

any part of this State, and in respect of any such addition any part of this State specified in respect of that addition"; and

- (c) by omitting subsections (2) and (3) and substituting therefor the following subsections:—

“(2) A person who commits an offence against any of the provisions of subsection (1) of this section is liable, if the offence is committed—

- (a) within a fire emergency district or on a fire danger day, to a penalty of not less than twenty pounds or more than two hundred pounds or imprisonment for twelve months; or
- (b) elsewhere on any other day, to a penalty of not less than ten pounds or more than two hundred pounds or imprisonment for twelve months.

“(3) A person who is guilty of an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable to a penalty of two hundred pounds.”.

WESLEY VALE PULP AND PAPER INDUSTRY.

No. 48 of 1961.

AN ACT to encourage the establishment in the Wesley Vale district of an industry for the manufacture of wood pulp, paper, and other products of wood, and to provide for matters incidental thereto. [15 December 1961.]

Preamble.

WHEREAS Associated Pulp and Paper Mills Limited, a company incorporated in the State of Victoria and carrying on business in this State, is desirous of establishing in the Wesley Vale district in this State the industry of manufacturing wood pulp, paper, and other products of wood from pulpwood obtained from forests in the areas described in the first schedule to this Act:

And whereas, in the opinion of the Forestry Commission, the quantity of pulpwood estimated to be available in those areas is sufficient for the purposes of such an industry:

And whereas in order to establish and develop the proposed industry the company will be involved in considerable expendi-

ture and it is desirous that it be assured that the rights and concessions incidental to the establishment, development, and carrying on of the proposed industry will be conferred on it:

And whereas in the interests of the economic and industrial development of the State it is desirable that the proposed industry be established, developed, and carried on as intended by the company:

And whereas it is expedient that certain rights and concessions be conferred, and that certain obligations be imposed, on the company in connection with the establishment, development, and carrying on of the proposed industry:

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

1 This Act may be cited as the *Wesley Vale Pulp and Paper Industry Act 1961*. Short title.

2—(1) In this Act, unless the contrary intention appears— Interpretation.

“approved sawmiller” means a person who is entitled, by virtue of any authority granted to him under the *Forestry Act 1920*, to obtain on, and remove from, the pulpwood area or the reserve area any milling timber;

“Commission” means the Forestry Commission constituted under the *Forestry Act 1920*;

“company” means *Associated Pulp and Paper Mills Limited*, a company incorporated in the State of Victoria and carrying on business in this State, and includes any subsidiary thereof and any permitted assignee thereof;

“cord” means—

(a) the quantity of round or split pulpwood (free from bark) that can be contained in a stack four feet wide, four feet high, and eight feet long; or

(b) such quantity of pulpwood (free from bark) in any other unit of measurement as the Commission and the company may, either generally or in any particular case, agree to regard as the equivalent thereof;

“date of the commencement of the licence” means such date as the Commission may, by notice in the *Gazette*, declare to be the date of the commencement of the licence for the purposes of this Act;

“factory” means the factory proposed to be established by the company at, or in the vicinity of, Wesley Vale in this State;

“industry” means the production at the factory of wood pulp, paper, and other products of wood, and includes—

(a) the production of by-products of the process of manufacturing wood pulp;

(b) investigations preliminary to, and in connection with—

(i) the manufacture of wood pulp, paper, and other products of wood; and

(ii) the supply and preparation of materials therefor; and

(c) afforestation;

“licence” means the special licence granted to the company pursuant to section four;

“milling timber” means logs or parts of trees, whether standing or fallen, that are, in the opinion of the Commission, suitable for use for sawmilling purposes, and includes the lower portion of any regrowth tree that is more than sixteen inches in diameter at a height of four feet three inches from the ground;

“permitted assignee” means a person to whom rights, concessions, and obligations are assigned by the company, with the consent of the Minister, pursuant to section twenty-two;

“pulpwood” means sound timber other than milling timber;

“pulpwood area” means all the Crown lands in that part of the State that are described in Part I of the first schedule;

“regrowth tree” means a tree the age of which is less than one hundred and ten years;

“reserve area” means all the Crown lands in that part of the State that are described in Part II of the first schedule;

“subsidiary”, used in relation to the company, means a corporation that is a subsidiary of the company within the meaning of subsection (3) of this section;

“working plan” means the working plan that is referred to in section five, and includes that plan as altered from time to time.

(2) For the purposes of this Act, if a question arises as to whether any timber is or is not pulpwood or milling timber, that question shall be determined by the Commission, and the decision of the Commission on such a question is final.

(3) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of the company if, but only if, the majority of the shares thereof are beneficially held by the company and—

- (a) the amount of the shares so held is more than fifty per cent of the issued share capital of the corporation or such as to entitle the company to more than fifty per cent of the voting power in the corporation; or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a security or by virtue of shares issued to the company in pursuance of any such provisions) directly to nominate or appoint the majority of the directors or members of the governing body of the corporation.

3—(1) Except as otherwise provided in this Act, the powers and duties conferred and imposed on the Commission by this Act are in addition to, and not in derogation of, the powers and duties conferred and imposed on the Commission by or under the *Forestry Act 1920*, and this Act shall be construed accordingly.

Savings.
Cf. No. 49 of
1954, s. 8.
No. 70 of
1959, s. 3.

(2) Except as otherwise provided in this Act or so far as may be necessary for the proper enjoyment of the rights conferred on the company by this Act, nothing in this Act affects any rights of a person to obtain forest products from any part of the pulpwood area or of the reserve area pursuant to any licence, permit, or other authority granted under the *Forestry Act 1920*.

(3) Nothing in this Act affects the operation of the *Rivers Pollution Act 1881* or the *Hydro-Electric Commission Act 1944*.

PART II.

RIGHTS AND OBLIGATIONS OF THE COMPANY AND OF OTHER PERSONS IN RESPECT OF TIMBER.

4—(1) Notwithstanding anything in the *Forestry Act 1920*, the Commission may grant to the company a special licence conferring on the company the exclusive right, subject to this Act, to obtain from the pulpwood area and the reserve area, in each year during the currency of the licence, such quantity of pulpwood as may be specified therein.

Special licence to obtain pulpwood, &c., from certain areas.
Cf. No. 49 of
1954, s. 3.

(2) A special licence under this section is subject to the following conditions, namely:—

- (a) That of the total quantity of pulpwood that the company is entitled to obtain in each year by virtue of the licence—
 - (i) not less than forty per cent shall be of the *Eucalyptus species delegatensis* (synonym *gigantea*), *obliqua* and *regnans*; and

- (ii) not more than ninety per cent may be pulpwood obtained from logs less than one hundred and eighty years of age or less than thirty-six inches in diameter;
 - (b) That, after the expiration of a period of twelve years commencing on the date of the commencement of the licence, the company shall obtain, in pursuance of the licence, at least fifty thousand cords of pulpwood in each year, and that the pulpwood to be so obtained shall be obtained from the pulpwood area unless that quantity of pulpwood is not available therefrom by reason of any fire, storm, disease, strike, or other unforeseen circumstances, or unless the Commission, for any other reason, otherwise approves; and
 - (c) That the company shall not obtain pulpwood from the reserve area unless it is authorized, in writing, by the Commission so to do.
- (3) If the Commission is satisfied that the operations of the company pursuant to its licence are being conducted on such a scale that the annual quantity of pulpwood obtained by it from the pulpwood area is likely to amount to not less than seventy-five thousand cords a year, the Commission shall authorize it to obtain pulpwood from the reserve area.
- (4) The provisions of subsections (2) and (3) of this section shall be construed subject to the terms and prescriptions of the working plan.
- (5) Subject to this Act, the company has, during the currency of its licence, the exclusive right to all pulpwood in the pulpwood area and the reserve area.
- (6) Notwithstanding anything in the foregoing provisions of this section, the company shall cease to have any right to obtain pulpwood from the reserve area on the expiration of thirty years after the date of the commencement of the licence unless the company's operations are then being conducted on such a scale that the quantity of pulpwood then being obtained by it pursuant to its licence amounts to not less than—
- (a) seventy-five thousand cords a year from the pulpwood area; and
 - (b) seventy-five thousand cords a year from the reserve area.
- (7) A special licence under this section—
- (a) unless sooner determined in accordance with this Act, continues in force for a period of eighty years after the date of the commencement of the licence;
 - (b) shall be granted subject to—
 - (i) the conditions that are referred to in subsection (2) of this section;

- (ii) the terms and conditions that are specified in the second schedule; and
 - (iii) such other terms and conditions as may be agreed upon between the Commission and the company and as may be specified in, or indorsed on, the licence; and
- (c) without prejudice to any other penalty that may otherwise be imposed on the company, may be revoked in accordance with this section for any contravention by the company of, or failure by the company to comply with, any of the terms and conditions to which the licence is subject or any provisions of the *Forestry Act* 1920 or of this Act that are applicable to the company.

(8) If the company at any time contravenes or fails to comply with any of the terms and conditions to which its licence is subject, or any conditions imposed by the Minister pursuant to subsection (6) of section eleven, or any provisions of the *Forestry Act* 1920 or of this Act that are applicable to the company, the Attorney-General, on the recommendation of the Commission, may apply to a judge for a summons requiring the company to show cause, on a day specified in the summons, why the licence should not be revoked.

(9) If on the hearing of a summons under this section the company fails to prove to the satisfaction of the judge that the contravention or non-compliance was due to inadvertence or to circumstances beyond the control of the company or that there was otherwise reasonable cause therefor and that, in all the circumstances, the contravention or non-compliance should reasonably be excused, the judge may, by order, authorize the Commission to revoke the licence, and thereupon the Commission may revoke it accordingly.

(10) Evidence in support of, or in opposition to, an application under this section may be given by affidavit or, if the judge so directs, may be given orally, or partly by affidavit and partly orally.

(11) Subject to subsection (10) of this section, the procedure on the hearing of an application under this section shall be as the judge may direct.

(12) On the determination of an application under this section, the judge may make such order as to the costs thereof as he may think just.

(13) The Commission shall not grant a special licence to the company under the authority of this section at any time after the thirty-first day of December 1970.

Working
plan.
Ibid., s. 4A.

5—(1) The Commission may prepare a working plan in accordance with the provisions of the *Forestry Act 1920* in relation to the taking of timber from the pulpwood area and the reserve area for the purposes of the industry, notwithstanding that lands that are not State forests are comprised within those areas, or either of them.

(2) The provisions of the *Forestry Act 1920* apply to and in relation to the preparation, approval, and alteration of the working plan in the same manner and to the same extent, in all respects, as if the whole of the lands comprised within the pulpwood area and the reserve area were lands within a State forest, and those provisions shall be construed accordingly.

(3) The working plan shall contain provisions for the settlement of disputes between the company and the Commission with respect to the expenditure required to be incurred by the company pursuant to, or by reason of the operation of, any provision of the working plan, in relation to—

- (a) the construction or maintenance of roads;
- (b) silviculture;
- (c) the prevention or suppression of bush fires; and
- (d) research.

(4) Notwithstanding anything in the *Forestry Act 1920*, the provisions of the working plan relating to—

- (a) the basic principles prescribed therein for the full period of the working plan in respect of—
 - (i) overcutting of permissible annual cuts;
 - (ii) under-demand by an industry for milling timber or pulpwood; and
 - (iii) the quality and kinds of pulpwood available;
- (b) specifications for pulpwood in respect of defects and dimensions;
- (c) the respective percentages of pulpwood required to be obtained by the company during any period from regrowth trees and from trees other than regrowth trees; and
- (d) the settlement of disputes with respect to any matter referred to in subsection (3) of this section,

as respectively set forth in the working plan, shall not be altered except by agreement between the Commission and the company.

Power of
the company
to use
pulpwood in
factories
outside the
pulpwood
area.

6—(1) Subject to this Act, the company may, with the approval in writing of the Commission but not otherwise, convert pulpwood obtained by it from the pulpwood area or the reserve area into wood pulp, paper, or other products of wood at any factory of the company in this State (in this section referred to as “the other factory”) situated elsewhere than within one of those areas but, if and so long as it does so—

- (a) the company shall not install or operate at the other factory any plant or appliance for the conversion of pulpwood into wood pulp that is capable of producing more than forty tons of wood pulp per day (being plant or an appliance that is purchased after the commencement of this Act); and
- (b) the company shall comply with such directions in relation to the taking of pulpwood from the pulpwood area as the Commission may give to it for the purpose of preventing any interference with the development or operation of the industry.

(2) Subject to subsection (3) of this section, if the Commission is not satisfied that the company—

- (a) has established within the pulpwood area or the reserve area a factory for the conversion of pulpwood into wood pulp; or
- (b) is likely to establish such a factory within the pulpwood area or the reserve area,

the Commission may refuse to grant to the company an approval under subsection (1) of this section.

(3) The Commission shall not exercise the power conferred on it by subsection (2) of this section at any time before the expiration of twelve years after the date of the commencement of the licence.

(4) The power conferred on the Commission by subsection (2) of this section is in addition to, and not in derogation of, any other power of the Commission under subsection (1) of this section to grant or refuse an approval under that subsection, and the provisions of the first-mentioned subsection shall be construed accordingly.

(5) Subsection (1) of this section does not apply to or in relation to the use by the company, for the manufacture of hardboard, of such quantity of pulpwood (being pulpwood obtained from the pulpwood area or the reserve area) as the Commission may approve.

(6) A reference in paragraph (a) of subsection (1) of this section to any plant or appliance shall not be construed as including a reference to any plant or appliance installed with the approval of the Commission that is used solely for the conversion of pulpwood into wood pulp required for use in the manufacture of hardboard.

7—(1) Notwithstanding anything in the *Forestry Act* 1920 or in section four of this Act, the Commission may at any time, by notice in writing, require the company or an approved sawmiller, for such period as is specified in the notice—

Power of Commission to direct persons to cut timber and supply it to other persons.
Ibid., s. 5.

(a) to—

- (i) cut, in accordance with the requirements specified in the notice, both pulpwood and milling timber on land within the pulpwood area or the reserve area on which the company is entitled to obtain it by virtue of the company's special licence under this Act, or, as the case may be, the sawmiller is entitled to obtain it by virtue of his licence, permit, or other authority under the *Forestry Act 1920*; and
 - (ii) remove from that land any pulpwood or milling timber cut in pursuance of the notice; and
- (b) on a roadside or at such other place as is specified in the notice, to separate pulpwood so cut from milling timber so cut.

(2) Where, pursuant to a notice under this section—

- (a) an approved sawmiller cuts pulpwood, he shall, subject to this section, sell that pulpwood to the company at a roadside or other place approved by the Commission; or
- (b) the company cuts milling timber, it shall, subject to this section, sell that milling timber at a roadside or other place approved by the Commission to such sawmiller as the Commission may, by notice in writing, specify.

(3) The Commission shall not exercise the power conferred on it by subsection (1) of this section—

- (a) unless it is satisfied that the exercise of that power is necessary in order to prevent the carrying out of the working plan being affected or prejudiced by reason of a failure by the company and an approved sawmiller to reach agreement with respect to the proper co-ordination of logging operations within the pulpwood area or the reserve area, or both those areas; or
- (b) so as to require the company or an approved sawmiller to cut or remove timber from any land other than land on which, at the time of the giving of the notice under that subsection, the company or sawmiller is carrying out, or, in accordance with any working plan or logging plan applicable to its or his operations, is entitled to carry out, operations pursuant to the company's special licence under this Act or, as the case may be, the sawmiller's licence, permit, or other authority under the *Forestry Act 1920*.

(4) Where a notice under subsection (1) of this section is given to the company or to an approved sawmiller, the company or approved sawmiller shall do all such things as may be necessary to ensure that it or he is in a position to obtain from the relevant land, during the period specified in the notice, such quantity of timber, in addition to that obtained by it or him for its or his own use, as it or he may be required, by virtue of the notice, to obtain.

(5) Subject to subsection (6) of this section, if the company or an approved sawmiller fails to comply with any of the provisions of this section or with any requirements of a notice under this section, the company or sawmiller, as the case may be, is guilty of an offence.

Penalty: One hundred pounds.

(6) Notwithstanding any other provision of this section—

- (a) the company is not obliged to sell milling timber to an approved sawmiller pursuant to a notice under this section unless and until the sawmiller has made arrangements, to the satisfaction of the Commission, for payment therefor; and
- (b) an approved sawmiller is not obliged to sell pulpwood to the company pursuant to a notice under this section unless and until the company has made arrangements, to the satisfaction of the Commission, for payment therefor.

(7) If the company or an approved sawmiller fails, for a period of two months or more, to comply with the requirements of a notice under this section, the Commission may itself do all such acts and things as it may consider necessary and practicable to ensure the continuity of supplies of pulpwood and milling timber from the land to which the notice relates.

(8) Nothing in subsection (7) of this section relieves the company or an approved sawmiller from any penalty to which it or he may be liable by reason of its or his failure to comply with a notice under this section.

8—(1) If the company and an approved sawmiller fail to agree as to the price to be charged for any pulpwood or milling timber required pursuant to a notice under section seven to be sold by the company or sawmiller, the Commission shall, on the application of the company or sawmiller, determine the price to be charged therefor, and shall also determine what, in the opinion of the Commission, would be the fair market price for the pulpwood or milling timber (as the case may be) obtained for its or his own use by the company or sawmiller from the land to which the notice relates.

Charges for
pulpwood
and milling
timber
supplied
pursuant to
section seven.
Ibid., s. 6.

(2) The price determined by the Commission pursuant to subsection (1) of this section shall comprise the total of—

- (a) the amount of the costs incurred in felling, snigging, barking, cross-cutting, splitting, and transporting pulpwood or milling timber, together with such amount in respect of the use or hire of any plant or machinery used for the purpose of obtaining the pulpwood or milling timber, and for supervision, camp charges, and other overheads, and also such amount (if any) by way of a toll for the use of any road constructed by the person by whom the pulpwood or milling timber is sold and used for the purposes of the carriage of that pulpwood or milling timber to the point of delivery, as the Commission may approve;
- (b) the royalty payable in respect of that pulpwood or milling timber; and
- (c) such amount as the Commission may approve, being an amount equal to not less than five per cent of the amount specified in paragraph (a) of this subsection.

(3) Subject to subsection (1) of section nine, a determination by the Commission under this section is final and binding on all persons concerned.

(4) In determining, for the purposes of paragraph (a) of subsection (2) of this section, the amount of the toll to be charged for the use of a road, the Commission shall have regard to the costs of construction and maintenance of the road, and the amount of the toll so determined shall be an amount that bears the same proportion to those costs as the quantity of pulpwood or milling timber in respect of which the determination is made bears to the sum of—

- (a) the total quantity of pulpwood and milling timber that, on and after the commencement of this Act, has been taken from the area from which the firstmentioned pulpwood or milling timber was taken; and
- (b) the total quantity of pulpwood and milling timber of commercial value that is estimated by the Commission, as at the date of the determination, to be still available for cutting in that area.

(5) For the purpose of enabling the Commission to make a determination under this section, the Commission may, by notice in writing, require a person concerned in the dispute to produce to the Commission or to an officer of the Commission appointed by the Commission for the purpose all relevant books of account in the possession of that person or to furnish to the Commission or that officer such audited statements and other information as the Commission may require.

(6) If a notice under subsection (5) of this section is given to the company or to any other person, the company or that person shall comply in all respects with the requirements of the notice within such time as the Commission may

allow in that behalf, in default whereof the company or that person, as the case may be, is guilty of an offence against this Act.

Penalty: Fifty pounds.

9—(1) Notwithstanding anything in section eight, if a person (including the company) to whom any pulpwood or milling timber is required to be sold pursuant to a notice under section seven is dissatisfied with the price determined by the Commission, pursuant to subsection (1) of section eight, in respect of the sale thereof and that person satisfies the Commission that he is able, for a period of not less than two years, to obtain both pulpwood and milling timber himself from the area specified in the notice, at prices at least five per cent lower, in each case, than the prices respectively determined by the Commission pursuant to subsection (1) of section eight, the Commission may authorize that person to enter on that area, or such part thereof as the Commission may determine, and obtain therefrom such quantities of pulpwood and milling timber as the Commission may determine.

Authority to obtain pulpwood and milling timber in certain cases. *Ibid.*, s. 7.

(2) An authority under subsection (1) of this section shall be in the form of a licence or permit under the *Forestry Act 1920*, according as the Commission may think most appropriate in the circumstances, and, notwithstanding anything in that Act—

- (a) shall be subject to the observance of such terms and conditions (either in lieu of, or in addition to, the terms and conditions prescribed by or under that Act) as the Commission, in its absolute discretion, may impose; and
- (b) shall continue in force for such period as may be specified therein.

10 If a dispute arises between a sawmiller and the company (otherwise than in a case in which section eight applies) with respect to the amount to be paid by the company to an approved sawmiller for the use of a road constructed by the sawmiller or as to the amount to be paid to the company by an approved sawmiller or by any other person who is authorized under the *Forestry Act 1920* to obtain any forest products from a State forest or timber reserve for the use of a road constructed by the company, the Commission shall determine the amount to be paid on an equitable basis, having regard to the costs of the construction and maintenance of the road and the quantity of milling timber, pulpwood, or other forest products carried, or estimated by the Commission to be likely to be carried, over the road during such period as the Commission may think relevant.

Determination of amounts to be paid by way of tolls. *Ibid.*, s. 7A.

PART III.

RIGHTS AND OBLIGATIONS OF THE COMPANY OTHERWISE THAN IN
RESPECT OF TIMBER.Water
rights.

11—(1) Subject to this section, the company, for the purposes of the industry and so long as the industry is carried on, may, by virtue of this section and without other authority, take without charge from the Mersey River at the prescribed point such quantity of water (not exceeding twenty million gallons a day) as the company requires for the purposes of the industry, to the extent that it is available at that point by the natural flow of that River, but so that—

- (a) the supply of water required by riparian owners for domestic purposes and the watering of stock is not thereby diminished; and
- (b) the rights of the holders of licences for the time being in force under the *Water Act 1957* to take from the Mersey River and its tributaries such quantities of water as are authorized by their respective licences are not thereby impaired.

(2) Notwithstanding anything in subsection (1) of this section, if at any time—

- (a) the quantity of water that is available for abstraction by the company from the Mersey River at the prescribed point is such that the company is unable to take the quantity of water that it requires for the purposes of the industry; and
- (b) water is available to be released from any dam or other work for the storage of water constructed (otherwise than by the company) under the authority of any Act to augment the natural flow of water in that River,

the person having the control of that dam or work shall, at the request of the company, to the extent that water is available therein, release from the dam or work such quantity of water as is necessary to enable the company to take for the purposes of the industry such quantity of water (not exceeding twenty million gallons a day) as the company requires for those purposes.

(3) Where water is released from a dam or other work pursuant to subsection (2) of this section, to the extent that the quantity of water taken by the company from the Mersey River exceeds—

- (a) the natural flow of that River at the prescribed point immediately before the release of water from the dam or other work; or
- (b) ten million gallons a day,

whichever is the greater quantity, the company shall take the excess upon and subject to such terms and conditions (including terms as to payment) as the Minister may, either generally or in a particular case, determine.

(4) Notwithstanding any other law or rule of law to the contrary, during the continuance of this Act—

- (a) the council of the municipality of Kentish shall not, in pursuance of any authority conferred on it by or under any enactment, take from the Mersey River and its tributaries for the purposes of a public water supply for the inhabitants of that municipality or any part thereof any quantity of water in excess of two million gallons a day, except with the approval of the Rivers and Water Supply Commission and with the consent in writing of the company;
- (b) the rights conferred on the councils of the municipalities of Devonport and Latrobe, by or under any enactment, to take water from that River or its tributaries for the purposes of a public water supply for the inhabitants of those municipalities or of any part thereof are subject to the rights conferred on the company by the foregoing provisions of this section, and shall accordingly be exercised in such a manner that the rights so conferred on the company are not impaired; and
- (c) the Rivers and Water Supply Commission shall, unless the company otherwise agrees in writing, so exercise its powers under the *Water Act 1957* (whether by the issue or modification of licences or otherwise) as to prevent the taking from that River and its tributaries, for non-domestic purposes, by persons other than one of the councils mentioned in paragraphs (a) and (b) of this subsection of such a quantity of water as, having regard to the total quantity of water required by those councils, would, at any time, reduce the quantity of water available to the company for the purposes of the industry below ten million gallons a day.

(5) For the purposes of subsection (1) of this section, the company may, subject to subsection (6) of this section, construct, lay down, and maintain upon, over, through, or under any Crown land or private land (including any road or street, whether belonging to or vested in the Crown or not) all such—

- (a) dams, weirs, walls, reservoirs, pumping stations, and other like works; and
- (b) channels, flumes, drains, pipes, conduits, and other like works,

as the company thinks necessary.

(6) The company shall not construct any dam, weir, reservoir, or other works for the storage of water or for controlling or affecting the flow or water level of any river or

stream except with the approval of the Minister and upon and subject to such conditions (if any) as the Minister may impose.

(7) Where any channel, flume, drain, pipe, conduit, or other like work is constructed or laid down upon, over, through, or under any Crown land or any road or street (whether belonging to or vested in the Crown or not) it shall, if the Minister so directs, be situated at such a depth below the surface of that land, road, or street as the Minister may determine.

(8) The company shall not exercise any of the powers conferred by this section in relation to—

- (a) any land (including a road or street) belonging to or vested in a local authority, without the consent of, or otherwise than in accordance with such reasonable conditions as may be imposed by, the local authority;
- (b) any Crown land (not being a State highway or subsidiary road or land reserved or set apart for a public road or street), except under the authority of a lease or licence granted to the company pursuant to the provisions of the *Crown Lands Act 1935*; or
- (c) any State highway or subsidiary road, or any Crown land that is reserved or set apart for a public road or street, without the consent of, and subject to such conditions as may be imposed by, the Minister having the administration of the *Roads and Jetties Act 1935*.

(9) The company shall—

- (a) if so directed by the Minister, install, at the prescribed point or at such place in the vicinity thereof as the Rivers and Water Supply Commission may approve, a water meter of a type approved by that Commission for the purpose of measuring the quantity of water taken from time to time by the company from the Mersey River for the purposes of the industry, and maintain that meter in a good and efficient condition so as to register accurately the quantity of water so taken from time to time;
- (b) if so directed by the Minister, keep a log or record book of a kind approved by that Commission and cause to be entered therein a complete and accurate record of the quantity of water taken in each day by the company from that River for the purposes of the industry; and
- (c) permit any member of that Commission or any officer thereof authorized by that Commission in writing so to do to enter, at all reasonable times, upon the place where a meter is installed pursuant to a direction under this subsection and to inspect and examine it and to examine and make copies of, or take extracts from, any

entries made in the log or record book referred to in paragraph (b) of this subsection.

(10) The Minister shall not give to the company any directions under paragraph (a) or paragraph (b) of subsection (9) of this section unless he is satisfied that the quantity of water being taken by the company from the Mersey River for the purposes of the industry exceeds ten million gallons a day.

(11) In this section—

“non-domestic purposes” means purposes other than domestic purposes and the watering of stock;

“prescribed point” means a site on or near to the right bank of the Mersey River situated approximately ten chains upstream from the western boundary of Lot 358 of 500 acres purchased by *John James*, being the lot so numbered that is delineated on County Chart Devon 2C in the office of the Secretary for Lands.

12—(1) If and so long as any effluent results from the use of any process in connection with the carrying on of the industry or of any part thereof, the company shall—

Disposal of
effluent.
Ibid., s. 6.

(a) by means of an effluent drain or of effluent drains to be constructed by the company for that purpose, discharge all effluent so resulting into the sea below ordinary low-water mark at such point as the Minister may approve; and

(b) maintain that effluent drain, or those effluent drains, as the case may be, in a good and sufficient state of repair so as efficiently to dispose of all such effluent.

(2) An effluent drain that is constructed under the authority of subsection (1) of this section—

(a) shall—

(i) be constructed of such materials, and according to such design or specifications, as the Minister may approve;

(ii) be located so that its outlet is below ordinary low-water mark at the point approved by the Minister pursuant to paragraph (a) of subsection (1) of this section; and

(iii) where it crosses any Crown land or any road or street (whether belonging to or vested in the Crown or not) be situated at such a depth below the surface of the land, road, or street as the Minister may approve or direct; and

(b) may be constructed upon, over, through, or under any Crown land or any private land.

(3) An authorized officer may, at any time, enter upon any land upon, over, through, or under which an effluent drain is constructed under the authority of this section and may examine and take samples of any effluent that is being passed into, or disposed of by means of, that drain.

(4) For the purposes of the execution by the company of any works authorized by this section to be executed by it, the company shall be deemed to be a service authority within the meaning of the *Roads and Jetties Act 1935* and sections twelve, twelve A, and thirteen of that Act apply to and in relation to the company accordingly.

(5) In this section, "authorized officer" means—

- (a) the Director-General of Health Services; or
- (b) any officer of the Department of Health Services who is authorized in writing by the Director-General of Health Services, either generally or in a particular case, to exercise the powers conferred on an authorized officer by subsection (3) of this section.

Easements.
Ibid., s. 7.

13—(1) The Minister having the administration of the *Mining Act 1929* may, under and in accordance with the provisions of that Act and subject to such limitations, restrictions, and conditions as that Minister may determine, grant to the company such easement licences as, in the opinion of that Minister, are reasonably required by the company for the purposes of the industry.

(2) For the purposes of this section, Part VI and section seventy-six of the *Mining Act 1929* apply to and in respect of the company and any lands used or occupied by it in connection with the carrying on of the industry as if those lands were lands occupied by the company by virtue of a lease under that Act.

(3) Notwithstanding anything in the *Mining Act 1929*, any easement licence that is granted to the company pursuant to this section may be granted so as to continue in force so long as the special licence granted to the company under section four continues in force, and the provisions of that Act shall be construed accordingly.

Roads.

14—(1) With the consent of the Minister, the company may, upon and subject to such terms and conditions as the Minister may approve or determine, make, construct, improve, repair, and maintain such roads, along such routes, as the company may think necessary for the purpose of carrying on the industry in the most efficient manner or for the purpose of transporting pulpwood, milling timber, or firewood from any forest from which the company obtains it pursuant to a special licence under this Act to any public road or to any mill or factory used by the company for the purposes of the industry.

(2) A road that is authorized by this section to be constructed by the company may be constructed—

- (a) over Crown land; or
- (b) over private land,

or partly over Crown land and partly over private land.

(3) When required by the Minister so to do the company shall deposit with the Minister, within three months after being so required, copies of all survey plans, designs, and

specifications prepared by or on behalf of the company in relation to any road constructed or proposed to be constructed by the company under the authority of this section.

(4) For the purposes of this section, the Governor may, notwithstanding anything in the *Crown Lands Act 1935*, sell to the company, by private contract, any Crown land that, in the opinion of the Governor, is reasonably required by the company for the purpose of constructing any road that the company is, by this section, authorized to construct.

15—(1) In the construction, execution, laying down, and maintenance of any works to which this section relates, the company—

- (a) shall not unnecessarily interfere with traffic on any road or street; and
- (b) shall, after the completion of the construction, execution, or laying down of the works, or of any works in connection with the maintenance thereof, fill up, reinstate, and make good the surface of the ground disturbed thereby and replace, reinstate, and make good all drains or other things opened or affected thereby to the satisfaction of the Minister or of the local authority having the control of those drains or things.

General provisions relating to works constructed by the company.
Ibid., s. 10.

(2) In this section, “works to which this section relates” means—

- (a) any dam, weir, wall, reservoir, pumping station, or other like work, and any channel, flume, drain, pipe, conduit, or other like work, constructed or laid down by the company under the authority of section eleven; and
- (b) any effluent drain constructed by the company under the authority of section twelve.

16—(1) In the exercise of the powers conferred on it by this Act, the company shall do all such acts and things as may reasonably be necessary so to regulate the artificial flow of the Mersey River below any dam or other like work constructed or executed by the company under the authority of this Act as to prevent the erosion of the bed or banks of that River, damage to bridges or culverts, and flooding of riparian tenements.

Duty of company to prevent damage, &c.
Ibid., s. 11.

(2) If by reason of any work constructed or executed, or any other act, matter, or thing done, by the company—

- (a) erosion of the bed or banks of the Mersey River;
- (b) damage to a bridge or culvert; or
- (c) flooding of a riparian tenement,

occurs, the company shall execute such works and do all such other acts and things as may be necessary for the purpose of restoring or repairing (so far as it is possible so to do) the bed or banks of that River and preventing further erosion thereof, or for the purpose of repairing the damage to the bridge or culvert and preventing further damage thereto,

or for the purpose of preventing further flooding of the riparian tenement, as the case may be, in default whereof the company is liable to make compensation as provided in section seventeen.

(3) For the purposes of this section, the company may, at all reasonable times, enter upon and pass over or across any Crown land or private land with men, vehicles, horses, machinery, and equipment and execute such works and do all such other acts and things, as may be necessary to enable the company to perform the duty imposed on it by subsection (2) of this section or to prevent the occurrence of any of the things that are mentioned in paragraphs (a) to (c) of that subsection.

(4) Before exercising the powers conferred on it by subsection (3) of this section, the company shall—

- (a) in the case of private land, give reasonable notice in writing of its intention so to do to the occupier of the land; or
- (b) in the case of Crown land, give the like notice to the Minister.

(5) In the exercise of its powers and the performance of its duties under this section, the company shall do as little damage as possible.

Compensa-
tion.
Ibid., s. 12.

17—(1) The company shall make compensation to any person having a lawful interest in any land that is injuriously affected by any works constructed or executed, or any other act, matter, or thing done, by the company in pursuance of this Act, for any damage to that land arising by reason of the execution of that work or the doing of that act, matter, or thing.

(2) A person who claims compensation under this section shall prefer his claim by notice in writing specifying—

- (a) the name and place of abode of the claimant;
- (b) the particular act occasioning the damage for which compensation is claimed;
- (c) the nature and amount of the damage; and
- (d) the nature of the title or interest of the claimant in or to the land in respect of which the claim is made.

(3) If the company, by notice served upon any person, requires him to make a claim for compensation for any damage occasioned by the exercise, before the service thereof, of any of the powers conferred on the company by this Act, that person is not entitled to compensation for any damage sustained by reason of the exercise of any such powers before the service of the notice unless he prefers his claim, in accordance with this section, within six months after the service on him of the notice.

(4) If the claimant and the company do not agree upon the amount of the compensation, the claim for compensation shall be determined by arbitration as provided in the *Lands Clauses Act 1857* as if it were a claim made under that Act

in respect of a disputed amount of compensation, and that Act, with the necessary modifications and adaptations, applies accordingly to and in respect of the determination of the claim.

PART IV.

MISCELLANEOUS.

18—(1) For the purpose of enabling the company to construct—

Power of company to acquire land for certain purposes.

(a) any road; or

(b) any dam, weir, reservoir, or other works for the storage of water or for controlling or affecting the flow or water level of any river or stream,

which the company is authorized by this Act to construct, but not for any other purpose, the company may, in accordance with the provisions of the *Lands Clauses Act 1857*, purchase or take lands (other than Crown lands), and that Act is incorporated with this Act accordingly.

(2) For the purposes of the incorporation of the *Lands Clauses Act 1857* with this Act—

(a) the company shall be deemed to be the promoters; and

(b) this Act shall be deemed to be the special Act, within the meaning of that Act.

19—(1) A notice that is authorized or required to be given or served under this Act by the company shall be signed by the secretary of the company or by some other officer of the company authorized by the company in writing.

Authentication and service of notices.
Ibid., s. 13.

(2) A notice that is authorized or required under this Act to be served on the company may be served personally or by registered post or certified mail on the secretary of the company or on the company's agent or other proper officer in this State.

(3) A notice that is authorized or required under this Act to be served on or given to any person other than the company may be so served or given—

(a) by delivering it to him personally; or

(b) by sending it by registered post or certified mail addressed to him at his usual or last-known place of abode or business.

(4) References in this section to the service of a notice by certified mail shall be construed as references to the transmission of that notice by post as certified mail as provided by the postal regulations for the time being in force.

20 If the company or any other body corporate is convicted of an offence against this Act, by reason of any contravention by the company or that other body corporate of, or any failure by it to comply with, any of the provisions of this Act, every director or member of the governing body of the company or of that body who authorized, directed, or consented to the contravention or failure shall be deemed to be guilty of that offence.

Offences.
Cf. No. 52 of 1960, s. 20 (3).

Forfeiture
of rights.
Cf. No. 70 of
1959, s. 16.

21—(1) If at any time during the continuance of this Act—

- (a) the company enters into liquidation (other than a voluntary liquidation for the purpose of reconstruction and the assignment of rights, concessions, and obligations under this Act);
or
- (b) the special licence granted to the company under section four is surrendered by it or is revoked in pursuance of the provisions of this Act,

the company's rights and concessions under this Act shall be deemed to be forfeited.

(2) If the company contravenes or fails to comply with any of the provisions of this Act that are applicable to it, the Attorney-General may apply to a judge for a summons requiring the company to show cause, on a day specified in the summons, why the rights and concessions of the company under this Act, should not be forfeited.

(3) If on the hearing of a summons under this section the company fails to prove to the satisfaction of the judge that the contravention, failure, or delay was due to inadvertence or circumstances beyond the control of the company or that there was otherwise a reasonable cause therefor and that, in all the circumstances, it should reasonably be excused, the judge may, by order, declare the rights and concessions of the company under this Act to be forfeited.

(4) Evidence in support of, or in opposition to, an application under this section may be given by affidavit or, if the judge so directs, may be given orally, or partly by affidavit and partly orally.

(5) Subject to subsection (4) of this section, the procedure on the hearing of an application under this section shall be as the judge may direct.

(6) On the determination of an application under this section the judge may make such order as to the costs thereof as he may think just.

(7) If by virtue of the operation of this section or of any order under this section the rights and concessions of the company under this Act are or become forfeited, the Governor may, by proclamation, repeal this Act.

Assignment
of rights.
Ibid., s. 16.

22—(1) The company may assign all or any of its rights, concessions, and obligations under this Act to any subsidiary of the company.

(2) The company may, at any time, procure the incorporation of a subsidiary for the purpose of assigning to that subsidiary all or any of the rights, concessions, and obligations of the company under this Act.

(3) Upon an assignment by the company to a subsidiary pursuant to subsection (1) of this section, the subsidiary is, by virtue of the assignment and this Act, subject to all the obligations and conditions imposed upon the company by this Act so far as they remain in force and are capable of taking effect, and the company remains responsible to the Minister for the performance of all its obligations under this Act as if no subsidiary had been formed and no assignment made.

(4) The company may assign all of its rights, concessions, and obligations under the special licence granted to it under section four to any subsidiary of the company.

(5) The company may, with the consent in writing of the Minister but not otherwise, assign to some person other than a subsidiary of the company—

- (a) all or any of its rights, concessions, and obligations under this Act; or
- (b) all its rights, concessions, and obligations under the special licence granted to it under section four.

(6) Upon an assignment by the company pursuant to subsection (5) of this section, the person to whom the rights, concessions, and obligations are assigned is subject to all the obligations and conditions imposed upon the company by this Act, to the exclusion of the company.

(7) The consent of the Minister to an assignment under subsection (5) of this section shall not be unreasonably withheld, but the Minister may refuse to grant his consent to any such assignment if the company fails to furnish proof to his satisfaction with respect to—

- (a) the fitness and suitability of the proposed assignee;
- (b) the solvency of the proposed assignee;
- (c) the capacity of the proposed assignee to maintain production at a satisfactory level;
- (d) the question whether the proposed assignee intends to develop the industry, in good faith, in substantial conformity with the working plan; and
- (e) such other matters as, in the public interest, the Minister thinks necessary.

23—(1) This Act shall expire at the expiration of the period of eighty years commencing on the appointed day.

*Expiry
of Act.
Ibid., s. 17.*

(2) In this section, “appointed day” means such day as the Governor may, by proclamation, declare to be the appointed day for the purposes of this section.

THE FIRST SCHEDULE.

(Section 2.)

Part I—The pulpwood area.

Commencing at a point on the high water mark on Bass Strait at the mouth of the River Forth and bounded by that river to its junction with the Wilmot River by that river to its intersection with the road from Forth to Cradle Mountain by that road in a general south-westerly direction passing through Lower Wilmot and Wilmot to its junction with the road to Moina by an easterly line to the Forth River aforesaid again by that river to its junction with the Dove River by that river to Longitude 146° 05' east by a southerly line along that meridian to the boundary of the Cradle Mountain Lake St. Clair National Park by that boundary in a general south-easterly direction to the boundary of approximately 112,000 acres of State Forest at the junction of Kia Ora Creek with the Mersey River by that boundary in a general north-easterly direction in ten bearings to the trigonometrical station on Western Bluff by a south-easterly line to the boundary of approximately 43,000 acres of State Forest on the northern shore of Lake Balmoral by that boundary in a general south-easterly direction to the Lake Highway by that highway in a general north-westerly direction after crossing same to the boundary of approximately 2,340 acres of State Forest by that boundary in a south-easterly and north-easterly direction to its intersection with Breton Rivulet by that rivulet to the south boundary of approximately 15,600 acres of State Forest by a south-easterly line to Latitude 41° 58' south Longitude 147° 05' east by an easterly line along that parallel of Latitude to Longitude 147° 07' east by a northerly line along that meridian to the high water mark on the River Tamar thence by that high water mark along that River and along Bass Strait aforesaid to the point of commencement.

Part II—The reserve area.

Commencing at a point on the high water mark on the River Tamar at Longitude 147° 07' east and bounded by a southerly line along that meridian to Latitude 41° 45' south by an easterly line along that parallel of Latitude to its intersection with the highway from Conara to St. Marys by that highway to Longitude 148° 00' east by a northerly line along that meridian to Latitude 41° 05' south by a westerly line along that parallel of Latitude to Longitude 147° 54' east by a northerly line along that meridian to the high water mark on Bass Strait by that high water mark along that strait to the Tamar River aforesaid thence by the high water mark along that river to the point of commencement, but excluding therefrom the whole of the catchment of the George River and its tributaries.

THE SECOND SCHEDULE.

(Section 4.)

Terms and conditions to which the special licence under section 4 is subject.

1.—(1) Where, in the opinion of the Commission, any part of the pulpwood area or of the reserve area is required for use—

- (a) for any public purpose under the *Forestry Act 1920*; or
- (b) except in the case of a part of either of those areas that is a State forest, for any public purpose under any other Act,

the Commission may, by notice in the *Gazette*, exclude that part of that area from the operation of the licence, either indefinitely or for a specified period, and, while a notice under this paragraph is in force, the company has no rights over the part of the pulpwood area or of the reserve area, as the case may be, to which the notice relates.

(2) Where, in the opinion of the Commission, the softwood plantations established (whether before or after the commencement of this Act)

within the pulpwood area or the reserve area, or both those areas, exceed twenty-five thousand acres in extent, the Commission shall, by notice in the *Gazette*, define the plantations, or parts thereof, not exceeding, in the whole, twenty-five thousand acres in extent, from which the company may obtain pulpwood of any exotic softwood species.

(3) Notwithstanding any other provision of this Act, on and after the publication in the *Gazette* of the notice referred to in sub-paragraph (2) of this paragraph the company is not entitled, by virtue of the licence, to obtain pulpwood of any exotic softwood species from any plantation other than a plantation, or a part of a plantation, that is defined in that notice.

(4) In this paragraph, "softwood plantation" means a plantation established by the Commission pursuant to the *Forestry Act* 1920 for the purpose of growing timber of any exotic softwood species.

2. All operations carried out by the company shall be carried out in conformity with the working plan.

3. The company shall, on its own initiative, take prompt action to suppress any fire occurring within, or threatening, any area on which the company is directly responsible for carrying out any logging operations.

4. The company shall, at all times, comply with such of the provisions of the *Rural Fires Act* 1950 as are applicable to it.

5.—(1) The company, before the expiration of two years after the date of the commencement of the licence, shall expend, to the satisfaction of the Commission, not less than £300,000 in or in connection with the establishment of the industry.

(2) Any moneys expended by the company before the date of the commencement of the licence (whether expended before or after the commencement of this Act) for any purpose to which sub-paragraph (1) of this paragraph relates shall be deemed to be moneys expended by the company for the purposes of, and in compliance with, the provisions of that sub-paragraph.

6.—(1) The company shall submit to the Commission for its approval reasonable specifications of any logging roads proposed to be constructed by the company within the pulpwood area or the reserve area.

(2) The company shall not construct any logging road within the pulpwood area or the reserve area unless the specifications thereof have been approved by the Commission.

(3) For the purposes of sub-paragraph (1) of this paragraph, specifications shall be deemed to be reasonable specifications, notwithstanding that they may be sufficient only for the immediate purposes of the proposed logging operations to which they relate, if they are so prepared as to provide for the later development of the road, if required.

CONSTITUTION.

No. 49 of 1961.

AN ACT to amend the *Constitution Act* 1934.

[15 December 1961.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—