

## **WOOD PROCESSING (WESFI) AGREEMENT Bill 2000**

### **COMMITTEE NOTES**

**CLAUSE 1** contains the short title of the Bill

**CLAUSE 2** provides for the Bill to come into operation as an Act on the day it receives the Royal Assent.

**CLAUSE 3** defines how the Agreement contained in Schedule 1 is to be interpreted.

**CLAUSE 4**

**SUBCLAUSE (1)** is the ratification of the Agreement

**SUBCLAUSE (2)** is the authorisation of the implementation of the Agreement

**SUBCLAUSE (3)** describes how the Agreement Act is to operate in regard to any written law (as defined in the Interpretation Act) or law.

## SCHEDULE 1 – AGREEMENT

The following describes major matters dealt with in the Agreement dated 8 August 2000 that is scheduled to the Bill:

### *Recitals*

The recitals outline the basis for the Agreement and intention of the parties in entering into the Agreement.

**Recital (A)** - the State has established substantial softwood plantations in Western Australia which require periodic thinning, producing softwood timber which is not suitable for sawlogs. However, these thinnings are suitable for the production of softwood based products manufactured by the Wesfi Limited (the Company).

**Recital (B)** - the Company has established a particleboard factory in the Dardanup area and a medium density fibreboard factory in Welshpool.

**Recital (C)** - in the interests of economy of operation and in recognition of the need for world-scale competitiveness, the factories were built with a design capacity considerably in excess of the markets for their products.

**Recital (D)** - before establishing the factories, the Company requested the State to assist with securing facilities and services to operate the factories and to ensure a continuous supply of softwood resources within economic distances of the factories.

**Recital (E)** - the State agreed to give effect to the Company's requirements by entering into the Wesply (Dardanup) Agreement Authorisation Act 1975 (the 1975 Agreement) for an initial term of 25 years from 23 May 1975.

**Recital (F)** - Clause 32 of the 1975 Agreement states that the State is prepared to negotiate a further agreement with the Company if it is deemed necessary to ensure a supply of softwood resources.

**Recital (G)** - in an effort to promote employment opportunities and industrial development, especially in regional Western Australia, the State desires to assist by extending the supply arrangements currently existing under the 1975 Agreement.

**Recital (H)** – in recognition of the State's commitment to continue its support for the softwood industry in Western Australia the Company has agreed to enter into a discrete agreement (having no impact on the terms of this Agreement) to contribute a minimum of \$1,000,000 per annum during the term of this Agreement towards the creation and management of softwood plantations by the State on Crown Reserves.

### *Clause 1 - Definitions*

Defines the terms used throughout the Agreement.

**Clause 2 – Interpretation**

**Subclause (1)** - provides legal interpretations of how Agreement is to be generally read.

**Subclause (2) and (3)** - requires the parties to comply with the laws relating to Native Title and Environmental Protection in relation to all activities under the Agreement.

**Clause 3 – Ratification and Operation**

**Subclause (1)** - requires the State to introduce and sponsor a Bill into Parliament to ratify the Agreement prior to 31 December 2000, or such later date as may be agreed.

**Subclause (2)** - states that other than Clauses 1, 2 and 3 the Agreement shall not come into operation until the Bill referred to in Subclause (1) is passed as an Act.

**Subclause (3)** - provides for the cessation and determination of the Agreement if the Bill has not commenced to operate as an Act by 31 March 2001 or such later date as may be agreed.

**Subclause (4)** - provides that upon ratification of the Bill the Agreement shall take effect notwithstanding any other Act or law.

**Clause 4 - Termination of 1975 Agreement**

Provides that upon the Bill commencing to operate as an Act the 1975 Agreement (and all associated rights and obligations) shall be cancelled.

**Clause 5 – Supply of resource**

**Subclause 1(a)** - requires the State to ensure that the Executive Director of CALM +supplies the Company with no less than 330,000 cubic metres of resource per year, unless a lesser requirement is specified by the Company.

**Subclause 1(b)** – except as otherwise agreed by the Minister, the Executive Director shall not be obliged to supply to the Company a quantity of resource in excess of 330,000 cubic metres per year.

**Subclause 1(c)** – requires the Executive Director to supply to the Company, from time to time, details of its best estimates as to the availability of softwood resources from the softwood plantations (as defined in the Agreement and illustrated on Plan A attached to the Agreement) for each year of the Agreement and to provide by 31 December each year the maximum quantity available to the Company for the next ensuing year.

**Subclause 1(d)** - requires the State to supply to the Company the quantity of softwood resources as agreed or determined to be provided each year.

**Subclause 1(e)** - requires that in order for the State to meet its obligations to provide a minimum of 330,000 cubic metres per year of resource to the Company, the State shall ensure that the Executive Director shall plant and replant areas of State forest and fee simple land held by him as may be necessary to ensure that sufficient volumes of resource can be made available to the Company.

**Subclause (2)** - requires the Company, before 31 December each year, to provide the Executive Director with an estimate of its resource requirement for each of the next 6 years.

**Subclause (3)** - requires the Executive Director to advise the Company, by 28 February each year, of the softwood plantations from which it will supply the factories, for each of the next ensuing 6 years.

**Subclause (4)** – enables the Company to advise the Executive Director if it considers the volume weighted average haulage distance from nominated plantation to factory to be uneconomical. Under these circumstances the Executive Director will consider the basis of the Company’s concerns, and if in agreement, will use all reasonable endeavours to reduce that volume weighted average haulage distance.

**Subclause (5)** – requires the Company, by 15 May each year, to provide the Executive Director with a statement of its resource requirements for each of its factories for the ensuing year.

**Subclause (6)** - by 31 May each year, the Company and Executive Director shall agree as to the quantity of resources to be supplied in the next ensuing year. The matter shall be referred to arbitration if agreement cannot be reached.

**Subclause (7)** – requires the Executive Director to ensure that the quantity of resource agreed is available to the Company in priority over other prospective users.

**Subclause (8)** – requires the Executive Director to provide the resource in accordance with specifications, as may be varied by agreement between the parties from time to time.

**Subclause (9)** – provides that the Company has no claim against the State or the Executive Director in the event of plantations being damaged by fire, disease or other reasons beyond the State’s reasonable control, resulting in it being unable to comply with supply agreements.

**Subclause (10)(a)** – provides that, as is agreed between the Executive Director and the Company, the Executive Director shall call for tenders for felling, extraction and chipping of resources.

**Subclause (10)(b)** – provides the State shall ensure that the Executive Director will construct and maintain roads suitable for the transportation of resources, from the loading points to the boundary of the land controlled by him.

**Subclause (11)** - For all resources made available and accepted by the Company, the Company will pay the Executive Director:-

- (a) rates of stumpage as set out in the First Schedule attached to the Agreement or as may be determined by the Minister;

- (b) the costs and expenses associated with contracts resulting from tenders called under Clause 5(10)(a).
- (c) cost to the Executive Director of transporting product from the loading point to the factory.
- (d) a specified percentage of the costs associated with controlling and supervising the work of contractors engaged under Clause 5(11) (b) and (c).
- (e) a cost for the construction, use and maintenance of roads in the softwood plantations levied at the rate set out in the First Schedule to the Agreement.

**Subclause (12)** – At intervals of not less than three years, either the State or the Company may ask for the provisions of subclause (11) (d) and/or (e) to be reviewed.

**Subclause (13)(a)** - The terms “GST” and “supply” are as defined in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**Subclause (13)(b)** – requires the Company must pay all applicable GST charges.

**Subclause (13)(c)** – requires the Company to pay the above charges to the State at the time of the payment to which they relate, or on demand.

**Subclause (13)(d)** – the Company is only subject to these GST charges if the State has provided the Company with a valid tax invoice.

**Subclause (13)(e)** – should any abolition or reduction of tax duties occur after the date of the Agreement, the full benefit shall be passed on to the Company.

### **Clause 6 – Company’s commitment**

**Subclause (1)(a)** – Subject to the provisions of the force majeure clause (Clause 12) the Company is bound to accept the quantity of resource agreed with the Executive Director. If it takes less than 90% of this quantity, the Company will pay stumpage at a rate equal to the stumpage rate payable in that year under Clause 5(11)(a) on the quantity less than 90%.

**Subclause (1)(b)** – should the Company, in the next following year or two years, take resource in excess of the 90% or 330,000 cubic metres then the royalty payable on the excess shall be reduced by the amount of royalty paid on the deficiency referred to in subclause 1(a) above.

But under no circumstances will the reduction in stumpage payable on the excess be greater than the amount of the payment made in respect of that deficiency.

**Subclauses (2) and (3)** – specify the conditions of stumpage payment and the place and manner by which resource to be supplied is measured and recorded.

**Subclause (4)** – except as modified by the Agreement the Company is required to comply with the provisions of the CALM Act.

**Clause 7 – Maintenance of Public roads**

**Subclause (1)** – The State undertakes to maintain public roads used by the Company for the purposes of the Agreement, to a standard comparable to normal public roads.

**Subclause (2)** – If the Company or its contractors wishes to use a public road which is inadequate for its purposes, or causes damage/deterioration to a public road, the Company will pay the State an equitable part of the total cost of upgrading or repair as is determined by the Commissioner of Main Roads. The State in supplying resources to the factories will not be considered to be a person engaged by the Company.

**Clause 8 – No discriminatory charges**

Except as provided in the Agreement, the State (including any of its agencies, instrumentalities or local government) will not impose discriminatory taxes, rates or charges on the Company's assets, materials or services the subject of the Agreement nor will it take any discriminatory action which would deprive the Company full enjoyment of the rights granted under the Agreement.

**Clause 9 – Zoning**

**Subclause (1)** – provides that zoning of the factory sites will be protected for the duration of the Agreement.

**Subclause (2)** – provides that provided the Company implements a reasonable ongoing improvement program in its operations at Dardanup, the State will make reasonable endeavours to use relevant legislation after consultation with relevant agencies to define a buffer boundary, having regard to existing noise emission contours shown on Plan B attached to the Agreement, and planning controls to land within the buffer boundary to preclude land uses incompatible with the approved operations of the Dardanup factory for the duration of the Agreement.

**Subclause (3)** – provides that at the request of the Company the State may resume land for the purpose of the Agreement provided that the Company shall pay, on demand, the costs incurred by the State through any such resumption. This is a standard clause in most State Agreement Acts.

**Subclause (4)** – At the Company's request, the Minister may, at his discretion, make submissions to any relevant State agency in respect of applications made by the Company to obtain relief or exemption from specific legislation or regulations.

**Clause 10 – Assignment**

Provides for the assignment of rights and obligations by the Company, subject to a Deed of Covenant by the party receiving the benefit of the rights assigned. The Minister may agree to release the Company from liability for the performance of obligations under the Agreement. This is a standard clause in most State Agreement Acts.

**Clause 11 - Variation**

**Subclause (1)** – enables the Agreement to be varied from time to time by agreement in writing.

**Subclause (2)** – requires any variation to the Agreement to be tabled in Parliament.

**Subclause (3)** – details how the variation Agreement may come into operation.

**Clause 12 – Force majeure**

**Subclause (1)** - recognises temporary suspension of Agreement obligations as a result of circumstances beyond the control of the Company or the State.

**Subclause (2)** - defines the events and circumstances referred to above.

**Subclause (3)** - requires the party who is affected by such events or circumstances to give prompt notice to the other party and shall use its best endeavours to minimise the effects thereof.

**Clause 13 - Power to extend periods**

Provides, at the request of the Company, for the Minister to extend dates or periods referred to in the Agreement.

**Clause 14 - Determination of Agreement**

**Subclause (1)** - specifies the events that can result in determination of the Agreement.

**Subclause (2)** - requires specified details to be given in a notice of determination.

**Subclause (3)** - enables the Company to contest a notice of default and allows the matter to be decided by arbitration. Where the arbitration decision is against the Company and the arbitrator finds there was a genuine dispute, the time for complying with such a decision shall be not less than 90 days.

**Subclause (4)** - enables the State to remedy a default and recover any costs of so doing from the Company.

**Clause 15 - Effect of cessation or determination of Agreement**

Details the effect of determination of the Agreement.

**Clause 16 - Indemnity**

Provides indemnity to the State for activities undertaken under the Agreement by the Company or by third parties on its behalf. This indemnity does not apply where the State or its agents are negligent in carrying out required work for the Company.

**Clause 17 - Subcontracting**

The State and the Company may sub-contract to third parties any activity it is obliged to carry out under this Agreement.

**Clause 18 - Arbitration**

**Subclause (1)** - defines the arbitration process that may be used to resolve disputes arising from the operation of the Agreement.

**Subclause (2)** - provides that arbitration shall not apply where the State, the Minister or any other Minister has a discretionary power.

**Subclause (3)** - empowers an arbitrator to grant an interim extension to any date or period in the Agreement to preserve rights while a matter is before arbitration.

**Clause 19 - Consultation**

Requires the Company to consult with the State on any action that the Company proposes with any other party (including the Commonwealth), which may affect the State's interests under the Agreement.

**Clause 20 - Notices**

Specifies how notices are to be given by the State to the Company and vice versa.



**Clause 21 - Term**

**Subclause (1)** - defines the term of the Agreement as being 25 years from the date of ratification of the Agreement.

**Subclause (2)** – modifies the CALM Act to enable the Executive Director to enter into arrangements for the duration of the Agreement.

**Subclause (3)** - provides that the parties will confer 10 years after ratification and each subsequent 10 years on the Company's intentions regarding the continued operation of the factories.

**Subclause (4)** – 5 years before the expiration of the term the parties will confer with respect to agreeing to commence negotiations on a new Agreement.

**Clause 22 - Applicable law**

Provides that the Agreement will be interpreted according to Western Australian applicable law.

**FIRST SCHEDULE – Supply and Price of Resource – Clause 5**