

Forests (Wood Pulp Agreement) Bill

EXPLANATORY MEMORANDUM

Preamble

The preamble explains that an Agreement has been entered into by the Minister for Conservation and Land Management and AMCOR Ltd and that this agreement will have no force until ratified by the Act.

- Clause 1 sets out the purpose of the Act, which is to ratify the Agreement for the supply of pulpwood.
- Clause 2 provides for commencement on the day on which Royal Assent is received.
- Clause 3 defines the term Agreement as being the agreement referred to in the Preamble and which appears as a Schedule.
- Clause 4 provides that the Act binds the Crown.
- Clause 5 ratifies the Agreement and empowers the Secretary to the Department of Natural Resources and Environment to carry it out.
- Clause 6 permits licence fees under the **Forests Act 1958** to be waived in accordance with the Agreement.
- Clause 7 requires the Minister to report to Parliament on amendment or termination of the Agreement.
- Clause 8 repeals the **Forests (Wood Pulp Agreement) Act 1961**.

SCHEDULE

AMCOR AGREEMENT

PART I - PRELIMINARY

- Clause 1 defines the terms used in the Agreement.
- Clause 2 provides that references to any Act shall include references to subordinate legislation and include amendments to the Act.
- Clause 3 provides that the Agreement shall not have any force until ratified by Parliament.

- Clause 4 provides that the commencement date of the Agreement is to be 1 July 1996, at which time the provisions of the preceding Agreement shall cease to have effect, without affecting the enforcement of any prior right or obligation.
- Clause 5 permits the company to exercise its rights under the Agreement through a subsidiary company, subject to the prior written agreement of the Minister.
- Clause 6 recognises that AMCOR is engaged in a competitive business and undertakes that the Minister and Secretary will recognise this in exercising discretions under the Act or the **Forests Act 1958**.

PART II - OPERATION OF INDUSTRY

DIVISION A - DURATION OF AGREEMENT

- Clause 7 provides for the Agreement to remain in force until expiry or determination.
- Clause 8 establishes that enforcement of rights or obligations under the Agreement will not be affected by the expiry or determination of the Agreement.

DIVISION B -TIMBER RIGHTS

- Clause 9 establishes that the **Forests Act 1958** applies to the operations of the Company except where inconsistent with the Agreement.
- Clause 10 provides that the rights and privileges of other persons under the **Forests Act 1958** or other Acts are not limited unless expressly provided in this Act or Agreement.
- Clause 11 affirms the right of the Secretary to meet the reasonable requirements of the public to obtain forest produce, notwithstanding the Agreement and makes the Secretary the sole judge of what constitutes reasonable requirements.
- Clause 12 obliges the Secretary to carry out a review of pulpwood in the area covered by the Agreement at least once in every five years and to advise the Company of the results of the review.
- Clause 13 sets out the requirement for the Secretary and the Company jointly to prepare Plans of Utilization each year for the forthcoming year, with provisional plans for the two subsequent years. The clause covers the matters to be dealt with in the plan, the need for pulpwood to be made available at economic costs and the manner of deciding how extraction will be carried out.
- Clause 14 confers the right on the Company to obtain pulpwood in accordance with the Plan of Utilization and specifies the annual minimum volume to be supplied.

The clause also establishes mechanisms for varying in any year the volume to be supplied and the area from which it is to be supplied. The clause also provides a mechanism for deciding whether the pulpwood shall be felled and extracted by the Company or the Department and specifies the quality of pulpwood to be supplied .

- Clause 15 sets out a mechanism for investigation and review of the Agreement should there be development proposed for the industry.
- Clause 16 requires the Company to take delivery of not less than eighty-five per cent of the minimum volume of pulpwood specified in each year subject to the Plan of Utilization or to pay royalty as if it had taken delivery of that amount. This requirement may be modified in the event of damage to timber in the harvest area under the Agreement or, following negotiation between the Company and the Secretary, if the economics of the industry are such that the requirement would cause hardship to the Company.
- Clause 17 provides the manner in which the licence fee payable by the Company shall be set and the manner in which it may be paid.
- Clause 18 provides for the issuing of accounts for royalty payments and the manner of payment.
- Clause 19 sets out the classes of timber on which royalty is payable and the royalty for the period 1 July 1995 to 30 June 1996.
- Clause 20 sets out the manner in which royalty is to be calculated during the period of the Agreement and provides for arbitration should the parties be unable to reach agreement on the rate.
- Clause 21 requires the Secretary to take all reasonable steps to grant appropriate licences under the **Forests Act 1958** to employees and contractors of the Company.
- Clause 22 requires the Company to obtain appropriate authorisation for roading and the Secretary to make available alternative wood sources should the roading to be carried out by the Department under a Plan of Utilization not be completed.
- Clause 23 sets out the method for calculating the quantity of pulpwood obtained in any year.
- Clause 24 requires the Company to keep records of pulpwood obtained, to provide monthly returns to the Secretary and to provide further information as required by the Secretary. The Secretary is required to preserve the confidentiality of information obtained.

Clause 25 requires the Company to provide the Secretary with the names of persons directing the obtaining of pulpwood who will be deemed to hold appropriate licences under the **Forests Act 1958**.

Clause 26 provides for the parties to work towards the provision of a proportion of the annual allocation in the form of chips rather than roundwood.

DIVISION C - OTHER RIGHTS AND POWERS

Clause 27 requires the Minister and the Secretary as appropriate to facilitate the granting of easements and other rights in or over private property to enable the Company to carry on the industry where this action can be taken under the **Forests Act 1958** or **Conservation Forests and Lands Act 1987**.

Clause 28 empowers any authority having management responsibility for any road (including culverts pipes tunnels flumes channels or drains) to consent to works for the conveying of water or process water to or from land where the Company carries on the industry.

Clause 29 provides for the grant of leases and licences to the Company under the **Water Act 1989** and in particular provides that the Company shall be granted a bulk entitlement sufficient to meet its requirements to carry on the industry at Maryvale for the term of the Agreement. The Company is also given the right to discharge process water subject to the provisions of any Act in force.

Clause 30 provides that subject to approval by the Minister administering the **Land Act 1958** the Company shall be entitled to licences of Crown land on the banks of any stream where works are necessary for the discharge of process water.

Clause 31 provides for the Governor in Council to approve the compulsory acquisition of land on the recommendation of the Minister administering the **Land Act 1958**.

DIVISION D - SUSPENSION OF OBLIGATIONS AND CONDITIONS

Clause 32 deals with damage to or destruction of forests in the area covered by the Agreement or identified in a Plan of Utilization. If as the result of such an event it is not practicable to provide pulpwood at an economic cost, obligations on both sides are suspended, with any dispute being determined by arbitration.

Clause 33 provides that if the Company's facilities are damaged or destroyed to an extent preventing production in an economic manner, or if production in an economic manner is rendered impossible as a result of force majeure, the

Company shall not be liable for no-fulfilment of its obligations so long as it is using best endeavours to rectify the damage or restore production.

Clause 34 provides for the Secretary to grant a reasonable extension of time for the fulfilment of any obligations as a result of delay caused by war strike or lockout..

Clause 35 empowers the Secretary and the Company, subject to agreement by the Minister, to vary matters of detail in the Agreement to facilitate the carrying on of the industry.

DIVISION E - DETERMINATION OF COMPANY'S RIGHTS

Clause 36 provides for determination of the Agreement by the Minister if the Company enters into liquidation or is in breach of the Agreement and the State will be materially prejudiced by the breach. The clause provides procedures for dispute resolution in the event of breach.

DIVISION F - SUPPLEMENTAL

Clause 37 provides for arbitration of disputes under the Agreement.

