

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

RESOURCE ASSESSMENT COMMISSION BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister,  
the Hon R J L Hawke)



## RESOURCE ASSESSMENT COMMISSION BILL 1989

### GENERAL OUTLINE

This Bill establishes the Resource Assessment Commission (RAC) and defines its functions and powers. The Commission will hold public inquiries and inform and advise the Government on matters relating to the use of resources and involving consideration of conservation and development issues. A Schedule sets out policy principles, provided to guide the Commission in its tasks.

The Bill covers the administrative arrangements of the Commission. It provides for the appointment of a Chairperson, and for special Commissioners to be appointed for particular inquiries. It sets out the terms and conditions under which the Chairperson and special Commissioners are to hold office.

Terms of Reference will be decided by the Government, and they, and any variation of them, will be published in newspapers circulating in the States, the Northern Territory and external Territories. All interested parties will have the opportunity to put information and views to the RAC, and to comment on any background papers and draft reports prepared for public consideration. On receipt of the final report the Minister will arrange for it to be tabled in both Houses of the Parliament within 25 sitting days.

The RAC will have powers to compel witnesses to produce documents and appear at hearings, and penalties are provided for non-compliance, or for giving false or misleading information. Penalties are also provided for offences against Commissioners and those assisting them in inquiries.

### FINANCIAL IMPACT STATEMENT

The running costs of the Commission will depend on the number, type and duration of references. Each major reference put to the Commission is expected to cost approximately \$2.0 million in any one year of operation. If there were no reference in the course of a year, the ongoing costs would be expected to be relatively low with the small permanent staff of the Secretariat engaged on methodological inquiries and research.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1: Short title

This clause cites the short title of the Act as the *Resource Assessment Commission Act 1989*.

#### Clause 2: Commencement

The clause provides for the commencement of the Act. The Act will commence on the day it receives Royal Assent.

#### Clause 3: Interpretation

This clause sets out the interpretations of key terms used in the Act.

Interpretations of "conservation" and "development" are based on those in the National Conservation Strategy for Australia.

Throughout this Bill, where the word "Commissioners" is used, it includes both the Chairperson and the special Commissioners appointed for inquiries.

A "Division" of the Commission means the Chairperson and special Commissioners appointed for a particular inquiry. It is used because there may be concurrent inquiries being held.

In this clause "environment" is given the same interpretation as in the *Environment Protection (Impact of Proposals) Act 1974*, as amended.

The interpretations of "resource", "resource matter" and "use", taken in conjunction with clause 8, indicate the kinds of matters the Commission will address, and how they will be addressed.

"Resource" applies to elements of the material environment but does not include human beings. As defined in the Act, it includes biological and mineral components, and combinations or associations of individual resources. It could include a forest of one or several varieties of trees or an ecosystem, or the association of elements that form a vista. A "resource matter" is any issue relevant to the use of resources. Issues are likely to arise for the Commonwealth because of the need to take decisions relating to the Commonwealth's powers. An inquiry may focus on particular resources, industries or regions, or any issues that may arise from any use of a resource - for example the appropriate kind of taxation for use of a

resource, or whether incentives should be given to ease the transition from uses that are considered to have an unacceptable impact on the environment to more acceptable practices, or whether an export permit should be given and under what conditions.

The interpretation of "use" makes it clear that the Government is concerned not just with use of the primary resource, but also with use of the resource in its processed forms - that is the use of energy as well as the use of particular energy commodities like oil or coal, or the use of timber for furniture making or woodchips or paper production as well as the use of an area of forest for logging. "Use" includes use for conservation purposes as well as for development purposes, and encompasses management plans for protected areas. Alternative management plans, for instance, would be alternative uses, as would be alternative sitings, processes and designs.

#### **Clause 4: Application**

This clause extends the Act to all external Territories.

### **PART 2 - RESOURCE ASSESSMENT COMMISSION**

#### **Division 1 - Establishment, Functions and Powers of Commission**

##### **Clause 5: Establishment**

This clause establishes the Resource Assessment Commission.

##### **Clause 6: Functions**

This clause specifies the functions of the Commission. These are to hold inquiries on resource matters and report on them to the Government.

##### **Clause 7: Commission to be guided by policy principles**

Policy principles applying to the resolution of competing claims for the use of resources are set out in a Schedule attached to the Act. This clause states that the Commission is to be guided by these principles.

##### **Clause 8: Matters to be addressed in performance of Commission's functions**

The Government will decide the terms of reference for each inquiry. This clause empowers the Commission to consider all those aspects of any matters referred to it that the Commission considers to be relevant. It has a reporting freedom like that given to the Industries Assistance Commission. The clause indicates the various

elements the Commission would be expected to consider - for example, identifying the resources and how they may be used at present or in the future; looking at the kinds of values individuals or groups in the community may place on the resources or on the uses that can be made of them (and this includes both conservation and development uses); assessing what various uses will mean to the community in the short term and the longer term - for instance who will gain and who will lose in both material and non-material ways. This kind of assessment could thus encompass losses or gains of amenity, or of aesthetic or spiritual values, as well as monetary losses or gains.

How the Commission makes the assessment is left to the Commission to determine. It is recognised that both quantitative and qualitative elements need to be assessed, by whatever means seem appropriate.

The clause empowers the Commission to do these things "as far as practicable". This phrase is intended to cover all the aspects likely to be encountered in the Commission's inquiries and acknowledges our incomplete understanding of complex resource issues. We may have limited understanding, for instance, of the dynamic processes that operate within and between ecosystems or of the equally complex economic and social interrelationships existing within and between communities.

Similarly, while we can make predictions about the impacts of certain human activities, we can rarely foresee all the consequences or their extent.

The Commission, therefore, has to assemble all reasonably obtainable information and advice and do what analysis can reasonably be done within the time limits set by the Government's need to take decisions.

#### **Clause 9: Powers of Commission**

This clause empowers the Commission to carry out its functions and to do everything it considers necessary or convenient to do to discharge its responsibilities.

#### **Division 2 - Constitution of Commission**

##### **Clause 10: Constitution of Commission**

As set out in this clause the Commission comprises the Chairperson and any special Commissioners appointed for the purposes of inquiries.

##### **Clause 11: Appointment of Commissioners**

This clause provides for the appointment of Commissioners, including the Chairperson, on either a full-time or part-time basis.

**Clause 12: Period of appointment of Chairperson**

This clause provides for the appointment of a Chairperson for a period of up to 5 years and includes provision for reappointment.

**Clause 13: Period of appointment of special Commissioners**

This clause provides for the appointment of a special Commissioner for one or more inquiries.

**Clause 14: Selection of special Commissioners**

The Government will decide on the appointment of special Commissioners. This clause requires that special Commissioners are chosen after the Minister consults with the Chairperson of the Commission, and with presiding members of the Australian Science and Technology Council and the Industries Assistance Commission. The purpose of this clause is to provide advice to the Government on an appropriate mix of expertise on the aspects of resource issues to be investigated in each inquiry.

**Clause 15: Conditions of Commissioners**

This clause enables the Minister to determine in writing any terms and conditions for Commissioners that are not specified in the Act.

**PART 3 - REFERENCE OF RESOURCE MATTER TO COMMISSION**

**Clause 16: Reference of resource matter to Commission**

This clause relates the Commission's functions to the Commonwealth's constitutional powers. It provides that where the Government or a Commonwealth agency may make a decision relating to a resource matter, the responsible Minister (in this case the Prime Minister) can require the Chairperson to have the Commission conduct an inquiry and report back to the Government. It also provides for publication of the Minister's notice to the Chairperson.

**Clause 17: Referral**

This clause provides for what is to be included in a referral, including subject matter, scope, timing of the inquiry, priorities, principles or other matters to be taken into account. The Commission may be required to prepare an information report, or specify optional courses of action, or additionally make recommendations on them.

**Clause 18: Notice varying or ending inquiry**

This clause ensures that there is flexibility once an inquiry has begun to vary or withdraw it. The clause is intended to ensure that if different or additional elements should desirably be taken into account, they can be incorporated into the reference. Similarly, if the requirement for a Government to take a decision no longer applies, or if there is no good reason to continue the inquiry, the Minister can end it.

**PART 4 - INQUIRIES**

**Division 1 - Preliminary**

**Clause 19: Notice of inquiries**

This clause lists the details of an inquiry which must be notified in newspapers in each State and Territory.

**Clause 20: Constitution of Commission for purposes of inquiry**

This clause requires at least two special Commissioners to be appointed for an inquiry unless the Minister otherwise directs. Under normal circumstances the Commission is expected to comprise at least three Commissioners, including the Chairperson.

**Clause 21: Inquiries may be held at the same time**

This clause enables inquiries to overlap in timing and gives the Commission flexibility to respond to issues in the event that there may be more than one resource issue meriting an inquiry.

**Clause 22: Delegation of Chairperson's powers**

This clause deals with the absence of the Chairperson during an inquiry - for example if there are simultaneous inquiries, illness or any other reason, and ensures that an inquiry will not be held up should the Chairperson be unavailable to attend particular hearings or meetings.

**Clause 23: Protection of Commissioners and witnesses**

This clause ensures that Commissioners and witnesses have similar protection to that given to persons involved in High Court proceedings.

**Division 2 - Conduct of Inquiries**

**Clause 24: General conduct of inquiries**

This clause gives the Commission, and in particular the Chairperson, a wide discretion in how the inquiries shall be conducted.



**Clause 25: Meetings of Commissioners**

This clause provides for the Chairperson to convene whatever meetings he or she thinks are necessary. As clause 34 indicates, the Chairperson would decide such matters as far as practicable with the special Commissioners appointed for the inquiry.

**Clause 26: Hearings by Commission**

This clause provides that, when the Chairperson decides to hold hearings, adequate public notice is given about the timing, location and subject matter of these hearings.

**Clause 27: Quorum for meetings and hearings**

This clause defines a quorum for the purposes of a hearing. The Chairperson or his or her delegate must be present. If, for instance, the Division of the Commission conducting an inquiry consists of the Chairperson and two special Commissioners, two of the three would constitute a quorum, so long as the Chairperson or his or her delegate was present.

**Clause 28: Presiding at meetings and hearings**

This clause ensures that the Chairperson, or delegate, presides at all meetings or hearings.

**Clause 29: Procedure at hearings**

This clause provides that a hearing is held in public except where the Commission considers that circumstances as outlined mean that evidence would be best taken in private. Commercial-in-Confidence evidence may however need to remain in confidence. A witness may also give written evidence, and evidence may be taken under oath or affirmation.

**Clause 30: Written evidence and documents to be made public**

This clause ensures that a witness's written evidence is made public except when the Commission is satisfied that the circumstances are similar to those covered by clause 29.

**Clause 31: Commission may prepare background papers**

This clause provides that background or issues papers may be prepared for public consideration. The intention of this clause is to provide whatever means seem appropriate of informing the public on the course of the inquiry and giving opportunity for public inputs to the Commission's deliberations.

**Clause 32: Draft reports**

This clause requires the Commission, unless the Minister instructs otherwise, to prepare and publish a draft inquiry report, and provide opportunities for public comment on it before a final report is presented to the Minister. Reasonable time will be provided for people to comment on any draft report.

**Clause 33: Participation in meetings etc**

This clause provides that for the purposes of ensuring a quorum a Commissioner may participate in a hearing or meeting using a telephone, closed circuit television or other method of communication.

**Clause 34: Powers of Chairperson**

This clause provides that the Chairperson should to the greatest extent that is practicable consult with the special Commissioners about the general conduct of the inquiry, meetings and method of participation, but that the Chairperson should direct and control travel arrangements.

**Division 3 - Reports**

**Clause 35: Report to be tabled**

This clause ensures that the final inquiry report is made public as soon as possible after the Minister receives it. The 25 sitting day period allowed for the Minister to table the report has been set to allow sufficient time for printing.

**Division 4 - Evidence**

**Clause 36: Power to obtain information and documents**

This clause gives the Commission the power to obtain relevant information and documents for the purposes of an inquiry, by giving written notice to persons believed capable of providing that information or documentation.

**Clause 37: Allowances to witnesses**

This clause provides for the payment of a person's travelling and other expenses where the person appears at a hearing because of a notice. Provision may be made in the regulations to the Act for payment of other witness expenses.

## **PART 5 - ADMINISTRATION**

### **Division 1 - Office of Commissioner**

#### **Clause 38: Arrangements for appointment of Judge of State or Northern Territory**

This clause provides for the Prime Minister to make arrangements with the Premier of a State or Chief Minister of the Northern Territory for the release of a Judge for appointment to the Commission; and provides for suitable arrangements including financial reimbursement to be made to secure that person's services.

#### **Clause 39: Appointment of Judge as Commissioner not to affect tenure etc**

This clause ensures that should a Federal Judge become a Commissioner, he or she retains all rights and privileges that are held as a result of holding judicial office.

#### **Clause 40: Acting Chairperson**

This clause provides for the Minister to appoint an acting Chairperson for up to 12 months, so that inquiries are not unnecessarily impeded by vacancies and absences.

#### **Clause 41: Acting special Commissioners**

This clause provides for the Minister to appoint a person to act as a special Commissioner for up to six months. The Minister is required to take his or her consultations (under clause 14) with the Chairperson and presiding members of Australian Science and Technology Council and the Industries Assistance Commission into account when considering persons suitable to act as a special Commissioner.

#### **Clause 42: Outside employment**

This clause restricts the ability of the Chairperson and the special Commissioners to engage in paid employment, or employment that could reasonably be expected to be paid, or which could conflict with carrying out his or her duties.

#### **Clause 43: Disclosure of interests**

This clause provides for the disclosure of interests by the Chairperson and special Commissioners, and prescribes what must be done to deal with conflict of interest situations.

In the case of the Chairperson, the Minister must be advised, and the Minister must take what action he considers appropriate.

In the case of a special Commissioner, the special Commissioner must advise the Minister, and resign as a special Commissioner for the inquiry where the conflict of interest has arisen.

**Clause 44: Suspension and removal from office**

This clause specifies the grounds on which, and the procedures under which, the Governor-General may suspend a Commissioner and/or remove him or her from office, and the action to be taken.

**Division 2 - Conditions of Commissioners**

**Clause 45: Part-time Chairperson taken to be full-time**

This clause provides that the Minister can direct a part-time Chairperson to work full-time should the need arise.

**Clause 46: Part-time special Commissioner taken to be full-time**

This clause provides that the Chairperson can direct a part-time special Commissioner to work full-time should the need arise.

**Clause 47: Remuneration and allowances**

This clause provides remuneration and allowances to be paid as determined by the Remuneration Tribunal. The clause does not apply to a Judge receiving Judge's salary and allowances.

**Clause 48: Leave of absence**

This clause enables the Minister to grant leave of absence to a full-time Commissioner, and to delegate authority to the Chairperson to grant leave of absence to special Commissioners.

**Clause 49: Resignation of Commissioners**

This clause provides for the resignation of the Chairperson and special Commissioners.

**Clause 50: Retirement from Office**

This clause provides for the retirement of a Commissioner on the ground of invalidity.

## PART 6 - OFFENCES

### Clause 51: Offences relating to administration of Act

The provisions in this and succeeding clauses are based on provisions in the Crimes Act. This clause sets a penalty of \$3,000 to be applied where a person commits the offences spelled out in this clause against a Commissioner or a person acting on behalf of the Commissioner, and imprisonment for 6 months where a person commits specified offences against a person giving information, documents or evidence to the Commission. Under the provisions of the Crimes Act, courts are empowered to consider whether the term of imprisonment specified in this clause and in clause 53 should be commuted to a fine.

### Clause 52 - Failure to comply with requirement

This clause provides for a \$3,000 penalty where a person given notice to provide evidence or attend a hearing fails to do so. Sub-clause (3) provides the common law protection that a person does not have to give self-incriminating evidence.

### Clause 53: False or misleading evidence or information

This clause imposes a penalty of 6 months imprisonment for a person providing misleading evidence, information or documents.

### Clause 54: Conduct of directors, servants and agents

This clause establishes guidelines for the conduct of directors, servants and agents.

## PART 7 - MISCELLANEOUS

### Clause 55: Relationship of this Act to other laws

The purpose of this clause is to ensure that the Act is additional to and does not interfere with the operation of any other Commonwealth laws. In particular it can not be used to exclude the operation of the *Environment Protection (Impact of Proposals) Act 1974* as amended, or other conservation legislation.

### Clause 56: Annual Report

This provision requires that the Commission prepare an Annual Report, and that the Minister table the Report within 25 sitting days of its receipt. The Report can, if the Chairperson wishes, canvass general issues arising from the Commission's inquiries.

### Clause 57: Regulations

This provision enables the Governor-General to make regulations regarding the Act.

**PART 8 - ARRANGEMENTS IF CERTAIN PERSON  
APPOINTED FIRST CHAIRMAN**

**Clause 58: Principal Act**

The Principle Act referred to here is the National Crime Authority (Status and Rights of Chairman) Act 1984.

**Clause 59: Amendments of Principal Act**

Clauses 58 and 59 are inserted in the Act to cover the possible appointment as Chairman of the Commission of the Honourable Donald Gerard Stewart. His appointment would require amendment of the Act relating to his status and rights as Chairman of the National Crime Authority.

**SCHEDULE 1**

**POLICY PRINCIPLES FOR RESOLVING COMPETING CLAIMS FOR THE  
USE OF RESOURCES**

The Schedule sets out the policy principles that the Government agreed in November 1988 should guide government decision-making and the work of the Commission.

The principles stress the need for an integrated approach and call for early consideration of conservation and development issues involved in the use of resources. The intention is that the net benefits to the community should be optimised, taking account of all the relevant quantifiable and unquantifiable factors. The principles recognise that in some areas conservation values may require absolute protection, but that in other areas multiple or sequential uses may be appropriate.

**SCHEDULE 2**

**AMENDMENTS OF THE NATIONAL CRIME AUTHORITY (STATUS AND  
RIGHTS OF CHAIRMAN) ACT 1984**

This Schedule contains the amendments to be made to the above Act in the event that the Honourable Donald Gerard Stewart is appointed as the first Chairperson of the Resource Assessment Commission.

It also sets out the conditions under which he will hold the office of Chairperson.



