers for the:*
- *Policy Officer who has carriage of the Bill; and*
 - *Instructing Officer in the relevant Department.*

Policy Officer: Mr Keiran McNamara
Executive Director
Department of Conservation and Land Management

Telephone: 9442 0300

Instructing Officer: Ms Sharon Colliss
Department of Conservation and Land Management

Telephone: 9442 0300

Yours sincerely



Dr Judy Edwards MLA
MINISTER FOR THE ENVIRONMENT

12 JUL 2004