

Forests (Wood Pulp Agreement) Act 1996

Act No. 16/1996

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Victoria

No. 16 of 1996

Forests (Wood Pulp Agreement) Act 1996[†]

[Assented to 2 July 1996]

Preamble

An Agreement with respect to the supply of pulp wood for the purposes of manufacturing wood pulp was entered into on 24 May 1996 between the Honourable Marie Tehan, Minister for Conservation and Land Management for and on behalf of the State of Victoria and AMCOR Limited A.C.N. 000 017 372.

The Agreement provides that it is of no force or effect until ratified and otherwise given effect by Act.

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It is expedient to ratify the Agreement.

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to ratify an Agreement between the Minister administering the **Forests Act 1958** and AMCOR Limited with respect to the supply of pulpwood for the manufacture of wood pulp and for other purposes.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Definition

In this Act, "**Agreement**" means the agreement a copy of which is set out in the Schedule.

4. Act to bind the Crown

This Act binds the Crown.

5. Ratification of Agreement

- (1) The Agreement is ratified and takes effect as if its provisions had been expressly enacted in this Act.
- (2) The Secretary to the Department of Natural Resources and Environment is empowered to carry out the Agreement.

6. Waiver of licence fees

A licence fee may be waived in whole or in part in accordance with the Agreement despite anything to the contrary in the **Forests Act 1958** or regulations under that Act.

7. *Amendment or termination of Agreement*

If the Agreement is amended or terminated in accordance with its provisions, the Minister must cause a report giving details of the amendment or termination to be laid before each House of the Parliament before the expiration of the 14th sitting day of that House after the Agreement is amended or terminated.

8. *Repeal*

The **Forests (Wood Pulp Agreement) Act 1961** is **repealed**.

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SCHEDULE

AMCOR AGREEMENT

THIS AGREEMENT is made the 24th day of May One thousand nine hundred and ninety-six between the Honourable Marie Therese Tehan as Minister for Conservation and Land Management for and on behalf of the State of Victoria administering the Forests Act 1958 (the "Minister") of the first part and **AMCOR LIMITED** (ACN 000 017 372) (the "Company") a company incorporated in the State of New South Wales whose head office is situate at Southgate, South Melbourne in the State of Victoria of the second part—

RECITALS

WHEREAS:

- I. On the twenty-eighth day of March One thousand nine hundred and sixty-one the Honourable Alexander John Fraser in his capacity as the Minister for Forests and Australian Paper Manufacturers Limited, as the Company was formerly called, entered into an agreement (hereinafter called the "original agreement") which was ratified, validated and approved by an Act of Parliament of the State of Victoria known as the Forests (Wood Pulp Agreement) Act 1961.
 - II. The original agreement has been amended by other agreements made between Ministers of the Crown and the Company which were ratified validated and approved by the Parliament of the State of Victoria by the Forests (Wood Pulp Agreement) Act 1966, the Forests (Wood Pulp Agreements) Act 1974 and the Forests (Wood Pulp Agreement) Act 1984.
 - III. The Minister and the Company desire to consolidate into one agreement the original agreement as previously amended and further amendments to the original agreement as previously amended agreed by the Minister and the Company.
 - IV. The Company has been engaged in large scale operations in connection with the manufacture of wood pulp and has established a large paper making industry and the ancillary activities of chemical manufacture and forestry in the State of Victoria.
 - V. The Company is a major contributor to the Australian economy and the national timber industry has benefited significantly from value adding and other initiatives of the Company.
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- VI. Having regard to the matters hereinbefore recited the parties hereto desire to enter into the following agreement so that upon its ratification by the Parliament of the State of Victoria the Company and the State of Victoria shall become bound by the provisions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:-

PART I - PRELIMINARY

1. In this Agreement unless inconsistent with the context or subject matter -
- "the Act" means the Act of the Parliament of the State of Victoria by which this Agreement is ratified.
- "the Agreement" includes this Agreement as from time to time amended.
- "any Act" means any Act of the Parliament of the State of Victoria.
- "authorised officer" has the same meaning as in the Conservation, Forests and Lands Act.
- "Company" means AMCOR Limited (ACN 000 017 372) and if in accordance with clause 5 of this Agreement a subsidiary company is incorporated or the rights of the Company are assigned to any company includes that subsidiary or assignee company.
- "Commercial Arbitration Act" means the Commercial Arbitration Act 1984 of the State of Victoria as amended from time to time.
- "Conservation Forests and Lands Act" means the Conservation Forests and Lands Act 1987 of the State of Victoria as amended from time to time.
- "date of expiration" means the thirtieth day of June in the year Two thousand and thirty.
- "Department" means the Department of Natural Resources and Environment and any successor department.
- "Forests Act" means the Forests Act 1958 of the State of Victoria as amended from time to time.
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"Forest Area" means State forest existing from time to time within the area surrounded by a green verge on the map annexed hereto or if that area is varied in accordance with clause 15 hereof that area as so varied.

"forest of regrowth" means any forest in which the majority of the trees are less than sixty years of age.

"forest produce" has the same meaning as in the Forests Act.

"the industry" means

- (a) the manufacture by the Company in the State of Victoria of wood pulp from pulpwood;
- (b) investigations preliminary to and in connection with such manufacture and the supply and preparation of materials therefor; and
- (c) the carrying on of processes incidental to such manufacture.

"Land Act" means the Land Act 1958 of the State of Victoria as amended from time to time.

"mill waste" means edgings and other waste timber cut from logs in the course of sawmilling.

"minimum annual supply of pulpwood" means the annual quantities of pulpwood of various types which the Secretary is bound to make available or the Department is bound to deliver from time to time in accordance with clause 14 hereof.

"Minister" means the responsible Minister of the Crown for the time being administering the Forests Act.

"month" means calendar month.

"mountain forest" means any eucalypt forest in which the predominating species is *Eucalyptus regnans* or *Eucalyptus delegatensis* or both of them.

"original agreement" means the agreement defined in the Forests (Wood Pulp Agreement) Act 1961 of the State of Victoria as amended from time to time.

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"Plan of Utilization" means any plan of utilization prepared in accordance with clause 13 as modified from time to time in accordance with this Agreement.

"pulpwood" means sound wood free from bark rot carroty heart and all other defects that make wood unsuitable for use in making wood pulp and obtained from any species of the genus *Eucalyptus* from which the Company is able to make wood pulp of merchantable quality.

"pulpwood timber" means timber in the log or sawn or split that consists exclusively of pulpwood or contains pulpwood but does not include any timber which the Secretary requires for disposal whether by sale or under a lease licence permit or other authority for sawmilling or fencing timber.

"removed" used in relation to pulpwood timber means taken from the stump (or other place in the forest where the pulpwood timber is lying) to a place where it can be loaded on a vehicle in working order and "removal" has a corresponding meaning.

"sawmilling" includes the obtaining of logs or timber for sawing veneering or slicing or splitting by hand or machine or for use as piles or poles or for hewing for engineering construction or public works.

"Secretary" means the Secretary to the Department.

"State forest" has the same meaning as in the Forests Act.

"Trade Measurements Act" means the Trade Measurements Act 1995 of the State of Victoria as amended from time to time.

"Water Act" means the Water Act 1989 of the State of Victoria as amended from time to time.

"wood pulp" means pulp produced from pulpwood by any process whether chemical or mechanical or by a combination of chemical and mechanical processes.

"year" means a period of twelve months commencing on the first day of July.

2. (1) In this Agreement unless inconsistent with the context or subject-matter references to any Act shall include all amendments and re-enactments thereof for the time being in force and all supplemental

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legislation for the time being in force whether by regulation rule proclamation or order made or continuing under that Act or any amendment or re-enactment thereof.

- (2) The headings and sidenotes shall not affect the interpretation of this Agreement.
 3. This Agreement shall not be of any force or effect until it has been ratified and otherwise given effect by the Act.
 4. (1) Upon the date of commencement of the Act this Agreement shall be deemed to have come into operation on 1st July 1996 and the provisions of the original agreement shall be deemed to have ceased to have any effect from 1st July 1996 subject to Clause 4(2).
 - (2) The cessation of the effect of the provisions of the original agreement shall not affect the enforcement of any right obligation or liability acquired accrued or incurred thereunder before 1st July 1996.
 5. (1) The Company shall be at liberty at any time with the prior written consent of the Minister to -
 - (a) procure the incorporation of a subsidiary company to exercise as the nominee of the Company all or any of its rights under this Agreement and the Act; and
 - (b) assign all or any of its rights under this Agreement and the Act to such subsidiary company or to any other company.
 - (2) After any such assignment and after written notice thereof given by the Company to the Minister the following provisions shall have effect -
 - (a) the subsidiary or assignee company shall by virtue of the assignment and the Act be subject to the relevant obligations and conditions imposed upon the Company by this Agreement so far as they remain in force and capable of taking effect; and
 - (b) the Company shall remain responsible to the Minister and the Secretary for the performance of all its obligations under this Agreement as if no assignment had been made.
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6. In using its powers and applying its discretions whether under this Agreement or the Act or the Forests Act the Minister and the Secretary shall give full recognition to the fact that the Company is engaged in a competitive business and so far as the interests of forest management allow the Secretary (which shall for the purposes of this Agreement be the sole judge of what is proper forest management) shall so act in every reasonable way as to enable the Company to carry on the industry in an economic manner.

PART II - OPERATION OF INDUSTRY

DIVISION A. - DURATION OF AGREEMENT

7. This Agreement shall remain in force until the date of expiration or until sooner determined in accordance with the provisions hereof and thereupon the rights interests powers and privileges granted by or under this Agreement to the Company its agents and contractors shall determine.
8. The expiration or determination of this Agreement shall not affect the enforcement of any right obligation or liability previously acquired accrued or incurred hereunder.

DIVISION B - TIMBER RIGHTS

9. The Forests Act shall apply to and with respect to all operations of the Company under this Agreement except in so far as that Act may be inconsistent with the provisions of this Agreement.
10. (1) Save as expressly provided by this Agreement or the Act nothing in this Agreement or the Act shall affect the rights powers and privileges acquired by any person (whether before or after the commencement of the Act) under the Forests Act or any other Act.
- (2) Notwithstanding anything contained in this Agreement or the Act any person who has acquired or acquires any rights powers or privileges as aforesaid shall be entitled to the full and free right of entry to the area in respect of which they were or are acquired.
11. Subject to the Secretary's compliance with the obligations expressed in clause 14 hereof nothing in the Agreement shall operate so as to restrict the Secretary's rights pursuant to the Forests Act to sell forest produce to meet the reasonable
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requirements of the general public. The Secretary shall be the sole judge as to what are reasonable requirements within the meaning of this clause.

12. In order to ensure the effective management and utilization of the forests within the Forest Area the Secretary shall carry out a review of pulpwood within the Forest Area at least once in each period of five years while this Agreement remains in force and shall make the results available to the Company.
- 13.(1) The Secretary and the Company have jointly prepared a Plan of Utilization for the supply of pulpwood based on the Company's estimates of its pulpwood requirements for the year 1996-1997 and a provisional plan for the supply of pulpwood for the next two years based on the Company's estimates of its pulpwood requirements. Not later than the thirtieth day of April in each year commencing 30 April 1997 the Secretary and the Company shall jointly prepare a Plan of Utilization for the supply of pulpwood for the following year and a provisional plan for the supply of pulpwood for the next two years based on the Company's estimates of its pulpwood requirements. For that purpose the Company shall by the first day of March in each year commencing 1 March 1997 submit to the Secretary in writing its estimates of its pulpwood requirements for the period to be covered by the Plan of Utilization and the provisional plan. The Plan of Utilization shall (in addition to any other matters which the Secretary and the Company desire to include) prescribe -
- (a) the areas to be made available under this Agreement for the obtaining of pulpwood;
 - (b) estimates of yield of each class of pulpwood from the areas to be so made available;
 - (c) organisation of and obligations of the Company or the Department as the case may be with respect to the felling and extraction of pulpwood;
 - (d) road construction and maintenance and responsibility therefor.
- (2) The Secretary and the Company may during the currency of any Plan of Utilization agree to a modification of the Plan of Utilization.
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- (3) The Secretary and the Company shall conform with each Plan of Utilization or modified or revised Plan of Utilization.
 - (4) The Secretary and the Company may each nominate from time to time two of its officers to form a committee the functions of which shall include -
 - (a) the detailed preparation and revision of Plans of Utilization for submission to the Secretary and the Company for approval;
 - (b) the co-ordination of pulpwood operations;
 - (c) the investigation of any other matters arising from this Agreement which it may be jointly required by the Secretary and the Company to investigate.
 - (5) If the Secretary is satisfied (including on representation by the Company) that pulpwood to be felled under any Plan of Utilization from any area (the original area) would not be obtainable at an economic cost, pulpwood shall not be felled or extracted from that area and the Secretary shall substitute for the original area another area as will enable pulpwood which it would have been entitled to take from the original area to be obtained at an economic cost, including where pulpwood wood is to be felled and delivered by the Department under the Plan of Utilisation taking into account any increased cost of delivery so arising. Any dispute as to what constitutes economic cost will be referred for determination in accordance with Clause 37.
 - (6) If a Plan of Utilization imposes obligations on the Company for the felling and extraction of pulpwood the Company shall complete to the satisfaction of the Secretary and in accordance with that Plan of Utilization the extraction of pulpwood within any area (other than an area in which the Secretary fells or fells and removes pulpwood timber) made available under the Plan of Utilization PROVIDED that the Company shall be deemed to have completed the extraction of pulpwood as aforesaid to the satisfaction of the Secretary unless the Secretary if it is not satisfied with the manner in which the extraction of pulpwood from any area is being carried out gives to the Company written notice to that effect within a reasonable time (being not less than fourteen days) before the date on which the extraction as aforesaid should in the opinion of an authorised officer having control of the area be completed and in that event the Company shall within a
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reasonable period after receipt of the notice complete the extraction as aforesaid to the satisfaction of the Secretary.

- (7) Subject to sub-clause 22(1) the Company shall be entitled to carry out in State forest works required to enable the extraction of pulpwood by it in accordance with this Agreement from any area prescribed in any Plan of Utilization or modified or revised Plan of Utilization.
- (8) When a person obtains pulpwood from the Forest Area in accordance with rights granted under the Forests Act or any other Act at the same time as the Company or the Department for delivery to the Company in accordance with the Agreement the Plan of Utilization shall provide that -
- (i) as far as practicable there will be no discrimination between that person and the Company or the Department as the case may be as to factors affecting costs of felling extracting and loading on to motor trucks of pulpwood; and
 - (ii) subject to proper forest management and the necessity of avoiding waste of merchantable material operations are located so that cartage costs within the Forest Area are minimised for that person and the Company or the Department as the case may be.
14. (1) Subject to the provisions of clause 13 hereof and of the succeeding sub-clauses of this clause the Company without obtaining any lease licence permit or authority under the Forests Act shall have -
- (a) the right (which shall not be exclusive) to obtain pulpwood timber by its employees agents or contractors from the Forest Area in accordance with any Plan of Utilization;
 - (b) the right (which shall not be exclusive) to obtain pulpwood timber by its employees agents or contractors from the areas outside the Forest Area in accordance with any Plan of Utilization.
- (2) The Secretary shall be bound in each year to make available to the Company or to have the Department deliver to the Company as the Plan of Utilization may require from areas of forest as provided in this clause and in accordance with a Plan of Utilization a minimum annual supply of pulpwood which shall be -
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- (a) in each of the years 1996 - 1997 to 2003 - 2004 inclusive - 500,000 cubic metres;
 - (b) in each of the years 2004 - 2005 to 2006 - 2007 inclusive - 450,000 cubic metres;
 - (c) in each of the years 2007 - 2008 to 2009 - 2010 inclusive - 400,000 cubic metres;
 - (d) in each of the years 2010 - 2011 to 2029 - 2030 inclusive - 350,000 cubic metres,

of which at least 300,000 cubic metres shall be made available to the Company or delivered by the Department to the Company as the Plan of Utilization may require from mountain forests inside the Forest Area.

- (3) The Secretary may with the approval of the Minister by written agreement with the Company increase or decrease for any period commencing from the first day of July next following the date of such agreement the minimum annual supply referred to in sub-clause (2) of this clause for that period and any minimum annual supply so agreed upon may likewise be further increased or decreased.
 - (4) The volume of pulpwood specified in sub-clause (2) of this clause to be made available from mountain forests may not at any time be altered without the consent of the Company.
 - (5) The Secretary in its discretion may whether for extraction by the Company or delivery to the Company by the Department as the case may be -
 - (a) make available in any year at the request of the Company a quantity of pulpwood exceeding the amount of the minimum annual supply of pulpwood;
 - (b) make available to the Company in any year by agreement with it a proportion of the Company's requirements of pulpwood for that year from State forest not forming part of the Forest Area;
 - (c) in any year whether by agreement with the Company or not, make available to the Company from State forest not forming part of the Forest Area and generally situated within 200 kilometres by road (using the
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shortest practicable route) from the Maryvale Mill a volume of pulpwood not exceeding -

- (i) 150,000 cubic metres; or
- (ii) the volume in excess of 300,000 cubic metres of the minimum annual supply of pulpwood

whichever is the lesser, at such royalty rates as may from time to time be determined by the Secretary provided that if the Company is able to show to the satisfaction of the Secretary that the pulpwood so made available from any area would not be obtainable at an economic cost the Secretary shall not require it to take such pulpwood or accept delivery of it by the Department and shall substitute another area as will enable the Company to take or accept delivery of the pulpwood at an economic cost provided always that if the Secretary is not so persuaded the Company by notice in writing to the Secretary may require the dispute to be determined by arbitration in accordance with clause 37 and further provided that all pulpwood which is expected to become available from sawmilling and silvicultural operations in the Forest Area has first been offered to the Company before being offered to any other person.

- (6) The Company shall be entitled to obtain pulpwood in accordance with a Plan of Utilization from logging residue and standing trees as indicated by an authorised officer in accordance with prescriptions laid down by the Secretary for the harvesting of forest produce. Pulpwood harvesting operations shall be restricted to such parts of the areas of forest as provided in accordance with a Plan of Utilization and shall be conducted in a manner satisfactory to the Secretary and in accordance with the directions of an authorised officer.
 - (7) The Plan of Utilization shall specify whether the organisation and carrying out of the felling and extraction of the pulpwood shall be the responsibility of the Department or the Company. The organisation and carrying out of the felling and extraction of the pulpwood in accordance with the Plan of Utilization for any year commencing on or after 1 July 1997 shall be the responsibility of the Company. However, if by the 15th April in any year including by the 15th April 1997, the Secretary is able to demonstrate to the reasonable satisfaction of the Company that the bona fide cost at which the Department could extract and fell the pulpwood to be extracted and
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felled pursuant to the Plan of Utilization for the next ensuing year commencing 1 July and deliver it upon conditions no less favourable to the Company to the mill gate at Maryvale (the "Department Price") would be less than the price per cubic metre at which the Company could extract fell and so deliver pursuant to such Plan of Utilization, such extraction felling and delivery shall be the responsibility of the Department unless the Company is prepared to equal the Department Price.

- (8) The following shall apply to any pulpwood to be extracted felled and delivered by the Department in accordance with a Plan of Utilization -
- (a) Should the Company reject any pulpwood delivered to it by the Department on any of the grounds set out in clause 14(10) the same shall be set aside for inspection on behalf of the Department.
 - (b) If the Company's rejection is accepted by the Department, delivery of substitute pulpwood will be made to the Company as soon as practicable and in consultation with the Company at no additional cost to the Company, the original delivery cost to be charged in respect of subsequent deliveries when received.
- (9) The Company shall pay to the Secretary -
- (a) the licence fee payable in each year commencing 1 July, 2004 under the provisions of this Division; and
 - (b) as to pulpwood obtained from pulpwood timber which the Company either by itself or its contractors fells and removes - the royalty payable from time to time under the provisions of this Division; and
 - (c) as to pulpwood obtained from pulpwood timber which the Department either fells or fells and removes - the royalty as aforesaid and the Department's charges for felling or felling and removal as specified in the relevant Plan of Utilization.
- (10) The Company shall not be bound to accept timber which -

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- (a) will not produce pulpwood of at least 3.0 metres in length;
 - (b) is not sufficiently straight to produce pulpwood suitable for the manufacturing processes for the time being employed in the industry;
 - (c) is so defective due to the presence of rot or other faults that pulpwood cannot be produced economically; or
 - (d) in forests of regrowth is less than ten centimetres in diameter under bark and in forests other than forests of regrowth is less than fifteen centimetres diameter under bark.
- (11) If pulpwood which is expected to become available from sawmilling or silvicultural operations in the Forest Area is offered to the Company during the modification or revision of any Plan of Utilization and the Company advises that it does not require such pulpwood then the Company shall not unreasonably withhold its consent to disposal by the Secretary of such pulpwood to any other person for any purpose whatsoever.
- (12) If as the result of salvage operations following an occurrence which the Secretary and the Company agree is a major disaster a quantity of pulpwood which the Company advises is beyond its ability to utilise arises within the Forest Area then the Secretary may dispose of such pulpwood to other persons.
15. In order to assure to the Company supplies of pulpwood in connection with any proposed development of the industry it is provided as follows:
- (a) representatives of the Secretary and the Company shall investigate the development and the pulpwood supplies available in the Forest Area;
 - (b) if as a result of that investigation the Secretary is satisfied that having regard to the Company's future requirements of pulpwood it is reasonable to do so the Secretary may with the approval of the Minister either -
 - (i) increase the Forest Area by the inclusion of additional areas of State forest; or
 - (ii) reduce the Forest Area to an area capable in its opinion of producing adequate supplies of
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the types of pulpwood required for the economic continuation of the industry,

PROVIDED THAT -

- (i) reasonable allowance shall be made for the possibility of destruction of or damage to forests by fire and other causes; and
- (ii) so far as is consistent with proper forest management the areas from which supplies of pulpwood timber can be most conveniently obtained at the cheapest rates shall be made available or shall remain available to the Company;
- (c) if-
 - (i) the Company seeks an extension of the operation of this Agreement beyond the date of expiration; and
 - (ii) the Secretary as a result of the said investigation is satisfied that the extension of the operation of this Agreement for the period sought by the Company is necessary for the continuation of the industry -

the Secretary shall make a recommendation to the Minister that a Bill be introduced into the Parliament of the State of Victoria as soon as possible to extend the operation of this Agreement for that period.

- 16.(1) With respect to pulpwood referred to in clause 14 hereof the Company shall be bound in each year in which the quantity comprising the minimum annual supply of pulpwood for that year is available to it either -
- (a) to take or accept delivery as the case may be pursuant to the Plan of Utilization of not less than eighty five per centum of that quantity; or
 - (b) if it takes or accepts delivery as aforesaid of less than eighty five per centum of that quantity, to pay royalty to the Secretary on the deficiency at a rate equal to the average royalty rate paid for pulpwood for that year.

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- (2) If the Company in respect of any year makes any payment under paragraph (b) of sub-clause (1) of this clause in respect of a deficiency in that year and during either or both of the two years next following that year it takes or accepts delivery of a quantity of pulpwood in excess of eighty five per centum of the minimum annual supply for those respective years then the amount of royalty payable in respect of such excess shall be reduced by an amount not exceeding in the aggregate the royalty paid in respect of the deficiency.
- (3) (a) In the event of damage to the Company's forests in Victoria by fire drought insects disease or other cause the provisions of this clause shall upon the Company giving written notice to the Secretary be modified to the extent that the pulpwood from such damaged forests is salvable.
- (b) In the event of damage of the kind referred to in the preceding paragraph to State forests within the Forest Area the Company shall to the extent that the pulpwood from such damaged forests is salvable use its best endeavours to use pulpwood from such forests including reducing the supply from the Company's own forests in Victoria to the fullest extent practicable.
- (c) In the event of damage of the kind referred to in paragraph (a) of this sub-clause occurring to the Company's forests in Victoria and State forests within the Forest Area at or about the same time the provisions of paragraphs (a) and (b) of this sub-clause shall not apply and if damage of that kind occurs to the forests of one party within twelve months of damage of that kind occurring to the forests of the other party the provisions of paragraphs (a) and (b) of this sub-clause may be modified by agreement between the Secretary and the Company or failing agreement as the Secretary may determine.
- (4) For the purposes of determining whether the Company has taken or accepted delivery of eighty five per centum of the quantity of pulpwood comprised in the minimum annual supply of pulpwood in any year, all pulpwood obtained by the Company or delivered by the Department to the Company in the year from any State forest (whether under this Agreement or otherwise) and on which royalty has been paid to the Secretary shall be taken into account.
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- (5) For the purposes of sub-clause (1) of this clause pulpwood shall not be deemed to be available from an area of forest if by reason of strike lockout fire storm or other unforeseen circumstances the means of supply from that area are interrupted or destroyed.
- (6) If owing to any change in the economics of the industry (such as competition from other raw materials or products, change in the extent of public demands, change in quality of products required by the public or substitution of other products requiring different types of raw material) the continued performance by the Company of its obligation under sub-clause (1) of this clause or the payment of royalties pursuant to this Agreement would affect it unfairly:-
- (a) the Secretary on the written request of the Company shall confer with it with a view to agreeing upon such a modification or suspension of the Company's obligations under this clause or clause 20 as in view of the altered circumstances will be fair and reasonable;
 - (b) if the Secretary and the Company fail to agree upon a modification or suspension as aforesaid within sixty (60) days of the request in writing made under clause 16(6)(a) the matter shall be determined in accordance with clause 37 hereof;
 - (c) any modification or suspension as aforesaid agreed upon by the Secretary and the Company or determination under clause 37 hereof shall be given effect accordingly, but so that all costs of the Secretary as between party and party of and incidental to any such determination shall be paid by the Company.
- 17 (1) The provisions contained in sub-clause (2) shall apply with respect to the licence fee payable under this Agreement.
- (2) (a) The Company shall pay to the Secretary an annual licence fee. However:
- (i) payment of the licence fee otherwise payable is waived by the Secretary until the year commencing 1 July 2004;
 - (ii) the amount of the licence fee shall be an amount calculated by multiplying the sum of \$0.50 (indexed to changes in pulpwood royalty rates since 1 July, 1996) by the
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volume (specified in cubic metres) of the minimum annual supply of pulpwood in the year in which the licence fee becomes payable.

- (b) On or before the thirtieth day of each year during the term of this Agreement, or within 30 days of being so advised, whichever is the later, the Company shall pay the annual licence fee to the Secretary. Alternatively the annual licence fee may be paid six monthly in instalments by prior arrangement with the Secretary. If the annual fee is payable in instalments, interest shall be applied for a period of 6 months to the second six monthly payment at the rate for the time being fixed under Section 30 of the Conservation, Forest and Lands Act (or any successor Act to that Act). If without reasonable cause, the licence fee is not paid after becoming overdue the Company shall pay interest on the sum due but unpaid, from the date that sum became overdue at the rate for the time being fixed under Section 30 of the Conservation, Forests and Lands Act (or any successor Act of that Act).
- (c) If the licence fee or an instalment of licence fee remains overdue for more than 14 days then the Secretary or his delegate may by notice in writing to the Company direct that no further timber may be taken under this Agreement until the amount and any interest thereon are paid.
18. (1) The provisions contained in sub-clause (2) shall apply with respect to royalty payable under this Agreement.
- (2) (a) Accounts for royalty shall be issued monthly by the Department.
- (b) An account issued for royalty is due for payment by the Company immediately it is rendered and becomes overdue if not paid by thirty (30) days from the days from the date the account is rendered.
- (c) If royalty is not paid after becoming overdue the Company shall pay interest on the sum due but unpaid, from the date that sum became overdue at the rate for time being fixed under Section 30 of the Conservation,
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Forests and Lands Act (or any successor Act of that Act).

- (d) If an account remains overdue for more than 14 days then the Secretary or his delegate may direct by notice in writing to the Company that no further timber shall be taken by the Company until the outstanding amount has been paid in full.
19. (1) For the purposes of determining rates of royalty payable under this Agreement pulpwood shall be in one of the following classes -
- ash species from within the Forest Area;
 - mixed species from within the Forest Area;
 - pulpwood of whatever class from outside the Forest Area.
- (2) Royalty on pulpwood obtained by the Company during the period 1 July 1995 to 30 June 1996 is acknowledged to have been payable pursuant to the original agreement at the rates following:-
- | Pulpwood Class | Rate in \$ Per Cubic Metre |
|--|----------------------------|
| Ash species from within the Forest Area | \$11.05 |
| Mixed species from within the Forest Area | \$ 8.46 |
| Pulpwood of any class from outside the Forest Area | \$ 8.46 |
- (3) The Secretary and the Company may at any time by agreement vary the classification of pulpwood provided in sub-clause (1) of this clause and the royalty rates applicable to the classes of pulpwood so varied shall be ascertained in a like manner to that provided in clause 20 hereof. Such variation may without affecting the generality of the foregoing be in respect of the species or age of the trees from which pulpwood will be obtained or the locality in which they are growing or the conditions specified by the Secretary under which they may be cut.
- 20 (1) During each successive period of twelve months from 1 July 1996 the royalty payable shall be:
- (a) at the rates agreed upon by the Secretary and the Company having regard to:

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- the Company's need for international competitiveness;
- the payment by the Company of the annual licence fee as from the year commencing 1 July 2004; and
- the Secretary's need for commercial viability,

(those matters being hereinafter collectively called "the objectives"); or

- (b) failing agreement within 90 days of the commencement of that period at the rates calculated by adjusting the rates previously payable (up or down as the case requires) by one half of the percentage change proved by audit of the Secretary to have occurred during the preceding period of twelve months in the average gross price per tonne charged by the Company bona fide and on an arms length basis to its customers for all paper goods manufactured in Victoria and sold by the Company during that period or in accordance with such other formula as may be agreed between the Secretary and the Company from time to time.
- (2) The Company shall give the Secretary its employees and authorised agents access to all accounts and papers and shall do all things reasonably required by the Secretary for the purposes of the audit contemplated by sub-clause (1).
- (3) Any information obtained from the Company under sub-clause (2) or sub-clause (6) below shall be used only for the purposes for which it was obtained shall be treated as confidential and shall only be disclosed if so required by law.
- (4) If either of the Secretary or the Company is not satisfied that any of the objectives are likely to be achieved if royalty is paid at the rates determined in accordance with sub-clause (1) and have notified the other accordingly within 30 days of being advised of the calculation of those rates, then the rates in respect of which the Secretary or the Company (as the case may be) are not satisfied shall instead be the rates determined by arbitration in accordance with Clause 37 hereof.
- (5) The arbitrators appointed in accordance with clause 37 hereof or their umpire shall take into consideration any alteration in circumstances and any other relevant matters which any of the
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parties to the reference may bring before the arbitrators or the umpire.

- (6) The arbitrators appointed in accordance with clause 37 hereof or their umpire or some person appointed on their behalf may investigate the Company's affairs and accounts so far as may be necessary to assist them to determine fair rates of royalty and the officers of the Company shall give them full access to all accounts and papers necessary for that purpose and shall afford them full information and assistance.
- (7) The Company shall continue to pay royalty at the rates previously payable until the adjustment of the rates has been agreed or determined in accordance with this clause 20 whereupon any necessary adjustment retrospective to the commencement of the relevant twelve month period will be made between the parties.
21. With respect to obtaining and transporting pulpwood timber the following provisions shall have effect:
- (a) the Secretary shall take all reasonable steps in its power to facilitate the obtaining by the Company in exercise of the rights granted under this Agreement of pulpwood timber or pulpwood from Crown lands the subject of any timber cutting licence issued in accordance with the provisions of the Forests Act and in particular to facilitate the supply to the Company by the holder of any such licence of pulpwood from the lands affected by the licence;
- (b) for the purposes of Section 52 of the Forests Act the Company and persons contracting with the Company for the supply of pulpwood to be obtained under the provisions hereof shall be deemed to have the appropriate licences under that Act.
22. (1) The Company shall not construct any road track passage tramway chute or flume or erect any haulage unit or building within any State forest without the consent of the Secretary or an authorised officer previously obtained.
- (2) Should the Secretary be unable to complete the program of road construction and maintenance for which it is responsible under the Plan of Utilization in any year it shall make available to the Company a volume of the same class of pulpwood timber and pulpwood from other roaded areas of forests of regrowth
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equivalent to the volume unavailable to the Company by reason of the Secretary's inability to complete the program.

23. (1) The quantity of pulpwood upon which royalty is payable under this Agreement shall be determined in such manner (allowance being made for timber or other substance that is not pulpwood) as may be agreed upon by the Secretary and the Company or failing agreement as the Secretary may direct.
- (2) The place at which pulpwood is to be measured shall be as fixed by the Secretary from time to time after consultation with the Company.
- (3) If the royalty so payable is to be determined by mass -
- (a) the Company shall provide at its Maryvale mill a weighbridge of a pattern approved by a person for the time being performing the duties of an Inspector under the Trade Measurement Act and shall while this Agreement remains in force have the weighbridge maintained and periodically verified in accordance with the provisions of that Act;
 - (b) at all times while the weighbridge is in accurate working order the quantity of pulpwood upon which royalty is payable under this Agreement shall be determined by weighing the pulpwood on the weighbridge;
 - (c) at all times while the weighbridge is not in accurate working order the quantity of pulpwood upon which royalty is payable under this Agreement shall be determined in such manner as may be agreed upon between the Secretary and the Company or failing agreement as the Secretary may direct.
24. (1) The Company shall keep records showing in respect of each year -
- (a) particulars of the respective quantities of pulpwood obtained by it or delivered by the Department to it from -
 - (i) the Forest Area or any subdivisions thereof specified in any Plan of Utilization as aforesaid;
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- (ii) other areas of State forest;
 - (iii) any source other than State forest.
 - (b) particulars in respect of each of the sources mentioned in the last preceding paragraph of the respective quantities of pulpwood obtained by the Company or delivered by the Department to the Company from -
 - (i) ash species from within the Forest Area;
 - (ii) mixed species from within the Forest Area;
and
 - (iii) pulpwood of any class from outside the Forest Area.
 - (c) particulars of the quantities of pulpwood obtained from mill waste; and
 - (d) such other particulars of a similar nature as may be prescribed by regulation under the Act.
- (2) The Company shall make such records available for inspection at all reasonable times by an officer appointed by the Secretary for that purpose.
 - (3) Not later than the fifteenth day of every month the Company shall furnish to the Secretary a return in the form prescribed by regulation under the Act or in any other form approved by the Secretary of all pulpwood received by it during the last preceding month.
 - (4) The Company shall also furnish to the Secretary returns in respect of the matters mentioned in sub-clause (1) of this clause in such form and at such times as from time to time are prescribed by regulation under the Act or in any other form approved by the Secretary.
 - (5) The Secretary or any person appointed by it shall be entitled to require from the officers of the Company such information and explanations as are necessary for the purpose of testing and verifying the completeness and accuracy of the records and returns. The Secretary and its officers and any person appointed by the Secretary for the purposes of this sub-clause shall keep
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strictly confidential any information obtained under this sub-clause.

25. (1) The Secretary shall give to the Company prior to the date on which it is entitled under this Agreement to obtain pulpwood timber from any area written notice of the conditions published by the Secretary in respect of the cutting of pulpwood timber in that area and the Company and any person authorized by it (whether by contract or otherwise) to cut pulpwood timber in that area shall be jointly and severally bound to comply with the said conditions.
- (2) The Company shall notify the Secretary in writing from time to time of the names of the foremen contractors and other persons who are in charge of or are directing the obtaining of pulpwood timber pursuant to this Agreement.
- (3) The Company shall supply to each such person for production when required by an authorised officer evidence in a form satisfactory to the Secretary that he is engaged in the obtaining of pulpwood timber pursuant to this Agreement and the Company shall forthwith notify the Secretary in writing whenever such person ceases to be so engaged.
- (4) Any person contracting with the Company to fell or fell and remove pulpwood timber pursuant to this Agreement whose name has been notified to the Secretary as aforesaid shall until such time as this contract has expired or has been determined or until the Secretary directs the Company in writing to terminate his authority to fell or fell and remove pulpwood timber (whichever first occurs) be deemed to hold an appropriate licence under the Forests Act.
26. The Company and the Secretary agree that the full utilization of wood material felled during integrated harvesting operations is desirable. To this end, the parties will work towards a proportion of the minimum annual supply being supplied, by agreement, as chip rather than roundwood.

DIVISION C. - OTHER RIGHTS AND POWERS

27. If any easement or other right in or over private property which is necessary or desirable for the convenient carrying on of the industry can be obtained under the Forests Act or the Conservation Forests and Lands Act:-
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- (a) At the request of the Company the Minister shall on the recommendation of the Secretary pursuant to the Forests Act and the Secretary pursuant to the Conservation Forests and Lands Act shall exercise the powers vested in the Minister or the Secretary as the case may be under those Acts for the purposes of obtaining the easement or right which when obtained shall be so exercised as to enable the Company conveniently to carry on the industry.
- (b) the Company shall pay all expenses incurred by the Minister or Secretary as the case may be in exercising such powers and shall defray all payments to be made to owners of the property affected.
28. The authority having the care and management of any public road street highway tramway or railway (all of which are in this clause included in the word "road") upon application by the Company and upon the report of any qualified engineer or licensed surveyor -
- (i) that a culvert pipe tunnel flume channel or drain (all of which are in this clause included in the word "work") can be laid or constructed on under or over any such road without any substantial injury to or obstruction of the traffic thereon; and
- (ii) that the work is necessary for the due and proper carrying on of the industry or for the conveyance of water for its purposes -
- by order in writing subject to the rights of owners and occupiers of adjoining or contiguous lands and of any persons lawfully having works on under or over any such road may consent to the construction of the work by the Company for the purpose of conveying any water or process water to or from any land upon which the industry is carried on or is proposed to be carried on PROVIDED that -
- (a) the authority shall not unreasonably refuse its consent to the construction of any work in accordance with such terms and conditions as the authority may determine;
- (b) every work shall be constructed in accordance with such terms and conditions;
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- (c) the authority may at its discretion carry out the work at the cost of the Company.
29. The powers of the Governor in Council and the Minister administering the Water Act 1989 to grant and issue leases and licences under the Water Act 1989 for pumping sites water easements the diversion of water and the cutting of races and other necessary purposes shall be deemed to extend to the grant and issue to the Company of such instruments (and in the case of bulk entitlements the Company shall be granted a bulk entitlement sufficient to meet the requirements of the Company to carry on the industry at the Maryvale Mill during the term of this Agreement as if the Company were an Authority for the purposes of Division 1 of Part 4 of the Water Act 1989) for a period ending on the date of expiration or sooner determination of this Agreement. Subject to any Act for the time being in force, the Company shall have the right to discharge the process water from its mills into the River Latrobe at a point or points on the river frontage adjacent to the Maryvale Mill.
30. The Company shall subject to the approval of the Minister responsible for the administration of the Land Act 1958 (the "Land Minister") be entitled to licences in respect of any strip or strips of unoccupied Crown land along the banks of any stream on which it is necessary to construct outflow drains tunnels and pipe lines for the discharge of process water as aforesaid.
31. (1) Whenever the Land Minister after hearing the Company and any persons interested in any land concerned or having given them an opportunity to be heard is satisfied that it is necessary or desirable that any land (including any easement right or privilege in over or affecting any land all of which are in this clause included in the expression "land") should be compulsorily purchased taken or used by the Company for the purposes of the industry, the Land Minister shall give to the Governor in Council a certificate to that effect under its seal specifying and delineating on a plan the land proposed to be so purchased taken or used and the purposes for which it is required.
- (2) Upon approval by the Governor in Council of a certificate as aforesaid it shall be lawful for the Company and its agents and workmen and all other persons authorised by it to enter into and upon and to take possession of and appropriate the land specified in the certificate for the purposes so specified in the manner provided for the resumption of land by the Land Minister under the Land Act and subject to all the conditions imposed by that
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Act. Full satisfaction shall be made by the Company in manner provided by that Act to all persons interested in the said land.

**DIVISION D. - SUSPENSION OF OBLIGATIONS AND
CONDITIONS**

32. If any of the forests in the Forest Area or any of the forests identified in any Plan of Utilization which are outside the Forest Area are damaged or destroyed by fire disease or other cause to such an extent that it is impracticable for the Secretary to comply with the provisions of clause 14 hereof or that having regard to the situation of those forests and of the Company's mills and other circumstances relevant to such damage or destruction it is impracticable for the Company to obtain under this Agreement supplies of pulpwood of sufficient quantity at reasonable cost whether by extraction by the Company or delivery from the Department to enable production of wood pulp to be carried on in an economic manner then so long as that state of affairs continues -
- (a) the Company shall have no claim against the Secretary for the non-fulfilment of its obligations under clause 14 hereof so far as non-fulfilment is due to any such cause;
 - (b) the Company's obligations under this Agreement shall be suspended provided that such suspension shall not affect any liability of the Company to make payments due before such suspension occurs;
 - (c) any questions or disputes arising in relation to the operation of this clause 32 and the suspension of the Company's obligations shall be referred for determination in accordance with clause 37.
33. If:
- (a) the Company's mills or other works used in the production of wood pulp or the means of transport of pulpwood timber are damaged or destroyed by fire or other calamity to a sufficient extent so as not to permit the production of wood pulp in an economic manner; or
 - (b) the continuance of the production of wood pulp in an economic manner is rendered impossible by force

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majeure by legal obstacles or by unforeseen or unavoidable cause (other than an economic cause) -

then until the damage or destruction can be rectified or the manufacture of wood pulp in an economic manner is resumed the Company shall not be liable for the non-fulfilment of any obligation to take, accept delivery of or pay for pulpwood not then delivered provided that the Company can satisfy the Minister that the Company is using its best endeavours to rectify the damage or destruction or resume the manufacture of wood pulp in an economic manner . Any question or dispute as to when the obligations of the Company are to be resumed in accordance with this clause 33 shall be referred for determination in accordance with clause 37.

34. If by reason of war strike lockout or action in the nature of a strike or lockout -
- (i) the Secretary or Department is prevented from making available or delivering in accordance with the Plan of Utilization pulpwood; or
 - (ii) the Company is prevented from obtaining pulpwood or accepting delivery of or carrying on production of wood pulp in an economic manner -

the Secretary shall (as the case requires) grant or make a reasonable extension of time in respect of or a reasonable modification of any obligation or condition affected thereby.

35. The Secretary and the Company may by agreement subject to the approval of the Minister and the procedures in the Act from time to time amend this Agreement by such additions, deletions and variations of matters of detail as may be necessary or desirable to facilitate the carrying on of the industry.

DIVISION E - DETERMINATION OF COMPANY'S RIGHTS

36. (1) If the Company at any time enters into liquidation (other than a voluntary liquidation for the purpose of reconstruction and assignment of rights under this Agreement) the Minister upon recommendation of the Secretary may determine this Agreement.
- (2) Subject to clause 36(3) if the Company at any time contravenes or breaches the terms and conditions of this Agreement the Minister
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on the recommendation of the Secretary may terminate this Agreement by giving notice in writing of intent to terminate in which event this Agreement shall terminate upon the expiry of the 30th day from the date of service of notice unless the right of the Minister to terminate is referred for determination in accordance with clause 36(4).

- (3) Clause 36(2) is subject to the proviso that the Minister shall only be entitled to terminate this Agreement if the contravention or breach:

was not due to mistake, or

to circumstances beyond the control of the Company, or

if there was otherwise no reasonable cause therefor, and

if the State of Victoria has been and will be materially prejudiced by the contravention or **breach**.

- (4) If within fourteen days after service of notice in accordance with clause 36(2), the Company serves a notice in writing on the Minister disputing the right of the Minister to terminate this Agreement, based on the considerations set out in clause 36(3) the right of the Minister to determine this Agreement shall be referred by the Minister for determination in accordance with clause 37. Otherwise failing service of any such notice by the Company this Agreement shall determine in accordance with clause 36(2).

DIVISION F - SUPPLEMENTAL

37. Wherever in any clause of this Agreement it is provided that any matter shall or may be determined in accordance with this clause:
- (a) that matter shall be referred to two arbitrators one to be appointed by the Company and one by the Secretary;
 - (b) the provisions of the Commercial Arbitration Act shall apply to the reference;
 - (c) the arbitrators and any umpire appointed for the purpose of the reference shall have regard to all matters set out in the clause of this Agreement which provides for determination of the matter under this clause and shall decide what is fair and reasonable having regard to the
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term of this Agreement and the circumstances existing
at the time of the reference.

IN WITNESS whereof the parties hereto have executed this Agreement the
day and year first before written.

SIGNED by the Honourable Marie Therese)
Tehan as Minister for Conservation and Land)
Management for and on behalf of the State of) **MARIE T. TEHAN**
Victoria administering the **Forests Act 1958**)
in the State of Victoria in the presence of)

NORMA MARSHALL
Witness

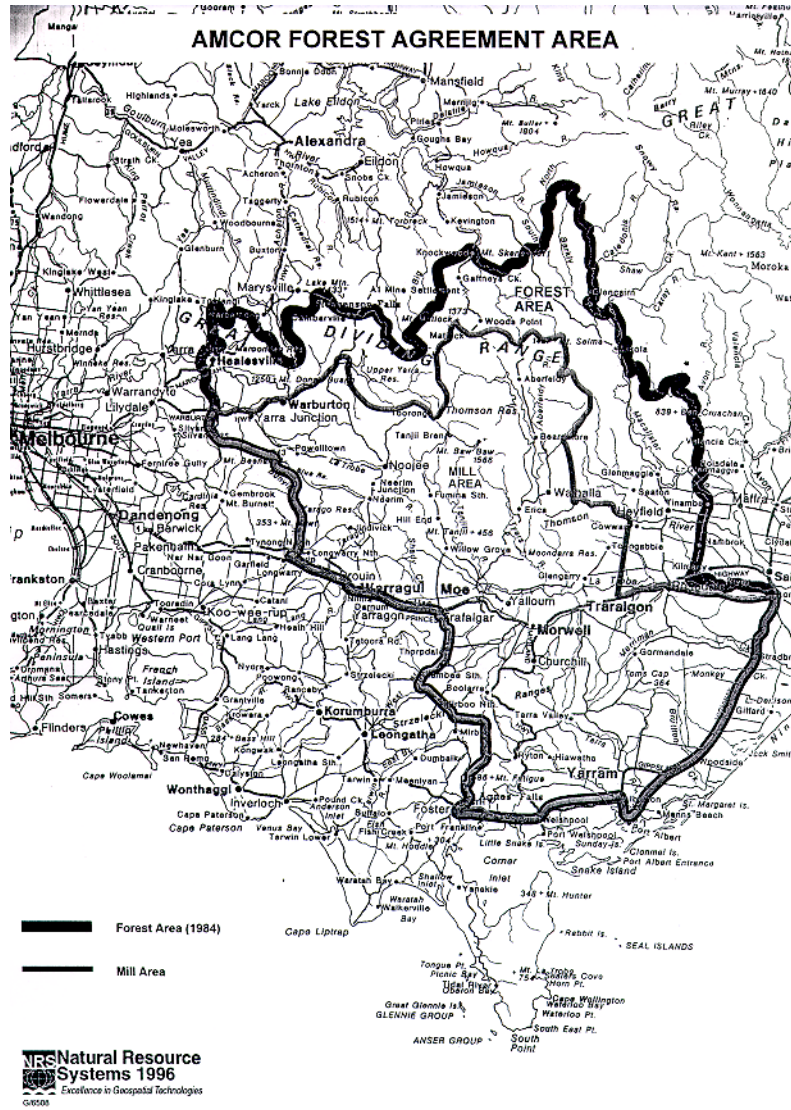
THE COMMON SEAL of **AMCOR LIMITED**)
(ACN 000 017 372) was hereunto affixed by) **L. S**
authority of the Board of Directors)

DONALD B MACFARLANE
Director

GARRY G RINGWOOD
Director

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NOTES

† *Minister's second reading speech—*

Legislative Assembly: 30 May 1996

Legislative Council: 19 June 1996

The long title for the Bill for this Act was "to ratify an Agreement between the Minister administering the **Forests Act 1958** and AMCOR Limited with respect to the supply of pulpwood for the manufacture of wood pulp and for other purposes."