

ALBANY WOOLLEN MILLS LTD. AGREEMENT.

No. 118 of 1976.

AN ACT to ratify an Agreement between the State of Western Australia and Albany Woollen Mills Ltd. for the purpose of further development of Albany Woollen Mills Ltd. in a decentralized location and cognate purposes.

[Assented to 1st December, 1976.]

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:—

1. This Act may be cited as the *Albany Woollen Mills Ltd. Agreement Act, 1976.* Short title.

Interpre-
tation.

2. In this Act "the Agreement" means the agreement a copy of which is set out in the Schedule to this Act and, if that agreement is altered in accordance with the provisions thereof, includes that agreement as so altered from time to time.

Ratification
of the
agreement.

3. The agreement is hereby ratified.

SCHEDULE.

This Agreement made this Tenth day of November, 1976 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., 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 ALBANY WOOLLEN MILLS LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 136-138 Great Eastern Highway, South Guildford in the said State (hereinafter called "the Company") of the other part.

WHEREAS:

- (a) the Company is engaged in the manufacture of woollen goods and carpet yarn at Albany in the said State, being a "decentralized location" within the meaning of the Assistance to Decentralized Industry Act, 1974, and is committed to continue such operations;
- (b) the Company proposes to install additional plant and equipment at its premises at Albany for the manufacture of carpet yarn at a cost of not less than \$650 000, thereby consolidating its position;
- (c) the Company has commenced to investigate the feasibility of establishing a plant for the manufacture of carpet in Western Australia with the intention of submitting proposals to the State not later than 30th June, 1983 for the erection of such plant;
- (d) the Company has requested that the State over a 5 year period subsidise the Company in respect of certain interest obligations of the Company and refund to the Company pay-roll tax paid by the Company; and

- (e) the State desires to ensure that the Company continues in operation in the decentralized location.

NOW THIS AGREEMENT WITNESSETH

1. In this Agreement subject to the context—

Definitions.

“notify”, “report”, “request”, or “require”, means notify, report, request or require in writing as the case may be;

“calculation period” means the financial year immediately preceding the date upon which each annual payment to the Company pursuant to Clause 6 falls due;

“Clause” means a clause of this Agreement;

“employees normally employed” means employees of the Company who normally report for work at the Company’s place or places of business at Albany;

“financial year” means the 12 month period commencing on 1st July in each year and terminating on 30th June in the year next following;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the ratifying Act and pending the passing of the Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“month” means calendar month;

“pay-roll tax” means the tax imposed by any Act as assessed under the Pay-roll Tax Assessment Act, 1971;

“person” or “persons” includes bodies corporate;

“said State” means the State of Western Australia;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended.

2. In this Agreement—

Interpre-
tation.

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;

- (b) power given under any clause other than Clause 11 to extend any period or date shall be without prejudice to the power of the Minister under Clause 11;
- (c) marginal notes do not affect the interpretation or construction; and
- (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Initial obligations of the State.

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st December, 1976.

Ratification and operation.

4. (1) The provisions of this Agreement, other than this Clause and Clauses 1 and 3, shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act and the Company has complied with the provisions of Clause 5.

(2) Subject to subclause (1) of this Clause the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Condition precedent.

5. This Agreement is conditional upon the Company installing at its premises at Albany before 30th June, 1977 additional plant and equipment for the purpose of manufacturing carpet yarn at a cost of not less than \$650 000.

Payments to Company.

6. (1) Subject to the performance by the Company of its obligations hereunder and subject to Clause 5 the State shall notwithstanding the provisions of the Assistance to Decentralized Industry Act, 1974 pay to the Company 5 consecutive annual payments the first of which shall be due and payable on 30th September, 1978. The amount of each such annual payment shall be the total of amounts calculated in accordance with paragraphs (a) and (b) of this Clause as follows—

- (a) the total amount of pay-roll tax paid by the Company in respect of pay-roll for employees normally employed by the Company at its place or places of business at Albany during the calculation period;

(b) an amount equal to the first 5 per cent of interest charged to the Company during the calculation period—

(i) on borrowings by the Company for the purchase by it of the additional plant and equipment referred to in Clause 5 for installation at its premises at Albany; and

(ii) by the Company's bankers for overdraft facilities used by the Company for working capital required for its operations at Albany

Provided However that the amount payable to the Company by the State under sub-paragraphs (i) and (ii) of this paragraph for any calculation period shall not exceed \$25 000.00.

(2) The Company shall not later than 2 months after the expiration of each calculation period produce to the State such books of account and records of the Company or copies thereto or extracts therefrom as the Minister may require for the purposes of this Clause.

(3) The Minister may require the Company to produce verification from the Company's auditors as to any of the details required by the State pursuant to subclause (2) of this Clause.

7. The Company shall continue to investigate the feasibility of establishing a plant for the manufacture of carpet in Western Australia and shall not later than 2 months after the expiration of each calculation period (excepting the final calculation period) submit a report to the Minister concerning its investigation with a view to its being in a position to submit to the Minister not later than 30th June, 1983 detailed proposals for the establishment of such a plant.

Investigation
of carpet
manufac-
turing
plant.

8. The Company shall not later than 30th June, 1983—

(a) if the Company is satisfied that the establishment of the plant referred to in Clause 7 is feasible, submit to the Minister detailed proposals for the establishment of such a plant;

(b) if the Company is not satisfied that the establishment of the plant referred to in Clause 7 is feasible submit to the Minister a report setting out full details of its investigations and findings.

Report on
Investigation.

Inspection. 9. The Company shall permit the Minister or his nominee at all reasonable times for the purposes of this Agreement—

- (a) to inspect and examine any plant or equipment installed pursuant to this Agreement; and
- (b) to inspect and take copies of or extracts from all books of account and records of the Company.

Variation. 10. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Power to extend periods. 11. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement. 12. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein on its part to be performed or observed, or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of 30 days after notice as provided in subclause (2) of this Clause is given by the State or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder shall thereupon determine.

(2) The notice to be given to the Company by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination.

Agreement.

13. Upon the cessation or determination of this Agreement—

Effect of
cessation
and
determin-
ation of
Agreement.

- (a) except as otherwise agreed by the Minister the rights of the Company shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement; and
- (b) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

14. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liability of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895.

Arbitration.

(2) The provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

15. Any notice or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the State and by the Company if signed on its behalf by a director, manager or secretary of the Company or by any person or persons authorised by

Notices.

the Company in that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

Applicable
law.

16. This Agreement shall be interpreted according to the law for the time being in force in the said State.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore mentioned.

SIGNED by the said THE HON-
OURABLE SIR CHARLES WALTER
MICHAEL COURT, O.B.E., M.L.A. } CHARLES COURT
in the presence of—

ANDREW MENSAROS
MINISTER FOR INDUSTRIAL
DEVELOPMENT

THE Common Seal of ALBANY
WOOLLEN MILLS LTD. was here-
unto affixed by the authority of } [C.S.]
the Directors in the presence of—

M. R. H. HOLMES & COURT,
Director.

J. A. EVERETT,
Secretary.
