

WESTERN AUSTRALIA

**WESPLY (DARDANUP)
AGREEMENT AUTHORIZATION
AMENDMENT ACT**

No. 100 of 1986

**AN ACT to amend the *Wesply (Dardanup) Agreement
Authorization Act 1975*.**

[Assented to 11 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Wesply (Dardanup) Agreement Authorization Amendment Act 1986*.

Commencement

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Principal Act

3. In this Act the *Wesply (Dardanup) Agreement Authorization Act 1975** is referred to as the principal Act.

[*Act No. 17 of 1975.]

Section 2 amended

4. Section 2 of the principal Act is amended by deleting “the Schedule to this Act” and substituting the following—

“ Schedule 1 ”.

Section 3 amended

5. Section 3 of the principal Act is amended by inserting after “thereto, the Agreement” the following—

“ (in this Act called “the Principal Agreement”) ”.

Section 4 inserted

6. After section 3 of the principal Act the following section is inserted—

Variation Agreement

“ 4. (1) The agreement (in this section called “the Variation Agreement”), a copy of which is set out in Schedule 2, is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Variation Agreement shall operate and take effect notwithstanding any other Act or law.

(3) Without limiting section 3, on the commencement of the *Wesply (Dardanup) Agreement Authorization Amendment Act 1986* the Principal Agreement, as amended by the Variation Agreement, shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act. ”.

Schedule amended

7. The Schedule to the principal Act is amended by deleting the heading thereto and substituting the following heading—

“ Schedule 1 ”.

Schedule 2 added

8. After Schedule 1 to the principal Act the following Schedule is added—

“ SCHEDULE 2

THIS AGREEMENT made this TWENTY FIFTH day of November 1986 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

WESFI PTY. LTD. (formerly Westralian Plywoods Pty. Ltd.) a company incorporated under the Companies Act 1961 of the said State and having its registered office therein at 1-27 Somersby Road, Welshpool (hereinafter called “the Company” which expression shall where the context so admits or requires extend to and include the successors of the Company including where the context so admits the permitted assignees or appointees of the Company) of the other part.

WHEREAS:

- (a) the parties are the parties to the agreement between them dated the 23rd May, 1975, the execution of which was authorised by the Wesply (Dardanup) Agreement Authorization Act 1975 (which agreement is hereinafter referred to as “the Principal Agreement”); and
- (b) the parties desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The Principal Agreement is hereby varied as follows—

(1) Clause 1 sub-clause (1)—

- (a) in the definition of “associated Company”, by deleting “Section 6 of the Companies Act, 1961” and substituting the following—

“section 7 of the Companies (Western Australia) Code”;

- (b) by deleting the definition of "Conservator";
- (c) by deleting the definition of "forest officer" and substituting the following definition—

"forest officer" means any officer of the Department designated as a forest officer under the Conservation and Land Management Act 1984;"

- (d) by deleting the definition of "Forests Department" and "Department";
- (e) in the definition of "forest produce" and "timber", by deleting "Forests Act, 1918" and substituting the following—

"Conservation and Land Management Act 1984";

- (f) by deleting the definition of "Kewdale factory" and substituting the following definition—

"Kewdale factory" means the Company's factory at 1-27 Somersby Road, Welshpool or such other factory or factories (other than the Dardanup factory) using chiplogs and sawmill residues from pine plantations and sawmills north of State Forest No. 16;"

- (g) by inserting, in their appropriate alphabetical positions, the following definitions—

"Department" means the Department of Conservation and Land Management established pursuant to the Conservation and Land Management Act 1984;

"Executive Director" means the person holding, or acting in, the office of Executive Director of the Department;"

(2) Clause 6—

by deleting "The Conservator is responsible, under the Forests Act, 1918" and substituting the following—

"The Executive Director is responsible under the Conservation and Land Management Act 1984".

(3) Clause 7 sub-clause (1)—

by inserting in paragraph (a) after "hereto" the following—

"Provided always that the Minister may from time to time, if he considers it appropriate so to do, reduce any of the said several rates of stumpages set out in the Schedule hereto to such amount or amounts and for such period or periods as he may determine".

(4) Clause 12—

by deleting "Forests Act, 1918" in clause 12 and the marginal note thereto and substituting the following—

"Conservation and Land Management Act 1984".

(5) Clause 26—

by deleting “Arbitration Act, 1895” and substituting the following—

“Commercial Arbitration Act 1985 and notwithstanding Section 20 (1) of that Act each party may be represented at an arbitration by a duly qualified legal practitioner or other representative”.

(6) By deleting “Conservator” wherever it occurs in the Principal Agreement and substituting the following—

“Executive Director”.

(7) The Schedule is deleted and the following Schedule substituted—

“

SCHEDULE

1. During the several periods set out or referred to in this Schedule the stumpage rates referred to in clause 7 of this Agreement shall be payable at the relevant rates set out and calculated in accordance with the provisions of this Schedule subject to the conditions and in the manner set out in this Agreement. The rates for chiplogs for the Kewdale factory shall continue to be agreed or determined and be applicable with respect to the rates for chiplogs for the Dardanup factory notwithstanding that the Company may not from time to time be carrying on operations at the Kewdale factory.

2. Stumpage rates for chiplogs for the Kewdale factory

(1) The stumpage rate shall be—

(a) for the period from 1st May, 1986 to 30th April, 1989—

\$7.95 per cubic metre; and

(b) for each successive period of 3 years commencing on 1st May, 1989—

the rate agreed upon by the State and the Company pursuant to subparagraph (4) of this paragraph or, failing agreement within the time therein provided, at the rate calculated by varying the rate payable during the relevant preceding period in the same proportion as the average of the proportional variation in the figures published or otherwise provided by the Australian Bureau of Statistics in regard to—

(i) the Average Weekly Earnings of Employees, Western Australia—All Males, Weekly total earnings, for the February quarter immediately preceding the beginning of the relevant preceding period and the February quarter immediately preceding the end of the relevant preceding period;

and

(ii) the Index Numbers Based on Australian Standard Industrial Classification (ASIC): Wood and Wood Products in respect of Perth, for the month of March immediately preceding the beginning of the relevant preceding period and the month of March immediately preceding the end of the relevant preceding period.

- (2) If any of the figures referred to in subparagraph (1) of this paragraph ceases to be published or to be available, becomes immutable or has its reference base changed so that it becomes inappropriate for the purposes of that subparagraph a new method of calculating any variation in the stumpage rate shall be agreed upon by the State and the Company or failing agreement within 30 days shall be determined by the State.
 - (3) If any variation in the stumpage rate for a period is not agreed or determined prior to the commencement of that period the Company shall continue to pay stumpage at the rate payable during the relevant preceding period and as soon as any new rate has been agreed or determined an adjustment shall be made retrospectively to the commencement of that period.
 - (4) The parties hereto shall confer within the 14 days preceding the expiry of each of the periods referred to in subparagraphs (1)(a) and (1)(b) of this paragraph in a bona fide effort to reach agreement within such fourteen days (or thereafter within such extended time as the Minister may allow as provided in clause 25 of this Agreement) as to the stumpage rate to be payable for the succeeding period and in so doing shall give full consideration to the economies of growing softwood timber in the pine plantations and all matters incidental thereto.
3. Stumpage rates for chiplogs for the Dardanup factory
- (1) Subject to paragraph 4 of this Schedule from and after 1st May, 1986 the stumpage rate payable shall be five-sixths of the rate from time to time applicable (pursuant to paragraph 2 of this Schedule) in respect of chiplogs for the Kewdale factory.
 - (2) The provisions of paragraph 2(3) of this Schedule shall apply mutatis mutandis to stumpage rates payable under this paragraph.
4. (a) It is acknowledged and agreed by the parties hereto that the stumpage rates provided for in this Schedule in respect of chiplogs used in the Dardanup factory are of a concessional nature based on the bulk of the particle board manufactured by the Company at the Dardanup factory being delivered beyond the boundaries of the said State.
- (b) The Company shall inform the Executive Director prior to the expiration of the period referred to in paragraph 2(1)(a) of this Schedule and of each successive 3 year period commencing on 1st May, 1989 of details of distribution of its particle board.
- (c) If the Executive Director considers that there has been a material reduction in the quantity of particle board delivered beyond the said State during the current period compared to that in the preceding period the parties agree that due regard shall be given to such increase in the stumpage rate payable for the succeeding period as the parties hereto agree or failing agreement as shall be determined by arbitration hereunder.”.

1986]

*Wesply (Dardanup) Agreement Authorization
Amendment Act*

[No. 100

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE
BRIAN THOMAS BURKE, M.L.A. in the
presence of:

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BRIAN BURKE

MAL BRYCE

MINISTER FOR INDUSTRY AND TECHNOLOGY

THE COMMON SEAL of WESFI PTY.
LTD. was hereunto affixed by authority of
the Directors in the presence of:

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(C.S.)

DENIS CULLITY Director

A. G. HARRIS Secretary

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